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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

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

**Fourteenth Session
Geneva, June 29 to July 3, 2009**

DRAFT REPORT

Document prepared by the Secretariat

INTRODUCTION

1. Convened by the Director General of WIPO, the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (“the Committee”) held its fourteenth session in Geneva, from June 29 to July 3, 2009.
2. The following States were represented: Algeria, Argentina, Australia, Austria, Azerbaijan, Bangladesh, Belgium, Bolivia, Botswana, Brazil, Burundi, Cambodia, Cameroon, Canada, Chile, China, Colombia, Congo, Czech Republic, Democratic Republic of the Congo, Costa Rica, Côte d’Ivoire, Cuba, Denmark, Djibouti, Ecuador, Egypt, El Salvador, Ethiopia, Fiji, Finland, France, Germany, Ghana, Greece, Guatemala, Guinea, Haiti, Holy See, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Lesotho, Lithuania, Luxembourg, Malaysia, Mauritius, Mexico, Montenegro, Morocco, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Senegal, Serbia, Singapore, Slovakia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Tunisia, Turkey, Uganda, Ukraine, United Kingdom, United States of America, Yemen, Zambia and Zimbabwe (99). The European Community was also represented as a member of the Committee.
3. The following intergovernmental organizations (“IGOs”) took part as observers: African Regional Intellectual Property Organization (ARIPO), African Union (AU), Common Wealth Secretariat (COMSEC), Council of Europe (CE), European Commission (EC); Food and Agriculture Organization of the United Nations (FAO), European Patent Office (EPO), Eurasian Patent Organization (EAPO), International Union for the Protection of New Varieties of Plants (UPOV), South Center, United Nations Conference on Trade and Development (UNCTAD), and the World Trade Organization (WTO) (12).
4. Representatives of the following non-governmental organizations (“NGOs”) took part as observers: 3D > Trade - Human Rights - Equitable Economy (3D); Assembly of Armenians of Western Armenia; Assembly of First Nations (AFN); Berne Declaration; Centre for Documentation, Research and Information of Indigenous Peoples (doCip); Centre for International Environmental Law (CIEL); Centre for International Intellectual Property Studies (CEIPI); Center for Peace Building and Poverty Reduction among Indigenous African Peoples (CEPPER); Civil Society Coalition (CSC); *Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos (CAPAJ)*; *Conseil national pour la promotion de la musique traditionnelle du Congo (CNPMT)*; Coordination of African Human Rights NGOs (CONGAF); Creators’ Rights Alliance (CRA); CropLife International; Electronic Information for Libraries (EIFL.net); Ethio-Africa Diaspora Union Millennium Council; Foundation for Research and Support of Indigenous Peoples of Crimea (FRSIPC); Ibero-Latin-American Federation of Performers (FILAIE); Indian Council of South America (CISA); Indian Movement “Tupaj Amaru”; International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP); Indigenous Fisher Peoples Network (IFP); Indigenous Peoples (Bethechilokono) of Saint Lucia Governing Council (BCG); Indigenous Peoples Council on Biocolonialism (IPCB); International Association for the Protection of Intellectual Property (AIPPI); International Centre for Trade and Sustainable Development (ICTSD); International Chamber of Commerce (ICC); International Commission for the Rights of Aboriginal People (ICRA); International Committee for the Indians of the Americas (INCOMINDIOS); International Federation of Library Associations

and Institutions (IFLA); International Federation of Musicians (FIM); International Federation of Pharmaceutical Manufacturers Associations (IFPMA); International Indian Treaty Council (IITC); International Society for Ethnology and Folklore (SIEF); International Publishers Association (IPA); International Trademark Association (INTA); Inuit Circumpolar Council (ICC); IQ Sensato; Kanuri Development Association; Knowledge Ecology International (KEI); L'auravetl'an Information and Education Network of Indigenous Peoples (LIENIP); Mannheim Centre for European Social Research (MZES); Mbororo Social Cultural Development Association (MBOSCUDA); Métis National Council (MNC); Music in Common; Nigeria Natural Medicine Development Agency (NNMDA); Queen Mary Intellectual Property Research Institute (QMIPRI); Research Group on Culture Property (RGCP); Rromani Baxt; Sudanese Association for Archiving Knowledge (SUDAANK); Third World Network (TWN); World Conservation Union (IUCN); Tulalip Tribes of Washington Governmental Affairs Department; West Africa Coalition for Indigenous Peoples' Rights (WACIPR); World Trade Institute (54).

5. A list of participants is annexed to this report.
6. Document WIPO/GRTKF/IC/14/INF/2 Rev. provided an overview of the working documents distributed for the fourteenth session.
7. The Secretariat noted the interventions made and recorded them on tape. This report summarizes the discussions and provides the essence of interventions, without reflecting all the observations made in detail or necessarily following the chronological order of interventions.

AGENDA ITEM 1: OPENING OF THE SESSION

8. The session was opened by Mr. Francis Gurry, the Director General of WIPO. In his opening remarks, the Director General noted that the Committee addressed issues of fundamental importance to many Member States and other participants, especially representatives of indigenous and local communities. It also raised searching questions for the IP system. There were, therefore, high expectations amongst many participants for concrete outcomes. Despite a rich amount of material before the Committee, there was, however, frustration among many delegations at the lack of progress. There were, at the same time, diverse views and aspirations among those participating in the Committee. The previous session of the Committee had ended without agreement on future work, and, specifically, on a proposal for an intersessional process put forward by the African Group. Since then, the Chair had been conducting consultations with all the regional groups and several individual delegations, as reported on in WIPO/GRTKF/IC/14/INF/6. Consultations with regional coordinators had also taken, convened by the Director General's newly appointed *Chef de Cabinet*, Mr. Naresh Prasad, whom the Director General introduced. These consultations had been positive and been held in a constructive atmosphere. The Director General was grateful to the Chair and all delegations for their efforts to move the work of the Committee forward. These consultations had identified that the Agenda Item on "Future Work" was likely to be the subject of much of the discussion, and in this regard the Director General had noted the proposal by the African Group, reflected in document WIPO/GRTKF/IC/14/8 Rev. He stated he was personally grateful to the African Group for having taken this initiative, which would, he was sure, be carefully studied by all delegations. The mandate of the Committee came up for renewal at the WIPO General Assembly in September 2009, and it was therefore expected that this session of the Committee would reach

a decision in this regard and make a recommendation to the Assembly. The Director General concluded by wishing the participants much success for the session.

9. Mr. Wend Wendland of WIPO was Secretary to the fourteenth session of the Committee.

AGENDA ITEM 2: ADOPTION OF THE AGENDA

Decision on agenda item 2:

10. The Chair submitted the revised draft agenda circulated as WIPO/GRTKF/IC/14/1 Prov. 2 for adoption. On the basis of a proposal made by the African Group, the draft agenda was amended so that item 10 of the agenda (“Future Work”) would appear after item 6 (“Participation of Indigenous and Local Communities”) and before item 7 (“Traditional Cultural Expressions/Folklore”). The “Future Work” item would, therefore, appear on the agenda as item 7 and the remaining items would be renumbered accordingly. The agenda was adopted, subject to this modification, and reissued as WIPO/GRTKF/IC/14/1.

AGENDA ITEM 3: ADOPTION OF THE REPORT OF THE THIRTEENTH SESSION

Decision on agenda Item 3:

11. The Chair submitted, and the Committee adopted, with two corrections, the report of its Thirteenth Session (WIPO/GRTKF/IC/13/11 Prov. 2), which will be issued in final form as document WIPO/GRTKF/IC/13/11.

AGENDA ITEM 4: ACCREDITATION OF CERTAIN ORGANIZATIONS

Decision on agenda item 4:

12. The Committee unanimously approved accreditation of all the organizations listed in the Annex to document WIPO/GR, TKF/IC/14/2 as *ad hoc* observers, namely: Elders Council of the Shor People; *Centre d'accompagnement des autochtones pygmées et minoritaires vulnérables* (CAMV); Olaji Lo Larusa Integrated Program for Pastoralists Development (OLIPAD); Nepal Indigenous Nationalities Preservation Association (NINPA); *Groupe de Recherche sur les Savoirs* (GRS); Afrikan Virtual Resource (NALANE); Samburu Women for Education and Environmental Development Organization (SWEEDO); The Nama First Indigenous People’s Forum in Namibia (NIPFIN); Indigenous Laikipiak Maasai Integrated Youth Organization (ILAMAIYO FOUNDATION); *Consejo de Caciques de la Nación Mbya Guaraní*; *Confederación de Nacionalidades Indígenas del Ecuador* (CONAIE); *Cadre de Concertation des Associations des Veuves du Burundi* (CAAVB); Community Development and Empowerment Association (CEDA); and, *Centrale Sanitaire Suisse Romande* (CSSR).

AGENDA ITEM 5: OPENING STATEMENTS

13. The Delegation of Senegal, on behalf of the African Group, thanked the Chair for the informal consultations carried out since the previous session of the Committee with a view to exploring means likely to allow its work to continue and achieve concrete results. The Delegation also thanked the Director General as well as his colleagues for their efforts in facilitating discussions. The Delegation warmly welcomed the facilities for participating in the meetings of the Committee provided by means of the Voluntary Fund and urged Member States to pay their contributions to the Fund. The Delegation stated that at the time of the renewal of the Committee's mandate in 2007 a large number of delegations had considered that new departure as an opportunity to refocus their work and to manage not only to recognize the international dimension of genetic resources, traditional knowledge and folklore, without prejudice to the work carried out in other bodies, but also to reach a consensus on achieving appropriate protection. The Delegation of Senegal added that the other delegations were convinced that the background work already carried out as well as increased participation and dialogue would lead to tangible results. The Delegation had stated that the comparison between those expectations and the results obtained were an indication of the disappointment of the African Group as regards the outcome of the work of the Committee on the eve of the expiration of its mandate in September 2009. The Delegation stated that the African Group remained hopeful and that its interest in the issues under discussion remained high. The Delegation of Senegal believed that the Committee could not renew the same terms of reference for its mandate which had led to stalemate. The Delegation underscored the holistic approach which was to lead to the effective protection of genetic resources, traditional knowledge and traditional cultural expressions, and noted the African Group had made proposals, inter alia, on the renewal of the mandate of the Committee along with a work program with a timetable for, in particular, intersession meetings as a means of accelerating the work of the Committee. The Delegation noted that the proposal of the Group referred to the negotiations based on texts, including documents WIPO/GRTKF/IC/9/4, WIPO/GRTKF/IC/9/5, submitted to the Committee under the document code WIPO/GRTKF/IC/14/9. The Delegation reaffirmed that only the adoption of a legally binding international instrument could guarantee the effective protection of folklore and traditional knowledge as well as genetic resources of indigenous and local communities of Member States. It expressed the wish that its proposals would, in the context of future work of the Committee, serve to correct the imbalance inherent in intellectual property at the international level with on the one hand individual property well protected by various rights (patents, copyright, related rights, ...) and on the other community-based assets at the mercy of piracy, illicit use, misappropriations or other prejudicial actions. The Delegation expressed the wish that the Committee could put a stop to that situation.

14. The Delegation of Sri Lanka, on behalf of the Asian Group, thanked the Chair for having held informal consultations prior to the Committee's meeting. It hoped that the Committee would revitalize its mandate towards a tangible result, including the possible development of an international instrument for the protection of GR, TK and TCEs. The Group expressed its ongoing concern for the misappropriation of TCEs, TK and GRs. The fundamental objective of the Committee's work was the protection and preservation of indigenous peoples' knowledge and resources. The sharing of benefits from GR, TK and TCEs should also be a guiding objective, and it was time for the Committee to have a more focused work program. The Group stressed the need for issuance of documents in all of WIPO's official languages. Concrete progress in the Committee was essential for the larger strategic goals of WIPO. Further, the Delegation recalled that the Director General had on

many occasions stressed the need for a concrete outcome with respect to the protection of TK and TCEs.

15. The Delegation of Pakistan aligned itself with the statement made by the Delegation of Sri Lanka on behalf of the Asian Group. The Delegation appreciated the Director General's personal interest in the issues before the Committee. The Delegation welcomed the African Group proposal for the renewal of the Committee's mandate. The Committee showed that intergovernmental negotiations could span many years and still be fruitless. Accordingly, the Delegation supported the renewal of the mandate with specific provisions including text based negotiations and a time-frame for an outcome. If a new mandate did not take a concrete approach, the Committee would only spend more time, energy, and resources for few practical benefits. Therefore, the Delegation was opposed to the renewal of a mandate similar to ones in years past. The mandate should include a legally binding international instrument for the protection of GR, TK and TCEs against misappropriation. Issues such as benefit - sharing and prior informed consent should form the heart of discussions. For WIPO to remain relevant in international IP debates on GR, TK and TCEs, it must address such issues.

16. The Delegation of Serbia, speaking on behalf of the Group of Central European and the Baltic States, understood that IP rights did not provide adequate international protection for GR, TK and TCEs and hoped to address the need for future protection in the course of the Committee's session.

17. The Delegation of Germany, speaking on behalf of Group B, stated that the documents provided for the session adequately reflected the thoughts and expertise of the Committee's participants and observers. TK and TCEs had taken on new economic and cultural significance within the globalized information society. GRs had assumed increasing economic, scientific, and commercial value to a wide range of stakeholders with the emergence of modern biotechnologies. The conservation, sustainable utilization, and benefit sharing were already being addressed within a range of different policy areas and forums, including food and agriculture, biological diversity, biotechnology, public health, and economic development. The Delegation said that the contribution of TK and GRs to tackling global challenges would be reflected in discussions during the WIPO Conference on Intellectual Property and Public Policy, which would take place in July 2009. The Committee had a leadership role to play in addressing the IP aspects of the protection, promotion, and preservation of TK, TCEs, and GRs. In particular, Group B hoped for progress in identifying the policy objectives and principles for protection of TK and TCEs. It wanted to deepen its understanding of the issues related to TK and TCEs, and of the possible gaps in TK and TCE protection. The Delegation pointed out that the gap analyses, prepared by the Secretariat for the Committee's last session, showed that possible gaps in protection of TK and TCEs exist on the national and on the international level. It agreed with other Delegations that the Committee could assist in bridging gaps in protection by producing tangible outcomes, such as guidelines and recommendations. Group B also hoped that the Committee would enhance its work on GRs. Concerning the international dimension of protection, it said that it was looking forward to discussions on the IP aspects of GR, TK and TCEs. The Committee should focus its discussion on the IP aspects, as a common understanding of these aspects would substantially advance the international dimension of the Committee's work.

18. The Delegation of Czech Republic, speaking on behalf of the European Community and its 27 Member States, reaffirmed its commitment to the work of the Committee and its hope to explore solutions for the protection of GRs, TK and TCEs. The European Community and its Member States welcomed the participation of accredited indigenous and local

communities, as they were integral to finding a holistic solution for the protection of GR, TK and TCEs. The Delegation also expressed its appreciation for WIPO's implementation of the Voluntary Fund. The European Community and its Member States were of the opinion that it was time for the Committee to take further steps towards substantive progress based on the work it had done so far, namely on the list of issues and draft gap analyses. The Delegation stated that the draft gap analysis on TCEs showed that, for a large number of indigenous communities' concerns, legal instruments already existed. The gap analysis also made clear that many of the problems regarding TCEs did not concern issues of copyright, but rather, were related to secrecy, unfair competition, and the safeguarding and promotion of intangible cultural heritage. To address concerns regarding TCEs, proper solutions could only be found "closer to the source," on national and regional levels. The European Community and its Member States had a preference for the development of international *sui generis* models, or other non-binding options, to provide legal protection for TK. The final decision on protection of TK should be left to respective States. Nevertheless, extended and active debate on precise definitions and functioning of TK was desired. The Delegation again expressed its hope for more work in the area of GRs. The Delegation recalled the European Community's proposal for the disclosure of origin of GRs and associated TK in patent applications, and wished to assure Member States that it would continue to actively and constructively participate in forthcoming discussions.

19. The Delegation of Thailand aligned itself with the statement made by Sri Lanka on behalf of the Asian Group. IP needed to be responsive to the needs of all WIPO Member States, in particular to developing countries. GRs, TK and TCEs protection should be promoted to help developing countries fully utilize IP for development, and to improve the current IP system for the benefit of all countries. The Delegation was disappointed that, in spite of intense negotiations in the past, no concrete progress had occurred. In this respect, the Delegation expressed its support for the African Group's proposal as the basis for the Committee's future work. It saw merit in renewing the mandate which contained a clearly defined work program and timeframe to help guide, over the next two years, the Committee's work towards concrete outcomes. It was also supportive of having intersessional working groups for key issues such as definitions and objects of protection, as well as *sui generis* options. Text based negotiations would help accelerate the work. The Delegation expressed its support for the development of an international legally binding instrument, but it also said that it was open to achieving tangible results along the way to a binding instrument. Thus, the Delegation of Thailand would consider a mandate that provided for only a normative international instrument or a high-level political declaration. Binding and non-binding instruments need not be mutually exclusive. All options should be viewed as building blocks for the common goal of effective international protection. In that respect, the Delegation reiterated the crucial need for Member States to further strengthen the protection at the national level. It called on the WIPO Secretariat to vigorously provide Member States with technical assistance and capacity building, to better enable effective national protection.

20. The Delegation of Republic of Korea recalled that it had always been an active participant in the Committee's discussions. The Delegation informed that it had taken steps for the domestic protection of GRs, TK and TCEs, through, for example, the establishment of a "Korean Traditional Knowledge" database and website, in which information collected on Korean GRs, TK and TCEs had been published. Despite this progress, however, the Delegation admitted to lingering confusion on several of the most fundamental issues in international GRs, TK and TCEs protection. Without clarification on such matters, it would be difficult to agree on text based discussions. First, the Delegation was concerned by the lack of a clear distinction between GRs, TK and TCEs and the existing IP system. Without

such a distinction, additional protection for GRs, TK and TCEs could cause legal disputes. Second, it noted the enormous negative impact of broad protection for GRs, TK and TCEs. The protection of GRs, TK and TCEs could cause information in the public domain to become the subject of proprietary ownership, reducing resources for innovative and creative activity. The Delegation gave two examples, the first about wooden sculptures in Africa which had been made in China. The Delegation asked the Committee if China had an obligation to pay indigenous African communities for the production of those sculptures. Second, the Delegation drew attention to the famous Korean food “Kimchi.” If a foreign company tried to get a patent on the recipe of Kimchi, the Government of the Republic of Korea would likely try to invalidate that patent. However, the Delegation then wondered whether the government had proprietary rights on Kimchi. Further, would the Republic of Korea have the right to authorize foreign companies’ production of Kimchi. If such were the case, the Delegation continued, consumers would have to pay for pizza and spaghetti from Italy, sushi from Japan, and curry from India. Rather than privatizing GRs, TK and TCEs, States should rather protect them. For instance, the Delegation suggested use of certificates of originality, or standardization of the quality of GR, TK and TCEs products. Member States were only looking at the benefits of the proprietization of their own GRs, TK and TCEs, without thinking of the reciprocal obligation of paying for the use of other countries’ GRs, TK and TCEs. Despite these concerns, the Delegation welcomed discussions to clarify the issues and find possible solutions.

21. The Delegation of Zimbabwe welcomed the organizations representing indigenous communities. Indigenous communities remained vulnerable to the piracy of their rich GRs, TK and TCEs. The Delegation aligned itself with the statement made by the Delegation of Senegal on behalf of the African Group. The Delegation expressed its concern with the manner in which the last Committee session had been held and expressed hope that this session would be run differently. It was regrettable that nine years had passed without any headway in the Committee. The importance of the Committee to the African continent could not be over-emphasized. It was with much regret, therefore, that the Delegation continued to witness a lack of political will by its negotiating partners. The African Group had made a proposal, seeking to renew the mandate to allow the Committee to undertake text-based negotiations in the 2010-2011 biennium. The Delegation believed that a clearly defined work program and timeframe, including the holding of intersessional work sessions, as proposed by the African Group, was a most favorable proposal. Given the amount of work that had been done by the Committee in previous sessions, it was only logical that the focus should turn to future work and the renewal of its mandate. GRs, TK and TCEs protection would strengthen the ideals of democracy and increase business opportunities for every Member State. Every State stood to benefit from GRs, TK and TCEs protection. It was unfortunate that the same Member States that justified international instruments in other committees were opposed to the same in this Committee. The Delegation appealed to the Director General to consider raising these issues at the highest political levels.

22. The Delegation of Egypt associated itself with the statement made by the Delegation of Senegal on behalf of the African Group. While it thanked the Secretariat for the documentation, it hoped that WIPO would translate the documents into Arabic in the future. The Delegation expressed its deep appreciation to the Director General for his personal commitment to the work of the Committee. It was hoped that the Committee would pursue a qualitatively different stride in renewing its mandate. After nine years of work, there was still no protection at the international level. In fact, the Committee was a “talk shop”, where positions were consistently restated without any evolution. The African Group’s proposal

was premised on the need for an internationally binding legal instrument or instruments. In order to make progress, the immediate commencement of text-based negotiations was needed.

23. The Delegation of Morocco thanked the Chair for its efforts in organizing the informal consultations prior to the session. It also thanked the Director General for his interest in the work of the Committee as well as the Secretariat for its efforts, in particular, in preparing the documentation. The Delegation supported the statement by Senegal made on behalf of the African Group. The Delegation of Morocco stated that it had made considerable efforts at the national level to protect genetic resources, traditional knowledge and folklore. It noted that any economic benefit gained, by either exploiting genetic resources, or traditional knowledge and folklore, was to be shared equally between the user and the rights' holders. The Delegation supported the establishment of binding international standards which would be the outcome of the work of the Committee. It expressed the wish that the spirit of harmony and consensus which gave rise to the adoption of the WIPO Action Plan for Development should set the tone for the Committee's discussions. The Delegation was confident of the capacity of its Members to rise to the challenge, so that its work could lead to a consensual and balanced agreement that would put an end to the misappropriation of genetic resources, traditional knowledge and folklore. Finally, the Delegation was delighted at the sound operation of the Voluntary Fund dedicated to the participation of local and indigenous communities and called on the generosity of Member States to contribute to the financing of the Fund.

24. The Delegation of Colombia indicated that Article 3 of Andean Community Decision 486 stated that Member Countries of the Andean Community should guarantee, in awarding industrial property rights, respect for the biological and genetic heritage, on the same footing as the TK of indigenous, Afro-American or local communities. It declared that Colombia had a duty to carry out that mandate and that it considered it appropriate to adopt legally binding international instruments, including the *sui generis* protection mechanisms for TK and TCEs being considered, as long as the instrument included consulting indigenous, Afro-American or local communities on their TK and developments in the negotiations on TK associated with GR of the CBD with a view to avoiding duplicating efforts in those matters. It indicated that the work of the Committee had made headway, highlighting that preventive protection of GR was required and adopting measures that avoided granting patents on GRs which did not meet the requirements of novelty or inventive step. It stated that WIPO, in order to meet its commitments, had set an objective to improve the search engines and classification systems for examiners who evaluated patent applications containing claims to genetic resources. Also, the Committee had studied IP aspects of access to GR and equitable benefit-sharing arrangements which came from using them. As regards TK, it highlighted in the work of the Committee the importance given to the work involved in the preservation, protection and effective use in IP systems. Although on that issue there were varied, diverse and complex aspects under consideration, the focus remained on the preventive protection of TK, adopting measures that were likely to ensure that the industrial property rights were not awarded to those who were not the confirmed holders of such rights. It noted that some countries were developing databases on TK which could be used as evidence of the state of the art to annul the claim to a patent for particular traditional knowledge. It added that there was also promotion of the protection of TK by means of establishing positive rights (positive protection), which enabled their holders to protect and develop them. In some countries *sui generis* legislation had been drafted to deal with the positive protection of TK concretely. It declared that the work of the Committee deserved recognition and support, and it would continue to back it. It believed that enough elements were already on the table to come up with a binding international instrument which would govern TK and folklore, as long as the instrument included consulting indigenous, Afro-American or local communities on their TK

and took into consideration developments in the negotiations on TK associated with genetic resources of the CBD with a view to avoiding a duplication of efforts in those matters.

25. The Delegation of Indonesia aligned itself with the statement made by the Delegation of Sri Lanka on behalf of the Asian Group. It expressed its hope for substantive progress on the Committee's issues. Inventions, designs, and trademarks had been duly protected by IP rights for a long time. On the other hand, GRs, TK and TCEs, which in most cases were invented and had passed through many generations, had not received the same levels of protection. Preservation and safeguarding of GRs, TK and TCEs was vital to the existence of traditional communities, particularly in developing countries, but also to the development and prosperity of countries as a whole. It was regretted that GRs, TK and TCEs had not received substantive protection. WIPO should redouble its effort to expedite the development of an international legally binding instrument for the protection of GRs, TK and TCEs. The Committee had abundant substantive tools to establish an international legally binding instrument. The Committee needed the firm political will to approve a mandate referring to a binding international instrument. In this regard, the Delegation strongly supported the African Group's proposal. The Delegation noted it had taken steps to prepare its domestic legal infrastructure for GRs, TK and TCEs protection. It recalled the Asian-African Conference, and the Bandung Declaration, which had helped to compel the strengthening of Indonesia's domestic GRs, TK and TCEs protection. Indonesia and South Africa were in the process of finalizing bilateral cooperation for the promotion and protection of each other's TK and TCEs. The Delegation stated that it wished to pursue similar bilateral arrangements with other countries. The Delegation reaffirmed its commitment to the mandate of the Committee and its pragmatic renewal. It hoped to begin text-based negotiations for an international legally binding instrument as soon as possible.

26. The Delegation of Brazil commended the Chair for the consultations he had carried out in since the previous session. The Delegation also thanked the Director General for his continued engagement with the Committee, and the Secretariat for its overall support of the session. The Committee had come to a point where substantial progress was immediately needed. The Committee should produce a workable and result-oriented mandate. The African Group proposal was both pragmatic and result-oriented, but any mandate should recognize the different levels of maturity between TK, TCEs and GRs. TK and TCEs enjoyed a higher level of progress relative to GRs. The Delegation hoped that discussions on GRs would be pursued in tandem with ongoing work in the WTO and the CBD. The Committee should avoid duplicating others' work. The Delegation also noted that both WIPO treaties and TRIPS readily required developing countries to protect trademarks, patents, and technology, which developed countries largely produced. Yet cultural products, of which developing countries monopolized production, remained unprotected. The Delegation said that an international legally-binding agreement would increase the legitimacy of the IP system and widen developing countries' participation by enabling them to protect and benefit from the sole intangible assets held by them.

27. The Delegation of South Africa expressed its full support for the statement made by the Delegation of Senegal on behalf of the African Group. The Delegation pointed out that, since its 8th session, the Committee had fallen far short on delivering on its mandate to accelerate its work without excluding any outcome. The absence of progress during the 13th session indicated of a lack of political will by some Members, which was hampering WIPO's progress. The Delegation wished to highlight several points critical to the success of the Committee. First, concerning discussions for the 14th session, the Committee need only focus on the outcome of its future work, in particular its mandate. Substantive debate on

GRs, TK and TCEs had been exhaustive. The only aspect remaining was for the Committee to commence text based negotiations aimed at the conclusion of an internationally legally binding instrument. Second, the substantive texts that the African Group proposed constitute the basis of text based negotiations were documents WIPO/GRTKF/IC/9/4, WIPO/GRTKF/IC/9/5 and WIPO/GRTKF/IC/11/8(A). The Delegation wished to inform the Committee that, through its membership in the African Group, it had been providing substantive comments to texts, which the Committee had not taken into consideration or even acknowledged in discussions since its 10th session. These comments, it said, were contained in the African Group's document WIPO/GRTKF/IC/13/9. It was clear that the current mandate no longer sufficed to ensure political will to accelerate the Committee's work. The Delegation expressed its full support for the African Group's proposal, as it contained all of the elements necessary for an effective mandate: The adoption of a clear work program and clear timeline leading towards a Diplomatic Conference; a clear commitment for text based negotiations for an internationally legally binding instrument(s) which would commence at the next session of the Committee based on the legal texts provided, namely, WIPO/GRTKF/IC/9/4, WIPO/GRTKF/IC/9/5 and WIPO/GRTKF/IC/11/8(A); and, the establishment of intersessional work with the aim of accelerating the work to discuss pertinent issues of definitions, beneficiaries, prior informed consent, moral rights and *sui generis* options.

28. The Delegation of Zambia reaffirmed the importance of protecting its citizens' intellectual expressions of cultural identity and heritage, as both formed a vital source of economic development and social well being. The Delegation of Zambia was richly endowed with GRs, TK and TCEs. The Delegation informed the Committee of its national IP policy, awaiting Cabinet approval, which advocated for *inter alia* the enactment of domestic legislation providing for *sui generis* protection. The law provided for protection and benefit sharing as well as for longer terms of protection. Despite its belief that national protection was essential, the Delegation stressed that misappropriation was a complex, transnational problem. The need for a legally binding instrument was indispensable. Continued failure to achieve concrete results risked rendering the Committee irredeemable. The options for and against a legally binding agreement had been adequately discussed. The Delegation pointed to working documents which stated that the issues had been "extensively reviewed". The Delegation asked how long the Committee would continue its "extensive reviews." It pleaded that there was no need to again consider the "gap analyses". As a result of the Committee's inertia, countries were resorting to other initiatives, such as the instrument on TK and TCEs being developed by ARIPO. The Delegation was ready for constructive engagement.

29. The Delegation of Ghana aligned itself with the statement made by the Delegation of Senegal on behalf of the African Group. The Delegation intended to engage in constructive dialogue to achieve the objectives for which the Committee had been established. Ghana had a rich culture, well endowed with GRs, TK and TCEs. The Delegation recounted its efforts to look for ways to protect its peoples' rich cultural heritage. In that regard, it was regrettable that after 13 sessions, the Committee had not been able to move forward. The Delegation believed that it was time to concretize matters by setting specific targets and timeframes, and focusing on securing an international legally binding instrument. The Delegation endorsed the African Proposal, and urged all delegations to endeavor to cooperate in a transparent and flexible manner with a view to attaining consensus. TK and TCEs were particular to groups of people, and it stood to reason that those groups would seek to protect their rights from misuse, misappropriation, and exploitation. The Delegation welcomed ARIPO's draft instrument on TK and TCEs to be adopted by ARIPO Member States in November 2009.

The Delegation remained open to all proposals geared towards fulfillment of the Committee's mandate.

30. The Delegation of the Philippines expressed its hope that the Committee would be able to find appropriate solutions to issues pending before the Committee in its 14th session. The Delegation noted the high priority attached to upholding the rights and welfare of disadvantaged and vulnerable groups, notably indigenous peoples. It supported rights-based approaches to address its concerns in a comprehensive, positive, and practical way. GRs, TK and TCEs posed cross-cutting concerns, and were a human rights issue, a trade issue, an IP issue, and a development issue. The Delegation had undertaken progressive refinement of its laws, policies, and practices, towards striking a balance between interests of rights-holders and the public welfare. The overarching goal of its domestic legislation was to enhance the mantle of protection for vulnerable sectors and groups, particularly its indigenous cultural communities. The Delegation therefore welcomed the opportunity to constructively engage with other Member States, not only to promote and protect the fundamental rights of indigenous peoples, but also to objectively assess how IP rights could serve as a vehicle to achieve sustainable development. The Delegation hoped that its categorical support for the strengthening of the mandate was a clear indication of the seriousness with which it viewed GRs, TK and TCEs protection on a global scale. The Delegation aimed to establish an international legal regime that provided remedial measures for the misappropriation of GRs, TK and TCEs. Intense debates had occurred in other IGOs, notably in the WTO, CBD and FAO. Despite these other forums, WIPO, as a specialized UN agency in the field of IP rights, had a key role to play in bridging national, regional, and international standards and strategies.

31. The Delegation of Guatemala thanked the Secretariat for preparing the documents for the meeting and the Chair for the information note on the consultations held since the thirteenth session of the Committee. It stated that Guatemala was a country with a majority population of indigenous and traditional communities. To meet the needs and interests of its communities, it believed it was essential, by means of international legal instruments, to achieve substantive progress in the issues dealt with by the Committee to date. It warmly welcomed the proposal submitted by the African Group, for contributing concrete answers for the Committee. It thanked WIPO for the opportunity to participate in the Creative Heritage Project, which it hoped would progress positively in Guatemala. It repeated its willingness to work with the Chair to achieve concrete and positive results during the current session of the Committee.

32. The Delegation of Bolivia pointed out that its country had vast biological wealth, a natural environment where more than 36 indigenous peoples with age-old cultures which had adapted to the local prevailing environmental conditions in their territories and during that process they had developed traditional knowledge, innovations and practices, elements which were closely linked to the use and conservation of biological resources. It maintained that preserving and maintaining such knowledge and the protection of *sui generis* collective rights of indigenous and native peoples were a priority and very important, even more so now that there was an Indigenous President, thanks to whom such knowledge was protected and the collective rights of indigenous peoples was recognized in the current State Political Constitution. It stated that traditional knowledge, learning, innovations and practices of indigenous peoples were fundamental to managing the conservation and use of biodiversity, as an integral part of the identity and territory of such peoples. It believed that the *sui generis* protection of collective rights with respect for the territorial structures, organization and internal standards of indigenous peoples was necessary and of vital importance. It pointed out that the collective rights of indigenous peoples in their TK should be recognized at the

international level. It indicated that indigenous peoples should manage and administer TK registries themselves and along with national authorities they should develop a *sui generis* system of protection of GR, TK and ancestral knowledge in such a way as to share skills. It stated that the participation of indigenous peoples in the benefits derived from using current genetic resources in their territories and the benefits derived from using TK as holders, was a right. It maintained that although indigenous participation in the discussions of the Committee was sought, participation of those directly involved had not been sufficient for their concerns to be taken into account, as established in the latest progress made in the multilateral legal system such as the United Nations Declaration on the Rights of Indigenous Peoples adopted in September 2007. Future work should put more emphasis on achieving greater involvement of indigenous peoples. The Delegation indicated that it shared the frustration of the majority of developing Member States, at not seeing sufficient progress in such matters in their countries. It concluded that if no decisive step was taken at the current session, it could not see the use of following the discussions in their previous format. It agreed with the proposal of the African Group to establish options for the collective *sui generis* protection of GR, TK and ancestral knowledge of their indigenous peoples.

33. The Delegation of China believed that the documents provided by the Secretariat made clear that the Committee had explored many possibilities for the protection of GRs, TK and TCEs. After more than a dozen meetings, the Committee had not yet come up with a positive conclusion and it was hoped that all the efforts had not gone in vain. The Delegation continued to expect positive and constructive results from the 14th session.

34. The Delegation of Algeria endorsed the statement by Senegal made on behalf of the African Group and thanked the Secretariat for preparing the documents. The Delegation stated that the three questions relating to folklore, traditional knowledge and genetic resources should be dealt with using a holistic approach, with a view to concluding a legally binding international instrument. The Delegation emphasized that since its creation in 2000, the Committee had transformed itself into an international forum for the exchange of views, without, however, focusing on its mandate, i.e. producing tangible results and managing to conclude one or more legal instruments to combat all forms of misappropriation of folklore, traditional knowledge and genetic resources. The Delegation of Algeria urged Member States to move to a more specific level of commitment in the Committee's future deliberations. The Delegation stated that the progress achieved in that regard was the result of the political will of the stakeholders and that they had gone beyond the stage of a general discussion. It invited Member States to look favorably on the proposal of the African Group regarding the renewal of the Committee's mandate for 2010/2011, according to a prescribed program of work and schedule. It said that it was determined to make a positive contribution to the negotiating process under way.

35. The Delegation of El Salvador referred to some of the progress made in its country on the subject of IP of TCEs, TK and GR. It stated that, since the recent change in government, there were new and better prospects for developing such subjects, which had led to the proposal to ratify the Charter on Indigenous Rights as an ideal ethical and moral platform to develop whatever initiative on native peoples, their expressions, knowledge and resources. It indicated that the discussion on such subjects was underway, with a view to placing them in the public domain especially for the custodians of and those passing on TK and TCEs, as well as researchers and specialists in IP law. A chat/discussion program had been organized, in which the expressions and knowledge of indigenous communities had been promoted and their relations with indigenous communities, and the change that researchers and other agents should assume to respect such rights. It stated that the promotion of such expressions and

knowledge was paving the way for results and parallel products such as the positioning of indigenous designers and craftspeople, writers and composers of El Salvador. It pointed out that its biggest achievement was the project to revitalize the Nahua-Pipil language, as that language of Aztec origin was seriously threatened with extinction and there were only approximately 200 indigenous speakers remaining in the western part of the country. It stressed that 2009 had seen an increase in the number of schools participating in the project, which included Nahua-Pipil in their study program, thereby guaranteeing its transmission, widespread use and survival. It made available to WIPO as reference material, two videos and some materials which reflected the work being carried out. Through an analysis of the long path taken by the Committee and the small number of results, it supported a renewed mandate for the Committee and applauded the initiatives taken to ensure the work done to reach objectives which would enable an international legal instrument to be defined for protecting TCEs, TK and GRs.

36. The Delegation of Fiji pointed out that it was the only South Pacific Island state represented at this session and it was grateful to WIPO for its funding. The Delegation supported the position expressed by the Asian Group. Despite many years of work, no definitive conclusion had been reached. Fiji supported the extension of the mandate of the Committee and the creation of an international legal framework that would protect the aspirations of indigenous communities, their cultural heritage and their uniqueness as a people. The indigenous people of Fiji had one language, drank kava and valued the whales tooth as the highest form of traditional wealth. There were many examples where Fijian culture had been taken away by individuals, organisations, academic institutions, pharmaceutical companies and multinational corporations for their own benefits without any acknowledgement or return to the communities that owned it. "Fiji" was a word which could no longer be unilaterally used by Fijians for their commercial benefit, because the name was registered to a company in the USA. Fiji called for genuineness, understanding, sharing, goodwill and commitment to successfully conclude the work of the Committee.

37. The Delegation of Nigeria entirely endorsed, as a framework, the statement made by the Delegation of Senegal on behalf of the African Group. It expressed appreciation to the Director General for having shown once again that he was bound by the words he delivered during his election and that he was determined to give the Committee a new prospect to move forward. The Delegation of Nigeria thought that the Committee could move forward, but after having listened to the statements made by a number of delegations, the Committee was in a vicious circle. Developing countries had been very clear as to where to go, even if with minor differences. The prospect to come up with ideal definitions and objectives would not facilitate the process. Such definitions and objective would only be useful if they constituted building blocks to help the Committee to go forward. The Delegation of Nigeria strongly supported the idea of a legally binding instrument. On this base, Member States could agree or not agree on specific aspects, come forward with suggestions and work on text and language in order to deal with them. The Delegation was of the view that statements without a text to work on could never reach conclusions. It recalled that only limited progress had been made on the mandate of the Committee during its previous meetings. There was a need to reshape its meetings in terms of negotiations in order to make more progress in terms of substance, including on the very controversial issues, without being stuck in working on ideal definitions that could take years to adopt. Since its foundation, the United Nations has been dealing with certain definitions and never found conclusions. This could be true of the Committee. The Delegation of Nigeria believed that time was ripe to change the tactics and strategy of the Committee. It was aware that the Committee needed also to mobilize

international and political opinion. It invited the Chair to lead the Committee in order to help the Members to put their ideas on paper.

38. The Delegation of Botswana expressed its support for the leadership of the Chair. It endorsed the statement that was made by the Delegation of Senegal on behalf of the African Group. It strongly hoped that the work of the Committee, particularly during this session, would take concrete steps. It recalled that an enormous amount of time had already been spent which should not go to waste. The main mandate of the Committee was to serve the people and give a voice to those who could not represent themselves. Botswana would host the Council of Ministers Meeting of the African Regional Intellectual Property Organization (ARIPO) in Gaborone in November 2009, to look at the possibility of adopting a regional instrument. National and regional processes could only benefit from an emerging consensus within the international community at large on the protection of TK, TCEs and GRs. The Delegation remained open to the views of other delegations regarding the future work of this Committee and was convinced that the Member States could find common ground.

39. The Delegation of Ecuador thanked the Chair for its work and for the informal consultations, as well as for the preparation of document WIPO/GRTKF/IC/14/6. Similarly, it thanked the Director General for his constructive participation in the discussions. It indicated that, at the national level, Ecuador promoted the right to recover, promote and protect collective knowledge; its sciences, technologies and ancestral knowledge, GR within biological diversity and agrobiodiversity; its medicines and traditional medical practices, including the right to recover, promote and protect ritual and sacred places, as well as plants, animals and minerals and ecosystems within its territory. The Delegation maintained that it was convinced of the international need to maintain, protect and develop TK and TCEs. It indicated that it viewed with much interest and satisfaction the proposal of the African Group on the mandate of the Committee, given that it considered initiatives such as the one contained in document WIPO/GRTKF/IC/14/8 as constructive and helpful in defining the work of the Committee. It stressed that it had always been interested in working towards a legally binding international instrument, *sui generis* in nature, which protected TK and TCEs, and welcomed the African proposal and offered its collaboration in achieving concrete results. It supported renewing the mandate of the Committee, given its major importance, as the documents already contained worthy ideas, some of which had been implemented internally by its country.

40. The Delegation of the Islamic Republic of Iran said that the Committee rested on three pillars: the Secretariat, political will and chairmanship. It associated itself with the statement made by the Delegation of Sri Lanka on behalf of the Asian Group. After thirteen sessions of the Committee, the international community now recognized that international protection of TK, GR and TCEs was a fundamental issue for developing countries and LDCs in the context of defining overall IP policies. The Committee has reached a good understanding of the issues and raised the awareness at the national, regional and international levels. The Committee should move from a general conceptual stage to a text-based and document stage in a holistic approach. Most Member States were seeking three objectives: the recognition of the GRs, TK and TCE rights holders, the protection of such rights and the establishment of a legally binding benefit sharing mechanism. The Committee should focus on the international dimension of protection of TK, GR and TCEs. The Delegation supported the proposal made by the African Group, and added that this proposal could be improved and enriched during the present session. It was also supportive of the renewal of the mandate of the Committee by the next General Assembly.

41. The Delegation of Cameroon unreservedly supported the proposals made by the Delegation of Senegal on behalf of African countries. The Delegation said that it supported the renewal of the Committee's mandate for 2010/2011, in order to explore new ways to emerge from the crisis, in particular by redefining new terms of reference and using a new procedure so that a binding international protection instrument could be put in place, along with the national instruments which by themselves would not suffice.

42. The Delegation of India thanked the Chair and the Secretariat for the useful and timely informal consultations held prior to the session of the Committee. Member States were aware that in the last nine years the Committee had produced more than fifteen documents and extensively reviewed legal and policy options for the protection of TK and TCEs based on comprehensive analyses of international, regional and national experiences, legal mechanisms, common elements of protection, case studies, surveys of the international policy and legal environment, as well as key principles and objectives of protection, that had received support in the Committee's earlier sessions. However, there had been no tangible progress on evolving effective modalities for international protection. The Delegation reported that as the Committee continued to deliberate and discuss these issues, in the absence of any internationally binding legal instrument of protection, more than two thousands cases of misappropriation were regrettably taking place every year, in Indian Traditional Medicinal Knowledge, alone. If one were to consider the total number of misappropriations through wrongful international patents since this Committee had been set up, the figure would be a staggering one, in the range of several thousands. This was not just a statistic, since it represented a huge economic, cultural, developmental and emotive loss for several marginalized communities and right holders from deriving the legitimate benefits from their common assets and heritage. The Delegation said that its country had enacted legislation that addressed all the three core elements of the ongoing global discussion on protection: disclosure, prior informed consent and access and benefit-sharing, adding that the Indian Patents Act provided for mandatory disclosure of source and geographical origin of biological material used in the invention and provided for revocation of the patent in the event of non-disclosure. India's National Biodiversity Act secured equitable sharing of benefits arising out of the use of accessed biological resources, under mutually agreed terms and conditions. While the administrative framework for the above legislation was already in place, India was focusing on implementing these provisions. It recalled that India had undertaken a pioneering initiative by setting up a Traditional Knowledge Digital Library containing 200,000 traditional Indian medicinal formulations spread over thirty million pages and available in five international languages (French, Japanese, German, English and Spanish). The European Patent Office has been authorized access to the database for Search and Examination purposes and a similar arrangement was expected to be operationalized very soon in respect of the USPTO. While the Delegation of India was hopeful that this would prevent misappropriation, it continued to believe that an optimal solution to this global challenge was a legally binding international instrument. The Committee had a historic opportunity to move forward on the basis of a focused action plan, towards evolving an effective legally binding system of international protection that ensured that TK, GR and TCEs become a tool for wealth creation and socio-economic development for the right-holders of these knowledge systems. It therefore welcomed the African Group's useful suggestion for beginning this session with a discussion on the agenda item on "Future Work" and supported its proposal for intersessional work. The Delegation thanked and strongly supported the African Group for its valuable, timely proposal regarding the renewal of the mandate of the Committee. The Delegation invited all Member States to engage positively and constructively in the deliberations.

43. The Delegation of Sudan supported the proposal of the Delegation of Senegal made on behalf of the African Group. It underlined the importance of protecting TK and TCEs since they lay at the foundation of the civilization of every country. It invited WIPO to grant its support to the Member States in this area. Developing countries should show even greater interest in protecting GR, TK and TCEs. It recalled that Sudan had enacted a new law to protect copyrights, and that civil society was actively participating in these efforts. The Delegation said that its country would very quickly conclude a charter which reflects the agreements reached on protecting TK and TCEs.

44. The Delegation of Australia looked forward to engaging with and supporting the Chair as he steered the work of the Committee, including the renewal of its mandate and the adoption of a strong future work program that would bring to fruition the significant work already undertaken by the Committee. The Delegation associated itself with the statement made by the Delegation of Germany on behalf of Group B. It expressed its very strong interest in the work of the Committee, since Australia had diverse and vibrant indigenous cultures with significant cultural heritage, which was rich in TK and TCEs and had a unique relationship with the land. It stated that Member States had much to learn from this relationship, as the world grappled with the challenges of maintaining a sustainable bio-system. It added that Australia, as a mega-diverse continent, had a significant proportion of the world's GRs, which, when combined with its mature bio-technological industry, had enabled the country to become a net exporter of GRs. It was in the country's interests and the interests of its indigenous communities that the work of the Committee made progress, particularly in relation to developing efficient, effective and transparent mechanisms to protect these resources, and to ensuring that these resources, where appropriate, were accessible and used for the benefit of all communities. The benefits should also be shared fairly and equitably, particularly without detriment to, and to the benefit of indigenous cultures and communities. The Delegation was keen to work with all Member States, to develop a future work program that would have broad support, particularly in relation to supporting: countries to develop effective, efficient, transparent and consistent domestic protection regimes and the identification of practical international frameworks and mechanisms to ensure consistent and transparent treatment, internationally, of TK, TCEs and GR. It said that without broad agreement any gains the Committee would achieve were likely to be illusory. The proposal made by the African Group was a solid basis from which to move the discussion forward, and the Delegation of Australia appreciated the efforts of the African Group. The Delegation reiterated its strong support for the renewal of the Committee's mandate, including progressing work on the full range of issues.

45. The Delegation of Canada thanked the Secretariat for preparing the documents for this session of the Committee, in particular documents WIPO/GRTKF/IC/14/4 and WIPO/GRTKF/IC/14/5. Canada associated itself with the statement made by Germany on behalf of Group B. It looked forward to engaging with the Chair, the Member States and Accredited Observers to renew the mandate of the Committee for the next biennium and continue its work on all three substantive items on equal footing. A clear critical path for its work on all three pillars would allow the Committee to progress in a pragmatic and step-by-step manner. To this end, the Delegation of Canada thanked the African Group for document WIPO/GRTKF/IC/14/8 Rev. on the mandate of the Committee. It was a useful proposal on which to develop the parameters for future work of this Committee. Canada had a strong interest in strengthening the interlinkages between the work of the Committee in plenary sessions and the indigenous panel. It believed that presentations by the indigenous panel were part of the body of knowledge of the Committee and that the Committee could greatly benefit

from it in its deliberations. The Delegation suggested making the presentations available on the WIPO website and/or appending the presentations to the report of the session.

46. The Delegation of the United States of America extended its appreciation to the Chair for having conducted informal consultations and for reporting thereon in WIPO/GRTKF/IC/14/INF/6. The Delegation was convinced that greater recognition and respect for the creative and innovative contributions of indigenous peoples and traditional communities was a timely and extremely important objective at the international, regional and domestic level. Second, WIPO had an important role to play in achieving that objective in close coordination and cooperation with other IGOs and forums, always bearing in mind the special expertise within WIPO. Third, the Committee had made significant progress in clarifying the complex issues related to the preservation, protection and promotion of TK, TCEs and GR over the last several years. Fourth, much work remained to be done at the international level including the unfinished analytical work of the current biennium. Fifth, the Delegation believed that the acceleration of the substantive work of the Committee held the greatest promise of reaching the consensus that was necessary to advance its work. Sixth, no outcome of the Committee, including the adoption of an international instrument or instruments addressing the preservation, protection and promotion of TK, TCEs and GR, should be excluded and, similarly, no outcome should be prejudged. Seventh, the Delegation believed that the work of the Committee did not occur in isolation from the work in other WIPO programs and areas and was therefore constrained by the financial and human resources of the organization as a whole. The African Group was thanked for tabling its thoughtful proposal for the renewal of the mandate and the Delegation was reviewing it closely under the general positions and principles that have informed its participation in the Committee. It was interested in learning more about the proposal from its proponents, about the views of other delegations, and about the financial and administrative implications of the proposal from the Secretariat. As various proposals and/or amendments for renewal of the mandate of the Committee were about to be tabled, the Delegation asked the Secretariat to provide the kind of financial, administrative and other data that it believed the Committee needed to make informed decisions about the proposal. In its view, the specific framework developed by the Committee for facilitating discussion was an important basis for the deliberations of the Member States. The Committee had made substantial progress in developing and refining the draft policy principles and objectives for TK and TCEs. These drafts held great promise to becoming a possible vehicle for a statement by the Committee that would articulate the special needs and concerns of traditional peoples and traditional communities with respect to the subject matter before the Committee. In the elegant phrasing of the Director General, the Committee needed to find an appropriate mechanism to “recognize explicitly the contribution to human society of collectively generated and maintained innovation and creativity”, but much work remained to be done. The list of ten issues on both TK and TCEs provided a useful framework for facilitating the kind of sustained and focused discussion of these issues needed to reach a consensus on these important issues. The Delegation continued to believe that the Committee had begun to make some progress in identifying the possible gaps in the existing framework for the protection of TK and TCEs, including identifying certain options that the Committee might wish to consider addressing any such identified gaps. At its last session, however, the Committee barely scratched the surface of its deliberations on this important topic. Much work remained to be done. Against a background of high expectations, the Delegation shared the frustration of many other Delegations with the slow progress of the Committee over the last two years. Nonetheless it looked forward to a positive outcome at the fourteenth session and would be willing to support a recommendation to the General Assembly to renew the mandate for another two year period. Any recommendation to the 2009 General Assembly for renewal of

the mandate must include a strong encouragement for the Committee to accelerate and complete its deliberations on the three specific uncompleted analytical areas from this biennium. In addition, it believed that the renewed Committee's mandate should include a call to enrich its work program in the area of GRs, ensuring that all three areas are addressed on an equal footing. It expressed the hope that the participants in the fourteenth session would be able to reach an agreement on language, for a renewed mandate for the Committee, that the Committee doubled its resolve to accelerate and complete its substantive deliberations on the protection of TK and TCEs, to enrich its work on GR and to reach consensus on achievable concrete outcomes during the next two year period.

47. The Delegation of New Zealand expressed its gratitude to the Chair for the information in WIPO/GRTKF/IC/14/INF/6, and endorsed the introductory statement made by Germany on behalf of Group B. It expressed strong support for the continuation of the Committee's work in all its mandated areas, including the exploration of *sui generis* models, potentially binding and non-binding measures, for the protection of TK and TCEs. The Delegation was in favor of a constructive approach involving the development of a menu of options which could be tested in and adapted to national circumstances. It shared the determination to curtail and prevent the misappropriation and misuse of GRs, TK and TCEs and supported the need to address the international dimension of protection. It stressed the need to retain flexibility to develop solutions and mechanisms appropriate to the unique characteristics, circumstances and needs of different countries, regions, indigenous peoples and local communities. From its own perspective, it meant retaining flexibility to enable the New Zealand Government and Māori to uphold their Treaty of Waitangi relationship. It also meant that consultation and engagement with Māori, in particular, was required before any internationally binding commitments were agreed to. In regard to the mandate of the Committee, the Delegation of New Zealand thanked the African Group for its constructive proposal and was looking forward to discussing its content during the course of this week. The Committee should focus on a structured program of work, including intersessional work, to address the key contentious issues. It wished to see the Committee reach common understanding and consensus on broad, non-exhaustive and non-exclusive, definitions, clear policy objectives and principles, beneficiaries, and acceptable and unacceptable behaviors, with a focus on the international dimension of the issues. It added that more work was needed in order to determine and agree on what was meant by *sui generis* approaches and models. The Delegation considered *sui generis* models to mean new models of protection that emerged, not from existing IP concepts or structures of protection, but rather from the needs and aspirations of the holders of TK and TCEs and their communities, from the customary laws, values, and protocols associated with TK and TCEs, and from the concerns that had been expressed by indigenous peoples and local communities about the inappropriate use of their TK and TCEs. As part of a menu of options, it aligned itself with the statement made by Germany on behalf of Group B in proposing the development of guidelines and recommendations for improving the efficiency of national systems. These guidelines and recommendations could complement a structured and appropriately resourced support program, managed and delivered by WIPO, for Member States and indigenous and local communities who required capacity-building and technical assistance in developing domestic policy relating to IP and GR, TK and TCEs. The Delegation was aware that WIPO already provided technical assistance in this manner, on a more *ad hoc* basis, upon request, and it commended these efforts. This initiative could be formalized and delivered in a more systematic way as part of or in conjunction with the WIPO Development Agenda. It agreed with Canada in relation to improving the linkages between the indigenous panel and the work of the Committee. It recalled that New Zealand had been one of the original proponents of the indigenous panel. The panel had been instrumental in elucidating through presentations

the issues that indigenous and local communities faced in the preservation and protection of their TK and TCEs. The Delegation had initiated discussions with the Indigenous Caucus and some Member States in order to explore the possibility of improving the format and timing of the panel. There were significant concerns about the decreasing attendance by Member States at the Panel, which it shared. The last two sessions had required exceptional management of the deliberations in order to attempt to reach consensus. Several simultaneous informal group meetings had been held during the Indigenous Panel and it was hoped this would not become the norm. Various options be considered in order to increase the contribution that the Panel made to the work of the Committee and looked forward to further discussions with accredited observers and Member States regarding this matter.

48. The Delegation of Singapore thanked the Chair for having conducted informal consultations with the regional groups in preparation for the Committee's session. It associated itself with the statement made by the Delegation of Sri Lanka on behalf of the Asian Group. The Committee was at a critical juncture in its work. The Delegation welcomed the debate taking place in the Committee which would contribute to building international consensus on the protection of GR, TK, and TCEs. It supported the renewal of the Committee's mandate and it welcomed and took note of the African Group's proposal as set out in document WIPO/GRTKF/IC/14/8 Rev. as one of the possible ways of moving the Committee's discussions forward. However, it expressed concerns with some elements in the proposal, such as moving to text-based negotiations given the present lack of consensus on many fundamental concepts, the limited range of issues for discussion, the proposed timelines, and the use of a restricted range of documents for the Committee's work. It was of the view that the two gap analyses on TKs and TCEs in WIPO/GRTKF/IC/13/4(b) Rev. and WIPO/GRTKF/IC/13/5(b) Rev. should be further discussed. It was of the view that, as a pragmatic approach, the renewal of the Committee's mandate should be on the basis of a focused work program. It was supportive of intersessional meetings amongst a balanced group of experts to enhance the quality of the Committee's work. The discussions of such intersessional meetings should focus on the list of ten issues for TK and TCEs reflected in WIPO/GRTKF/IC/10/7 Prov. 2, as well as any other issues raised by Member States and accredited observers. To facilitate work, there should be a focused work program to cluster the various issues and set priorities for discussion of the clusters. It firmly believed that a balance in the issues to be discussed in each cluster would be a good way to move the discussions forward in the Committee. It reaffirmed its willingness to engage constructively, and urged all Members to keep an open and pragmatic mindset in considering the various possibilities for the work of the Committee to move forward.

49. The Delegation of Malaysia was confident that the Committee would be able to renew its mandate. It aligned itself with the statement made by the Delegation of Sri Lanka on behalf of the Asian Group. The Delegation had waited for the Committee to set up an effective international instrument for the protection of TK, GR and TCEs. It hoped that after more than eight years of meetings a diplomatic conference could be convened. Many documents had been discussed by the Committee with no outcome so far. In response to this inertia and in order to show its support for the work undertaken by the Committee, the Delegation announced that a pilot project had been launched on the national level by setting up a TK digital library in April 2009. About 8000 documents linked to TK and GRs had been collected so far. This database would be utilized by Malaysian patent examiners as part of their prior art examination of non patent literature. A Committee had been appointed in 2007 to draft a national law on GR, TK and TCEs. Malaysia had been assisted by WIPO in facilitating this draft and would continue to request further assistance. A concrete

international regime should be set up in the near future, and there should be a clear timeframe for reaching this objective.

50. The Delegation of Kenya commended WIPO and the Committee for the work it had completed on GR, TK and TCEs since the last Committee session, in particular for its convening of intersessional and consultative meetings for the various regions. The Delegation associated itself with the statement by the Delegation of Senegal, on behalf of the African Group, and fully supported the Group's proposal as to the future work of the Committee. It was imperative that the Committee's future be structured to achieve an internationally binding legal instrument. The Delegation acknowledged that the Committee's progress had been slow thus far, but its work had been in vain. Many Member States had used the discussions as reference for national legislation. The Delegation believed that addressing the gaps to deal with international protection of GR, TK and TCEs was urgent. Kenya had developed a draft policy on TK, GR, and TCEs, which would afford protection against misappropriation and ensure that communities benefitted from the commercialization of their resources. The Delegation explained that the guiding principles and policy objectives developed by the Committee had been of great use in providing guidance during its domestic policy formulation process. WIPO was thanked for choosing Kenya's Maasai community as beneficiaries of a WIPO pilot program for cultural documentation, archiving and IP management, and it hoped that all indigenous communities would benefit from a similar program. The Delegation looked forward to a structured and time based process so that TK, GR and TCEs would be effectively protected.

51. The Delegation of Peru indicated that, since the creation of the Committee, Member States had invested a lot of time in examining issues related to IP and GR, TK and TCEs, issues were highly sensitive and complex due to the range of interests at stake, and that were vital for countries and particularly for indigenous populations, without having managed to achieve concrete progress in protection in those three areas. It believed that the work should persevere and continue in such a way as to reach the objectives for those for whom the Committee was created. It indicated that, for Peru, a country with immense biodiversity, TK and TCEs, the importance of IP, for protecting such areas, was justified in the clear understanding of how important that tool was for economic, social and cultural development, and that such a conviction meant they were relatively active in the work done by the Committee and in other fora, in those which had shared their experience in relation to the efforts deployed to ensure the preservation, protection and promotion of their GRs, TK and TCEs. It cited as an example the recently launched web page of the National Commission against Biopiracy. It supported the creation and development of a binding international *sui generis* legal instrument, given the experience of defending and protecting TK and GR, as the national law and Commission for their defense had not been sufficient to stop acts of biopiracy. It supported extending the mandate of the Committee, with a view to developing one or more IP mechanisms for protecting GR, TK and TCEs of benefit to all, particularly indigenous communities in the poorest areas of developing countries who were still waiting.

52. The Delegation of Norway associated itself with the statement made by Germany on behalf of Group B. It expressed its continuing commitment to the work of the Committee and it thanked national delegations, indigenous groups, and NGOs for sharing their local experiences. The Delegation thanked the African Group for its proposal, which provided a helpful basis for discussions. The Delegation expressed its support for the continuation of work on GR, TK and TCEs and for a tangible outcome. It believed that a tangible outcome could occur with the setting up of timelines and a work program. However, the Delegation was not looking forward to having the same discussion that the Committee had already had in

past sessions. It hoped for a clear focus in its talks, and it emphasized its belief that consensus could be found. Recommendations or guidelines were one way that the Delegation suggested it could move forward without prejudice to the form or content of any final result. The Delegation remained open to a solution at any level, national or international, and was looking forward to a renewal of the Committee mandate.

53. The Delegation of Japan associated itself with the statement made by Germany on behalf of Group B. Japan stated that it had been engaged in discussions with a constructive spirit, as it attached importance to the issue of GR, TK and TCEs. As for the issue of TK and TCE, discussions should first be deepened on some fundamental issues. For instance, Member States did not yet share a common understanding of the targeted subjects and objects and also definitions of terms. The Delegation believed that focusing on such fundamental issues in a steady manner was indispensable. In order to deepen the understanding on those basic matters, further discussions based on the List of ten substantive issues should first be explored. With such common understandings on those fundamental items, then, it would be beneficial to accelerate discussions on the Gap Analysis. The issue of GR was as important as TK and TCEs. Therefore, it requested that sufficient time be allocated to discussing that issue. The protection of GR, TK and TCEs had been examined in various international fora. The Delegation believed WIPO, as a UN specialized agency in the field of IP, could employ its expertise and best respond to various members' expectations in accordance with the mandate.

54. The Delegation of Guinea aligned itself with the declaration made by the Delegation of Senegal on behalf of the African Group. It said that the Committee was important and believed that its mandate should be renewed. It invited Member States to work in a spirit of cooperation and flexibility. It declared that with the elements at its disposal and on the basis of the proposal of the African Group, the Committee could hope to achieve fruitful discussions. It believed that implementing a legal framework to support genetic resources, traditional knowledge and folklore would once again help intellectual property to benefit the social and economic development of Member States. It asked Member States of the Committee not to adopt a static position and to make progress to fill the existing gaps between the various positions and to develop a binding legal instrument.

55. The representative of the African Regional Intellectual Property Organization (ARIPO) hoped that the Committee would achieve a concrete outcome and develop effective work programs for its future work. He thanked the Director General for his support. ARIPO had often drawn the attention of the Committee to the need to accelerate its work towards development of comprehensive international frameworks to enable an international instrument capable of ensuring effective protection of GR, TK and TCEs. TK and TCEs were important cultural and economic assets, and potential sources of wealth creation for the knowledge owners. The slow pace of the Committee's work, coupled with the entrenched positions of Member States, contributed to the continued misappropriation and exploitation of GR, TK and TCEs. In the past nine years, ARIPO had consistently been proactive in finding solutions to the complex issues facing the Committee. When delegations called for national and regional experiences to guide the normative process at the international level, ARIPO had developed a road map to assist its 16 members in the development of national and regional policies and legislative frameworks. ARIPO, together with WPO, was assisting the Government of Kenya in reviewing a draft national policy for the protection of GR, TK and TCEs. ARIPO had also participated in the Southern African Development Community (SADC) Indigenous Knowledge Systems Workshop. With WIPO's technical and financial assistance, ARIPO had come up with a Protocol and Implementing Regulations, which it

would present to the Council of Ministers of ARIPO at its next session in November 2009. ARIPO supported adoption of the proposal put forward by the Delegation of Senegal on behalf of the African Group regarding the urgent need to return to text-based negotiations.

56. The Food and Agriculture Organization of the United Nations (FAO) reported that in June 2009, the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture had adopted a Third Party Beneficiary and Funding Strategy. The FAO was still in the process of exploring the role of food and agriculture in existing access and benefit-sharing arrangements and policies. Studies had been commissioned on the use and international exchange of GRs in the different sectors of food and agriculture. The representative referred to the Global Plan of Action for Animal Genetic Resources, adopted in 2007. The FAO Conference had endorsed this Plan of Action and stressed the important role of indigenous small-scale livestock keepers, particularly in developing countries, as custodians of most of the world's animal genetic resources for food and agriculture. The FAO had explicitly requested the Commission on Genetic Resources for Food and Agriculture to address this issue. A first draft report had been presented in January 2009 to the 5th Session of the Commission's Intergovernmental Technical Working Group on Animal Genetic Resources and the Commission would report on the role of livestock keepers in conservation and use of animal genetic resources to the next session of the FAO Conference. The representative referred to FAO's publication, *The State of the World's Plant Genetic Resources for Food and Agriculture*. The FAO was pleased that WIPO and the Committee recognized the specificity of issues relating to agriculture and livestock production, and accordingly the need for specific solutions. It wished to further strengthen and deepen the cooperation between the FAO and WIPO, in mutual respect for their respective mandates. The work of WIPO on GRs was of particular interest to the FAO. The FAO would continue to seek complementarity and synergy between the Organizations' respective activities, including through mutual reporting and support.

57. The representative of the Indigenous People (Bethchilokono) of Saint Lucia Governing Council (BGC), speaking on this occasion on behalf of the "Indigenous Peoples' Caucus" thanked the Chair for the meeting he had held before the session with indigenous representatives. The representative was pleased that the Chair had initiated the opening of channels of communication between the Committee and indigenous peoples. He said that despite its members' diverse perspectives and experiences, the Caucus would try to speak collectively. On the African Group's proposal regarding intersessional meetings, the Caucus expressed its disappointment that the proposal did not explicitly provide for participation of indigenous peoples. The Indigenous Caucus supported continuation of the mandate of the Committee, but any future work should fully guarantee indigenous participation which was essential to the Committee's legitimacy.

58. The Representative of Tupaj Amaru indicated that the Committee had been confronted with a lack of political will on the part of Western powers. He maintained that Member States should refrain from postponing developing such an instrument or an international treaty consistent and in keeping with international law. He said that indigenous peoples had seen during the sessions of the Committee the confrontation between two blocks: the rich countries of the North which blocked the work of the Committee, and the developing countries of the South which defended the real need to develop and adopt an international legal framework for protecting the cultural heritage of indigenous peoples or local communities. He stated that bioprospecting and biopiracy had assumed dramatic proportions in the plundering and misuse of TK and GRs. Holders had been robbed of their TK and deprived of the right to fair distribution of the benefits derived from the use and abuse of their

age-old knowledge. He stressed the importance of an international legal framework which stipulated a coherent universal definition acceptable to the international community and the application mechanisms channeled to the international protection of intangible, sacred and secret TK. He reiterated his support for the proposal of the African Group and asked the Committee to develop and submit to the General Assembly of WIPO a draft or outline which would serve as a basis to develop and adopt one or more binding international instruments. He called on the WIPO Secretariat to receive and process the written contributions of TK holders.

59. The Representative of the Ibero-Latin-American Federation of Performers (FILAIIE) indicated that perhaps the problem of the Committee was due to the fact that the mandate of the General Assembly was split into six different options. He said that the mandate of the General Assembly had a very clear meaning, in the sense that the work should be international in scope. He maintained that the Committee should better delimit or specify the possible solutions that, according to the mandate, were under international protection. He expressed his disagreement with the term of misappropriation because, according to continental law, it established a relationship of dependency between those appropriating and those appropriated, and also because it gave rise to legal expressions such as misappropriation; that was the argument generally employed to appropriate the resources of indigenous communities, which calmly stated that they were in the public domain. He was unaware of any indigenous community which had accepted that their cultural products or their cultural expressions were in the public domain. He stated that what had happened was a plundering of cultural heritage and there should be an immediate reaction to that, so that those cultures which had enriched and continued to enrich all of humanity would not disappear, and to avoid the pillaging in progress. He recalled that the 1996 WPPT established as a definition of an artist the person who recited, sang or performed in any form or manner a literary or artistic work or expressions of folklore. He called on all the government delegations to provide clear ideas and an acceptance or otherwise of the principle of binding international protection.

60. The representative of the Ethio-Africa Diaspora Union Millennium Council stated that a legally binding instrument was of utmost importance to the global Rastafari Community. Since the last session, the Rastafari Community had to confront several issues of unauthorized distortion of photographs by an artist. The artist had transposed pornographic imagery onto photographs of some of the community's elders, which ridiculed the Rastafari community and its traditions. Further, the community continued to see a growing number of websites advertising various goods and services by misappropriating traditional Rastafari imagery and expressions. The representative strongly supported an appropriate timetable for intersessional meetings, in which indigenous representatives and the Indigenous Caucus should be included in keeping with the United Nations Declaration on the Rights of Indigenous Peoples. It was also important that communities selected their representatives to intersessionals. In the Caribbean Community, the CARICOM Working Group on Traditional Knowledge had been established in 2008 in Jamaica to frame a model law on GR, TK and TCEs for the region. The Rastafari Community was indebted to WIPO and the Jamaican IP Office for their active support of indigenous and local communities of the Caribbean region. The Community supported the renewal of the Committee's mandate.

61. The Delegation of Côte d'Ivoire thanked and congratulated the Chair for its considerable work within the Committee. It also thanked the Director General for his participation in the work, whose slow and difficult progress could lead to satisfactory conclusions for all Member States within a reasonable timeframe. The Delegation

unambiguously and strongly supported the statement by Senegal on behalf of the African Group and wholeheartedly espoused the spirit of the proposals made by its Members, renewing the mandate of the Committee and the planned timetable. The Delegation declared that the time had come for the WIPO Secretariat and for Member States to endorse a text based on the African proposals. It stated that the text might be improved in qualitative terms at future sessions of the Committee, followed by the finalization of a legally-binding international instrument supporting national legislation on the protection of genetic resources, traditional knowledge and folklore. The Delegation called on Member States to be pragmatic and flexible so as to recommend concrete proposals to the General Assembly in September 2009.

AGENDA ITEM 6:
PARTICIPATION OF INDIGENOUS AND LOCAL COMMUNITIES:
VOLUNTARY FUND

62. The Chair introduced documents WIPO/GRTKF/14/3 and WIPO/GRTKF/IC/14/INF/4.

63. The Representative of Tupaj Amaru called for more transparency in the selection of members of the Committee. He stated that indigenous peoples were never consulted as to who among them would be part of the Committee. He claimed that the principles and criteria used for the distribution of subsidies to indigenous peoples had never been respected and that there was selective and discriminatory treatment when considering candidates.

64. In accordance with the decision of the Committee at its seventh session (WIPO/GRTK/IC/7/15, paragraph 63), the fourteenth session was preceded by a half-day panel of presentations, chaired by Mr. Nadir Bekirov, President of the Foundation for Research and Support of Indigenous peoples of Crimea. These presentations were made according to the program (WIPO/GRTKF/IC/14/INF/5). The Chair of the Panel submitted a written report on the Panel to the WIPO Secretariat which is contained below:

“The theme of the panel at the fourteenth session was “Indigenous and Local Community Initiatives in Protecting Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources: Applying the Practical Lessons of Community Experience”. The first speaker, Mr. Estebancio Castro Diaz, International Indian Treaty Council, Panama City, Panama, referred to the *comarcas* and indigenous territories in Panama which are an area of rich biodiversity and underground deposits of gas, gold and petrol and sources of water which have made these areas very attractive to the researchers, pharmaceutical companies, extractive and mining industries and tourism. The seven indigenous communities had agreed that they would have one indigenous protocol in order to negotiate with the government representatives. At this stage, the seven indigenous general congresses are considering the approval of the indigenous protocol on genetic resources. The objective of the protocol is to protect and maintain TK and associated biological and genetic resources, and to establish norms that ensure fair and equitable benefit sharing based on the customary law of the indigenous peoples of Panama. The draft protocol was also based on the full and effective participation of indigenous peoples. In his presentation, Dr. Ani Casimir Chukwunonyelum Kingston, Center for Peace and Poverty Reduction Among African Indigenous Peoples, Enugu, Nigeria, said that Africa’s indigenous peoples are “those people with a unique knowledge system embodied by them in a way of life, identified with a particular land and environment, and, who, as a people, have been forcibly and subtly colonized in the past, and

presently are marginalized and prevented by hostile modern states and commercial enterprises in Africa from practicing and applying this knowledge systems to their own benefit". Dr. Kingston recommended that WIPO should (i) set up an international tribunal for TK, TCEs and IP to try cases and deliver verdicts globally, (ii) appoint special counsels/advocates from member countries, indigenous communities and NGOs, (iii) appoint TK, TCEs and IP "ambassadors", (iv) enter into curriculum integration programs with select universities for introduction of the curriculum of the WIPO Academy into IP/TK, TCEs/Indigenous/African Studies and set up an academic committee to work out the modalities of this strategy globally. Mr. Terry Williams, Tulalip Tribes, United States of America and Mrs. Gulvayra Shermatova (Mrs.), L'auravetl'an Information and Education Network of Indigenous Peoples (LIENIP), Ongudai, Russian Federation presented next. Mr. Williams emphasized that from a position of weak recognition of their rights prior to the 1970s, when the federal USA government made many decisions on their behalf, the Tulalip Tribes now had a government-to-government relationship with the federal government. He also described processes in which the Tribes participate as co-managers and as equal decision-makers with the federal government. The Tribes had never surrendered their sovereign rights to regulate their TK, TCEs and GRs. He described a Tulalip project to develop a Cultural Heritage Protection Act which regulates activities such as research, publications, arts and crafts, business practices and genetic resources. The Tulalip Tribes are also developing standard contracts for agreements where knowledge, cultural objects or genetic resources are transferred. These contracts allow them to write terms of sharing that are consistent with their customary laws. The contracts, though important, do not fully protect their rights, and so the Tulalip Tribes hope to work with the United States for direct recognition of their customary and tribal laws. The Tulalip Tribes believe that the development of such *sui generis* recognition of these rights in international law should be the goal of the Committee. Mrs. Shermatova pointed out that in the Russian Federation the majority of problems related to the protection of TK were directly connected to the issue of the right to use land and natural resources. Unfortunately, most of the attempts to request attention of the government to the subject matter had been unsuccessful. These attempts included petitions, civil protest campaigns and court procedures. Presently the indigenous peoples of Russia had no legal basis to improve the situation. In such context, the speaker said it was hopeful that the Committee's work would have a positive effect and improve the situation. There were several questions and comments during the discussion. These raised or referred to issues such as absence of the respect and misuse of TK and GRs, Aboriginal vineyards, the preservation of cultural heritage, and the link between TK/TCE/GR and land rights of Indigenous Peoples. In particular, it was noted that this link was key. Finally, the participants of the panel supported the Committee as a platform for the protection and strengthening of TK/TCE/GR on international and national levels."

Decision on agenda item 6:

65. The Committee took note of documents WIPO/GRTKF/IC/14/3 and WIPO/GRTKF/IC/14/INF 4.

66. The Chair proposed, and the Committee elected by acclaim, the following eight members of the Advisory Board to serve in an individual capacity: as members of delegations of WIPO Member States: Mr. Martin GIRSBERGER, Head, Intellectual Property and Sustainable Development, Legal and International Affairs Division, Swiss Federal Institute of Intellectual Property, Switzerland; Mrs. Hayet MEHADJI, First Secretary, Permanent Mission of Algeria, Geneva; Mr. Yazdan NADALIZADEH, Counselor, Permanent Mission of the Islamic Republic of Iran, Geneva; Mr. Milan NOVAKOVIĆ, Patent Examiner,

Intellectual Property Office, Republic of Serbia; Mr. Luis VAYAS VALDIVIESO, First Secretary, Permanent Mission of Ecuador, Geneva; as members of accredited observers representing indigenous and local communities or other customary holders or custodians of TK or TCEs: Mr. Preston HARDISON, representative of the *Tulalip Tribes of Washington Governmental Affairs Department*; Mrs. Le'a Malia KANEHE, representative of the *Indigenous Peoples Council on Biocolonialism*; Mr. Joseph OGIERAKHI, representative of *West Africa Coalition for Indigenous Peoples' Rights*. The Chair of the Committee nominated Mr. Abdellah OUADRHIRI, Deputy Chair of the Committee, to serve as Chair of the Advisory Board.

AGENDA ITEM 7: FUTURE WORK

67. The Delegation of Senegal, on behalf of the African Group, presented the crucial points of its proposal, i.e. the renewal of the mandate of the IGC, in such a way that the Committee's work covered text-based negotiations, including documents WIPO/GRTKF/IC/9/4, WIPO/GRTKF/IC/9/5 and WIPO/GRTKF/IC/11/8(a), submitted to the Committee as WIPO/GRTKF/IC/14/9, on traditional knowledge, traditional cultural expressions and genetic resources respectively. The Delegation stated that the negotiations should lead to the adoption of one or more legally binding instruments, and that those elements of the mandate should be accompanied by a work program with a timetable.

68. The Delegation of Serbia, speaking on behalf of the Central European and Baltic States Group, welcomed the proposal as presented in document WIPO/GRTKF/IC/14/8 Rev. submitted by the African Group and recognized the efforts made by the Secretariat and by the African Group in preparation of the 14th session. It supported the renewal of the mandate of the Committee and agreed with the second part of the proposal of the African Group to undertake text based negotiations on GRs, TK and TCEs in the 2010-2011 biennium. It stated that it was ready to discuss intersessional work and requested that the Secretariat consider the issue of the funding of capital based experts, in view of the current economical crisis. The Group proposed to work on a non-binding model or instrument of protection that would not interfere with IP rights rather than an internationally legally binding instrument as stated in paragraph 4 of the document submitted by the African Group. The Group further requested, to avoid duplication, that the achievements of other international fora on these issues be taken into consideration by the Committee and stated that it was looking forward to hearing the opinions of the other delegations on this Agenda item.

69. The Delegation of the Czech Republic, speaking on behalf of the European Community and its Member States, welcomed initiatives to give new momentum to the work of the Committee. The Delegation supported the renewal of the mandate of the Committee giving equal treatment to the three substantive topics. The future work of the Committee should be more effective, and the Delegation was ready to discuss different possible outcomes in view of improving the efficiency of the work of the Committee during the next biennium. Therefore it was premature to preclude any options at that stage. It stated that it was looking forward to playing a positive role in discussions with other delegations.

70. The Delegation of Egypt supported the statement made on behalf of the African Group, and pointed out that the documentation made available by the Secretariat was a starting point for discussions to begin text based negotiations. The Committee had already spent enough time in negotiations and that it was time to get down to work on the basis of texts. There were a number of issues upon which agreement had been reached and that there were other

issues still outstanding. There was genuine ground for optimism for the future work of the Committee. The Delegation stated that the ultimate objective was to find a solution that would serve the cause of those the Committee claimed to speak for, and proposed that an *ad-hoc* working group be created composed of experts on GRs, TK and TCEs together with highly qualified experts on IP law to fill the gaps in the text before the Committee, and to work out recommendations that would be acceptable to all in view of the drafting of an international legally binding instrument that would be recognized as such throughout the world. The Delegation further stressed the importance of the Committee working towards a binding text, as opposed to a non binding text that nobody would be obliged to put into practice, and that all countries could abide by, enabling everyone to protect the wealth that was rightly theirs. This could only be achieved through cooperation. The Delegation wished to see the rich countries reaching out to the poor countries so that they may embark upon the path of sustainable development.

71. The Delegation of Bolivia supported the proposal of the African Group as a binding system of protection for TK was lacking. The Delegation recalled that in the gap analysis presented to the thirteenth session of the Committee one of the fundamental gaps was the lack of a binding international legal instrument. The Delegation pointed out that, under the new political constitution of the State of Bolivia, to take decisions on the rights of indigenous peoples, a new system had been implemented, in which not only the State but also indigenous organizations participated directly, when working on any issue related to their rights. The Delegation supported the approach of the Delegation of Egypt: that the Group of Experts which could be created and would report to the Chair included the direct participation also of indigenous engineers, not only of experts representing the Member States of WIPO.

72. The Delegation of Canada stated that it was prepared to discuss the proposal of the African Group, to build on it and set parameters for future work. It would have a number of questions and clarifications that it wished to discuss with the African Group. These included the composition of the proposed working group, the documents that would be the basis of the work and the issues that would be dealt with by the 15th session of the Committee as referred to in the Annex of the proposal. With reference to the Annex, the work program and the terms of reference that the Committee needed to develop were interrelated, and it was unclear whether the documents, with reference to the issues and the activities listed on page 2 of the Annex, should be included in the terms of reference. These were preliminary questions. On the subject of GR, the Delegation pointed out that they were not clearly addressed in the proposal, and it wished to know how they would fit in the work program of the intersessional working groups.

73. The Delegation of Australia commented that the African Group proposal was a good basis for discussion on future work. Referring to the intervention of the Delegation of Canada, it asked for the views of the African Group, in particular on the intersessional work and requested clarifications on the mechanism and framework for progressing, in particular how to determine who the experts would be, regional representation and how to ensure that there was effective communication with the Committee.

74. The Delegation of Brazil, referring to the three proposals of the African Group (documents WIPO/GRTKF/IC/14/9, WIPO/GRTKF/IC/14/8 Rev. and WIPO/GRTKF/IC/14/10) asked whether those proposals were to be addressed as a package or if the new mandate for the Committee and the intersessional work were to be considered separately. The Delegation commented that there was an emerging and large base of support for the three proposals of the African Group.

75. The Delegation of Mexico indicated that points of convergence were emerging: it was being accepted that the text on the table was a good basis for negotiations; the majority of delegations agreed on the objectives. The Delegation thanked the African Group for presenting the text under discussion. As regards document WIPO/GRTKF/IC/14/8 REV., the Delegation stated that it was in agreement with renewing the mandate of the Committee. As regards the second paragraph, the Delegation indicated that the work of the Committee during the next budgetary biennium 2010/2011 should be taken into account and that its discussion should be based on the texts already presented by the Secretariat. The Delegation referred to documents WIPO/GRTKF/IC/9/4, WIPO/GRTKF/IC/9/5, WIPO/GRTKF/IC/13/4(b), WIPO/GRTKF/IC/13/5(b) and WIPO/GRTKF/IC/11/8(a), which it believed would provide a good basis for discussion in the context of the Committee's work. The Delegation agreed with the recommendation for a date to be set for the Diplomatic Conference. It said that there was a contradiction, which would need to be clarified, between the work program and the timetable, in which the Diplomatic Conference would be in 2012, and paragraph 4 of the elements of the new mandate, in which there was still no set date for the Diplomatic Conference. The Delegation believed it would be even more appropriate not to fix a set date for the Diplomatic Conference. As regards the proposal that the Delegation had made on the need to have two working groups, the Delegation indicated that one working group should be created for TK and TCEs, which were more mature subjects, and another for GRs. In the first case, the meeting could make arrangements for the next session of the Committee. In the second case, due to its complexity, it would be more suitable to take into account the negotiations taking place in the framework of the CBD, so as to avoid a duplication of efforts and to take note of the results of other fora, and that the date of the meeting would be set according to the progress made in the CBD. The Delegation stated that the work of these two groups would allow those delegations with fewer resources to attend both sessions in an appropriate manner. As regards the intersessional work, the Delegation agreed with the Delegations of Bolivia, Canada and Australia, in that order. The Delegation underscored that the participation of experts was fundamental. It agreed with the Delegation of Egypt, in the sense that the experts should be legal experts or experts on highly specialized issues. The Delegation stated that the respective Member States should appoint the experts. It indicated that a clear definition was required of what the mandate of those meetings would be and how they would be integrated, and that they should be open to the participation of interested parties and authorized observers, under the United Nations principle of transparency. The Delegation stressed that it should be very clear that the group would not take decisions but would only make recommendations to the Committee or give conclusions.

76. The Delegation of New Zealand aligned itself with the statement made by the Delegations of Canada and Australia in relation to the proposal made by the African Group, and thanked the group for its constructive proposal. It reserved its position and was interested in having discussions with the African Group on the importance of maintaining work on the three substantive issues; not precluding any options at that stage; working towards the development of a concrete outcome; and, in regard to the intersessional work, accountability, transparency, inclusiveness and budgetary constraints. The Delegation inquired as to the meaning of "text-based negotiations", and, on the relationship between the reference to text-based negotiations in paragraphs 2 and 3 of the proposal and item 7 of the annexed work program which proposed approval at the fifteenth session of the Committee of "intersessional work and substantive text as a basis for negotiations". The Delegation asked what text would be the basis for negotiations and whether that text would be developed by the group of experts.

77. The Delegation of Senegal, on behalf of the African Group, declared that the Group would make its reactions known when the overall position of all participants had been set out in detail. The Delegation deemed it premature to react to such concerns, preferring to do so in a comprehensive manner. The Delegation underlined that the questions on the work program and the intersessional work had not yet been tackled, as the question of the mandate was the main element under discussion. The Delegation stated that an agreement on the elements of the mandate would give greater room for maneuver as regards achieving the objectives of the mandate. It called on the delegations to focus more on agreeing on the elements of the mandate, its configuration, definition and what it should deal with. The Delegation referred to the need to take the time necessary so as to respond to the different reactions of other delegations. The Delegation encouraged the Chair to continue in the direction they had already taken.

78. The Delegation of Mexico requested information from the Secretariat on whether the work program described in document WIPO/GRTKF/IC/14/8 Rev. would be feasible, from a budgetary point of view, before giving an opinion on the matter.

79. The Delegation of the United States of America referred to the point raised by the Delegation of Mexico, and thanked the African group for its proposal. It stated that it would be helpful to gain a clearer view of the financial and administrative implications of the proposal, and would be pleased to receive detailed budget information from the Secretariat on resources both for personnel and non-personnel activities, for all WIPO activities on TK, GR and TCEs for the 2010-2011 biennium. It requested also that the Secretariat provide a breakdown of the costs for the four sessions of the Committee that would take place within the biennium, and on the additional costs necessary to implement the proposed 6 intersessional sessions and the funding of the participation of experts from developing countries. It also requested information on the plans and the resources necessary for the funding of indigenous peoples to participate in the various sessions, thus allowing the Committee to take an informed decision.

80. The Delegation of Japan thanked the African Group for its proposal and supported the renewal of the mandate for the next biennium. It also supported the proposal's reference to the three substantive issues, but was concerned about the nature of the outcome and the direction of future discussions. It stated that, although the current mandate provided that an international instrument or instruments was a possible mode of development, no outcome of the work of the Committee should be excluded.

81. The Delegation of Brazil commented that many delegations had expressed their support for the renewal of the mandate of the Committee but that there was a need to define an effective and results-oriented mandate. The Delegation pointed out that the main element of the proposal was the qualifier "legally binding" and that there was a need for the Committee to take stock of the work already achieved and direct future work towards providing indigenous communities with a pragmatic response to the questions of protection. One should deal first with the more mature elements of TK and TCEs and GR should be dealt with separately. It considered that documents WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5 provided the texts of international legally binding instruments and that document WIPO/GRTKF/IC/11/8 (a) provided a list of options. Priority should be given to TK and TCEs.

82. The Delegation of Switzerland thanked the African Group for its proposal regarding the mandate of the Committee, and expressed its interest in hearing the views of the African

Group on the composition of the proposed intersessional working group. More information was requested on the experts mentioned in paragraph 5 of the proposal. More information was sought on the *sui generis* options for protection, in particular how they related to the issues that would be addressed by the other intersessional working groups. The Delegation expressed its concerns on inclusiveness and budgetary issues and supported the renewal of the mandate of the Committee. It should be clearly reflected in the future mandate that all three substantive issues should be dealt with on an equal footing.

83. The Delegation of South Africa supported the proposal of the African Group and pointed out that the Committee needed to agree first on the elements of the mandate before going into detail. The issues that had been discussed at the 13th session of the Committee were surfacing again and that it would desist attempts to lead the Committee into a talk shop. This session was the last opportunity to extend the lifeline of the Committee.

84. The Delegation of the Russian Federation thanked the African Group for its work on the proposal and supported the renewal of the mandate of the Committee. It was premature to indicate that the outcome would be a legally binding instrument or instruments. There were still a number of questions that needed to be discussed, namely the proposed heavy timetable and its possible impact on the effectiveness of the work of the Committee. The Committee also needed to consider the financial aspects and the proposed work program.

85. The Delegation of Indonesia thanked the African Group for its positive contribution, which was the only concrete proposal on the table. The proposal was a good basis for discussions. The questions concerning budgetary and administrative implications needed to be addressed in detail but should not prevent the advancement of effective work on a new international legal regime.

86. The Delegation of Angola supported the proposal of the African Group as well as the statement by its coordinator. The Delegation thanked the delegations that supported the proposal. It stated that the proposal was constructive, unlike the past nine years during which the work of the Committee had been ineffective. The Delegation underlined that all the members of the Committee were in agreement on renewing its mandate and that agreement on the elements of the new mandate should be reached. The question of costs would be dealt with during the forthcoming meeting of the Program and Budget Committee. The Delegation added that it was not the first time that there was a question of “text-based negotiations” and that the Committee was well and truly negotiating a draft text. The negotiation should be based on all the proposals, including on the points of convergence and divergence which had appeared over the course of the past nine years, with the text for negotiation being a summary of that period.

87. The Delegation of India expressed the view that the Committee was at a critical juncture. There was no point in repeating the exercise of the last nine years, and although the modalities were clearly to be negotiated, there was need to decide upon the general direction in which the Committee would be headed by defining clear goals, clear modalities and a new specific time frame. The proposal of the African Group was the only concrete proposal on the table. Other issues had been discussed over the last several years and there had been no progress. With regard to financial aspects, the priorities of the Member States determined the budget of WIPO and how the money would be allocated. The Committee should agree to allocate a certain part of the resources towards this exercise, and that the details regarding the timetable could be resolved in a satisfactory manner upon reaching a consensus.

88. The Delegation of Algeria supported the statement by the African Group and underscored that it was not simply a question of renewing the mandate but of achieving results, in the current case, a legally binding international instrument. The Delegation invited the Committee, after nine years of negotiations, to take the necessary decisions in a pragmatic manner. The Delegation underlined that the proposed mandate had two aspects: the first was the text-based negotiation and the second, the holding of a diplomatic conference with a view to concluding a binding instrument. In reply to questions on the choice of texts, the Delegation stated that it was logical to use the work done previously as a basis. As regards budgetary questions and those relating to the financing of the intersessional work, the Delegation supported the Delegation of India and said that it was the duty of Member States to draw up a budget for the Organization and that that was the work of the Program and Budget Committee. The Delegation recalled that the African Group had persevered in its request to the Program and Budget Committee in December 2008 so as to include provisions on the intersessional work of the Committee and that that request had been positively received by the Secretariat. The Delegation stated that the problem of financing should not be an obstacle to the Committee making progress in its work.

89. The Delegation of Malaysia supported the proposal of the African Group. An international legally binding instrument was an important consideration, and that text based negotiations would be a good starting point. A draft legal text needed to be put on the table several times for consideration and proposed that the Committee might use the text that had been prepared in Cochin as a starting point.

90. The representative of the Indigenous People's Council on Biocolonialism (IPCB), speaking on behalf of the IPCB, the International Indian Treaty Council, the Centre for Peace Building and Poverty Reduction among African Indigenous Peoples (CEPPER), the Kanuri Development Association and the Moboro Social and Cultural Development Association (MBOSCUDA), stated it was premature to determine whether an instrument should be legally binding or not, and that it would be irresponsible to commit to an outcome that she believed had as yet no concrete provisions. It was also premature to commence text based negotiations without full and effective participation of indigenous peoples. She stated that the Committee's work must address the specific rights of indigenous peoples according to the United Nations Declaration on the Rights of Indigenous Peoples. The Voluntary Fund should provide financial support for any intersessional meetings.

91. The Representative of Tupaj Amaru expressed his surprise at the statement by the Representative of the IPCB. The representative expressed his wish that the mandate of the Committee be renewed. He indicated that the mandate of the Committee should be specified and a draft prepared. The Representative supported the proposal of the Delegation of Egypt and said that regional experts should prepare the draft, i.e., legal and technical experts in IP, that background documents should be collected, such as the Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169. The Representative pointed out that there were many instruments and materials for the protection of the cultural and intellectual heritage. He highlighted the need for the Committee or *ad hoc* Group to refrain from devising provisions on a whim, but rather to prepare a text consistent with international instruments and international law. The Representative added that procedures should be discussed and defined. The Representative stated that in the case of the United Nations Working Group on Indigenous Peoples, it was the Working Group which had developed the instrument and indigenous peoples had not participated in preparing the text but had studied it. The Representative concluded that indigenous peoples should participate, with written contributions.

92. The Delegation of Zambia commented that the issues being addressed in this session of the Committee had already been discussed, in detail, in the previous session. It pointed out that, in its opening remarks, the Delegation had stated that the Secretariat should provide a document compiling areas of convergence. The developed countries did not disagree with the idea of a legally binding instrument, rather they argued that there was a need for clarifications. The Committee needed to have a clear destination, and that clarifications would be made as studies were carried out and as experts looked at the issues. The Delegation noted that if a legally binding instrument was not a possible outcome, other alternatives could be considered. It also stated its surprise at hearing the statement of the representative of an indigenous organization who was not in favor of a legally binding instrument. It further pointed out that a country would only be bound if it acceded to an instrument and, therefore, did not understand reticence to the idea of a legally binding instrument.

93. The Delegation of the Islamic Republic of Iran supported the African Group proposal. Financial aspects should not be considered as a problem or an obstacle. The African Group proposal could be enriched during negotiations.

94. The Delegation of Pakistan pointed out the discussion seemed to be going around in circles. It stated that it strongly supported very focused and targeted discussions, text based, and with a definite timeline for conclusion.

95. The Delegation of Ghana identified itself with the statement made on behalf of the African Group by the Delegation of Senegal and supported the sentiments expressed by the Delegation of Egypt. It recognized the importance of renewing the mandate of the Committee to cover the three substantive issues, and expressed the view that the Committee should set parameters to work on and ensure clear terms of reference, and supported the creation of an intersessional working group to push the process forward in view of preparing text for an international legally binding instrument. It stated that the experts at the intersessional working group meetings would propose substantive texts and leave decision making to the Committee. The Committee was at a critical point and that it was crucial to ensure clear goals and mandates.

96. The Delegation of Sri Lanka stated that, like a majority of the Member States, it supported the African Group proposal, and to avoid further extensive discussions and a waste of time, requested that the Chair provide direction for the Committee to move forward.

97. The Delegation of Mexico noted that there were already several agreements: that the discussions were based on the proposal of the African Group, that the mandate had to be renewed, that the previously mentioned documents prepared by the Secretariat were an excellent basis for discussion in intersessional meetings and that intersessional meetings should be held. The Delegation recognized that a definition of the terms of reference of the mandate was lacking but stressed that there was agreement on the desired contents of a mandate. The Delegation clarified that a request for the budget or cost of the work program was not an obstacle but a reality, and that that did not mean that there was opposition to the work program. The Delegation added that in all international fora that was requested for practical reasons. The Delegation noted that there was a very important point which had reached stalemate and that if progress were required, it had to be accepted that the result of the intersessional meetings could not be prejudged, as pointed out by the indigenous representatives themselves. The Delegation stressed the importance of reaching an agreement, given that it had considerable interest in protecting TK, TCEs and GRs. The

Delegation mentioned that it was having consultations with its indigenous peoples and underscored the need to bridge the gap between positions and reach a midway point.

98. The Delegation of Senegal, on behalf of the African Group, stated that it was not a question of extending the mandate but of renewing it. Furthermore, given the difficulty of renewing a mandate whose scope was still in question, that scope should first and foremost be defined precisely. The Delegation indicated that it would like to put to one side the question of an intersessional work program because that, together with the way in which the mandate would be implemented, would not pose a significant problem. It explained that the document on the work program, including the intersessional work, would effectively be an annex document. It stated that the option of the African Group was on the table and that it was premature to speak of renewing the mandate, and that once the scope had been better defined, the mandate could be renewed, after which the Committee would know how to implement it.

99. The Delegation of Egypt pointed out that the common denominator between Member States seemed to be the renewal of the Committee's mandate and that the new element before the Committee was essentially that the renewal of the mandate be qualitatively different. There was a need to structure the Committee's discussions to avoid wasting time on details such as the structure of intersessional meetings or on the costs involved, and focus on the broad essential question.

100. The Delegation of Angola supported the statement by the African Group as well as that of the Delegation of Egypt. The Delegation reiterated the need to renew the mandate. It insisted on the need to obtain results and reach a goal, so as to avoid wasting time and money. It stated that all processes should lead to results.

101. The Delegation of China agreed to renewal of the mandate of Committee because the Committee had not finished its mission. The proposal by the African Group was supported. It was important to agree on the Committee's objective, while detailed technical issues could be discussed later.

102. Note from the Secretariat: At this stage in the session, the morning of Wednesday, July 1, 2009, the Chair proposed that a discussion take place specifically on the wording of the African proposal. A procedural discussion followed in which interventions were made by several delegations¹ on whether the discussion should take place in plenary or amongst a smaller number of delegations, and on the logistics and modalities for undertaking a drafting session on the basis of the text of the African Group's proposal. In the end, it was agreed to conduct the discussion in plenary and portray the text of the African proposal (WIPO/GRTKF/IC/14/8 Rev.) on a screen. Members of the Committee would have the opportunity to suggest additions to, deletions from and modifications to that text. Interventions were made on how precisely to reflect such additions, deletions and modifications on the screen. The WIPO Secretariat kept a written record of the changes proposed, in "track change" mode and in parallel English, French and Spanish versions of the text. In reporting on this drafting session below, (i) specific, textual additions, deletions and modifications made by delegations, and direct discussion thereof, are reflected and

¹ The following delegations and organizations took the floor on at least one occasion: Costa Rica, Senegal, Venezuela, South Africa, Republic of Korea, Brazil, Egypt, New Zealand, Bolivia (Plurinational State of), Indonesia, Mexico, Sri Lanka, Philippines, Morocco, France, Tupaj Amaru, Mexico, Algeria, Angola, the United States of America, Sweden, Nigeria, India, Canada, Thailand, Zimbabwe, Kenya and Myanmar.

highlighted, with attribution, in the table reproduced below, and (ii) other interventions containing general substantive comments and questions and responses to those questions are reported on in full, immediately after the table referred to.

The African Group proposal (WIPO/GRTKF/IC/14/8 Rev.) with proposals for amendment, with attribution during the fourteenth session of the Committee

Original text by: <i>African Group</i>	1. "Bearing in mind the Development Agenda recommendations, agreed to recommend to the WIPO General Assembly that the mandate of the Committee be renewed as follows, namely that,
Amendment proposed by: <i>Australia</i>	1. "Bearing in mind the Development Agenda recommendations, the Committee agreed to recommend to the WIPO General Assembly that the mandate of the Committee be renewed as follows, namely that,
Amendment proposed by: <i>European Community and its Member States</i>	1. "Bearing in mind the Development Agenda recommendations, the Committee agrees agreed to recommend to the next WIPO General Assembly in September 2009 that the mandate of the Committee be renewed as follows, namely that,
Amendment proposed by: <i>Mexico</i>	1. "Bearing in mind the Development Agenda recommendations, agreed to recommend to the next WIPO General Assembly in September 2009 that the mandate of the Committee be renewed as follows, namely that,
Original text by: <i>African Group</i>	2. The Committee will undertake during the next budgetary biennium (2010/2011) text-based negotiations on genetic resources, traditional knowledge and traditional cultural expressions.
Amendment proposed by: <i>Australia</i>	2. The Committee will undertake during the next budgetary biennium (2010/2011) text-based negotiations without prejudice to the outcome, including a possible legally binding instrument on genetic resources, traditional knowledge and traditional cultural expressions.
Amendment proposed by: <i>Brazil</i>	2. The Committee will undertake during the next budgetary biennium (2010/2011) text-based negotiations on genetic resources, traditional knowledge and traditional cultural expressions, taking into account the different levels of development reached by the three substantive topics and the different levels of development of the texts indicated in the third paragraph.
Amendment proposed by: <i>European Community and its</i>	2. The Committee will continue its work and undertake during the next budgetary biennium (2010/2011) text-based negotiations outcome-oriented deliberations on genetic resources, traditional knowledge and traditional cultural expressions, based on their impartial treatment and noting the different levels of development in the texts.

<i>Member States</i>	
Amendment proposed by: <i>India</i>	2. The Committee will undertake during the next budgetary biennium (2010/2011) text-based negotiations on genetic resources, traditional knowledge and traditional cultural expressions, taking into account the different levels of development of the texts indicated in the third paragraph.
Amendment proposed by: <i>Mexico</i>	2. The Committee agrees to will undertake during the next budgetary biennium (2010/2011) text-based negotiations a clearly defined work program and timeframe including the holding of expert intersessional working groups, as stated in the terms of reference which will be adopted at the Intergovernmental Committee meeting, taking into account the different levels of development of the texts indicated in the third paragraph, on genetic resources, traditional knowledge and traditional cultural expressions. 2.bis The Committee will request to the next WIPO General Assembly to consider the necessary budget for the implementation of the work program of the Committee's renewed mandate.
Amendment proposed by: <i>New Zealand</i>	2. The Committee will continue its work and undertake during the next budgetary biennium (2010/2011) text-based negotiations the development of text, without prejudice to any outcomes, on genetic resources, traditional knowledge and traditional cultural expressions.
Amendment proposed by: <i>United States of America</i>	2. The Committee will undertake during the next budgetary biennium (2010/2011) text-based negotiations outcome-oriented deliberations on genetic resources, traditional knowledge and traditional cultural expressions, without prejudice to any outcome and on the basis of the Committee's prior work. Noting the different levels of development in the texts indicated in the third paragraph, the Committee will undertake to work on the three substantive issues on a non-discriminatory basis.
Amendment proposed by: <i>Venezuela</i>	2. The Committee will undertake during the next budgetary biennium (2010/2011) text-based negotiations on genetic resources, traditional knowledge and traditional cultural expressions according to the possibilities that could be developed in the framework of their differences.
Amendment proposed by: <i>Costa Rica</i>	2./3.alt The Committee will adopt, for the next budgetary biennium (2010/2011), a clearly defined work program and timeframe, including the holding of intersessional work sessions.
Original text by: <i>African Group</i>	3. It will adopt, as set out in the Annex, a clearly defined work program and timeframe, including the holding of intersessional work sessions. The focus of its work, without prejudice to the work pursued in other fora, will build on the existing work carried out by the Committee and use WIPO documents WIPO/GR, TK and TCEs/IC/9/4, WIPO/GR, TK and TCEs/IC/9/5 and WIPO/GR, TK and TCEs/IC/11/8A (TCE, TK, and GR) which is to

	constitute the basis of the Committees' work on text based negotiations.
Amendment proposed by: <i>Australia</i>	3. It will adopt, as set out in the Annex , a clearly defined work program and timeframe, including the holding of intersessional work sessions. The focus of its work, without prejudice to the work pursued in other fora, will build on the existing work carried out by the Committee use all WIPO working documents, including WIPO/GR, TK and TCEs/IC/9/4, WIPO/GR, TK and TCEs/IC/9/5 and WIPO/GR, TK and TCEs/IC/11/8A (TCE, TK, and GR) which is to constitute the basis of the Committees' work on text based negotiations.
Amendment proposed by: <i>United States of America</i>	3. It will adopt, at Committee 15 , a clearly defined work program and timeframe, including the holding of extraordinary sessions of the Committee in a format to be agreed. The work will build on the existing work carried out by the Committee.
Amendment proposed by: <i>Argentina</i>	3.alt The experts will be appointed by the Member States.
Amendment proposed by: <i>European Community and its Member States</i>	3.alt The focus of its work, without prejudice to the work pursued in other fora, will build on the existing Committee texts and will in particular focus on definitions and objectives of protection, beneficiaries, prior informed consent, moral/economic rights, exceptions, limitations and durations, sui generis options for protection, disclosure of origin, and other outstanding issues. In order to increase its efficiency, the Committee will adopt at Committee 15 a clearly defined work program and timeframe that will include holding three Committee sessions per year. These sessions will be result-oriented and focused on positive outcomes. Time will be allocated to technical matters.
Amendment proposed by: <i>Mexico</i>	3.alt The experts working groups will take as inputs the documents WIPO/GR, TK and TCEs/IC/9/4, WIPO/GR, TK and TCEs/IC/9/5, WIPO/GR, TK and TCEs/IC/11/8(a), WIPO/GR, TK and TCEs/IC/13/4(b) and WIPO/GR, TK and TCEs/IC/13/5(b), from WIPO and benefiting from others produced by other fora, as the experts deem appropriate. 3. bis The expert working groups will provide a report with recommendations to the Committee to produce a text/s for an international instrument/s.
Original text by: <i>African Group</i>	4. The Committee is requested to submit to the 2011 GA a text for an internationally legally binding instrument/instruments on TCEs, TK and GR and recommend a date for the Diplomatic Conference as agreed in its work program.

Amendment proposed by: <i>Australia</i>	4. The Committee is requested to submit to the 2011 GA a text for an internationally legally binding instrument/instruments on TCEs, TK and GR and recommend a date for the Diplomatic Conference as appropriate as agreed in its work program.
Amendment proposed by: <i>Mexico</i>	4. The Committee is requested to submit to the 2011 GA a text/s for an international instrument/instruments on TCEs, TK and GR and to recommend a date for the Diplomatic Conference, if applicable .
Amendment proposed by: <i>United States of America</i>	4. The Committee is requested to submit to the 2011 GA, recommendations on content for an outcome or outcomes, including the nature, format, and status and how the Committee should finalize its recommendations on TCEs, TK and GR and recommend a date for a high-level meeting to be considered in its work program.
Amendment proposed by: <i>European Community and its Member States</i> <i>Switzerland</i>	4.alt No outcome of the Committee’s work is excluded, including the possible development of a legally-binding international instrument or instruments.
Original text by: <i>African Group</i>	5. The General Assembly would further request the International Bureau to continue to assist the Committee by providing Member States with necessary expertise, funding of the participation of experts from developing countries and LDCs.”
Amendment proposed by: <i>European Community and its Member States</i>	5. The General Assembly would further request the International Bureau to continue to assist the Committee by providing Member States with necessary expertise and documentation. ”
Amendment proposed by: <i>United States of America</i>	5. The General Assembly would further request the International Bureau to continue to assist the Committee by providing Member States with necessary expertise. In addition, the Committee would continue to seek from the Voluntary Fund funding of the participation of experts from developing countries and LDCs. ”

103. The Delegation of Republic of Korea wondered why it was important to include “legally binding instrument” because there was as yet no content of that instrument. Any instrument would only bind those States who signed the instrument. Perhaps “text based negotiations” would have some merit, but a treaty was normally based on some common existing domestic systems of Member States. Member States should first agree on the exact concept and idea for the protection of GR, TK and TCEs. For example, TK was defined as some knowledge belonging to indigenous people but who were “indigenous people”? Some

knowledge might belong exclusively to an indigenous people while some was shared by several peoples. The Delegation preferred to start with a concept paper to try to find some common ground on each specific issue.

104. The Delegation of Indonesia requested the Legal Counsel of WIPO to explain what a “legally binding instrument” was.

105. The Delegation of Sweden, on behalf of the European Community and its Member States, stated that it did not have specific drafting suggestions at that stage but that it had some concerns about “text based negotiations” in the African Group proposal. Furthermore, the European Community and its Member States wished to insert some wording that conveyed that GR, TK and TCEs should be treated on equal footing.

106. The Delegation of New Zealand again raised questions in relation to the words “text-based negotiations”. It appreciated and recalled the Delegation of Angola’s comment that “text-based negotiation” meant drafting a text and that this text must be a compilation text including all the work highlighting the areas of convergence and divergence. However, did the term refer to developing a text or to working on texts?

107. The Delegation of Nigeria stated that the term used in the UN System was “text-based negotiations”.

108. The Delegation of Brazil recorded that Brazil, along with the Member States of the EU, the African Group, and 108 members of the WTO, had made a proposal at the WTO on disclosure requirements and a proposal on geographic indications. Brazil suggested that work done by the Committee might prejudice the work done in the WTO. Brazil did not see a need for one session a year dedicated to GR, as had been proposed, nor why there was a wish to state that the three issues should be addressed on an equal footing, because they were part of the same mandate. The Delegation of Brazil asked how the United States of America intended to discuss GR, because the United States of America was a proponent of a contract-based national approach.

109. The Chair proposed at this point to suspend the plenary to enable the African Group to consider the amendments proposed to its proposal and to consult with other participants. Upon the resumption of the plenary on the following afternoon, the Chair invited the African Group to take the floor and report on its consideration and consultations with the other participants.

110. The Delegation of Senegal, on behalf of the African Group, expressed its appreciation of the discussions held during the Committee session. The Delegation stated that it wished to continue with the negotiations in the plenary in a constructive spirit. It reiterated its appreciation of the commendable efforts of the Chair aimed at a constructive commitment to positive results. In that regard, the Delegation said that the Group had met to discuss the proposed amendments. It also mentioned that the Group had initiated a series of consultations with Member States of the developed and developing world, as well as with representatives of indigenous communities. It stated that after those consultations, the African Group had agreed that the main elements of the proposal on renewing the mandate should be maintained, i.e., the need to conduct text-based negotiations according to a pre-established timetable, and the adoption of one or more legally binding international instruments. The Delegation added that the adoption of such an instrument was the only means likely to guarantee effective protection of the rights of indigenous and local communities both in developing and

developed countries. It said that it had received broad support from many countries during the plenary sessions as well as during the informal consultations. The Delegation referred to the commitment of the Director General shown at the September 2008 General Assembly and quoted him: “The Organization has launched a long process of discussions and negotiations, it is time to move to concrete outcomes”. The Delegation appreciated such commitment and expressed the wish to see that become reality.

111. The Delegation of Pakistan expressed its thanks to the African Group for the very detailed discussions it had had with different countries and groups. The Delegation fully supported the original African Group proposal and hoped that the Committee's work would proceed in that direction.

112. The Delegation of Sri Lanka supported the proposal of the African Group, as many countries had done. The new amendments to the proposal were difficult to identify, and therefore the Committee should reflect on the original proposal of the African Group to find consensus and move forward on the renewal of the mandate of the Committee.

113. The Delegation of Venezuela thanked the African Group for the presentation of its document. The Delegation stated that, following consultations with its government, it had received new guidelines based on three points: support for the African Group document based on the renewal of the mandate with basic definitions and limitations of its functions; the need to hold text-based negotiations; and the need to negotiate a legally binding instrument. The Delegation said that consultations with its national authorities were in progress on the possibility of co-sponsoring the African Group proposal.

114. The Delegation of the Islamic Republic of Iran supported the original proposal of the African group as submitted in document WIPO/GRTKF/IC/14/8 Rev.

115. The Delegation of Bolivia confirmed its support for the proposal submitted by the African Group. The Delegation said that consultations were underway with its government to determine whether it could co-sponsor the African Group proposal.

116. The Delegation of the Philippines expressed its support for the African Group proposal. The need for an international legally binding regime was anchored in the fundamental need to prevent the misappropriation of GR, TK and TCEs. The very absence of a global mechanism to address misappropriation had created a legal vacuum that obliged WIPO and the Committee to take serious steps to negotiate a legally binding instrument among Member States.

117. The Delegation of El Salvador regretted not having been invited to the consultations organized by the African Group. The Delegation expressed its concern that there was still no draft recommendation for the forthcoming assemblies, particularly because the mandate was drawing to an end. It indicated that the work which the Committee had done had been extremely enriching, although, similar to any Committee, it had positive aspects and not-so-positive aspects. It highlighted the fact that the information had been extremely rich and had been of great use for work at the national level on projects and concrete activities.

118. The Delegation of Thailand expressed its strong support for the African Group proposal and its appreciation for the Group's leadership and hard work in coordinating with members of other groups.

119. The Delegation of Cuba declared its full support for the African Group proposal as presented. The Delegation believed that the elements contained in the proposal were the best basis for achieving concrete results in the Committee.

120. The Delegation of Yemen supported the proposal of the African Group.

121. The Delegation of India reiterated its strong support for the main elements of the African Group Proposal.

122. The Delegation of Ecuador supported and welcomed the proposal presented by the African Group, and thanked it for its leadership. The Delegation stated its preference for a legally binding instrument and negotiations based on texts. It indicated that it was ready to continue with the discussions and negotiations, in order for the Committee to arrive at a successful outcome.

123. The Delegation of Fiji strongly supported the proposal of the African Group.

124. The Delegation of Brazil strongly supported the intervention of the Delegation of Senegal on behalf of the African Group. The Committee needed to work towards the renewal of the mandate and text based negotiations, and towards a legally binding instrument with a cost effective approach, addressing the more mature substantive topics of TK and TCEs. In previous negotiations of several WIPO treaties, there had been no reference to the term “legally binding”. Developing countries had to make tremendous efforts to present their demands to the Committee in order for them to be treated in an equal manner as those of developed countries. The need to use the term “legally binding” was offensive to developing countries, and that it should be an implicit and explicit element for obtaining protection on the three substantive elements.

125. The Delegation of Germany wished to be informed of the outcome of the informal negotiations that the African Group had been carrying out regarding the text that the Committee had worked on the previous day. The Delegation wished to know how those informal negotiations had been carried out, with whom they had been carried out, what were the interventions and what had been the outcome.

126. The Delegation of Malaysia reiterated its support for the African Group proposal.

127. The Delegation of Mexico reiterated the commitment of its government to that issue and the importance of achieving a solution agreeable to local communities and indigenous peoples. The Delegation stated that it had tried to participate in a constructive manner to resolve the issue. It clarified that, thus far, there was no text for negotiation, but rather highly worthwhile materials in five documents provided by the Secretariat. The Delegation pointed out that work based on the proposal of the African Group was being carried out and that such a proposal had not been rejected. It said that Mexico had ratified ILO Convention 169 and that it had promoted and signed the Declaration on the Rights of Indigenous Peoples in New York. It asked what had happened to the text being worked on the day before.

128. The Delegation of Peru thanked the African Group for presenting its proposal and stated that it contained elements which represented a good basis for continuing the work. The Delegation urged Member States to be flexible so as to achieve an extension of the mandate with a view to obtaining one or more legally binding instruments for the benefit of all.

129. The Delegation of Guatemala reiterated its support for the African Group proposal, particularly as regards the main elements of the proposal. The Delegation indicated that its position complied with its national reality and with the prevailing need to respond to the interests and necessities of its indigenous communities, which made up 61 per cent of the Guatemalan population. The Delegation stated that the most effective solution, to preserve knowledge systems which gave rise to traditional knowledge, to mobilize its development so as to bring legal certainty to the holders of such rights, was by means of a legally binding instrument. The Delegation stressed that making such an instrument binding in nature would be the most suitable, correct and timely response to the interests expressed by the majority of developing countries in the course of all the Committee sessions including the current one, and that that way the Committee would effectively enshrine the development aspect in its work acting fully consistently with the principles of the Development Agenda.

130. The Delegation of Sudan stated that the outcome of the meeting would serve as an excellent basis for the establishment of a legally binding international instrument.

131. The Delegation of Indonesia noted that the comments that had been made by a number of delegations were not in line with the essence of the original proposal, and that “text based negotiations” and “legally binding instruments” had been put aside, which totally diluted the proposal. The exercise was going nowhere. The Delegation reiterated its strong support for the original proposal made by the African Group.

132. The Delegation of Pakistan stated that it was unfortunate that the Committee was again insisting on the term “legally binding”. This should be taken for granted, implicitly and explicitly, and that it was its understanding that negotiating an instrument that may not be legally binding was not an option.

133. The Delegation of China supported the core of the African Group proposal. The aim of the Committee was to reach a legally binding international instrument and that text based negotiations should be carried out. It commented that, in order to increase efficiency, the Committee should have a clear plan, and hoped that all parties would show flexibility to promote the work of the Committee.

134. The representative of the Tulalip Tribes of Washington supported the proposal of the African Group as it had been originally submitted. He stated that governments had had ample time to pass voluntary international measures to adequately protect the TK, GR and TCEs of indigenous peoples. He did not see how a non-binding regime and political declarations would advance the process. His organization was not present to praise the successes of existing international IP law, but to express their deep discontent with its failures, and that there had been plenty of time to make the necessary changes. He pointed out that TK, GR and TCEs were only held by at most 5% of the world's population and that the majority of the world's IP was not likely to be disturbed. Indigenous peoples would only accept a legally binding regime if it fully and effectively involved their participation and recognized, respected and protected their rights. The Committee should move to text-based negotiations towards a legally-binding instrument or instruments.

135. The representative of the Indigenous Peoples (Bethechilokono) of Saint Lucia Governing Council (BCG), speaking on behalf of the Indigenous Caucus, referred to articles 3, 32.2 and 31.1 of the United Nations Declaration on the Rights of Indigenous Peoples and stated that anything less could not be accepted by indigenous peoples. The standard setting

undertaken by the Committee should be higher than what was contained in the Declaration. He repeated the support of the Indigenous Caucus for the African Group's proposal.

136. The Representative of the Ibero-Latin-American Federation of Performers (FILAIE) indicated that the mandate should be very clear. The Representative opined that it was necessary to keep moving towards an international treaty so as to solve the problem, based on texts which had already been analyzed in detail. The Representative considered that the formula was appropriate for three annual sessions but each session should be dedicated to a specific subject, i.e., one on TK, another on TCEs and a third on GRs, with a common element for those three sessions, similar to the proposed voluntary contribution fund so that indigenous communities could be given priority.

137. The Representative of Tupaj Amaru commented that the work done on rewording the African Group proposal was not intended to delete the proposal but to improve the text, its content and its scope. The Representative inquired as to the results of the previous day's discussion. The Representative indicated that what would be necessary was to improve the text so that it was acceptable to all States. The Representative stressed the importance of renewing the mandate, but not for discussions and debates of a general nature. The Representative recalled that at the heart of the matter was the legal protection of TK, TCEs and GRs from biopiracy and their illicit or improper use. As regards the texts, the Representative pointed out that they were draft documents and should be confirmed by regional experts. The Representative believed that it was necessary to specify whether work was being done on a binding document or simply a recommendation or guidelines. The Representative suggested being flexible on the timetable which would depend on the circumstances. He emphasized that participation should include the holders of TK, TCEs and GRs, as they were indigenous peoples, using the letter and spirit of the Declaration on the Rights of Indigenous Peoples, in which there were specific chapters in that respect.

138. The representative of the Inuit Circumpolar Conference stated that she had spoken many times on the misappropriation of Inuit symbols that had value and sacredness to Inuit people and that they could not do anything about it. She supported the African Group proposal for the reasons that declarations did not assist them. She stated that there were articles in the Declaration of the Rights of Indigenous People that addressed TK that did not help them. Therefore, there was a need for an internationally legally binding treaty that would put legal obligations on States.

139. The representative of the Assembly of First Nations (AFN), representing 633 indigenous communities in Canada, recognized that current IP regimes were inadequate to deal with the protection indigenous peoples TK, TCEs and GR. Non-binding regimes and declarations continued to fail indigenous peoples and first nations in Canada. A binding regime would offer protection to communities. He further supported the renewal of the mandate of the Committee and many elements of the African Group proposal.

140. The representative of the Indigenous Peoples (Bethechilokono) of Saint Lucia Governing Council (BCG) reported on a WIPO-funded project, initiated by CARICOM Ministers in 2006 in Barbados, for the establishment of a mechanism for the protection of TK, TCEs and GR within the 14 CARICOM countries. A group of experts, of which he was a part, had been carrying out consultations. His organization strongly supported the African Group proposal and considered the Committee should move towards a legally binding instrument.

141. The representative of the Ethio African Diaspora Union Millennium Council reiterated the full support of her organization for the African Group's original proposal. The groups of experts should have the full and effective participation of experts representing indigenous peoples or local communities, including the right to intervene on equal footing with all other experts. It was important that sufficient financial resources be guaranteed in the budget for the meetings of the groups of experts to fully support their participation. Indigenous people and local community organizations should be involved in drafting the terms of reference and in the selection of the experts.

142. The Delegation of Armenians of Western Armenia expressed support for the African Group's proposal to renew the Committee's mandate and to develop a legally binding instrument to protect national heritage.

143. The representative of the Mbororo Pastoralists of Cameroon and the umbrella Association MBOSCUDA supported the African Group proposal with its content of a text based negotiation leading to an internationally legally binding document taking into account the active participation of indigenous people in the intersessional working groups of sessions of the Committee.

144. The Delegation of Nepal supported the statement of the Delegation of Sri Lanka on behalf of the Asian Group. The session of the Committee should decide on a concrete work plan.

145. The Delegation of Egypt thanked the Committee for the overwhelming support expressed for the African Group proposal as originally submitted. The vast majority of Member States and almost all the NGOs had supported the proposal.

146. The Delegation of Senegal welcomed the firm statements made by many delegations in support of the African Group's proposal. It acknowledged that cost was an issue with regard to holding informal sessions, but considered that once that issue had been resolved, the door would be wide open for a comprehensive solution to be found.

147. The Delegation of Azerbaijan supported the proposal of the African Group. Its country's national cultural heritage had been destroyed and expropriated for several years, and although Azerbaijan already had a law on the subject, it considered that there was an urgent need to adopt such an instrument at the international level.

148. The Delegation of Germany expressed its surprise and disappointment that, after consultations with developed countries, developing countries and indigenous peoples, the outcome was that the African Group remained on its proposal, in spite of the strenuous exercise undertaken the previous day to come up with a text on the screen. The African Group had opposed the proposal of the Chair to go to informal sessions and that the reasonable argument for this was that there was a danger of a lack of clarity, accountability and transparency. The Delegation had an uncomfortable feeling with the answer of the African Group in view of the valuable interpretation and negotiation time that the Committee had sacrificed. It was necessary to receive information from the African Group on how those informal negotiations and contacts with partners had been conducted, with whom they had been conducted, who was considered to be a partner, when they had taken place, what had been the outcome, and what were the arguments in favor and against. The Committee and its Member States and the indigenous people wanted to know what had happened to the text that the Committee had produced the previous day.

149. The Delegation of India stated that while it would be simple to be briefed on the contents of the informal discussions, it considered it would not serve much purpose in taking the debate forward. In looking at the altered text from the previous day, the central elements of the African proposal would be amended. There had been overwhelming support for the proposal of the African Group. WIPO administered many treaties dealing with patents, copyrights, trademarks and designs and that most of the IP rights in those areas were owned by developed countries, and asked whether it would have been accepted by those countries had it been suggested that there should only be a political declaration or guidelines on patents. For the first time developing countries were asking for protection of their rights and that as one NGO had pointed out, it was a very small portion of the global IP rights that developing countries were asking for, and that non-binding declarations or guiding principles or model laws would not be acceptable. The Committee was at a critical juncture where it had to be recognized that there was a need for equity, balance and justice, whether it be in IP, global equity in economy, political rights, and that it was the occasion to bring a certain semblance of proportion, equity and justice to the IP discourse. If countries had problems with the three main elements of the proposal, then they should state what those problems were.

150. The Delegation of Egypt commented that the Committee was being told that the African Group was sidetracking the work and that it did not wish to build consensus. There had been reticence in meeting with the African Group, and that it was time to answer the overwhelming emerging consensus. A binding legal instrument would be the only legal way to protect TK, GR and TCEs globally, and that a declaration, a non-binding legal instrument would not. Those delegations that did not wish to join consensus should explain why an internationally legally binding instrument would not be productive.

151. The Delegation of Nigeria stated that the question was how to move forward. It was fruitless to hold any particular group responsible for not advancing the process of the Committee.

152. The Delegation of Venezuela pointed out that the only proposal that remained on the table was the one submitted by the African Group. It recalled that the African Group, together with all its supporters, had indicated that it was willing to accept many of the proposals that had been made the previous day, but that the main elements of its proposal should be retained.

153. The Delegation of Zimbabwe stated that the African Group had undertaken consultations with the various groups but not to report back on them. The results of the consultations had manifested themselves through the overwhelming support for the African Group's original proposal.

154. The Delegation of South Africa stated that the informal consultations had not been at the behest of the African Group but rather Member States that had approached the African Group for further consultation. Regarding their identity and the details, the African Group was not obliged to divulge that information. The African Group was not opposed to the text being put up on the screen again, but that it would be merely for cleaning up the document and returning it to its basic elements.

155. The Delegation of Canada reiterated its willingness, as expressed during both the plenary discussion and also informally throughout the week, to work on the basis of the African proposal. It was disappointed that none of its concerns had been taken into account

by the African Group and said that while it had demonstrated flexibility, thus far the same could not be said for the African Group. It asked the African Group to provide a detailed explanation and technical justification for a legally binding instrument being the only solution. It said that it was necessary firstly to ensure that there was a well-established process and that it was also necessary to define the political objectives and guidelines. That was the only way in which the Committee would be able to determine the appropriate outcome to its work. That had been the Delegation's position from the outset, i.e. that no outcome should be ruled out. The non-renewal of the mandate was not an option. The Delegation asked the Chair to clarify the status of the document arising from the discussions held the previous day. It wished to know whether the Committee was working on the basis of document WIPO/GRTKF/IC14/8/Rev. or on the basis of the document summarizing the previous day's discussions indicating the amendments proposed by the various Member States. The Chair was asked to assist in establishing a process which would allow the Committee to continue working on the text with a view to achieving a satisfactory outcome for all Member States.

156. The Delegation of France expressed its full support for the statement made by the Delegation of Canada. It was disappointed to see that no headway was being made with the work and added that it seemed preferable to move to a format based on informal consultations with the regional coordinators and to take up the African proposal as amended the previous day in order to make progress on the text concerned. It indicated that the spontaneous contact which had taken place between the groups had not been sufficient to achieve a result. The Delegation thanked certain delegations, in particular the Delegation of Mexico for the considerable goodwill that it had shown in attempting to build a bridge between the various opposing positions. The Chair's assistance was sought to find a rapid solution. As things stood, the Committee was heading towards a non-renewal of its mandate, which was not an option supported by the Delegation.

157. The Delegation of Costa Rica supported the proposal made by France, given that further dialogue on that issue was needed and the discussions should continue beyond the current meeting. Further consultations with the Chair were required, together with inter-regional consultations.

158. The Delegation of Zambia stated that, to respond to the intervention by the Delegation of Canada, it was unfortunate that instead of giving justification for their opposition, those delegations opposed to a legally binding instrument, were inviting delegations to state why they needed a legally binding instrument. The reason for a legally binding instrument was that rights could not be enforced in a court of law with a political declaration. The position of the African Group was that there were three core principles which had to be retained, and that there were other issues on which there was room for negotiation.

159. The Delegation of Angola thanked Azerbaijan, China, India and Brazil for their support for the African proposal. It considered that two thirds of the Committee's members had supported the African Group's proposal, while the Delegations of the European Union, Mexico and the United States could not reach agreement between themselves on what they wanted exactly. The Delegation said that the African position was clear and it suggested listening to the majority voice. It recalled the discussions held on the first day of the fourteenth session of the Committee which seemed to indicate a desire to renew the Committee's mandate. The Delegation said that the African position provided new elements in the fifth paragraph, including the funding of experts. Certain delegations had expressed support for moving the work forward based on a new mandate, but they had made proposals

which came under the previous mandate. The Delegation considered that that revealed a contradiction and that it would be difficult to reach a consensus on the issue. The Delegation also said that in other committees it was a question of the funding of experts and added that it failed to see why in the current committee it was a question of the Voluntary Fund. The Delegation commented on the proposal of the United States which mentioned the holding of “special sessions”. It recalled that when the African Group had proposed the intersessional group, it had raised the issue of cost, but holding special sessions also entailed costs. A large majority of Members had expressed clear views on three elements: text-based negotiations, clear objectives and a legally binding instrument, and the Delegation stressed that a recommendation was something that each State was free to adopt. It added that WIPO’s objective was to protect intellectual property and traditional knowledge. It warned the WIPO Secretariat not to convey the message that the rights of some were recognized but not those of others, or that they were taken lightly, since that would constitute a poor interpretation and could lead other countries to regard a binding instrument as something optional. Those countries which had supported the African Group’s proposal accounted for two thirds of world merchandise trade. If those countries were to take a different view, that would lead to considerable losses.

160. The Delegation of the United States of America stated that it remained ready, willing and fully prepared to negotiate with the African Group.

161. The Delegation of the Republic of Korea supported proposals for informal consultations.

162. The Delegation of South Africa stated that, in response to the question raised by the Delegation of Canada, they should consult with indigenous communities to get a clear picture as to why an international binding instrument was necessary. Regarding informal consultations, a decision was taken at the 13th session that there would be no informal discussions and that all negotiations would be in plenary.

163. The Delegation of Costa Rica pointed out the need for the Chair to organize informal consultations to discuss the form. As a regional coordinator, it would not be able to convene fewer than five delegations from its region because they all deserved to be there and all had participated actively inside and outside of the meeting room. It urged the Chair to convene only the regional coordinators to an informal meeting, which would not be a meeting on substance but simply one on procedure, which would be consistent with the role of regional coordinators. It explained that the discussions would not revolve around national or regional positions and that they would instead clarify the rules on which the work would be based.

164. The Delegation of the Philippines, noting that the Delegation of Mexico had asked a question that nobody had answered yet, stated that consultations would only succeed if questions on the core elements of the African Group proposal were answered. Not only the African Group had a stake in the issue and several delegations had made statements identifying the core elements that they believed should be in the renewal of the mandate.

165. The Delegation of Algeria aligned itself with the statements made by the Delegation of Senegal on behalf of the African Group and with those made by all African Member States. The consultations had shown clearly that there was wide support for the African Group’s proposal. It invited the other Member States which it regarded as being in the minority to join the majority of Member States. The African Group had proved itself to be flexible throughout the nine years in which the Committee had been meeting. It reiterated its preference for

negotiations leading to a legally binding instrument. In reply to the Delegation of Canada, it explained that preference by the fact that WIPO's role was not to preach, as suggested by the possible adoption of a political declaration, but rather to ensure effective protection for rightsholders, in that case the rights of the indigenous and local communities of Member States. A political declaration which was not binding could not guarantee such protection. The Delegation of Algeria stressed the large number of treaties which sanctioned counterfeiting and piracy and said that it was time to extend those sanctions to the plundering, unlawful use and misappropriation of the folklore, genetic resources and traditional knowledge of the countries affected.

166. The Delegation of Mexico reiterated its desire to renew the Committee's strengthened mandate and for progress to be made in the negotiation of legal mechanisms for the protection of TK, TCEs and GRs.

167. The Delegation of Sweden stated that the European Community and its Member States were ready to engage in discussions with the African Group as well as with other interested groups and delegations on how to reach a positive outcome on the renewal of the mandate.

168. The Delegation of Japan echoed the sentiment expressed by several delegations including France, Costa Rica and South Korea, and commented that what was needed was text which would bring consensus. In this context and in order to get out of the deadlock, it suggested that the holding of informal consultation with the assistance of the Chair would be the best way forward.

169. The Delegation of India endorsed the view that the African Group proposal enjoyed a wide base of support also from Asian countries and a few from GRULAC. Over 20 countries had voiced support for the proposal, and the Delegation was confused by the suggestion of having meetings with coordinators only to discuss the modalities. Wide based consultations would be more appropriate.

170. The Delegation of Brazil believed that informal consultations in small groups would not be productive.

171. The Delegation of Indonesia shared the view that the deliberations must be kept in the plenary.

172. The Delegation of Senegal, speaking on behalf of the African Group, said that even though each regional group was discussing matters in its own corner, the decision taken would in any case be tabled again during the plenary given that no coordinator would be able to speak on behalf of all members of its group. Negotiations should be held in plenary. The African Group was such a monolithic group that working in small groups at that stage would be very difficult.

173. The Chair decided to continue discussions in informal mode and invited interested delegations to participate.

174. Resuming in plenary and formal mode, the Chair invited the Secretariat to respond to questions posed by delegations on financial aspects and, in particular, on the financial implications of the African proposal.

175. The Secretariat provided information first on the budget allocated to WIPO's program on TK, GR and TCEs in general. In the draft Program and Budget for 2010-2011, which had yet to be approved by Member States, an amount of roughly 7.1 million Swiss francs were proposed for this program (Program 4) for the 2010-2011 biennium. This comprised roughly 4.3 million Swiss francs for personnel costs and 2.8 million Swiss francs for non-personnel costs. The budget for Program 4 represented 1.15% of the total proposed budget for the Organization. Second, in regard to the costs of Committee sessions, each session (based on a 5 day session, the funding of 26 delegates from developing countries and countries in transition and interpretation into English, French and Spanish), cost about 240 000 Swiss francs. Four sessions of the Committee were foreseen in the 2010 and 2011 period, and in the draft Program and Budget for 2010-2011, approximately 962 000 Swiss francs had been proposed for the four IGC sessions. Third, in terms of what an intersessional process might cost, the Secretariat advised that this would depend on factors such as the number of funded participants, the duration of the meetings, the venue of the meetings and the interpretation services to be provided. Some estimates had been prepared for different scenarios. For example, a three day meeting, with funding for 16 delegates and with interpretation into English, French and Spanish, would cost about 160 000 Swiss francs. A one day meeting, with funding for 26 delegates and with the same level of interpretation would cost approximately 130 000 Swiss Francs. Finally, regarding the Voluntary Fund, as stated in WIPO/GRTKF/IC/14/INF 4, an amount of at least 180 000 Swiss Francs was currently available in the Fund. The Rules of the Fund did not explicitly permit use of the Funds for intersessional processes and this question would therefore have to be examined.

176. The Delegation of Canada stated that, beside the Indigenous Caucus, accredited observers should be able to make comments on the proposal under discussion, after the Member States, although it agreed that they might not negotiate the text.

177. The Delegation of Sweden, on behalf of the European Community and its Member States, wished bring the session to a positive outcome. It stated that it had been working constructively and open-mindedly on the African proposal. The process had reached a critical point. The Delegation had revisited the comments made and tried to accommodate diverging views by adding extra value to the proposals made so far on behalf of the European Community and its Member States. The Delegation tabled a written proposal, which was available in English, French and Spanish, as a good faith effort based on the African proposal to build bridges and set a basis for a compromise.

178. The Delegation of Australia expressed its willingness to present a substantive text it had prepared addressing the key issues.

179. The Delegation of Senegal, speaking on behalf of the African Group, noted the progress made in the discussions on the Committee's mandate. However, it wished to recall that the African Group considered that its proposal and the key to the discussions under way were based on three fundamental elements, namely text-based negotiations, a legally binding instrument and a clearly defined work program. It therefore proposed that the negotiations on the new mandate which were taking place in plenary be focused on those three issues, adding that if a consensus were reached on those issues, the rest would follow. The Delegation also expressed the wish of the African Group to see the Director-General, in accordance with the wishes expressed, play a role in convincing the minority to support the consensus that seemed to be emerging on its proposal.

180. The Delegation of Nigeria endorsed the statement made by the Delegation of Senegal on behalf of the African Group. Referring to the statement made by the Delegation of Canada on the involvement of accredited observers into the discussions, it reminded the Committee about the norms of the UN system that allowed all parties and relevant partners to be involved in debates and negotiations. The Delegation of Nigeria wanted everybody to be involved, but requested that this involvement did not lead the Committee to experiment too much outside the norms that were applicable within the UN system.

181. The Delegation of Sri Lanka noted that the Delegation of Sweden, on behalf of the European Community and its Member States, made a proposal, as well as the Delegation of Australia. It suggested that the Committee have a clear understanding of those proposals before deciding whether to remain in plenary or move to the informal mode.

182. The Delegation of India supported the statement made by the Delegation of Senegal on behalf of the African Group. It invited the Committee to focus on the emerging consensus that was building up on the three main elements referred to by the Delegation of Senegal.

183. The Delegation of Brazil referred to the participation of other stakeholders in the present discussion and in the future work of the Committee. It asked the Committee to be particularly flexible at this point in order to allow them to intervene and make substantive contributions in accordance with the UN rules of procedure. It highlighted the fact that indigenous and traditional communities had much at stake in the Committee, particularly in the present session. The Delegation of Brazil recalled that the Committee took an earlier decision to proceed on the basis of the African Group proposal that included its core elements. The Committee should consequently address these core elements first. If Member States started changing the core elements of the African Group proposal, they would indeed replace it with another proposal.

184. The Delegation of Australia wished to clarify its previous intervention. As indicated, it was prepared to provide its views on the core elements of the African Group proposal. It could support the core elements of the Group's proposal with some textual amendments as indicated in its proposal.

185. The Delegation of New Zealand shared the objectives of preventing the misappropriation of GR, TK, and TCEs. It recognized that the issues of misappropriation and misuse of GR, TK, and TCEs had a significant international dimension that needed to be addressed. It recalled that New Zealand had a highly diverse environment rich in unique biological resources, as well as significant indigenous peoples with whom it had a partnership arrangement codified in the Treaty of Waitangi, which dated over 150 years. It aligned itself with the statement of the Delegation of Australia and its recommended changes to the text in the proposal of the African Group on the three key elements. It agreed to text based negotiations for an instrument, potentially legally-binding, to be developed in the next biennium, based on all the working documents produced to date in the Committee as well as what had been heard in the Committee so far. As it explained to the African Group and in plenary, the Delegation of New Zealand could not decide on the status of a text without full domestic consultation and in particular with the Maori communities. It wished to leave the decision as to the status of the text until the end of the proposed work program. It supported the aim for recommendations to be made to the General Assembly in 2011 as to final format and status of a developed text, provided Maori and the New Zealand public would have had an opportunity to follow the process. It stressed the importance of maintaining a broad mandate for the Committee's work and expressed its readiness to engage in the development

of a menu of options. The Committee process encompassed more than the development of an instrument. It should be a forum where substantive issues were analyzed, options, including *sui generis* options, were explored, and a menu of resources and a potential instrument or instruments were developed, in order to encourage and ensure better, more respectful, behaviors by users of TK and TCEs internationally. It therefore supported the recommended inclusion made by the Delegation of Sweden on behalf of the European Community and its Member States at the beginning of paragraph two of the African Group's proposal of the following sentence: "The Committee will continue its work and undertake...". It aligned itself with the exercise proposed by the Delegation of Australia in relation to recommending some changes to the African proposal.

186. The Delegation of Sweden, on behalf of the European Community and its Member States, expressed support for the amendments proposed by the Delegation of Mexico and Australia concerning the first paragraph of the African Group proposal. It referred to the written proposal it had tabled. In doing so, it endorsed the proposal made by the Delegation of the United States of America to insert the wording "outcome oriented deliberations" to accommodate the views expressed by the Delegations of India, Brazil, Mexico and the United States of America.

187. The Delegation of the United States of America thanked the Delegation of Sweden for its support, on behalf of the European Community and its Member States, of the phrase "outcome oriented deliberations". It acknowledged that there had been perhaps some confusion or lack of clarity about this phrase. Some delegations had suggested informally that it might turn the clock backward to earlier positions maintained by the United States of America on the Committee. Nothing could be further from the truth. By suggesting this phrase, the Delegation wished to express its readiness to go forward and accelerate the work of the Committee in all its richness and in all its depth. The Delegation referred to the substantial progress that had been made in developing and refining the draft policy principles and objectives for TK and TCEs. The Delegation continued to believe that these draft policy principles and objectives held great promise to become a possible vehicle for the Committee to articulate the special needs and concerns of indigenous peoples and traditional communities and lead to the very kind of text that had been anticipated in many of the comments made by Member States. The Delegation looked forward to those concrete outcome oriented deliberations that would lead to the kinds of concrete outcomes that all too often had escaped the Committee in the past.

188. The Delegation of South Africa said that it was puzzled by concepts that it had never heard before, such as "outcome based deliberations". It recalled that the Committee was trying to find a sense of direction and was running out of time. It expressed appreciation for some of the suggestions made, especially by the Delegation of New Zealand. While those suggestions constituted encouraging signals, some other notions that had been brought forward were problematic for the Delegation of South Africa. At some stage it would have to decide whether to continue engaging on a fruitless exercise or whether to try further in order to find common ground with the other delegations. The Delegation was reluctant to go back to its capital with a phrase like "outcome based deliberations".

189. The Delegation of Canada referred to the proposal just made by the Delegation of Australia and said that this minimalist approach was in line with what it had been advocating, since this approach stuck as closely as possible to the proposal of the African Group.

190. The Delegation of Sweden, on behalf of the European Community and its Member States, asked the African Group to clarify what it meant by “text based negotiations” and in particular whether it saw a linkage between this wording and the proposed outcome of such negotiations, as per its proposed language in paragraph 4 of its proposal.

191. The Delegation of Senegal, speaking on behalf of the African Group, noted that the Delegation of New Zealand supported the principle of text-based negotiations. It recalled that the Committee was focusing on the three main points of the African Group’s proposal and that the discussion concerned that principle for the time being. It noted that two proposals had been made in that regard, adding that it was the first time that it had come across the phrase “outcome-oriented deliberations”. It invited the Chair to allow the discussion to continue on that specific point before tackling the other two.

192. The Delegation of Sweden, on behalf of the European Community and its Member States, asked the African Group whether it would agree with the language proposed by New Zealand.

193. The Delegation of Angola recalled that the European Community and its Member States had submitted a proposal within the WTO including text-based negotiations and said that it did not understand why, in the context of the Committee, they were seeking clarification on the meaning of that phrase.

194. In response to the intervention made by Sweden, on behalf of the European Community and its Member States, the Delegation of South Africa recalled that the African Group had already offered to consult with delegations on issues that needed clarification and that the Group was ready to listen to their proposals. The Delegation regretted that some still did not understand what was meant by “text based negotiations”.

195. The Delegation of Senegal asked to see the proposal made by the Delegation of Australia displayed clearly on the screen so that it could be examined in relation to the African Group’s proposal.

196. The Delegation of the Islamic Republic of Iran indicated that the Committee had been discussing for over nine years the need to have a binding instrument. There was a need to develop a systematic solution in order to ensure the protection of rights and privileges of several societies, including the indigenous and ancient civilizations. The Delegation believed that such rights were considered a common human heritage and should be protected, and the Committee should engage in text-based negotiations. The Delegation did not understand the phrase “outcome oriented deliberation”.

197. The Delegation of Burundi expressed regret at the fact that the Committee had remained at a deadlock for five days. It noted that the African Group had been asked to reply to questions which already had clear answers, recalling that concepts such as text-based negotiations, a legally binding instrument and a timeframe were easily understandable. It therefore considered that the questions raised constituted delaying tactics. It supported the request made by the Delegation of Senegal on behalf of the African Group inviting the Secretariat to play a greater role so that the text appearing on the screen would enable the Delegations to follow what was happening in the Committee.

198. The Delegation of Indonesia stated that “text-based negotiations” referred to a collective effort to develop an international legally binding instrument based on a text that had been

extensively discussed and deliberated by the Committee. Amendments to the African Group proposal should not disregard the principal elements of the original proposal. The Delegation would therefore not support amendments which were fundamentally different from the original.

199. The Delegation of Brazil indicated that there existed a conflict between the terms “text-based negotiations” and “outcome-oriented deliberations”. The term “text-based negotiations” could be considered as new language, since it had never been used before by this Committee. After nine years of deliberations, the Committee might need new tools and new language, such as “text-based negotiations”, in order to move forward. The term “outcome-oriented deliberations”, on the other hand, although it may be well-crafted or a new expression, could be perceived as non-committal language.

200. The Delegation of Guinea expressed support for the statement made by Senegal, which, on behalf of the African Group, invited the Committee to focus on the three main points of its proposal. It was out of the question for the African Group to see the proposal that it had submitted in advance distorted. The Committee was becoming distracted from its task by basing its discussions on the phrase “outcome-oriented deliberations” and the Delegation added that that was a phrase that was hardly used, if at all, in the context of the United Nations.

201. The Delegation of India proposed to focus the session on the three elements of the African Group proposal. The Delegation added that the ideas were not new, as these had already been discussed by the Committee for several years. The Committee should not go back to discussing fundamental questions.

202. The Delegation of Thailand agreed that the three original key elements in the African Group proposal should be maintained. However, the Delegation was also open to any additional suggestions as long as the essence of the original proposal would not be diluted.

203. The Delegation of Sri Lanka reiterated its wish to see all the proposals that had been proposed. In order to reach consensus, the Committee should work on the proposal that had the least amendments, namely the proposal of Australia.

204. The Delegation of the Philippines highlighted the importance of the three core elements in the African Group proposal.

205. The Delegation of India reiterated that the work of the Committee should be towards “a legally binding international instrument”. For this reason, the Delegation wished to retain the African Group proposal in its original format.

206. The Delegation of Switzerland stated that there had been a number of negotiations, which had started without any decisions made on whether the result would be legally binding or not. An example was the International Treaty of the FAO. Only at the end of the negotiation process had it been decided that the Treaty would be legally binding. There was therefore no need to decide on this issue at this point of time.

207. The Delegation of Pakistan believed there was a difference between a legally binding and non-legally binding text and the language used to negotiate such types of texts. It did not understand how the Committee could start negotiating a non legally binding instrument, which could evolve into a legally binding one. The Delegation did, however, understand that

a legally binding text could eventually become non legally binding at the end of the negotiation process.

208. The Delegation of Sudan believed that it was important that the negotiations would focus on developing a legally binding text.

209. The Delegation of Canada supported the example given by the Delegation of Switzerland regarding the nature of the FAO Treaty which was only determined at the end of the negotiation process. This was also true for the Convention on Biological Diversity. The Committee should not preclude any outcome at this stage. There was a need for a work program when negotiating a text.

210. The Delegation of Mexico referred to its proposal for the paragraph in question and said that it took into consideration the concerns of the two extremes. Mentioning the possibility of one or more international instruments paved the way for more than one type of instrument. The Delegation called for the Legal Counsel of WIPO to clarify whether referring to an international instrument or to international instruments necessarily implied an international treaty. The Delegation reiterated that it would like a legally binding mechanism although it understood the concerns of other delegations.

211. The Delegation of Egypt reiterated that the majority of delegations were for the development of a legally binding international instrument. For delegations that had concerns with the “legally binding” language, there were still a number safety valves. First, they could influence the nature and direction of the text based negotiations. Second, they would retain the option not to participate in the Diplomatic Conference, should one be established, and should they participate, they could still decide not to become a signatory to the possible treaty established. Third, should they decide to become a signatory, they could still decide not to ratify the treaty.

212. The Chair announced that it intended to settle the items of the agenda still pending, on substantive issues, and it requested the Legal Counsel to take the floor to respond to the questions raised by some of the delegations.

213. The Delegation of the Islamic Republic of Iran stated that all WIPO treaties should be treated on an equal footing. A treaty might come into force if certain countries accede to it. The African Group proposal was not a request, but a demand by the developing world to the developed world. It asked the Secretariat to respond to the questions raised.

214. The Delegation of Senegal recalled that the objective of the work of the Committee was to protect traditional knowledge and traditional cultural expressions. The debate on international instruments could therefore be summed up as knowing what type of international instrument was likely to ensure effective protection. The Delegation of Senegal recalled that the African Group believed that only a legally binding instrument would fit the bill. The Delegation, however, declared itself ready to listen to the arguments of those who believed that effective protection could be attained by means of other types of instruments as well as to the clarifications which might be made by the Legal Counsel of WIPO in that respect.

215. At the invitation of the Chair, the Legal Counsel of WIPO replied to two questions put to him by the Chair: (1) what was the meaning of the phrase “international legally binding instrument”; and (2) whether the phrase “international instrument” included the possibility of a binding or non-binding instrument. With regard to the first question, the Legal Counsel

stated that it could be assumed that “internationally legally binding instrument” meant an instrument which was binding in legal sense. There were different forms of legal instruments and whether it would be binding depended on what was included in the instrument. For example, if there was a treaty with certain obligations and Member States signed on to it, they would be bound by that treaty. If that treaty itself also stated that Member States could sign on but that they were not required to be bound, Member States would not be bound by that treaty. Thus, an internationally legally binding instrument would be one that was legally binding. As to the second question, the answer would be “Yes”. The term “international instrument” could refer to anything ranging from a declaration to a resolution, including a treaty. A conventional treaty could be referred to as an international instrument. Soft law or declarations could be referred to as international instruments, and the extent to which they would be binding would depend on their language. For example, if the Committee itself were to come up with a declaration, that declaration itself would not be legally binding. What would make it legally binding would be what was done with it. If that declaration was subsequently incorporated, for example, in national or domestic legislation, it would be binding on those nations that had adopted it in their domestic legislation. If that declaration was included in a treaty, it would be binding on those countries that signed that treaty and subsequently ratified or those that acceded to the treaty.

216. The Delegation of Brazil believed a legally binding instrument was needed because indigenous and traditional communities were entitled to rights to protect their intangible patrimony. WIPO had already provided a response to other holders of knowledge in the form of legally binding instruments. Developing countries had few offensive interests in IP, and it was fair therefore to move forward towards a legally binding instrument.

217. The Delegation of Sweden, speaking on behalf of the European Community and its Member States, stated that there might be some misunderstanding concerning the European Community’s proposal as regards the relation between its proposed paragraph 4 and the proposed declaration at the beginning of its document. The proposed declaration was not the outcome but work on it would be done in parallel. Adoption of a declaration did not preclude any outcome of the Committee’s work. The European Community proposed to work on both a declaration and, in parallel, continue the important work of this Committee to reach a result that was acceptable for everyone.

218. The Delegation of the Czech Republic expressed its full support for the proposal presented by Sweden on behalf of European Community and its 27 Member States. At the same time, the Czech Republic identified itself with reasoning on the open formulation of the outcome as explained by the Switzerland and Canada.

219. The Delegation of Zambia supported working towards a legally binding instrument as this was the most effective way of protecting GR, TK and TCEs. It recalled the legal advice from the Secretariat that a legally binding instrument would not be automatically binding on a country and a country had to ratify or accede to that instrument. Thus, if a country did not wish to be bound by an instrument, it would just not accede or ratify it.

220. The Delegation of Venezuela indicated that the consensus was to accept the will of the majority and that the majority, three-quarters of the Committee, requested that meaningless discussions should not continue, similar to that held on what constituted a binding legal instrument.

221. The Delegation of Malaysia had no problem with cosmetic changes being made to the African proposal but adhered to the three core principles of the proposal. Malaysia asked the Legal Counsel as to the meaning of “outcome oriented deliberations”.

222. The Delegation of Norway supported the proposal of the European Community and its Member States that a declaration should be prepared in addition to the other work of the Committee. A treaty would not be effective if it did not enter into force.

223. The Delegation of South Africa believed the proposals from some delegations were very constructive, especially from New Zealand and Australia. However, it suggested wrapping up the current process and having another parallel process to make progress.

224. The Delegation of India stated that, looking at the ongoing IP negotiations in the WHO, WCO and elsewhere, many countries were convinced of the need for greater protection and greater enforcement of conventional IP rights but some countries were not willing to consider protecting the holders of TK although this was wished for by a majority of countries. A legally binding instrument did not mean an automatically binding one as every country had the sovereign right to decide whether it wanted to adhere or not. Many treaties took a long time to be negotiated because many Member countries believed in their importance.

225. The Delegation of Burundi supported the declarations made by the Delegation of Senegal on behalf of the African Group. The clarifications made by the Legal Counsel of WIPO strengthened its position in favor of a legally binding international instrument and negotiations based on the texts. The Delegation also endorsed the proposal of Brazil that negotiations be carried out on the three subjects of the Committee, taking into account their more or less advanced state. The Delegation also noted with appreciation that some delegations wished to consult their own indigenous communities. The Delegation called on those delegations which had expressed doubts regarding a process which could lead to a diplomatic conference not to block that movement. While thanking the delegations for their efforts in progressing towards a solution, the Delegation recalled that a stalemate would be harmful to future generations concerned with both the subjects of the Committee today and other WIPO-related subjects in general.

226. The Delegation of the Russian Federation expressed support for aspects of the proposal of the European Community and its Member States. Regarding intersessional work, the Delegation referred to the experience of the PCT Committee, which had used electronic means of communication.

227. The Delegation of Nigeria believed that the majority of delegations knew what constituted a “legally binding instrument”. As alternative options and new dimensions were being introduced through amendments to the African Group proposal, the Committee still lacked a certain level of convergence, which prevented the work of the Committee from moving forward or at least from having a clear direction on how to move forward. The Committee needed to resolve this by narrowing its focus rather than to introduce new alternatives. The Delegation questioned whether the problem lay in defining the beneficiaries of protection or simply that TCEs, TK and GR did not require any protection. The African Group proposal had been presented to move the work forward and the Group did not preclude having a refined version at the end of the session.

228. The Delegation of Philippines recalled that bringing a treaty into force was the last step in a treaty making process. It agreed to take the first step towards an international legally binding instrument.

229. The Delegation of Bolivia expressed its deep concern at the lack of political will on the part of developed countries to initiate negotiations targeted to achieving the protection that the indigenous peoples merited as owners of TK, TCEs and GR. The Delegation indicated that it was concerned that the IP system administered by WIPO was unable to lead to negotiations for dialogue on the concerns of developing countries. The Delegation stated that the documents belatedly presented reflected the delaying tactics used in such proposals.

230. The Delegation of Zimbabwe referred to the enforcement of IP rights and the view that the exploitation of the IP system was a powerful tool for wealth creation and poverty reduction. Zimbabwe stated that GR, TK and TCEs should be included. Legislation and effective administrative infrastructure for the acquisition of IP rights were important steps toward IP protection. Most delegations were in favor of a legally binding instrument, which put nobody under any obligations.

231. The Delegation of Indonesia strongly agreed with creating an international legally binding instrument. Reasons for opposing a legally binding instrument were not clear. Those who opposed should not continue to hold the Committee hostage.

232. The Delegation of Sri Lanka stated that most Asian Group members did not favor a political declaration because it meant nothing. The African Group and other developing countries had tried to engage in a dialogue.

233. The Delegation of Pakistan hoped to have a clear and concise agenda on future work as drafted by the African Group. Developing countries had supported the African Group and opposite views were without substantive ground.

234. The Delegation of Zambia stated that enough had been said and it was now time to move forward. Almost every delegation had been able to express their views.

235. The Delegation of Angola thanked all the delegations which had supported the proposal of the African Group, particularly the Asian Group, GRULAC, the delegations of Brazil and India, and others. The Delegation reiterated its support for the declarations of the Delegation of Senegal made on behalf of the African Group. The Delegation believed, similar to the Delegation of Indonesia, that WIPO had reached a critical juncture in its development. Reacting to the proposal of the Delegation of Canada on the decision that the Committee was to take on future work, the Delegation of Angola proposed establishing rather a factual report which would present the viewpoints expressed on the proposal of the African Group, which had received the support of African Member States as well as some thirty other delegations belonging to other regional groups. Given the support expressed by civil society and NGOs, the Delegation believed that the proposal of the African Group had garnered the support of 90 per cent of the Committee participants. The Delegation noted that other delegations were close to joining the consensus, while others had maintained their objections. The Delegation invited the Chair to include that factual state of affairs in the report of the Committee session to be examined by the General Assembly.

236. The Chair noted that the debate had become rhetorical and devoid of concrete proposals. The Chair proposed dealing with pending matters to be able to broach the last item on the

agenda. The Chair called for indications on what the delegations would like to do and how they would like to proceed, and whether it was possible to find a solution for a mandate acceptable to all to raise at the General Assembly.

237. At the invitation of the Chair, the Secretariat advised that, in respect of agenda item 6, document WIPO/GRTKF/IC/14/INF/7 had been made available. This document communicated the report and recommendations adopted by the Advisory Board of the Voluntary Fund at the conclusion of its meeting held on the margins of the session of the Committee.

238. The Chair then resumed discussions on agenda item 7.

239. The representative of the Indigenous Peoples (Bethechilokono) of Saint Lucia Governing Council (BCG), speaking for the Indigenous Caucus, strongly urged the renewal of the mandate of the Committee and appreciated the African Group's leadership to ensure the renewal. He stated that any internationally legally binding instrument or instruments must fully recognize and protect the rights of indigenous peoples and be consistent with the minimum standards of rights recognized in the United Nations Declaration on the Rights of Indigenous Peoples. He referred in particular to Articles 11 and 31. In order for any instrument to meet the needs of indigenous peoples and local communities, the Indigenous Caucus had to be fully involved in the negotiating process, and he referred to Articles 18 and 19 of the Declaration. With regard to any technical expert groups that might be established and any text-based negotiations, indigenous peoples' full and effective participation had to be guaranteed and supported by Member States. "Full and effective participation" included the right of indigenous peoples and local communities to intervene on an equal footing with all other delegations and experts. Sufficient funding had to be available to fully support the participation in expert groups of indigenous and local community experts. He also encouraged Member States and donors to make further contributions to the Voluntary Fund. Finally, he specifically stated that, with regard to the technical expert groups, "full and effective participation" included the right of accredited indigenous peoples and local communities' organizations to select the experts to represent indigenous peoples or local communities.

240. The Representative of the Coordination of African Human Rights NGOs (CONGAF) declared that the mandate of the Committee since its inception was dense, whilst noting that other aspects of international intellectual property law were not included in the mandate. The Representative pointed out that the objective of the Committee, which had no fixed deadline, remained to be finalized. International intellectual property law and above all related international trade law had changed, but not in the collective interest. The efforts made at the international level to recognize traditional knowledge and genetic resources as well as the authenticity of local languages were nevertheless appreciated. The Representative of CONGAF stated that CONGAF's participation was due to the fact that formerly-colonized peoples or countries had become aware that their capital, including also their identity, was not only threatened, but was at risk of being exploited, in the wake of the plundering carried out under the colonial system. The Representative underscored that indigenous peoples would continue to be subject to international law and that CONGAF intended to plead their cause and to denounce the misappropriations and abuses of traditional knowledge, and spiritual and sacred symbols. The Representative of CONGAF believed that those abuses were due to the fact that international intellectual property law had ignored and marginalized indigenous peoples at their expense. For intellectual property law to become a catalyst for economic development, exploitation of the heritage of humanity by such private sector companies

should be controlled and equitable sharing mechanisms should be implemented based on disclosing the origin of resources and prior consent, in the name of fairness and justice. In the view of CONGAF, there was no such thing as an underdeveloped world and a developed world, but only a world incorrectly developed. The Representative of CONGAF noted that the Committee was in charge of preparing a legally binding text, that the renewal of the mandate should not even be under discussion and that victims of exploitation and active members of civil society expected much from Member States. The Representative regretted that other international organizations administering other aspects of international intellectual property law were not involved in the work of the Committee. The Representative called on WIPO to administer a framework agreement on sharing genetic resources and traditional knowledge, an agreement which could be accompanied by additional protocols. The work of the Committee should strengthen the contribution of international intellectual property law to economic development in the countries of the South and should be attached, as a form of good governance, to the United Nations Millennium Development Goals program, a responsibility shared by all Member States as well as by civil society. The Representative of CONGAF added that Africa was the continent with the richest resources, the cradle of human civilization, but also the poorest of continents. CONGAF would continue its work, and so would the African continent.

241. The Delegation of Senegal, on behalf of the African Group, and of its allies, thanked the Chair for its efforts during the work of the Committee. The Delegation added that the African Group and its allies had constantly made considerable efforts to achieve productive conclusions and concrete results during the nine years of the Committee's work. The Delegation recalled that the proposal of the African Group covering the renewal of the Committee's mandate was essentially based on three key elements. The Delegation believed that it had been supported by an overwhelming majority of Member States. The three key elements were negotiations based on the texts, concluding a legally binding international instrument and a pre-established work program. The Delegation of Senegal regretted on behalf of the African Group and its allies that in spite of massive support for the only official proposal, the lack of willingness to make progress on the part of some delegations was leading to the Committee's mandate not being renewed. The Delegation recalled that the African Group would have wished that the Director General involved himself in the proceedings of the current session of the Committee which it had deemed important. The Delegation asked, on behalf of the African Group and its allies, that the proposal of the African Group, as amended, be annexed to the factual report of the Committee in order to reflect faithfully what was discussed. The Delegation expressed its fears that if WIPO could not achieve appropriate protection of the rights of indigenous and local communities for their traditional knowledge, traditional cultural expressions and genetic resources, misuse and misappropriation of the cultural and scientific heritage would endure.

242. The Delegation of Mexico deeply regretted the lack of a satisfactory conclusion to the work of the Committee, which would have enabled it to renew and strengthen its mandate. The Delegation indicated that, in the current process of consultations with its 62 indigenous peoples on forms of protection of TK, TCEs and GR, there was considerable expectation and hope for progress for the Committee, as it would be very embarrassing to inform them of the stagnation of the process. The Delegation repeated its commitment to the following: the need to have a text for negotiation which arose from the consensus in the Committee based on the five texts prepared by the Secretariat of WIPO already mentioned and to have an appropriate methodology and timetable to guide future work. The Delegation urged all the delegations and regional groups to find common ground, whilst keeping in mind the potential beneficiaries of their work, the indigenous peoples and local communities worldwide.

243. The Delegation of Sweden, on behalf of the European Community and its Member States, requested the Secretariat to include reference to its proposal in the report of the meeting and to issue the proposal as a formal working document of the fourteenth session. The Delegation had hoped there would be constructive discussions and an agreement on a recommendation for a renewed mandate. The format for negotiations had not facilitated this. Informal negotiations would have been more fruitful. One outcome was an agreement on a renewed mandate. However, guidance as regards procedure on how to renew the mandate was sought, as were further consultations. Finally, the Delegation emphasized that its proposal was intended to accommodate the concerns of various delegations and indigenous peoples. The European Community and its Member States remained committed to discuss that proposal with all interested delegations.

244. The Delegation of South Africa aligned itself with the statement made on behalf of the African Group and like-minded countries. It was with regret that the Committee could not come to an agreement due to a few countries. The Delegation thanked those countries and indigenous representatives which had supported and co-sponsored the African Group proposal. South Africa, as a country rich in biodiversity and TK, had been active on the national level through its Indigenous Knowledge Systems Policy, the amendments of its relevant IP laws to include disclosure requirements and, currently, the preparation of its *sui generis* legislation for the protection of its TK. It had numerous forms of bilateral cooperation with like-minded countries to achieve effective protection of its TK. As a country it would continue to pursue parallel processes for the effective protection of TK and the Delegation invited those few countries with divergent views to join it in those initiatives. Those few countries that could not agree to work with the African Group proposal should make the critical decision to allow for the Committee to work for the development and conclusion of an international treaty within WIPO. The need for an international treaty was a global and human concern to address the current challenges faced by many developing countries to achieve its MDGs as well as to recognize and protect the rights of the indigenous and local communities. It remained hopeful that those few countries would agree in the near future.

245. The Delegation of Australia said that it had come to negotiate in good faith, reflected in the seniority and expertise of its Delegation, and in its interventions directed at trying to bring this debate forward. It expressed its disappointment that the divide could not be bridged, particularly as WIPO had been well recognized as a consensus based organization. But for such an approach to work, it needed to be prepared to understand the issues that divide it and be willing to negotiate in good faith. It stressed again that the interests of the African Group and that of Australia intersected. This was not a debate between the developing and developed world as some delegations had attempted to portray it. The issues cut across regions and countries at different stages of development. The Delegation understood the intent of the African proposal, and desire for rapid progress on real outcomes, and agreed with the majority of the proposal. Simply stated, it was premature to pre-empt the work of the experts group. It believed there were still issues to be worked through by these experts to determine the best and most practical elements of any international instrument that would have, broad support, and most importantly ensure, fair, equitable, consistent and transparent treatment of TK, TCEs and GRs. Without broad agreement, any gains achieved were likely to be illusionary. Finally, it wished to work with members to overcome their differences and achieve broad consensus. All the members must work in good faith. The Delegation had strong desire for the mandate to be renewed, but could not support the current text proposed.

246. The Delegation of Canada recalled that some members wished to capture the work done in the past days because a lot of effort had been made to find a way forward. Canada proposed the following language to be reported under agenda item 7 in the report of the meeting: “Recognizing that there exists a difference of views among Member States as to the terms and conditions upon which the mandate of the Committee should be renewed for the budgetary biennium 2010-2011, the Committee requests the Chair to carry out informal consultations with Member States in the period leading up to the 2009 General Assembly on the basis of the proposals made at this session which are annexed to the present decision. The Committee requests the Chair to help bridge outstanding differences concerning the renewal of the mandate of the Committee”.

247. The Delegation of South Africa sought legal clarification on the continuing mandate of the Chair and on what basis the consultations proposed by Canada could take place. The Delegation also asked as to the status of the proposal made by Canada.

248. The Delegation of Zimbabwe indicated that in negotiations there were two results expected, an outcome or no outcome. It was regrettable that the Committee had failed to reach a conclusion. The Delegation of Zimbabwe stated that good statements did not necessarily produce outcomes but commitment was the key. Most members had negotiated in good faith but the interests of some delegations had contradicted the spirit. The Delegation thanked those who had made the attempt to bridge the gap but stated that surely the lines had been drawn before even coming to the meeting that the Committee should not produce an outcome. There were diverging views, not on language but on core principles. There were other avenues and other options that might be thought of, and Zimbabwe intended to approach other organizations and other multilateral options to pursue the issue.

249. The Delegation of Sweden, on behalf of the European Community and its Member States, expressed its support for the proposal forwarded by the Delegation of Canada. The basis for the consultations would be all proposals submitted to this Committee during the current session and that would include also the European Community’s proposal as well as all proposals to amend the African proposal.

250. The Delegation of Egypt stated that unfortunately there was no longer a Committee and that the mandate had not been renewed. The Canadian proposal could contain useful elements and would need to be printed and discussed in groups. Clearly, the General Assembly could discuss the issue, but there would not be a Chair after the end of this session, unless the Legal Counsel could clarify matters. Further, Egypt believed that there was only one official document under “Future Work” and that was the African Group proposal.

251. The Delegation of Indonesia regretted that the Committee had failed to provide effective protection to the rightful holders of the GR, TK and TCEs. The failure would perpetuate the existing imbalance and injustice, and might lead to the emergence of a new track to meet the expectation that WIPO was unable to fulfill. In the spirit of the Bandung Declaration, 2007 Indonesia was prepared to engage actively and constructively if such a new track would emerge.

252. The Delegation of Sweden understood that the mandate ended at the end of December 2009.

253. The Delegation of Pakistan stated that holding discussions in plenary had been the right option. The Delegation stated that there was a broad agreement on the renewal of mandate.

That had never been the issue. The real issue was the exact details of mandate. The Delegation had agreed to negotiate in good faith but there needed to be flexibility on both sides. Regarding the Canadian proposal which referred to work which was to be done between then and the General Assembly. However, the recommendation should be what the Committee recommended the General Assembly to do. Pakistan did not know how the General Assembly in September 2009 could confirm or consider something which was to be done between the end of the current session and the Assembly. The only recommendation which could be made to the General Assembly should refer to what the Committee needed to do in future.

254. The Delegation of Senegal, on behalf of the African Group, wondered about the value of informal consultations which could be held prior to the General Assembly in the context of the proposals and elements of the discussion which had been raised at the current session. It also asked whether the amendments displayed on screen were to be considered as proposals or not, and believed that only one main proposal had officially been submitted. It requested clarification on the matter from the Legal Counsel of WIPO.

255. At the invitation of the Chair, the Legal Counsel of WIPO replied to the specific questions addressed by the Delegations of South Africa, Egypt and Pakistan. In September 2007, the General Assembly had renewed the mandate of the Committee for a two-year period for the 2008-2009 biennium, so the mandate was until the end of 2009. The Committee made recommendations to the General Assembly, so the Committee had been deciding at this session what recommendation to make to the General Assembly. In September, the General Assembly would take a decision on the future mandate of the Committee for the biennium starting in January 2010. As to what the Committee wanted to do between the present moment and September 2009 when the General Assembly met, should be up to the Committee. But clearly what the Committee might do was to send a specific recommendation to the General Assembly meeting in September as to whether it hoped its mandate should be continued, and it was for the General Assembly to decide what the future of the Committee should be. As to the Chair, he had been elected last year for a one year period, so he was Chair of the Committee until the end of 2009.

256. The Delegation of Pakistan asked whether the current mandate ended on September 30, 2009 or December 31, 2009, as the Legal Counsel had stated that in September 2007 the General Assembly renewed the mandate for two years.

257. The Legal Counsel of WIPO advised that the current mandate of the Committee adopted for the 2008-2009 biennium would run until the end of 2009.

258. The Delegation of Pakistan commented on the recommendation to be sent by the Committee to the General Assembly. It was of the view that there should be a clear distinction made on the issues to be decided by the General Assembly and by the Committee itself. For instance, whilst the General Assembly could decide on how the Committee should proceed in the next biennium, the Committee should maintain its decision-making status regarding the procedure for intersessional work.

259. The Delegation of Egypt requested the Legal Counsel of WIPO to clarify whether the African Group proposal, as the only one submitted under the "Future Work" agenda item, would be the only working document of the Committee to be transmitted to the General Assembly in September 2009.

260. The Legal Counsel of WIPO indicated that the Chair was trying to get direction from the Committee on which proposals were to be sent to the General Assembly.

261. The Delegation of Egypt stated that, according to the WIPO Rules of Procedure, any official document to the Committee should be submitted three weeks in advance of the meeting of the Committee. It requested the Legal Counsel of WIPO to confirm this.

262. The Delegation of South Africa expressed its appreciation for the participation of the Legal Counsel of WIPO during the session. The Delegation referred to rules 4 and 6.2 of the WIPO Rules of Procedure and requested clarification on the status of the proposal submitted by the Delegation of Sweden, on behalf of the European Community and its Member States, as an official working document. The Delegation believed that this proposal should have been submitted in accordance to the provisions of the WIPO Rules of Procedure. It therefore requested clarification on the timing to submit a proposal for it to constitute a working document.

263. The Delegation of Egypt reiterated its concern that it may become a habit for delegations to submit their proposals to the Committee during the session itself rather than to respect the proper rules for submission of these working documents to the Committee. The Delegation reiterated its request for clarification on which official working documents were included under the “Future Work” agenda item.

264. The Delegation of Pakistan was reminded of the Committee’s thirteenth session, during which a document submitted on behalf of the Asian Group had not been taken into consideration as it was deemed late. The Delegation therefore sought that the WIPO Rules of Procedure should be respected in regard to such late submissions.

265. The Legal Counsel of WIPO confirmed that, according to the Rules of Procedure, working documents should be submitted two months in advance together with the letter of convocation or as soon as possible thereafter. Past practice had shown, however, that in all WIPO committees, there had been situations where delegations made proposals on the floor, which were either translated into the different official languages for consideration or simply considered in French or English. In all cases, delegations reserved the right to request more time to consider the proposals that had been put before the Committees.

266. The Delegation of Egypt wished to belabor the “legal accuracy” taken in relation to the submission of proposals before WIPO Committees. It was of the view that the Committee only had one official working document under agenda item 7, which was numbered and translated into the different WIPO working languages. The Delegation therefore requested the Legal Counsel of WIPO to advise which official working document the Committee was currently working on under this agenda item.

267. The Delegation of Senegal, following the declaration by the Delegation of Egypt, had asked whether a document submitted on July 3, 2009 could be retained as an official document of the fourteenth session, recalling that the document could have been submitted the day before or just before the start of the session.

268. The Delegation of Nigeria indicated that the Committee was still in a deadlock and thought that a discussion on the WIPO Rules of Procedure would not solve the issue but rather complicate it further. Whether or not to accept the submission of a proposal was not the main issue at this point, as it would not provide a clear way for the Committee to move

forward. With reference to the proposal submitted by Canada, the Delegation stated that although it was well intended it could not have been accepted as nobody had seen the proposal in advance. As there were many suggestions on the table, which could not be discussed during the plenary, the Delegation advised the Chair to hold informal consultations with the different group coordinators to find any common ground. Should this not be possible, the Committee would then simply not take any decision on how to move its work forward.

269. The Delegation of Brazil stated that, regarding agenda item 7 “Future Work”, as the Committee had not reached an agreement, the General Assembly would now make that decision. In relation to the proposals submitted to the Committee, these were relevant as far this session was still in place. The Delegation also believed that any delegation wishing to submit a proposal or re-submit its proposal to the General Assembly was entitled to do so. The Delegation advised the Committee to recognize that it was not able to reach an agreement on this agenda item and that it should leave the agenda item up to the General Assembly.

270. The Delegation of India indicated that there was no meeting of the minds, but rather a substantive disagreement. As it was not sure whether informal consultations would contribute much to the discussion, the Committee should simply aim at a “minimalist outcome”, in other words, a factual and accurate reflection on the proceedings of the session to be submitted to the General Assembly. Any delegation could submit or re-submit its proposal to the General Assembly.

271. The Legal Counsel of WIPO drew the Committee’s attention to Rule 21 of the WIPO Rules of Procedure on “Proposals by Delegations”. This rule allowed for any delegations to submit a proposal, either orally or in writing, to the Committee. The proposal of Canada would, for example, fall under this rule. The African Group proposal had been submitted one week in advance and did, therefore, actually not comply with the deadline established in the WIPO Rules of Procedure. He therefore thought that it was up to the Committee to decide on how these rules should be implemented in its proceedings. In relation to the submission of proposals, the Legal Counsel confirmed that proposals could be submitted to the Committee and amendments made to official working documents for consideration during the session and such was the practice. Examples were the submission by the European Community and its Member States of its proposal, submission by Australia of its proposed amendments to the African Group proposal, and the amended text itself. All these fell perfectly within the WIPO Rules of Procedure and the Committee had therefore been conducting in accordance with these rules.

272. The Delegation of Algeria referred to paragraph (3) of Article 21 of the General Rules of Procedure which stipulated: “Unless it decides differently, the Assembly shall discuss and vote on a written proposal only if it has been translated and distributed in the languages in which the documents of the body concerned must be submitted”. It stated that the proposal by the African Group had been translated, whereas the other proposals had not, taking note that the Secretariat, called on to produce translations of the other proposals, had been unable to do so. It believed therefore that the only proposal likely to be the subject of discussion was that submitted by the African Group.

273. The Delegation of South Africa reiterated the questions it had raised on the status of the proposal submitted by the Delegation of Canada as it wished to know whether it was a decision or a proposal, and on the status of the proposal submitted by the Delegation of Sweden, on behalf of the European Community and its Member States. It recalled that the

Delegation of Sweden had submitted its proposal as a working document. The Delegation of South Africa cited Rule 6.6.2, stating “reports and other working documents must be sent out at the same time as the Letter of Convocation or as soon thereafter as possible”, which it stated was also on par with Rule 4. The Delegation requested that these legal issues be clarified.

274. The Delegation of Brazil presented a hypothetical example for which it asked the Legal Counsel of WIPO to comment on with a yes or no answer. If Brazil were to have submitted a proposal to the Committee two months ago and this proposal was regarded as an official working document, would this proposal automatically be taken or transferred to the General Assembly?

275. The Legal Counsel of WIPO stated that any proposal submitted to the Committee could be taken to the General Assembly, should the Committee accept it.

276. The Delegation of Germany stated that, following the answer provided by the Legal Counsel, it could, with a certain justification, be argued that all the proposals, including the African Group proposal, the proposal of the European Community and its Member States and the amended text, had certain formal deficiencies, if the provisions on the deadline for submission and translation of the working documents outlined in the WIPO Rules of Procedure were to be applied. The Delegation wondered why the Committee had entered into such a political debate and stated that it did not see any justification for preventing any delegation from having its proposal reflected in the report of the session other than to prove that only one delegation or group had been active. All proposals should be appended in the report.

277. The Chair recalled that there was a proposed text prepared by Canada and pointed out that it was still willing to receive other texts proposed by delegations. The Chair commented that it would be important for some kind of text to be proposed to the Assembly and that it should be acceptable to all.

278. The Delegation of Canada, in regard to the status of its proposal, clarified that its proposal merely comprised wording to be included as part of the decision of the Committee on agenda item 7 “Future Work”. It was simply a well-intentioned endeavor to reflect on the work and efforts that had been put in during the session and to continue the work of the Committee. It was therefore not a recommendation to the General Assembly. The Delegation noted that its proposal had not received much support and would not press on it.

279. The Delegation of Egypt thought that “legalities” did matter. As the Committee was working towards establishing an international legally binding instrument for the protection of TK, any decision made under this agenda item would have to be consensually agreed upon. It wondered whether the Committee should simply not take the decision that no consensus nor agreement on the renewal of its mandate was made. The Delegation, in any case, hoped that the Director General of WIPO would, from now until September, be able to conduct consultations as it believed that these would be useful. It also hoped that General Assembly could discuss this item in a more concrete fashion.

280. The Chair indicated that that would be a concrete proposal which could also be considered, in terms of directly reflecting that there had not been agreement at the meeting without adding any further comments on later consultations or proceedings. The Chair stated

that if Canada did not insist, that proposal would remain the proposal that would need to be accepted by consensus by the Committee.

281. The Delegation of Indonesia supported suggestions that the report should factually reflect all that had happened during the entire week of deliberations by the Committee.

282. The Delegation of Angola repeated its request for a factual report on the proceedings of the Committee session.

283. At the invitation of the Chair, and on the basis of the discussion that had just ensued, the Secretariat offered the following wording for the decision on agenda item 7: “The Committee did not reach an agreement on this agenda item”.

284. The Chair noted this wording appeared acceptable to the participants, and the meeting adopted it as the decision under agenda item 7.

Decision on Agenda Item 7:

285. The Committee did not reach an agreement on this agenda item.

AGENDA ITEM 8: TRADITIONAL CULTURAL EXPRESSIONS/FOLKLORE

286. At the request of the Chair, the Secretariat introduced the working documents prepared under agenda item 8, namely WIPO/GRTKF/IC/14/4, WIPO/GRTKF/IC/14/6 and WIPO/GRTKF/IC/14/9.

Decision on agenda item 8:

287. The Committee took note of documents WIPO/GRTKF/IC/14/4, WIPOGRTKF/IC/14/6 and WIPO/GRTKF/IC/14/9.

AGENDA ITEM 9: TRADITIONAL KNOWLEDGE

288. At the request of the Chair, the Secretariat introduced the working documents prepared under agenda item 9, namely WIPO/GRTKF/IC/14/5, WIPO/GRTKF/IC/14/6 and WIPO/GRTKF/IC/14/9.

Decision on agenda item 9:

289. The Committee took note of documents WIPO/GRTKF/IC/14/5, WIPO/GRTKF/IC/14/6 and WIPO/GRTKF/IC/14/9.

AGENDA ITEM 10: GENETIC RESOURCES

290. At the request of the Chair, the Secretariat introduced the working documents prepared under agenda item 10, namely WIPO/GRTKF/IC/14/7 and WIPO/GRTKF/IC/14/9.

Decision on agenda item 10:

291. The Committee took note of documents WIPO/GRTKF/IC/14/7 and WIPO/GRTKF/IC/14/9.

AGENDA ITEM 11: CLOSING OF THE SESSION

Decision on Agenda Item 11:

292. The Committee adopted its decisions on agenda items 2, 3, 4, 6, 8, 9 and 10 on July 3, 2009. It agreed that a draft written report, containing the agreed text of these decisions and all interventions made to the Committee, would be prepared and circulated. Committee participants would be invited to submit written corrections to their interventions as included in the draft report before a final version of the draft report would then be circulated to Committee participants for adoption at the September 2009 General Assembly.

293. The Chair thanked all those present for their active participation and commitment. He stated that all had made considerable efforts and certainly no time had been lost. He particularly thanked the Secretariat for its constant support and enormous dedication, and especially the Legal Counsel for its participation at a crucial time. He thanked the interpreters for their efforts and work. He stressed that the debate had been productive, the delegations had had the opportunity to express themselves and progress had largely been made towards what would surely one day become a reality. The Chair noted that such projects were lengthy and took time to mature in a multilateral environment, which could be felt in all organizations and also at WIPO. He recalled the words of Victor Hugo, a well-known opponent of injustices and against bad things in his society, who said that “no one is able to oppose an idea whose time has come”. The Chair stated that the time would come when all the ideas and proposals would come together and decisions, surely different from those today, would be taken. The Chair adjourned the meeting.

[Annex follows]

ANNEXE/ANNEX

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

I. ÉTATS/STATES

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

AFRIQUE DU SUD/SOUTH AFRICA

Glaudine J. MTSALI (Mrs.), Ambassador, Permanent Representative, Permanent Mission, Geneva

Luvuyo NDIMENI, Deputy Permanent Representative, Permanent Mission, Geneva

Tom SUCHANANDAN, Director, Department of Science and Technology, Pretoria

Silendele THABEDE, Foreign Service Officer, International Relations and Cooperation, Department of Foreign Affairs, Pretoria

Johan VAN WYK, Counsellor, Economic Development, Permanent Mission, Geneva

Susanna CHUNG (Miss), First Secretary, Economic Development, Permanent Mission, Geneva

Tshihumbudzo RAVHANDALALA (Ms.), Second Secretary, Economic Development, Permanent Mission, Geneva

ALGÉRIE/ALGERIA

Mohamed BOUDRAR, directeur des affaires juridiques et des relations internationales, Office national du droit d'auteur et des droits voisins (ONDA), Alger

Hayet MEHADJI (Mme), premier secrétaire, Mission permanente, Genève

ALLEMAGNE/GERMANY

Reinhard SCHWEPPE, Ambassador, Permanent Representative, Permanent Mission, Geneva

Henning PLÖGER, Senior Officer, Law of Inventions and Patent Section, Federal Ministry of Justice, Berlin

Frank SCHMIEDCHEN, Director, Federal Ministry for Economic Cooperation and Development, Berlin

Marc AUER, Senior Officer, Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, Bonn

Udo FENCHEL, Counsellor, Budget and Finance Affairs, Permanent Mission, Geneva

ARABIE SAOUDITE/SAUDI ARABIA

Khalid A. ALAKEEL, Supervisor, General Directorate of Industrial Property, King Abdulaziz City for Science and Technology (KACST), Riyadh

ARGENTINE/ARGENTINA

Inés Gabriela FASTAME (Srta.), Primer Secretario, Misión Permanente, Ginebra

AUSTRALIE/AUSTRALIA

Ian GOSS, General Manager, Business Development and Strategy Group, IP Australia, Canberra

Edwina LEWIS (Ms.), Assistant Director, International Policy Section, IP Australia, Canberra

Philippa LYNCH (Ms.), First Assistant Secretary, Territories and Information Law Division, Attorney-General's Department, Canberra

Sanyu MUGAMBWA, Services and Intellectual Property Branch, International Intellectual Property Section, Office of Trade Negotiations, Department of Foreign Affairs and Trade, Canberra

Trudy WITBREUK, Minister-Counsellor, Deputy Permanent Representative, Permanent Mission to the World Trade Organization (WTO), Geneva

Katherine WILLCOX (Ms.), Third Secretary, Permanent Mission to the World Trade Organization (WTO), Geneva

AUTRICHE/AUSTRIA

Günther AUER, Advisor, Federal Ministry of Justice, Vienna

Regine ZAWODSKY (Mrs.), International Relations, Austrian Patent Office, Vienna

Georg ZEHETNER, First Secretary, Permanent Mission, Geneva

AZERBAÏDJAN/AZERBAIJAN

Kamran IMANOV, Chairman, State Copyright Agency of the Republic of Azerbaijan, Baku

Emin TEYMUROV, Attaché, Permanent Mission, Geneva

BANGLADESH

Md. Mustafizur RAHMAN, Chargé d'affaires, a.i., Permanent Mission, Geneva

BELGIQUE/BELGIUM

Natacha Marguerite Laurie Christiane LENAERTS (Mme), attaché, Office de la propriété intellectuelle, Service public fédéral, économie, petites et moyennes entreprises, classes moyennes et énergie, Bruxelles

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

Alberto RODRÍGUEZ ZEBALLOS, Coordinador Ecorregional, Viceministerio de Medio Ambiente, Biodiversidad y Cambios Climáticos, La Paz

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

BOTSWANA

Sejo MONTSHO (Mrs.), Minister Counsellor, Permanent Mission, Geneva

Mabedi T. MOTLHABANI (Mrs.), Counsellor, Permanent Mission, Geneva

BRÉSIL/BRAZIL

Fábio ALVES SCHMIDT DA SILVA, Secretary, Intellectual Property Division, Ministry of External Relations, Brasília

Erika BORGES (Ms.), Patent Examiner, Biotechnology Division, National Institute of Industrial Property (INPI), Rio de Janeiro

Carlos Adriano DA SILVA, Analyst of Foreign Trade, Ministry of Development, Industry and Foreign Trade, Brasília

BURUNDI

Alain Aimé NYAMITWE, premier conseiller, Mission permanente, Genève

CAMBODGE/CAMBODIA

Tina DITH, Under Secretary of State in Charge of Intellectual Property Rights, Ministry of Commerce, Phnom Penh

Bunthan THAY, First Secretary, Permanent Mission, Geneva

CAMEROUN/CAMEROON

Jacqueline Nicole MONO NDJANA (Mme), directeur a.i. du développement technologique et de la propriété industrielle, Ministère de l'industrie, des mines et du développement technologique, Yaoundé

Alexandre Dugast MAKONGO DOOH, sous-directeur, Ministère des relations extérieures, Yaoundé

Jean Marie NJOCK, chef, Cellule juridique, Ministère de la culture, Yaoundé

Joseph LOBE, inspecteur des services n°1, Ministère de la culture, Yaoundé

Rose TAGNE (Mme), chef de Service formation et action sociale, Ministère de la recherche scientifique, Yaoundé

Sophie SEN MATANGA (Mme), chargé d'études assistant, Yaoundé

CANADA

Sophie GALARNEAU (Ms.), Senior Trade Policy Officer, Intellectual Property, Information and Technology Trade Policy Division, Department of Foreign Affairs and International Trade, Ottawa

Nicole FRENETTE (Ms.), Director, Policy, Planning and Research, Department of Canadian Heritage, Gatineau

Younes BOUNHAR, Policy Analyst, Patent and Trademark Policy Directorate, Industry Canada, Ottawa

Dara LITHWICK (Ms.), Policy Analyst, Copyright and International Intellectual Property Policy Directorate, Industry Canada, Ottawa

Ritu GAMBHIR, Senior Counsel, Aboriginal Law and Strategic Policy, Department of Justice, Ottawa

Brian ROBERTS, Senior Policy Advisor, International Relations Directorate, Indian and Northern Affairs, Ottawa

Darren SMITH, Second Secretary, Permanent Mission, Geneva

CHILI/CHILE

Luciano CUERVO, Economista, Departamento de Propiedad Intelectual, Dirección General de Relaciones Económicas Internacionales, Santiago de Chile

Maximiliano SANTA CRUZ, Consejero, Misión Permanente, Ginebra

CHINE/CHINA

XIAO Xingwei, Deputy Commissioner, State Intellectual Property Office (SIPO), Beijing

YANG Hongju (Ms.), Deputy Director, Third Division, Law Department, State Intellectual Property Office (SIPO), Beijing

ZHANG Yaning (Ms.), Project Administrator, International Organizations Division, International Cooperation Department, State Intellectual Property Office (SIPO), Beijing

MU Youwei, Project Administrator, International Cooperation Department, State Intellectual Property Office (SIPO), Beijing

XU Wei, Official, Department of Regulation, National Copyright Administration of China (NCAC), Beijing

DENG Yuhua, Deputy Director, General and International Affairs Division, National Copyright Administration of China (NCAC), Beijing

CHEUNG Peter Kam Fai, Deputy Director, Intellectual Property Department, Hong Kong, Special Administrative Region

COLOMBIE/COLOMBIA

Angelino GARZÓN, Embajador, Representante Permanente, Misión Permanente, Ginebra

Martha Irma ALARCÓN LÓPEZ (Sra.), Ministro Consejero, Misión Permanente, Ginebra

CONGO

Jean-Batiste MIAYOUKOU, chef, Service de la valorisation des inventions et des innovations, Antenne nationale de la propriété industrielle (ANPI), Ministère du développement industriel et de la promotion du secteur privé, Brazzaville

Célestin TCHIBINDA, secrétaire d'ambassade, Mission permanente, Genève

COSTA RICA

Laura THOMPSON CHACÓN (Sra.), Embajador, Representante Permanente, Misión Permanente, Ginebra

Carlos GARBANZO, Ministro Consejero, Misión Permanente, Ginebra

CÔTE D'IVOIRE

Tiemoko MORIKO, conseiller, Mission permanente, Genève

CUBA

Alina ESCOBAR DOMÍNGUEZ (Sra.), Tercer Secretario, Misión Permanente, Ginebra

DANEMARK/DENMARK

Niels HOLM SVENDSEN, Senior Legal Adviser, International Affairs, Danish Patent and Trademark Office, Ministry of Economic and Business Affairs, Taastrup

Marianne Lykke THOMSEN (Ms.), Senior Policy Advisor, Greenland Home Rule Government, Nuuk

DJIBOUTI

Djama Mahamoud ALI, conseiller, Mission permanente, Genève

ÉGYPTE/EGYPT

Hisham BADR, Ambassador, Permanent Representative, Permanent Mission, Geneva

Ahmed ALI MORSI, Counsellor to the Minister for Culture, Permanent Bureau for the Protection of Copyright, Supreme Council for Culture, Cairo

Ahmed Ihab GAMAL EL DIN, Deputy Permanent Representative, Permanent Mission, Geneva

Hammad Sudeek Hassan MOURAD, Head of Legal Department, Egyptian Patent Office, Academy of Scientific Research and Technology (ASRT), Ministry of Scientific Research, Cairo

Mohamed GAD, First Secretary, Permanent Mission, Geneva

Heba MOSTAFA (Ms.), Second Secretary, Permanent Mission, Geneva

EL SALVADOR

Marta Elena ROSALES PINEDA (Sra.), Coordinadora de Investigación Artística, Consejo Nacional para la Cultura y el Arte (CONCULTURA), San Salvador

Martha Evelyn MENJIVAR CORTEZ (Srta.), Consejera, Misión Permanente, Ginebra

ÉQUATEUR/ECUADOR

Mauricio MONTALVO, Embajador, Representante Permanente, Misión Permanente, Ginebra

Luis VAYAS VALDIVIESO, Primer Secretario, Misión Permanente, Ginebra

Erika PAREDES (Srta.), Misión Permanente, Ginebra

ESPAGNE/SPAIN

Asha SUKHWANI (Sra.), Técnico Superior Examinador, Departamento de Patentes e Información Tecnológica, Oficina Española de Patentes y Marcas (OEPM), Ministerio de Industria, Turismo y Comercio, Madrid

Jaime DE MENDOZA FERNÁNDEZ, Jefe de Área, Subdirección General de Propiedad Intelectual, Ministerio de Cultura, Madrid

Carmen CARO JAUREGUALZO (Sra.), Consejera Técnica, Subdirección General de Propiedad Intelectual, Dirección General de Política e Industrias Culturales, Ministerio de Cultura, Madrid

ÉTATS-UNIS D'AMÉRIQUE/UNITED STATES OF AMERICA

Michael S. SHAPIRO, Senior Counsel, Office of Intellectual Property Policy and Enforcement, United States Patent and Trademark Office (USPTO), Department of Commerce, Alexandria

Peggy A. BULGER (Ms.), Director, American Folklife Center, Library of Congress, Washington

Karin L. FERRITER (Ms.), Patent Attorney, Office of Intellectual Property Policy and Enforcement, United States Patent and Trademark Office (USPTO), Department of Commerce, Alexandria

Michele J. WOODS (Ms.), Senior Counsel for Policy and International Affairs, United States Copyright Office, Washington D.C.

Sezaneh SEYMOUR (Ms.), Foreign Affairs Officer, Office of Ecology and Terrestrial Conservation, Bureau of Oceans and International Environmental Scientific Affairs, Department of State, Washington D.C.

ÉTHIOPIE/ETHIOPIA

Allehone MULUGETA ABEBE, First Secretary, Permanent Mission, Geneva

FÉDÉRATION DE RUSSIE/RUSSIAN FEDERATION

Larisa SIMONOVA (Mrs.), Deputy Director, International Cooperation Department, Federal Service for Intellectual Property, Patents and Trademarks (ROSPATENT), Moscow

Natalia BUZOVA (Ms.), Deputy Head of Division, Federal Service for Intellectual Property, Patents and Trademarks (ROSPATENT), Moscow

Dimitry GONCHAR, Counsellor, Permanent Mission, Geneva

FIDJI/FIJI

Pio TIKODUADUA, Permanent Secretary for Justice, Electoral Reform and Anti-Corruption, Ministry of Justice, Suva

FINLANDE/FINLAND

Anna VUOPALA (Ms.), Senior Advisor, Division of Culture and Media Policy, Ministry of Education, Helsinki

FRANCE

Christophe GUILHOU, représentant permanent adjoint, Mission permanente, Genève

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

Delphine LIDA (Mlle), conseiller (affaires économiques et développement), Mission permanente, Genève

Hélène JURAMY (Mme), Mission permanente, Genève

GHANA

Grace Ama ISSAHAQUE (Mrs.), Principal State Attorney, Registrar-General's Department, Ministry of Justice, Accra

Joseph TAMAKLOE, Principal State Attorney, Registrar-General's Department, Ministry of Justice, Accra

Loretta ASIEDU (Mrs.), First Secretary, Permanent Mission, Geneva

GRÈCE/GREECE

Stella KYRIAKOU (Mrs.), Attaché, Permanent Mission, Geneva

GUATEMALA

Ana Lorena BOLAÑOS (Sra.), Consejera Legal, Misión Permanente, Ginebra

GUINÉE/GUINEA

Amanita KOUROUMA-MIKALA (Mme), premier secrétaire, Mission permanente, Genève

HAÏTI/HAITI

Jean-Claude JUSTAFORT, conseiller, Mission permanente, Genève

HONGRIE/HUNGARY

Krisztina KOVÁCS (Ms.), Head, Industrial Property Law Section, Hungarian Patent Office, Budapest

INDE/INDIA

K. NANDINI (Mrs.), First Secretary, Permanent Mission, Geneva

INDONÉSIE/INDONESIA

Dian Triansyah DJANI, Ambassador, Permanent Representative, Permanent Mission, Geneva

I Gusti Agung Wesaka PUJA, Ambassador, First Deputy Permanent Representative, Permanent Mission, Geneva

Ahmad M. RAMLI, Head, National Law Development Agency, Department of Law and Human Rights, Jakarta

Ansori SINUNGAN, Director of Cooperation and Development, Directorate General of Intellectual Property Rights, Department of Law and Human Rights, Jakarta

Mulya WIRANA, Secretary, Directorate General of Legal and International Treaties, Department of Foreign Affairs, Jakarta

Jose A. M. TAVARES, Minister Counsellor, Permanent Mission, Geneva

Danrivanto BUDHIJANTO, Commissioner, Indonesian Telecommunications Regulatory Authority, Department of ICT, Jakarta

Sulaiman SYARIF, Deputy Director, Economic Social and Cultural Treaties, Department of Foreign Affairs, Jakarta

SUDARMANTO, Head, Division of Legal Affairs and Organization, Department of Industry, Jakarta

Marihot SIMORANGKIR, Head of Division of Research and Development of Industrial Technology, Department of Industry, Jakarta

Agus HERYANA, Deputy Director for Standardization, Intellectual Property Rights and Dispute Settlement, Directorate of Trade, Industry, Investment and Intellectual Property, Department of Foreign Affairs, Jakarta

Yasmi ADRIANSYAH, First Secretary, Permanent Mission, Geneva

Basuki ANTARIKSA, Head, Section on UNESCO, Department of Culture and Tourism, Jakarta

Syahda Guruh L. SAMUDERA, Head of Section, Directorate of Economic, Social and Cultural Treaties, Department of Foreign Affairs, Jakarta

Harry PUTRANTO, Directorate of Multilateral Cooperation, Directorate General International Trade Cooperation, Department of Trade, Jakarta

Widya SADNOVIC, Second Secretary, Permanent Mission, Geneva

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

Morteza REZVANFAR, Director, Anthropology Research Center, Tehran

Yazdan NADALIZADEH, Second Counsellor, Permanent Mission, Geneva

IRAQ

Ahmed AL-NAKASH, Third Secretary, Permanent Mission, Geneva

IRLANDE/IRELAND

Brian HIGGINS, Second Secretary, Permanent Mission, Geneva

ISRAËL/ISRAEL

Orit REGEV, Deputy Superintendent of Examiners, Israel Patent Office, Ministry of Justice, Jerusalem

Ron ADAM, Deputy Permanent Representative, Permanent Mission, Geneva

Samuel BREIER, Advisor, Permanent Mission, Geneva

ITALIE/ITALY

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

Ivana PUGLIESE (Mrs.), Senior Patent Examiner, Italian Patent and Trademark Office,
Ministry of Economic Development, Rome

Pierluigi BOZZI, Environmental Economics, Faculty of Economics, University of Rome, Rome

Francesca FUSCO (Ms.), Intern, Permanent Mission, Geneva

JAMAÏQUE/JAMAICA

Richard BROWN, First Secretary, Permanent Mission, Geneva

JAPON/JAPAN

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

Takao TSUBATA, Deputy Director, International Affairs Division, General Affairs
Department, Japan Patent Office (JPO), Tokyo

Kunihiko FUSHIMI, Deputy Director, Intellectual Property Affairs Division, Economic
Affairs Bureau, Ministry of Foreign Affairs, Tokyo

Harumi WATANABE (Mr.), Senior Cultural Policy Analyst, Policy Planning and
Coordination Division, Commissioner's Secretariat, Agency for Cultural Affairs, Tokyo

Yukiko KATO (Ms.), Unit Chief, International Affairs Division, Japan Copyright Office
(JCO), Agency for Cultural Affairs, Tokyo

Kiyoshi SAITO, First Secretary, Permanent Mission, Geneva

Satoshi FUKUDA, First Secretary, Permanent Mission, Geneva

JORDANIE/JORDAN

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

Mohammed Sameer HINDAWI, Second Secretary, Permanent Mission, Geneva

KENYA

Marisella NABONGO OUMA (Ms.), Executive Director, Kenya Copyright Board, State Law
Office, Nairobi

Bernice GACHEGU (Ms.), Registrar General, Department of the Registrar-General,
Attorney-General's Chamber, State Law Office, Nairobi

Nilly H. KANANA, First Secretary, Permanent Mission, Geneva

LESOTHO

Moeketsi Daniel PALIME, Chief Intellectual Property Counsel, Ministry of Law and
Constitutional Affairs, Maseru

Tsotetsi MAKONG, First Secretary, Permanent Mission, Geneva

LITUANIE/LITHUANIA

Gyta BERASNEVIČIŪTĖ (Ms.), Chief Specialist, Copyright Division, Ministry of Culture,
Vilnius

LUXEMBOURG

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

MALAISIE/MALAYSIA

Rohazar Wati ZUALLCOBLEY (Mrs.), Deputy Director General, Industrial Property,
Intellectual Property Corporation of Malaysia (MyIPO), Kuala Lumpur

Zuraidah Mohd. JAMIL (Mrs.), Senior Patent Examiner, Industrial Property, Intellectual
Property Corporation of Malaysia (MyIPO), Kuala Lumpur

Sumah RAMACHANDRAN (Ms.), Manager, IP Services, Client Support Services Division,
Malaysian Biotechnology Corporation, Kuala Lumpur

Zara Aina MOHD. ZAWAWI (Miss), Faculty of Law, University Technology Mara, Shah
Alam

Rafiza ABDUL RAHMAN (Miss), First Secretary, Permanent Mission, Geneva

MAROC/MOROCCO

Omar HILALE, ambassadeur, représentant permanent, Mission permanente, Genève

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

Mohamed EL MHAMDI, conseiller, Mission permanente, Genève

MAURICE/MAURITIUS

Tanya PRAYAG-GUJADHUR (Mrs.), Second Secretary, Permanent Mission, Geneva

MEXIQUE/MEXICO

Mabel del Pilar GÓMEZ OLIVER (Sra.), Embajadora, Representante Permanente Alternativa, Misión Permanente, Ginebra

Dulce María VALLE ÁLVAREZ (Sra.), Directora General Adjunta para Organismos Económicos Regionales y Multilaterales, Dirección General de Organismos Internacionales Especializados, Secretaría de Relaciones Exteriores, Ciudad de México

Jesús VEGA HERRERA, Supervisor Analista del Área de Biotecnología, Dirección Divisional de Patentes, Instituto Mexicano de la Propiedad Industrial (IMPI), Ciudad de México

Gabriela GARDUZA ESTRADA (Sra.), Directora de Asuntos Internacionales, Unidad de Planeación y Consulta, Comisión Nacional para el Desarrollo de los Pueblos Indígenas (CDI), Ciudad de México

Gabriela NAVA DOMÍNGUEZ (Sra.), Subdirectora de Seguimiento y Participación, Área de Asuntos Internacionales, Comisión Nacional para el Desarrollo de los Pueblos Indígenas (CDI), Ciudad de México

Norma MUNGUÍA ALDARACA, Consejera Legal, Comisión Nacional para el Conocimiento y Uso de la Biodiversidad (CONABIO), Ciudad de México

María Victoria ROMERO CABALLERO (Sra.), Primer Secretario, Misión Permanente, Ginebra

Gustavo Adolfo TORRES CISNEROS, Asesor, Misión Permanente, Ginebra

MONTÉNÉGRO/MONTENEGRO

Snežana DŽUVEROVIĆ, Senior Adviser, Intellectual Property Office, Ministry of Economic Development, Podgorica

MYANMAR

Khin Htike Htike LWIN, Director, Industrial Property Office, Ministry of Science and Technology, Yangon

NAMIBIE/NAMIBIA

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

Linus INDONGO, Examiner of Trademarks, IP Office, Ministry of Trade and Industry, Windhoek

Josia EFRAIM, Copyright Administrator, Directorate of Audiovisual Media, Copyright Services and Commissions, Ministry of Information and Communication Technology, Windhoek

NÉPAL/NEPAL

Sita Ram TIMSINA, Joint Secretary, Ministry of Industry, Kathmandu

Ravi BHATTARAI, représentant permanent adjoint, Mission permanente, Genève

NICARAGUA

Gloria Marina ZELAYA LAGUNA (Sra.), Directora, Protección Obtenciones Vegetales, Registro de la Propiedad Intelectual, Ministerio de Fomento, Industria y Comercio (MIFIC), Managua

NIGER

Amadou TANKOANO, professeur de droit, Université de Niamey, Niamey

NIGÉRIA/NIGERIA

John Ohirieme ASEIN, Director, Nigerian Copyright Institute, Nigeria Copyright Commission, Abuja

Shafui Yauri ADAMU, Principal Assistant Registrar, Trademarks, Patents and Designs Registry, Federal Ministry of Commerce and Industry, Abuja

Ositadinma ANAEDU, Minister, Permanent Mission, Geneva

NORVÈGE/NORWAY

Inger HOLTEN (Ms.), Senior Adviser, Department for Legal Affairs, The Royal Ministry of Foreign Affairs, Oslo

Vegar JOHNSRUD, Senior Legal Advisor, Legal and International Affairs, Norwegian Industrial Property Office (NIPO), Oslo

NOUVELLE-ZÉLANDE/NEW ZEALAND

Paryse SUDDITH, Senior Policy Analyst, Ministry of Economic Development, Wellington

OMAN

Abdul Wahab Nasser AL-MANDHARI, Advisor, Public Authority for Craft Industries, Muscat

Khalid FAIZ, Coordinator, Permanent Mission, Geneva

OUGANDA/UGANDA

Benjamin Wako MUKABIRE, Second Secretary, Permanent Mission, Geneva

PAKISTAN

Manzoor Ali BOZDAR, Deputy Director, Intellectual Property Organization of Pakistan, Islamabad

PARAGUAY

Rigoberto GAUTO VIELMAN, Embajador, Representante Permanente, Misión Permanente, Ginebra

Raúl MARTÍNEZ VILLALBA, Segundo Secretario, Misión Permanente, Ginebra

PAYS-BAS/NETHERLANDS

Margreet GROENENBOOM (Ms.), Senior Policy Advisor, Directorate-General for Enterprise and Innovation, Ministry of Economic Affairs, The Hague

Irene KNOBEN (Ms.), First Secretary, Permanent Mission, Geneva

PÉROU/PERU

Néstor ESCOBEDO FERRADAS, Vocal de la Sala de Propiedad Intelectual, Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual (INDECOPI), Lima

Giancarlo LEÓN COLLAZOS, Segundo Secretario, Misión Permanente, Ginebra

PHILIPPINES

Denis LEPATAN, Deputy Permanent Representative, Permanent Mission, Geneva

Josephine M. REYNANTE, First Secretary, Permanent Mission, Geneva

POLOGNE/POLAND

Dariusz URBANSKI, Head Expert, Legal Department, Copyright and Neighboring Rights Unit, Ministry of Culture and National Heritage, Warsaw

Anna MISIEWICZ (Ms.), Expert, Legal Department, Copyright and Neighboring Rights Unit, Ministry of Culture and National Heritage, Warsaw

Ewa LISOWSKA (Ms.), Specialist, International Cooperation Division, Cabinet of the Chief of the Patent Office of the Republic of Poland, Warsaw

PORTUGAL

Nuno Manuel GONÇALVES, Director of Copyright, Ministry of Culture, Lisbon

Cidália Maria de Jesus GONÇALVES (Ms.), Executive Officer, International Relations Department, National Institute of Industrial Property (INPI), Ministry of Justice, Lisbon

Luís Miguel SERRADAS TAVARES, Counsellor, Permanent Mission, Geneva

RÉPUBLIQUE DE CORÉE/REPUBLIC OF KOREA

RHEE Sang Young, Director, Rural Development Administration, Suwon

SHIN Ju Cheol, Deputy Director, Biotechnology Examination Division, Korean Intellectual Property Office (KIPO), Daejeon

KIM Min Ah, Deputy Director, Copyright Policy Division Ministry of Culture, Sports and Tourism, Seoul

CHO Jeong Han, Deputy Director, Multilateral Affairs Division, International Cooperation and Customer Support Bureau, Daejeon

PARK Duk Byeong, Researcher, Rural Development Administration, Suwon

PARK Seong-Joon, First Secretary, Permanent Mission, Geneva

RÉPUBLIQUE DÉMOCRATIQUE DU CONGO/DEMOCRATIC REPUBLIC OF THE CONGO

Fidèle SAMBASSI KHAKESSA, ministre conseiller, affaires économiques, Mission permanente, Genève

RÉPUBLIQUE TCHÈQUE/CZECH REPUBLIC

Pavel ZEMAN, Director, Copyright Department, Ministry of Culture, Prague

Kristina MAGDOLENOVÁ (Ms.), Expert, Copyright Department, Ministry of Culture, Prague

Lucie ZAMYKALOVÁ (Mrs.), Senior Officer, Patent Law Issues, International Department, Industrial Property Office, Prague

Darina CHVOSTEKOVÁ (Ms.), Lawyer, International Department, Industrial Property Office, Prague

Petr BAMBAS, Counsellor, Deputy Permanent Representative, Permanent Mission, Geneva

ROUMANIE/ROMANIA

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

ROYAUME-UNI/UNITED KINGDOM

Andrew J. FELDON, Senior Policy Advisor, Trade policy and Development, International Policy Directorate, Intellectual Property Office, Newport

Beverly PERRY (Mrs.), Policy Officer, Trade Policy and Development, International Policy Directorate, Intellectual Property Office, Newport

SAINT-SIÈGE/HOLY SEE

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

Anne-Marie COLANDRÉA (Mlle), attaché, Mission permanente, Genève

SÉNÉGAL/SENEGAL

Elhadji Ibou BOYE, deuxième conseiller, Mission permanente, Genève

Paul SENGHOR, Mission permanente, Genève

SERBIE/SERBIA

Slobodan VUKČEVIĆ, Ambassador, Permanent Representative, Permanent Mission, Geneva

Milan NOVAKOVIĆ, Patent Examiner, Intellectual Property Office, Belgrade

Vesna FILIPOVIĆ-NIKOLIĆ (Ms.), Counsellor, Permanent Mission, Geneva

SINGAPOUR/SINGAPORE

Adrian Choong Yee CHIEW, Senior Assistant Director and Legal Counsel, Legal Policy and International Affairs Department, Policy Division, Intellectual Property Office of Singapore (IPOS), Singapore

LIEW Li Lin (Ms.), First Secretary, Permanent Mission to the World Trade Organization (WTO), Geneva

SLOVAQUIE/SLOVAKIA

Emil ZATKULIAK, Senior Counsellor, International Affairs Department, Industrial Property Office of the Slovak Republic, Banská Bystrica

SOUDAN/SUDAN

Mohammed ALI ELMAKI, Ministry of Culture and Youth and Sports, Khartoum

Ard Elshifa FARAG ALLAH (Mrs.), The Federal Council for Literary and Artistic Works, Ministry of Culture and Youth and Sports, Khartoum

SRI LANKA

Manorie MALLIKARATCHY (Mrs.), Second Secretary, Permanent Mission, Geneva

SUÈDE/SWEDEN

Jonas PONTÉN, Deputy Director, Division for Intellectual Property and Transport Law, Ministry of Justice, Stockholm

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

Elisabeth BILL (Mrs.), Legal Adviser, Division for Intellectual Property and Transport Law, Ministry of Justice, Stockholm

Hosuk LEE, Senior Advisor, Permanent Mission, Geneva

SUISSE/SWITZERLAND

Martin GIRSBERGER, directeur, Propriété intellectuelle et Développement durable, Division droit et affaires internationales, Institut fédéral de la propriété intellectuelle (IPI), Berne

Benny MÜLLER, conseiller juridique, Service juridique brevets et designs, Division droit et affaires internationales, Institut fédéral de la propriété intellectuelle (IPI), Berne

Marco D'ALESSANDRO, collaborateur scientifique, Section biotechnologie et flux, Office fédéral de l'environnement (OFEV), Berne

Danielle GUGOLZ (Mme), stagiaire, Section agriculture durable internationale, Office fédéral de l'agriculture (OFAG), Berne

THAÏLANDE/THAILAND

Sahasak PHUANGKETKEOW, Ambassador, Permanent Representative, Permanent Mission, Geneva

Savitri SUWANSATHIT (Mrs.), Advisor, Ministry of Culture, Bangkok

Sunantha MIT-NGAM (Mrs.), Intellectual Property Officer, Office of the National Culture Commission, Ministry of Culture, Bangkok

Kalayanee BROHMSUBHA, Senior Agricultural Extensionist, Bureau of Farmers Development, Department of Agricultural Extension, Bureau of Farmers Development, Ministry of Agriculture and Cooperatives, Bangkok

Veerana Sinsawat FORRER, Senior Agricultural Scientist, Department of Agriculture, Field Crops Research Institute, Bangkok

Thidakoon SAENUDOM (Ms.), Agricultural Scientist, Plant Variety Protection Division, Ministry of Agriculture and Cooperatives, Bangkok

Pakvipa AHVIPHAN (Ms.), First Secretary, International Law Development Division, Department of Treaties and Legal Affairs, Ministry of Foreign Affairs, Bangkok

Tanyarat MUNGKALARUNGSU (Ms.), First Secretary, Permanent Mission, Geneva

Vowpailin CHOVIKIEN (Miss), Third Secretary, International Economic Policy Division, Department of International Economic Affairs, Ministry of Foreign Affairs, Bangkok

TUNISIE/TUNISIA

Lamia KATEB (Mme), chef du service juridique, Département de la propriété industrielle, Institut national de la normalisation et de la propriété industrielle (INNORPI), Tunis

TURQUIE/TURKEY

Yeşim BAYKAL, Legal Advisor, Permanent Mission of Turkey to the World Trade Organization (WTO), Geneva

UKRAINE

Olena IGNATIEVA (Ms.), Chief Expert, Copyright and Related Rights Division, State Department of Intellectual Property (SDIP), Ministry of Education and Science, Kyiv

Alexey SHANCHUK, Chief Expert, European Integration and International Cooperation Division, State Department of Intellectual Property (SDIP), Ministry of Education and Science, Kyiv

YÉMEN/YEMEN

Abdu Abdullah AL-HODAIIFI, Director General, Intellectual Property Department, Ministry of Industry and Trade, Sana'a

Fawaz AL-RASSAS, Third Secretary, Permanent Mission, Geneva

ZAMBIE/ZAMBIA

Christopher MAPANI, Senior Trademarks Examiner, Patents and Companies Registration Office, Lusaka

ZIMBABWE

Garikai KASHITIKU, First Secretary, Permanent Mission, Geneva

II. DÉLÉGATIONS SPÉCIALES/SPECIAL DELEGATIONS

COMMISSION EUROPÉENNE (CE)/EUROPEAN COMMISSION (EC)

Conal CLYNCH, Administrator, Internal Market and Services Directorate General, Unit D1, Copyright and Knowledge-Based Economy, Brussels

Sergio BALIBREA SANCHO, Counsellor, Permanent Delegation, Geneva

UNION AFRICAINE (UA)/AFRICAN UNION (AU)

Georges-Remi NAMEKONG, Senior Economist, African Union Commission, Permanent Delegation Geneva

III. ORGANISATIONS INTERNATIONALES INTERGOUVERNEMENTALES/
INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

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

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

Christoph SPENNEMANN, Expert, Division on Investment and Enterprise, Geneva

Carly HUTH (Miss), Intern, Division on Investment and Enterprise, Geneva

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

Dan LESKIEN, Consultant, Commission on Genetic Resources for Food and Agriculture, Rome

CONSEIL DE L'EUROPE (CE)/COUNCIL OF EUROPE (CE)

Georgios KRITIKOS, Administrator, Geneva

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

Maria SEROVA (Mrs.), Chief Examiner, Chemistry and Medical Department, Moscow

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

Sten HARCK, Lawyer, Patent Law, Munich

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

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

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

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

Emmanuel SACKEY, Head, Search and Examination Section, Harare

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

Makoto TABATA, Senior Counsellor, Geneva

SECRÉTARIAT POUR LES PAYS DU COMMONWEALTH (COMSEC)/
COMMONWEALTH SECRETARIAT (COMSEC)

Margaret BRUCE (Ms), Acting Head, Law Development Section, Legal and Constitutional
Affairs Division, London

SOUTH CENTER

Xuan LI, Coordinator, Geneva

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

3D > Trade - Human Rights - Equitable Economy (3D)
Magdalena BIZET (Mrs.) (Program Assistant, Geneva)

Alliance pour les droits des créateurs (ADC)/Creators' Rights Alliance (CRA)
Greg YOUNGING (Chair, Indigenous Peoples Caucus, Vancouver)

Assemblée des premières nations (AFN)/Assembly of First Nations (AFN)
Stuart WUTTKE (Acting Director, Environment Stewardship, Ottawa)

Association internationale pour la promotion de l'enseignement et de la recherche en
propriété intellectuelle (ATRIP)/International Association for the Advancement of Teaching
and Research in Intellectual Property (ATRIP)
François CURCHOD (représentant, Genolier)

Association internationale pour la protection de la propriété intellectuelle (AIPPI)/
International Association for the Protection of Intellectual Property (AIPPI)
Maria Carmen DE SOUZA BRITO (Mrs.) (Member of Q 166, Intellectual Property and
Genetic Resources, Traditional Knowledge and Folklore, Zurich)

Center for Peace Building and Poverty Reduction among Indigenous African Peoples (CEPPER)

Casimir Kingston Chukwunonyelum ANI (President and Secretary General, Enugu)

Centre de documentation, de recherche et d'information des peuples autochtones (DoCip)

Sabine KRADOLFER MORALES (Mlle) (coordinatrice, Genève); Danica VANZA (Mme) (assistante, Genève); Gregory BOREL (technicien, Genève); Marie BISMUTH (Mme) (Genève); Peter CLAYBURN (Genève); Benigno DELGADO (Genève); Inès HIDALGO-CHÂTELAIN (Mme) (Genève); Evgenia IGNATOVA (Mme) (Genève); Danica VANZA (Mme) (Genève); Claudinei NUNES DA SILVA (Genève); Nathalie STITTZEL (Mme) (Genève); Ernesto LÓPEZ VILLAGÓMEZ (Genève); David MARTÍNEZ TORTOSA (Genève); Susan ISKO (Mlle) (Genève); Lene SWETZER (Mlle) (Genève)

Centre d'études internationales de la propriété intellectuelle (CEIPI)/Centre for International Intellectual Property Studies (CEIPI)

François CURCHOD (représentant, Genolier)

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

Ahmed ABDEL LATIF (IPRs Programme Manager, Geneva)

Centre pour le droit international de l'environnement (CIEL)/Center for International Environmental Law (CIEL)

Dalindybo SHABALALA (Director, Project on Intellectual Property and Sustainable Development, Geneva);

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

Timothy W. ROBERTS (Consultant, London)

Civil Society Coalition (CSC)

Marc PERLMAN (Fellow, Washington, D.C)

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

Tomas ALARCON EYZAGUIRRE (Presidente, Tacna);

Commission internationale pour les droits des peuples indigènes (ICRA)/International Commission for the Rights of Aboriginal People (ICRA)

Cyril COSTES (Strasbourg); Jennie HO-KONG-CIAT (Ms.) (stagiaire, Paris)

Conseil national pour la promotion de la musique traditionnelle du Congo (CNPMT)

Jacques MATUETUE (président national, Kinshasa)

Consejo Indio de Sud América (CISA)

Tomás CONDORI (Representante, Ginebra)

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

Djéby Karifa SAMOURA (Genève); Emmanuel NDUWAYEZU (chargé de programme développement durable, Genève); Ana LEURINDA (Mme) (Genève); Riad BAAZIA (conseiller, Genève)

CropLife International

Tatjana SACHSE (Ms.) (Geneva)

Déclaration de Berne/The Berne Declaration

Heiko BAUMGÄRTNER (Academic Assistant, Luzern)

Electronic Information for Libraries (EIFL.net)

Rima KUPRYTE (Ms) (Director, Rome); Teresa HACKETT (Ms.) (Programme Manager, Rome)

Ethio-Africa Diaspora Union Millennium Council

Marcia STEWART (Ms.) (Executive President, International Ambassador, Lithuania); Marcus GOFFE (London)

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

Ibero-Latin-American Federation of Performers (FILAE)

Luis COBOS (Presidente, Madrid); Miguel PÉREZ SOLIS (Asesor Jurídico, Madrid)

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

Guilherme CINTRA (Research Assistant, International Trade and Market Policy, Geneva)

Fédération internationale des associations de bibliothécaires et des bibliothèques (FIAB)/

International Federation of Library Associations and Institutions (IFLA)

Winston TABB (Chair, Copyright Commission, The Hague); Harald VON HIELMCRONE (Head of Research, Aarhus)

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

Benoît MACHUEL (secrétaire général, Paris)

Foundation for Research and Support of Indigenous Peoples of Crimea (FRSIPC)

Nadir BEKIROV (President, Simferopol); Khalide KURTBELYALOVA (Ms.) (Specialist on Genetic Resources and Traditional Knowledge, Simferopol)

Indian Movement "Tupaj Amaru"

Lazaro PARY ANAGUA (General Coordinator, Geneva);

Indigenous Fisher Peoples Network (IFP)

Silvano NAMADOA (Head of Programs, Nairobi)

Indigenous Peoples (Bethchilokono) of Saint Lucia Governing Council, BCG

Albert DETERVILLE (Executive Chairperson, Castries)

Indigenous Peoples Council on Biocolonialism (IPCB)

Le`a Malia KANEHE (Ms.) (Legal Analyst, Nixon); Anays Arias ANDERSON (Ms.) (Information Officer, Panama City)

International Committee for the Indians of the Americas (INCOMINDIOS)

Natalia GIMPEL-SABAROTS (Mrs.) (Member, Zürich)

International Indian Treaty Council (IITC)

Estebancio CASTRO DÍAZ (Representative, Ciudad de Panamá)

International Trademark Association (INTA)

Bruno Machado (Representative, Geneva)

Inuit Circumpolar Council (ICC)

Violet Ford (Ms.) (Vice-President, Ottawa)

IQ Sensato

Sisule MUSUNGU (President, Geneva); Daphni ZOGRAFOS (Ms.) (Geneva)

Kanuri Development Association

Babagana ABUBAKAR (Vice President, Maiduguri)

Knowledge Ecology International (KEI)

Thiru BALASUBRAMANIAM (Representative, Geneva)

L'assemblée des arméniens d'Arménie occidentale/The Assembly of Armenians of Western Armenia

Arménag APRAHAMIAN (chef, Paris); Vartan Jacky KARNIKIAN (Paris)

L'auravetl'an Information & Education Network of Indigenous Peoples (LIENIP)

Gulvayra SHERMATOVA (Ms.) (President, Gorno-Altai); Julia GOSART (Ms.) (International Representative, Los Angeles); Tatiana KALYANTAGRAU (Ms.) (Information Manager, Moscow)

Mannheim Centre for European Social Research (MZES)

Lars THOMANN (Research Assistant, Mannheim)

Mbororo Social Cultural Development Association (MBOSCUDA)

Ali AII SHATU (Mrs.) (Bamenda)

Music In Common

Mathew CALLAHAN (Chair, Bern)

Nigeria Natural Medicine Development Agency (NNMDA)

Tamunoibuomi F. OKUJAGU (Director General and Chief Executive, Lagos); Stella N. MBAH (Ms.) (Senior Legal Officer, Desk Officer on IPR, Lagos)

Queen Mary Intellectual Property Research Institute (QMIPRI)

Marcus GOFFE (Associate Member, London); Luo LI (Associate Member, London);

Ralliement national des métis (MNC)/Métis National Council (MNC)

Kathy HODGSON-SMITH (Ms.) (Ottawa)

Research Group on Cultural Property (RGCP)

Stefan GROTH (Researcher, Göttingen); Rosemary COOMBE (Ms.) (Professor, Göttingen); Marianna BICSKEI (Ms.) (Göttingen); Brigitta HAUSE-SCHÄUBLIN (Ms.) (Göttingen); Matthias LANKAU (Göttingen); Philipp SOCHA (Göttingen); Nora VOGT (Göttingen)

Rromani Baxt

Leila MAMONI (Mlle) (représentant, Paris)

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

Lena SINN (Ms.) (Göttingen); Philipp ZIMBEHL (Göttingen)

The Sudanese Association for Archiving Knowledge (SUDAAK)

Fawzia YOUSIF GALALELDIN (Ms.) (Executive Director, Khartoum)

Third World Network (TWN)

Asmeret ASGHEDOM (Ms.) (Geneva)

Tulalip Tribes of Washington Governmental Affairs Department

Preston HARDISON (Policy Analyst, Tulalip); Terrance WILLIAMS (Executive Director of Fisheries and Natural Resources, Marysville)

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

Jens BAMMEL (Secretary General, Geneva)

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

Elizabeth REICHEL (Ms.) (Member TCC, Commission on Environmental, Economic and Social Policy, Geneva)

West Africa Coalition for Indigenous Peoples' Rights (WACIPR)

Emmanuel AITOKHUEHI (Deputy Director, Benin City); Joseph OGIERIAKHI (Programmes Director, Benin City);

World Trade Institute

Rodrigo CORREDOR (Research Project Consultant, Bern)

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

Francis GURRY, directeur général/Director General

Naresh PRASAD, directeur, chef de Cabinet/Director, Chef de Cabinet

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

Begoña VENERO (Mme/Mrs.), chef, Section des ressources génétiques, des savoirs traditionnels et de la biotechnologie, Division des savoirs traditionnels/Head, Genetic Resources, Traditional Knowledge and Biotechnology Section, Traditional Knowledge Division

Simon LEGRAND, conseiller, Section de la créativité, des expressions culturelles et du patrimoine culturel traditionnel, Division des savoirs traditionnels/Counsellor, Traditional Creativity, Cultural Expressions and Cultural Heritage Section, Traditional Knowledge Division

Jessyca VAN WEELDE, consultante, Section de la créativité, des expressions culturelles et du patrimoine culturel traditionnel, Division des savoirs traditionnels/Consultant, Traditional Creativity, Cultural Expressions and Cultural Heritage Section, Traditional Knowledge Division

Brigitte VEZINA, consultante, Section de la créativité, des expressions culturelles et du patrimoine culturel traditionnel, Division des savoirs traditionnels/Consultant, Traditional Creativity, Cultural Expressions and Cultural Heritage Section, Traditional Knowledge Division

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