

WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION
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WIPO GENERAL ASSEMBLY

Thirty-Fourth (18th Ordinary) Session
Geneva, September 24 to October 3, 2007

REPORT

adopted by the Assembly

1. The General Assembly was concerned with the following items of the Consolidated Agenda (document A/43/1): 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 15, 16, 17, 19, 21, 24, 26, 29, 31 and 32.
2. The reports on the said items, with the exception of items 7, 11, 12, 13, 15, 16, 17, 19, 21, 24, 26 and 29, are contained in the General Report (document A/43/16).
3. The reports on items 7, 11, 12, 13, 15, 16, 17, 19, 21, 24, 26 and 29, are contained in the present document.
4. Mr. Martin I. Uhomobhi (Nigeria), Chair of the General Assembly, presided over the meeting.

ITEM 7 OF THE CONSOLIDATED AGENDA:

REPORT OF THE DESK-TO-DESK ASSESSMENT

5. Discussions were based on documents WO/GA/34/1, 12, 12 Corr. and 14.

6. The Secretariat introduced the set of documents concerning the item, namely, document WO/GA/34/1, which contained the Report of the Desk-to-Desk Assessment; document WO/GA/34/12, which contained the comments of the Secretariat, document WO/GA/34/12 Corr. which contained a correction to the document WO/GA/34/12, and document WO/GA/34/14, which was an updated version of the Human Resources Strategy document presented to this Assembly last year, revised in accordance with comments given in the Report of the Desk-to-Desk Assessment. It was recalled that the Desk-to-Desk Assessment, which had originated in a recommendation of the Joint Inspection Unit, had now been conducted. A request for proposals had been issued, as Member States had been aware, and in December of last year, PricewaterhouseCoopers had been selected pursuant to that request for proposals, as the external contractor to undertake the Assessment. The exercise which had commenced in December last year had culminated in the Report that was published at the end of June of this year. The Secretariat further informed the Member States that the Director General had appointed an Internal Project Steering Committee to facilitate the conduct of the exercise internally and to ensure that the Contractor complied with the terms of reference that had been set for the exercise. It was further recalled that two Member State information meetings had taken place early on in the exercise, one in December last year and the other one in January this year, and that Member States had delegated the supervision of the exercise to the WIPO Audit Committee. The Secretariat wished to place on record the Internal Project Steering Committee's gratitude to the Audit Committee for its guidance and for its advice to the staff for their active participation in, and facilitation of, this exercise and to the Staff Council for its assistance throughout the exercise. The Secretariat stated that the Staff Council's comments on the Desk-to-Desk Assessment Report itself had been made available outside the meeting room. The attention of the delegates was then drawn to document WO/GA/34/12, which contained the comments of the Secretariat in respect of the Final Report of the Desk-to-Desk exercise. In presenting these comments, The Secretariat wished to make several observations, the first being that the document did not contain any comments on the assessments or evaluations that were made in the Report itself, but rather that the orientation of the document was towards the recommendations. In the second place, there were certain "High Level Comments" made that were "general comments" applying to the Report as a whole. The attention of the Assembly was drawn, in particular, to two paragraphs. These were paragraph 10 which contained a statement that the Secretariat welcomed this Report and embraced the central recommendation for changes, and paragraph 14, which addressed the central recommendation of the Report that there should be a coordinated and integrated Organizational Improvement Program. It was highlighted that paragraph 14 suggested, for the consideration of the General Assembly, that the Director General would propose to the Member States a mechanism and organizational arrangements in order to implement this Organizational Improvement plan. Thirdly, it was highlighted that, in the Annex, the Secretariat had provided its comments in respect of each of the recommendations that had been set out in the Final Report, and that it had sought to divide those comments, in general, into three categories: the first category indicated where an action that was foreseen in a recommendation was already underway within the Secretariat; the second category related to actions which were planned, an example being the ERP system, or the Enterprise Resource Planning System, where a proposal had been placed before the

Member States; and, the third category was where nothing was underway, or had been planned, but where the Secretariat had indicated what it considered to be the appropriate response on its part. In general, the Secretariat was of the view that each of these recommendations needed to be unpackaged and addressed in detail as it went forward with this exercise. The fourth comment concerned budgetary implications of the Desk-to-Desk exercise, and the Final Report, and in this respect, the Secretariat took the opportunity to specify that, at the present stage, there were no immediate budgetary implications. It was recalled that the Report had specified that the Organizational Improvement Plan, which it recommended, would take a period of some three years for implementation. The Secretariat believed that, while there were no immediate budgetary implications, there would certainly be budgetary implications in the future. The Secretariat however considered that the mechanism existed (that of the Revised Budget in the following Biennium) within the Program and Budget process for taking into account such budgetary implications, and made two final comments. The first was that at the Program and Budget Committee meeting, that had taken place just one week ago, two delegations, namely the Delegation of Algeria and the Delegation of France, had requested that the external contractor make a presentation of the Report to the Member States. This request had been addressed during the course of the last week, and three possibilities had been examined. These were to conduct such a presentation before the Assemblies, during the Assemblies or after the Assemblies. It had turned out not to be possible before the Assemblies on account of insufficient notification to all Member States to facilitate their presence. In addition, there had been some difficulty on the part of the two principal Partners of the external contractor to be available during the course of the last week. The Secretariat therefore proposed that, if the Member States wished to proceed with this presentation, it should take place on October 9, 2007, and, if that date proved to be inconvenient, October 18, 2007, was proposed. Finally, the attention of the General Assembly was drawn to the decision paragraph of document WO/GA/34/12, paragraph 18, that invited the General Assembly to note the contents of the Secretariat's observations, to express any views on those observations and to specify how Member States might wish to receive further Reports or consider the process of addressing in detail, and implementing the various recommendations of the Report.

7. The Chair of the WIPO Audit Committee stated that it was not necessary for him to explain the background for the Desk-to-Desk Assessment exercise, as the Secretariat had already done so. He thanked the Secretariat for the kind words said about the work of the Audit Committee, and reciprocated by thanking him, and the Internal Project Steering Committee, for the cooperation they had had during this exercise. The Chair of the Audit Committee then stated that the position of the Audit Committee on the Desk-to-Desk Review could be found in its latest Report WO/AC/6/2, of September 5, 2007, which he understood was available to delegations. He further stated that, with the agreement of the General Assembly, the Audit Committee wished to see the part of this report dealing with the Desk-to-Desk Review included within the minutes under this Agenda Item. The Audit Committee had been seized with the Desk-to-Desk review since its first meeting in April 2006. The Committee had advanced its views, and submitted its recommendations to Member States and the Secretariat through its periodic reports. It had continued to oversee the progress of this project through its different stages of development, and had relayed its views both to the Secretariat and PricewaterhouseCoopers (PwC). In considering its response to the PwC's Final Report, the Committee had reflected on its previous meetings and had considered carefully the views expressed by the participants in those meetings and the written reports it had received. The Committee had noted that the Secretariat had pointed to certain inaccuracies and inconsistencies in PwC's Final Report. The Committee had

discussed this issue with both the WIPO Internal Project Steering Committee (IPSC) and PwC. On balance, the Committee had concluded that, whereas there may have been inaccuracies, particularly in the potential headcount savings on the one hand, there may also have been a paucity of data upon which to base the Report within the allotted timescale, on the other. The Committee had also concluded that looking into this issue in further detail would not change the major findings and conclusions of PwC's Final Report. Rather, it was the Committee's view that the broad thrust of PwC's Final Report, particularly in terms of its recommended actions, provided a platform for introducing an integrated program for Organizational Improvement. This was in line with the welcome given to PwC's Final Report by the Secretariat, as it had already been indicated by the Secretariat. It was also in line with the comments by the Staff Council. In its comments on PwC's Final Report, the Secretariat had noted the endorsement by PwC of the initiatives already commenced by WIPO. In connection with these initiatives, the Audit Committee welcomed the fact that the Secretariat had undertaken to propose to Member States a mechanism and organizational arrangements to achieve an integrated program for Organizational Improvement. These initiatives included (i) comprehensive changes in human resources (HR) management and systems; (ii) new financial regulations and rules; (iii) an Enterprise Resource Planning (ERP) system; (iv) outsourcing of certain activities; and, (v) a modern IT platform. These initiatives had both substantial challenges and risks, which would need careful management. A further level of complexity was imposed by the need to integrate these modules with each other. In the view of the Committee, WIPO, as an organization, would not be able to operate effectively in the future either as a series of silos or without the proper balance of accountability and competency of management and staff, supported by an open, fair and communicative culture within a framework of sensible risk management and internal control. This meant, in particular, that proper professional human resources practices, including performance appraisal, job descriptions that spell out the responsibility and accountability of the incumbent, required skill sets, behaviors and experiences, and clearly formulated contracts of employment, needed to extend to all layers of the Organization, including top management, as in other UN system organizations. The Committee considered, therefore, that the very substantial integrated changes needed by WIPO to meet the challenges of the 21st century would not only require the full and open commitment and ownership of the Organization's top management, but would also need the necessary skills and experience in change management, integrated cross-functional project management, and IT, together with the appropriate support software and infrastructure. A carefully structured and managed integrated program for Organizational Improvement should be seen as an opportunity for all staff and as a means to bring forward new generations of management. With these remarks, the Committee made three recommendations as follows: First, the Secretariat should develop a comprehensive integrated program for Organizational Improvement along the lines and priorities recommended in PwC's Final Report, and as recognized by the Secretariat in its report (WO/GA/34/12). Because such a program would not only be complex, but was likely to extend over a period of years, it should be constructed on a SMART C basis, that is to mean: Specific, Measurable, Attainable, Realistic, Timely and Consistent; the second recommendation was that the Secretariat should prepare a road map for the implementation of the program showing the organizational and resourcing requirements. This road map should be reviewed by the Audit Committee at its meeting scheduled for the first week of December 2007; and, their last recommendation was that the implementation of the program should be periodically reviewed by the Audit Committee. The Chair of the Audit Committee further stated that the Committee had intentionally avoided becoming bogged down in the details of the Review, especially those related to numbers and data. It had concluded that there were enough elements in both PwC's Final Report and the Secretariat's response that could be built

upon in a forward-looking manner. The Committee had taken advantage of the thrust of the findings and recommendations of the PwC Report for an integrated program for Organizational Improvement, on the one hand, and the recognition and welcome given by the Secretariat of WIPO, and by the Staff Council, for change and reform, on the other. The Committee wished that the Desk-to-Desk review and the environment generated throughout the whole process of interaction among the different stakeholders would be used as a springboard for change and reform. In short, the Committee had wanted to emphasize a forward-looking and results-based orientation. Hence, it looked forward to receiving from the Secretariat the promised proposals for a mechanism and organizational arrangements to achieve an integrated program of Organizational Improvement. The Committee trusted that the Secretariat's proposals would include a road map for implementation of the said program, showing organizational and resourcing requirements within a timeframe. The Committee would review this paper at its forthcoming meeting in the first week of December, and report to the Program and Budget Committee accordingly. Finally the Chair of the Audit Committee stressed once again the concept of shared responsibility in oversight. In dealing with the Desk-to-Desk review, this shared responsibility, the Audit Committee believed, was to be borne by Member States, the WIPO Secretariat and oversight bodies, including the WIPO Audit Committee. In his concluding statement, the Chair of the Audit Committee stated that to the Audit Committee, at this juncture, the Member States views were of special importance. They would be listening attentively to those views. The views of the Member States and the Secretariat's proposals would be the focus of the Audit Committee's further examination and review of this important subject in its forthcoming meeting in the first week of December 2007.

8. The President of the Staff Council stated that, as President of the Staff Council, it was an honor to be able to address the General Assembly on behalf of the staff of WIPO, particularly during the present item of the Agenda. This year had been an exceptional one for the staff of the Organization. The Assessment of the Organization's human resources by PricewaterhouseCoopers, and the subsequent Report, had provided staff with positive recommendations and career development. A plan on how to move the Organization forward over a period of three to five years had also been presented. However, many staff had expressed disappointment that a genuine Desk-to-Desk audit had not been carried out. Others had expressed concern about the large number of inaccuracies and superficial analysis behind the outsourcing proposals. Needless to say that discussion in the local media about the number of possible redundancies at WIPO had seriously unsettled staff, leaving morale and motivation at a very low level. The Staff Council had responded to the recommendations made by PwC in a document that had been made available outside the conference room and these would be attached to the printed version of her remarks today. For several years, the Staff Council had repeatedly highlighted the need for many of the changes outlined in the updated version of the Human Resources Strategy, and it would continue to work with the administration to ensure implementation of this long-awaited plan. In addition to the changes proposed in both the PwC Report, and the Human Resource strategy, the Staff Council believed that the Organization was in need of a substantial change in organizational culture—a change which needed to begin as soon as possible. She emphasized that a change in culture meant much more than management training for current managers. It meant open competition for all managerial posts. It meant prioritizing integrity and competence in the selection procedure. It meant selecting the right people. A change in culture meant more than refining selection procedures. It meant a full commitment by the Organization and its Member States to recruit for excellence, attracting the best to WIPO. It meant making honest commitments to all the staff in the form of secure contractual arrangements, and equal pay for equal work.

Improving the Organization's performance appraisal system should not just be replacing the old form with the new one and training managers. There was a need to ensure that staff at all levels could make and accept constructive criticism, and that the appraisal system would be applicable to all. The level of absenteeism in the Organization was regrettably a good indicator of the low morale of the staff. There was a need to understand why there was such a high level of absenteeism and a need to take appropriate steps to restore a sense of pride in being part of this Organization. The staff needed to believe in the mission of WIPO, and to have clear and meaningful career development, tying them to that mission. There was a need to restore a sense of integrity and to bring back the UN ideals that had attracted many of the staff to WIPO in the first place. The Staff Council trusted that Member States would come to an agreement on how the Organization could move forward. It thanked Member States for supporting the staff whose commitment, ideas and talent were essential in the change process.

9. The Delegation of Poland, speaking on behalf of the Group of Central European and Baltic States, acknowledged the fact that an implementation of such a report was not automatic, nor was it the question of a month or two. On the contrary, human resources related programs needed time and adequate preparation. It was important, however, that the momentum gained by the publication of the Report be used and the findings and recommendations be appropriately assessed and further steps defined. That was why the Group supported the idea that a discussion be held as soon as possible regarding these issues, a discussion that should be inclusive and Member-driven. As stated in paragraph 14 of the document WO/GA/34/12, it was the intention of the Secretariat to propose a relevant mechanism and the Group was looking forward to see the proposal at the earliest possible date. In this sense, it supported the recommendations made by the Audit Committee. It believed that this existing body and the membership of WIPO should be duly included in the process. Even though the Group had had no chance to coordinate on this issue, it duly took note of the statement made by the President of the Staff Council.

10. The Delegation of Portugal speaking on behalf of the European Community and its 27 Member States, welcomed the Desk-to-Desk assessment prepared by PricewaterhouseCoopers. In its view, the report contained important findings and useful recommendations that should guide further action and future decisions on the related governance and administrative issues, notably in what concerned the Program and Budget process of the Organization. The European Community was aware that the Secretariat, in its response to the Report by PricewaterhouseCoopers, had noted that there were inaccuracies and inconsistencies in this report. The Group wished to note, however, that the Audit Committee had discussed this with the WIPO Steering Committee and PricewaterhouseCoopers and wished to support the conclusion of the WIPO Audit Committee that looking into this issue in further detail would not change the major findings and conclusions of the Report and would therefore be unproductive. The European Community and its Member States also supported the recommendations of the Audit Committee on the way forward, namely that (a) the Secretariat develop a comprehensive integrated program for organizational improvement along the lines and priorities recommended in the PricewaterhouseCoopers Report and on a SMART C basis; (b) the Secretariat prepare a roadmap for implementation of the program showing the organizational and resource requirements; and (c) the implementation of the program should be periodically reviewed by the Audit Committee.

11. The Delegation of Kenya stated that it had noted the contents of the Desk-to-Desk assessment report. It further stated that WIPO Member States supported the re-engineering of

the Human Resources capacity and prudent utilization of WIPO Funds that were critical to the sustainability and future growth of the Organization. The Delegation appreciated the efforts made to have a comprehensive review of the WIPO human resources, policies and practices. This task was of high priority as it involved the review not only of human resources, but also financial resources. The Delegation commended PricewaterhouseCoopers for the detailed and comprehensive report, which addressed the objectives of the study as mandated by WIPO. It said that the implementation of the report would assist WIPO in continuing to discharge effectively its mandate taking cognizance of external environmental challenges. In addition, in the Delegation's view, it was important that issues relating to result-based-management be actually instituted at WIPO. It cited an example from its own country, where the United Nations had awarded Kenya one of the best-practice awards in terms of result-based-management through performance contracting. It stated that it was important that, as the Assembly moved forward with these specific issues, the institution of the UN itself needed to embrace and internalize the result-based-management and to the extent possible engage in performance contracting as one of the ways of resolving the problem. Therefore, the Delegation proposed to the Assembly that issues of specific measurable realistic and timely targets be part of the components that needed to be taken forward in implementing the recommendations of this work.

12. The Delegation of the United States of America welcomed the Secretariat's resolve, as outlined in paragraph 10 of document WO/GA/34/12, to embrace and implement the recommendations contained in this report. The Delegation supported the Audit Committee's recommendations. It added that it had also listened attentively to the report on behalf of the Staff Council and wished to assure the Staff Council that it agreed with many of its recommendations and certainly supported the Council's quest to improve the functioning of WIPO. The Delegation further urged that WIPO develop a plan to implement the Audit Recommendations outlined in paragraph 248 of the report. Furthermore, the Delegation requested that an item related to the Audit Recommendations be included in future General Assembly agendas. It also encouraged WIPO to adopt the Human Resources strategy detailed in paragraphs 145 to 164 of the report, containing the following elements in particular: a strategy in which priority was given to leadership and management skills, development of a culture of learning, implementation of a performance management system, new job descriptions written by management in a common style to facilitate job evaluation and classification, alignment of employment contract type with role, and provision of severance opportunities. The Delegation supported conducting a needs assessment before converting short-term staff to regular posts to determine the need for each particular position. It also encouraged WIPO to upgrade its information technology systems, since the Organization relied on effective information technology for service provision and for its own management and administration. It suggested that any proposed upgrades should focus on scarce IT resources, in places where automation could best improve the efficiency and effectiveness of the Organization. It encouraged WIPO to commit to a program of organizational improvements and properly plan and manage the suggested recommendations, in a cost-effective way that did not require additional funding from Member States. Finally, the Delegation supported and agreed with the need for improving performance, reducing inefficiencies and generally reducing staff numbers. It stated that, while the study had not been intended to include an evaluation of the workload in competencies at the level of individual posts, this would seem to be a logical next step. With the increased number of requests for higher grades, it would be interesting to review an independent assessment of staff, the work performed and the grade of those staff members.

13. The Delegation of Australia stated that it was very supportive of the need for the Desk-to-Desk assessment and welcomed the report. It added that it had been concerned about aspects of the quality of the administration of WIPO for some time. It said that the Desk-to-Desk review should be part of a comprehensive approach to strengthen management of performance of WIPO that addressed roles and responsibilities of senior management in driving the change. In its view the Desk-to-Desk assessment provided an unprecedented opportunity for WIPO to look to introducing best practice management approaches throughout the Organization. While it was acknowledged that WIPO was continuing to undertake some reform in line with the report, the Delegation strongly urged WIPO to take a strong stand in addressing some of the more sensitive issues raised in the Report, for example, the culture of entitlement, management of performance, and appropriate recruitment practices. The Delegation was concerned that WIPO needed to be seen to uphold strong positive values regarding accountability and that it should become best regarded as a highly skilled organization at the forefront of management and the use of technology. The Delegation believed that the implementation of the recommendations in the report was a high priority and, while it was important to accurately determine financial and resources implications, this needed to be progressed in a timely fashion. The Delegation was concerned that there was no immediate effect on the Program and Budget proposal for 2008-09. In its view this indicated that the imperative for improvement expressed throughout the report might not yet have been fully accepted by the Organization. It was also concerned that appropriate governance arrangements be put in place to oversee the implementation of any of the recommendations in the Desk-to-Desk assessment report. Apart from the oversight by the Audit Committee, the Delegation believed that the Program and Budget Committee, which met twice yearly, was best placed to receive timely reports on behalf of Member States to ensure effective monitoring of progress on consideration and implementation of actions. It would be expected that the Program and Budget Committee would, in turn, further report to the Member States at the General Assemblies on the implementation of the report, including where timelines had not been met and the reasons why, to enable the full range of Member States to receive timely and transparent information on the progress of implementing the report.

14. The Delegation of Ethiopia stated that it appreciated the report by the Secretariat and also, of course, of the Audit Committee. The Delegation considered the report as yet another opportunity for change in an organization that was undergoing a phenomenal growth. It added that, while it was heartening to note that the Organization was continuously searching for ways and means to enhance its effectiveness and efficiency, it was its view that the report had not factored in and modeled the significant demand the Organization was set to face in relation to the implementation of the Development Agenda. It said that, for Ethiopia, any recommendation on the reorganization of the Organization should seek to strengthen its development focus. It recalled a paragraph in the report which said that the report did not take into account the various recommendations that would be implemented in this regard. Regarding the methodology adopted for the preparation of the report, the Delegation found it disconcerting to know that States, as important drivers and stakeholders of the Organization were not adequately involved for input. It stated that it was important to align the recommendation provided by the external consultant with the various initiatives that the Organization had already commenced and were in the process of planning. The Secretariat should be encouraged to invigorate the implementation process even further. It recalled one of the recommendations of the report related to the possibilities of outsourcing of some of the activities of the Secretariat. The Delegation was strongly inclined to agree with those who believed that outsourcing was indeed a complex process, which could only be embraced after a thorough and considered investigation. It added that clear modalities should be designed to

indicate which activities and which institutions would benefit from such redirection. The Delegation considered that the objective of outsourcing should be, not only to create efficiency, but also to transfer skill and knowledge to institutions from underprivileged areas. It noted that among the recommended actions contained in the report and its annexes included a new human resources strategy that saw to it that existing authorities within the organization were properly aligned with the responsibilities and also ensuring an efficient and effective performance management and provision of adequate outsourcing. While commending the major thrust of these recommendations, the Delegation said that it should be underscored that the vision of the Human Resources Management of this Organization that the Delegation cared so much for, was not just to see WIPO being run as an efficient company, but as an empowering and representative multilateral platform, with staff representative of cultures, legal systems, and original specificity. It stated that restructuring of the Organization in a way that would undermine this ideal was not only unacceptable, but defeated the very mission of the Organization.

15. The Delegation of Brazil thanked the Secretariat for fulfilling the mandate on the elaboration of the Desk-to-Desk assessment. As a first point, it wished to indicate and concur with others who had spoken along the same lines that the implementation of the recommendations contained in this report was not automatic. Member States needed to take time to examine, discuss and express their views on such an important and complex document. Action on the recommendations contained in the report of the Desk-to-Desk review by PricewaterhouseCoopers, and comments on it by the International Bureau, the Audit Committee and Staff Council, required first a consensus of the Member States. Preliminary views on the review document, in view of the Delegation, indicated that the approach taken by PricewaterhouseCoopers might, in many respects, have fallen short of recognizing and understanding the special nature of WIPO as an intergovernmental organization, a specialized agency of the UN System, not a private corporation. It reiterated what was highlighted by the Delegation from Ethiopia that one of the major flaws of the Desk-to-Desk assessment was the fact that the Development Agenda was explicitly and deliberately not considered as an important part of the mission of WIPO for the future. It added that, notwithstanding the agreements reached on a wide ranging substantive and far reaching platform of 45 action-oriented recommendations, cross-cutting in nature, the Member States had agreed in the discussions within the PCDA and prior to that, and notwithstanding the creation of an entirely new committee of this Organization, the Committee on Development and Intellectual Property. The Delegation believed that the approach adopted was excessively a managerial one and in many respects not suitable for the type of Organization that WIPO was. It did not wish to exhaust its comments on the Desk-to-Desk review, it was a lengthy document. However, it wished to pin-point a couple of elements to illustrate its views in a general way. First of all, it said that with respect to the clusters of competencies that WIPO needed to address as a matter of priority, most of these referred to management, IT, office management, languages, and they were all means, not the ends, of the Organization. It stated that it was not possible to ignore the substantive mission of WIPO. It recalled that the Members had discussed that at length, for example, within the context of the Development Agenda, and added that Member States wished to see WIPO enhancing its capabilities in the area of economic analysis of intellectual property, so there was need to hire more economists in the Organization, development economists or people specialized in development. It further stated that there were a lot of recommendations that referred to the need for WIPO to further develop its capabilities to produce impact assessment studies. The Delegation thought that the substantive part of WIPO's mission was clearly ignored in this Report. Other comments contained in the report could also be the result of this

lack of experience and understanding of PricewaterhouseCoopers regarding the nature of WIPO as an intergovernmental UN Body and, to a great extent, a political body, not a corporation or private company that produced goods or services for sale. It said that, in its view, there were certain contradictions, for example, the issue of a lack of pride in being a WIPO employee or the lengthy sick-leaves. It added that this seemed to be contradicted to a great extent by the low staff turn-over and the long tenure of the workforce. It wished to see more clarification as to why there was a low staff turn-over and a long tenure of the workforce. It said that people stayed a greater number of years in this Organization, and this did not seem to support the idea that there was a general lack of pride in belonging to the Organization. It thought that they must perceive it as a positive and satisfying place to work. It said that the fact that WIPO was not perceived by PricewaterhouseCoopers as being a performance-oriented culture or having a performance-oriented culture, could be explained by the political and intergovernmental nature of the Organization and by the type of work that WIPO did. It noted that there was not a single mention, for example, of something that was of great importance to Brazil, the need for greater geographical balance in the composition of the staff and personnel of this Organization. It added that WIPO was an intergovernmental and multilateral organization, and the Staff composition, in terms of nationalities, should reflect this. It said that, of course, this would not be a concern to PricewaterhouseCoopers because it was oblivious to the fact that this was a multilateral intergovernmental UN organization, and that member countries had an important role in the conduct of business of this body. In the opinion of the Delegation of Brazil, the issue was not only one of competence, since it was not measuring outcomes in material terms, but also evaluating the adequacy of the infrastructure of the Organization in light of the political goals that it was meant to be achieved and represented. The Delegation concluded by saying that there was room for improvement in every organization and that all, including the Bureau, the Staff and the Member States were pulling to work toward further improving the Organization.

16. The Delegation of China expressed its appreciation for the report of the PricewaterhouseCoopers and the examination of the work of the Organization which had allowed Member States to know better the work of the organization. It believed that PricewaterhouseCoopers did not have very coherent propositions concerning their recommendations. The Delegation also attached great importance to the use of official languages in WIPO. Document WO/GA/34/12 indicated that companies were found for outsourcing the language translations, of six languages, and the Delegation hoped that this arrangement would be extended to all the meetings' interpretations and translations, especially in the PCT-related activities. It hoped that the six languages would be equally considered so as to allow all Member States to participate equally in the Organization's work.

17. The Delegation of Japan thanked the Secretariat and PricewaterhouseCoopers for providing the detailed and comprehensive Desk-to-Desk report and also thanked the Chair of the Audit Committee for providing the recommendations. It thought that it was important to move forward based on this tangible result for good management and improvement of WIPO. It said that in the report there should be several issues to be addressed and discussed, for example, the Secretariat in its comments in document WO/GA/34/12 paragraph 13(d) showed doubt of the Bureau with respect to the streamline effect on posts of the ERP. The Delegation wished to see such an assessment being conducted further in depth. It believed that, while the report was but a start, it wished to ask for action on the part of WIPO based on this report. Therefore it hoped that there would be a roadmap and mechanism to translate the Desk-to-Desk report in practice, as appropriate. It added that, if there were some elements to be implemented promptly, these should be reflected in the revised budget 2008/09.

18. The Delegation of the United Kingdom associated itself with the statement made by the Delegation of Portugal on behalf of the European Community and its Member States, particularly the comments supporting the recommendations of the Audit Committee in document AC/6/2. In addition, the Delegation wished to propose that, as well as taking forward the preparation of a roadmap recommended by the Audit Committee, the Secretariat should convene a meeting of interested Member States. The Delegation recalled the intervention of the Delegation of Australia, suggesting that this meeting could be an open-ended meeting of the Program and Budget Committee. It would allow States to consider and comment on the improvement program and roadmap prepared by the Secretariat alongside the comments which would be made by the Audit Committee when it would meet in December 2007.

19. The Delegation of Turkey welcomed the report and the recommendations of the Audit Committee. It said that, in addition to diagnosis it provided useful means and guidance, directions for management which should be considered and that the measures in order to improve organizational and managerial efficiency were very important. However, in addition to those measures, motivational measures were also vital, since the nature of the work of WIPO was intellectually intensive and human-resource intensive, and in this respect, cooperation and involvement of the staff was crucial. The Delegation believed that such minor things like lengthy sick leaves or absenteeism were very critical indicators of dissatisfaction. It said that the human resources efficiency should be improved and, in this respect, it found the speech of the President of the Staff Council very useful and cooperative. Finally, the Delegation thought that organization of a meeting of interested delegations, as proposed just recently by the Delegation of the United Kingdom, was useful.

20. The Delegation of the Russian Federation thanked the company PriceWaterhouseCoopers (PwC) for the report submitted, which provided comprehensive coverage of the issues linked to WIPO's human resources. It also thanked the Secretariat for the assistance given to PwC in carrying out its investigations and for the efforts already undertaken to implement certain programs, as well as the Audit Committee for its direct participation in coordinating the investigations. The report reflected the problems which needed to be resolved systematically and showed that, according to the recommendations made, an improvement in the human resources situation could be expected within three to five years, provided that attempts were made immediately to carry out a number of measures.

21. The loss of working time as a result of illness and the age level of staff gave particular cause for concern. Both those issues affected the interests of specific staff and therefore required a delicate approach. At the same time, a reduction in the loss of working time constituted a real reserve in reducing the requirement for new posts. As to the departure of experienced staff members as a result of their age, that departure should not be accompanied by a reduction in the quality of the services provided by the Organization. In that regard, the continuity and vocational training of new staff members were issues of current concern. However, such problems would sooner or later face the leadership of any organization and they could not be solved by means of short-term measures. What was required from the Organization was continuous and painstaking work.

22. As regards the recommendations made by PwC on specific programs implemented by WIPO as part of the Program and Budget, such recommendations required further analysis, in particular those relating to the merging of a number of programs. Such matters were within

the remit of the Program and Budget Committee and could be examined at its sessions. At the same time, the Russian Federation considered that the number of staff working on Program 7 was insufficient, taking into account the expansion of activities in the region. Program 7 covered WIPO's activities in 32 countries, with eight staff members employed in fixed-term posts. In order to strengthen the administration of the program, the Delegation proposed, on behalf of the Regional Group, that a new post of Co-Director be created to administer WIPO's activities in the Russian Federation and all CIS countries. That matter should be examined with the participation of the interested parties. On the whole, the Delegation supported the recommendations put forward in the PwC report and welcomed the Secretariat's efforts in adopting a comprehensive approach to the issue of human resources management and enhancing the Organization's activities. It also supported the proposals for the holding of further consultations on the implementation of the recommendations laid out in the report.

23. The Delegation of Benin, speaking on behalf of the Least Developed Countries, said that it had taken note of the report. Nonetheless, it wished to draw attention to the fact that reforms related to human and financial resources should take place gradually, taking into account three concerns. The first of those concerns was the willingness to ensure that the technical assistance structure and the related human and financial resources remained in tact. The second concern was to strengthen the commitment of member countries to providing technical assistance and strengthening innovation capacities, while the third was that any reform of WIPO should be gradual and done in a manner so as not to make fundamental changes to WIPO which was the only United Nations specialized agency that established interaction between the Member States and the private sector in their work.

24. The Delegation of Canada stated that, as part of the general initiative of management reform in the United Nations, there was a need to ensure ethical conduct, accountable leadership and administration, proper oversight and modern management throughout the UN system. It stated that Canada attached great significance to management reform and accountability within WIPO. Recalling this importance that Canada attaches to good governance, it was concerned about the Desk-to-Desk audit. The many problems with regards to leadership, management and the very Organization and structure of WIPO indicated the overall low state of governance within the Organization. In order to ensure that the objectives of this exercise were realized, the Delegation of Canada stressed that the recommendations be thoroughly evaluated by WIPO's Secretariat, by all relevant Committee's and by all Member States. It urged WIPO to incorporate the recommendations into its operations through a robust implementation plan. The Delegation of Canada supported the role of the Audit Committee in the review and evaluation of this report and would support regular reporting back to the General Assembly on the recommendations and progress.

25. The Delegation of Nigeria stated that it wished to align itself with the comments made by those Delegations of Ethiopia, Brazil, China and Benin. The Delegation appreciated the report of PricewaterhouseCoopers. It also appreciated the recommendations made by the Audit Committee, but wished to point out that the only way that a thorough evaluation of WIPO activities, staff and improvement of activities could be meaningful was if it was set within the framework of the Mission Statement of WIPO. This was because WIPO was a specialized agency of the United Nations and had enormous responsibilities with respect to the Development Agenda because that was the prime objective of the United Nations, in addition to the issue of security. To that effect, the Delegation of Nigeria believed that the shortcomings seen in the report had to do with the fact that the Mission Statement in terms of development had not been reconciled properly with the strength of staff and other activities.

The Delegation nevertheless saw the report as an opportunity to improve the activities and performance and effectiveness of WIPO. It also believed that in addressing the recommendations of the report, it was important to consider the kind of impact that was expected from the outcome of activities of WIPO. It was also important that steps be taken to conduct proper consultation in terms of implementing the recommendations.

26. The Delegation of Nigeria expressed its agreement that there was a need for outsourcing activities, but was of the opinion that outsourcing should be undertaken with care. The Delegation noted that the report itself had acknowledged the complexities of outsourcing. In effect, the Delegation was of the opinion that outsourcing should not be used in a way to undermine the work of the permanent staff. The Delegation believed that it was also important that the objectives of improving effectiveness and efficiency, reconciled with the goals, should be achieved in a way to raise the morale of the staff. The Delegation further acknowledged the statement that had been made by the President of the Staff Council that had pointed out a number of issues, including the matter of low morale and the issue of absenteeism within the Organization. This, in the opinion of the Delegation, had to be addressed. The Delegation of Nigeria also requested WIPO, as a UN Agency, to seek to ensure that its recruitment was fairly geographically represented. While supporting the recommendations that had been made, the Delegation of Nigeria believed that it was important that implementation be planned and a roadmap prepared for it. Such an implementation, in the opinion of the Delegation of Nigeria, should be based on a thorough evaluation of the report.

27. The Delegation of Argentina thanked PricewaterhouseCoopers for the report. The Delegation viewed this report as a part of the series of improvements that had been introduced over the past number of years and believed that the report would help the membership to make the Organization even more efficient. Like other delegations, the Delegation of Argentina saw a few flaws and believed that some of the recommendations were not entirely clear. As an example, the Delegation of Argentina agreed with Brazil that, perhaps, the focus and approach of the exercise had been more suited to that of a private enterprise and it would be very important, as almost all the delegations had said, to bear in mind the nature of inter-governmental organizations. The Delegation did not think this was of highest importance, since the report was a first diagnosis, and would need to be deliberated upon and discussed with a view to achieving consensus. The United Kingdom had made a specific recommendation that such deliberations take place within the framework of the Program and Budget Committee, for example. One of the elements that the Delegation of Argentina wished to highlight was the need to integrate the development dimension into this analysis and into the new human resource policy that the Organization was proposing to adopt. The Delegation further stated that it had to be borne in mind that there needed to be a better balance, one that considered not only geographical differences, but other differences within the Organization. One such imbalance was that the Delegation saw that many officials from certain countries were involved only in technical cooperation, while it was very important for developing countries to be represented in legal affairs and those regarding negotiation of standards or economic analysis for example. This last point, the Delegation believed was a basic one that needed to be borne in mind in respect of human resources.

28. The Delegation of Switzerland stated that it welcomed the Desk-to-Desk assessment in terms of the observations that had been made and the recommendations contained within the Report. The report underscored the shortcomings of human resource management and they have been confirmed by the Staff Council. The Delegation took this very seriously since the

Staff Council was usually rather restrained in its comments in this Organization. The President of the Staff Council had clearly said that there was a drop in staff morale and concern over governance in WIPO and this was of concern to the Delegation of Switzerland. The Delegation wished to see the adoption of a new policy of selection and recruitment that was transparent at all levels and based on objective criteria and professional qualifications. The Delegation agreed that, as many delegations had pointed out, WIPO as a UN agency played a very important role in development through intellectual property. However, in the opinion of the Delegation of Switzerland, it was also true that the backbone of WIPO was the services it provided to the private sector and its operational work, which also guaranteed financing of the Organization as a whole. The Delegation of Switzerland supported the idea of developing an integrated program and a roadmap to review the entire strategy of WIPO in terms of human resources, as indicated by the Audit Committee. Just as the Delegations of Kenya and Canada had mentioned, it believed that, above all, the Audit Committee had played a critical role in reviewing these recommendations and, therefore, in its opinion, the Organization should immediately introduce these changes and nothing should be allowed to hinder this implementation.

29. The Delegation of Algeria expressed its support for what had been said by several delegations that had spoken before it, including those of Brazil and Nigeria. The Delegation felt that the report by PricewaterhouseCoopers was a very useful tool for improving the effectiveness and the productivity of WIPO, as indeed all UN agencies needed to review periodically and systematically identify ways of improving their management. The Delegation was aware that this was a constant preoccupation and the fact that suggestions had been made for improvement would not necessarily lead one to make the conclusion that there was a basic problem with governance in this particular institution.

30. The Delegation of Algeria stated that a wealth of comments had been received in the discussion during the course of the morning. Comments had also been received from the Staff Association which had been, somehow, sometimes quoted selectively during the discussion by some speakers. The fact of the matter was that the Delegation wished to have the possibility of further interaction on the issues that had been put forward. The Delegation did not wish to take too much time in looking at some of the issues that it had underlined but wished to state that, as a Member State, it would like to have an opportunity to have an interactive dialogue on the issues which had been raised. There was a need for more detailed examination of this report with the wealth of useful suggestions which had been made, but also, as the Secretariat's document indicated, in order to clear the inconsistencies and flaws that were included in the report. The point had been made by several speakers that perhaps the vision of the external contractor was one that would have been more appropriate to a business. The Delegation reiterated that WIPO was not a multi-national enterprise, but rather a multilateral enterprise and there were some differences. It did not mean to say that the proposals were irrelevant but it needed to be given the flavor that would be applicable to a multilateral enterprise that had to be responsive to the policy positions taken by Member States. The issue of outsourcing was one of the issues in point, but there were many others, including the very notion of Desk-to-Desk, which was more applicable to a business. In WIPO the multilateral character meant that all these elements were interactive and, if one sliced them up in a Desk-to-Desk approach, it was a risk that the one may lose sight of the wood for trees. The Delegation of Algeria stated that its statement was in no way a criticism of the report and that it, indeed, welcomed the report. It was, however, of the opinion that it would be useful that the report be reviewed again taking into account the specificity of the Organization, as well as the priorities drafted and charted by the Governing Bodies, including

the focus on development that it had mentioned before. The Delegation further stated that the Audit Committee should continue to review this document in depth, taking into account the comments that had been made by the Secretariat, by the Staff, and also perhaps to consider the possibility of organizing between the Audit Committee and the Program and Budget Committee some kind of interactive dialogue including all stakeholders in order to come to some listing of priorities in terms of implementation of these proposals over time, as adopted or adjusted as a result of the interactive process with all stakeholders.

31. The Secretariat, referring to the decision paragraph (document WO/GA/34/12, paragraph 18), stated that the first two sub-paragraphs seemed clear. The Member States had clearly noted the contents of the document and expressed their views on it. In respect of sub-paragraph (iii), which posed a question for the Member States, since there had been a number of views expressed about the way forward, it would be desirable if there were clarity about the matter and an explicit understanding. General support had been expressed for the recommendations of the Audit Committee, which were set out in paragraph 24 of the Audit Committee's report (document WO/AC/6/2) and had been presented by the Chair of the Audit Committee, Ambassador Othman. These recommendations coincided with paragraph 14 of the Secretariat's comments in document WO/GA/34/12, and meant that the Secretariat was expected to develop a comprehensive, integrated program for organizational improvement and that it was expected, as had been promised to the Audit Committee, to present the Audit Committee with a plan and road map for implementation of such a program. It was also expected that periodic reviews would be conducted by the Audit Committee.

32. The Secretariat further added that two other elements had been expressed with a fair degree of generality by the different delegations: one, that there was a desire expressed for some form of interactive process with the Member States, while the second concerned the vehicle for that process, a number of delegations suggesting, in this regard, that the Program and Budget Committee might constitute an appropriate vehicle. Putting those together, it was suggested that the specific mechanism might be, after the Audit Committee's meeting in December, an open-ended meeting of Member States at which the Secretariat's proposals to the Audit Committee, as well as the Audit Committee's comments on those proposals, could be presented for interactive dialogue.

33. The last element raised by the Secretariat was the request that had been made by the Delegation of Algeria and the Delegation of France at the time of the Program and Budget Committee that a presentation be made by PricewaterhouseCoopers of its report. If there was still a desire for such a presentation, it could take place in the second week of October as a prelude to the other actions with the Audit Committee and the open-ended meeting of Member States at the end of this year or the beginning of next year.

34. The WIPO General Assembly noted the contents of document WO/GA/34/12 and decided:

(i) to approve the recommendations of the WIPO Audit Committee contained in paragraph 24 of document WO/AC/6/2, namely that

“(a) The Secretariat develops a comprehensive integrated program for Organizational Improvement along the lines and priorities recommended in PwC's Final Report, and as recognized by the Secretariat in its report (WO/GA/34/12). Because such a program will not only be complex but likely to extend over a period of years, it

should be constructed on a SMART C basis (Specific, Measurable, Attainable, Realistic, Timely and Consistent);

“(b) The Secretariat should prepare a road map for the implementation of the program showing the organizational and resourcing requirements. This road map should be reviewed by the committee at its meeting scheduled for the first week of December 2007; and,

“(c) The implementation of the program should be periodically reviewed by the Audit Committee”.

(ii) that the Secretariat should present, by the end of November 2007, to the WIPO Audit Committee for its consideration a plan and a road map for the implementation of the comprehensive integrated program for organizational improvement, as well as organizational arrangements for the implementation of that program.

(iii) that an open-ended meeting of Member States be convened, in the first quarter of 2008, to consider the documents to be submitted by the Secretariat to the WIPO Audit Committee in accordance with the preceding sub-paragraph, revised if appropriate in the light of any comments of the WIPO Audit Committee.

35. The Delegation of Brazil stated that, while it had no problem with what was written in paragraph 18, the issue of convening an open-ended group for an interactive dialogue on the plan was not acceptable to it, as the plan, in its opinion, should be submitted for decision of Member States and not simply for an inter-active dialogue.

36. The Secretariat stated that it had in no way suggested that the plan would not need to be approved, but had sought merely to pick up on the desire expressed by a number of delegations to have an inter-active process about the way in which it would go forward in the future. From the point of view of the Secretariat, there was no difficulty whatsoever with the notion that there would be some form of approval process for the various recommendations that had been made in the Organizational Improvement Program.

ITEM 11 OF THE CONSOLIDATED AGENDA:

REVISED TERMS OF REFERENCE OF THE WIPO AUDIT COMMITTEE;
CONSOLIDATED REPORT OF THE WIPO AUDIT COMMITTEE FOR THE 2006-2007
BIENNIUM; REVISED INTERNAL AUDIT CHARTER; SUMMARY ANNUAL
REPORT OF THE DIRECTOR OF THE INTERNAL AUDIT AND OVERSIGHT
DIVISION

37. Discussions were based on documents WO/GA/34/3, 4 and 15.

38. The Secretariat recalled that the approval by the Director General of the first WIPO Evaluation Policy in May 2007 was a significant step forward. However the Internal

Oversight staffing remained below the accepted UN norms, and concrete plans were in place to effectively and quickly deal with this challenge.

39. At the invitation of the Chair of the General Assembly, the Chairman of the Audit Committee introduced the revision process of the Terms of Reference for the WIPO Audit committee (WO/GA/34/15). He stated that the Committee had been involved in this exercise in a number of occasions, in an interaction both with Member States and the Secretariat. It followed and participated in two Working Groups for that purpose, and in the Program and Budget committee's deliberations. On the consolidated report of the WIPO Audit Committee for 2006 and 2007, he said that this was the first time the Audit Committee reported to the General Assembly upon its own initiative. The Report outlined the Committee's main tasks and activities in 2006 and 2007 putting into context the concept, role and function of the Committee as an oversight body within the UN system.

40. The General Assembly took note of the contents of documents WO/GA/34/3 and WO/GA/34/4, and approved the revised terms of reference of the WIPO Audit Committee and the revised WIPO Internal Audit Charter, as contained in Annexes I and II, respectively, of document WO/GA/34/15.

ITEM 12 OF THE CONSOLIDATED AGENDA:

INTERNAL AUDIT REPORT OF WIPO ISSUED SINCE THE LAST GENERAL ASSEMBLY

[to be referred to the Friends of the Chair]

41. Discussions were based on the revised Agenda as reflected above.

42. The Chair recalled that in adopting the provisional agenda contained in document A/43/1 Prov.1 Rev. of the forty-third General Assembly of WIPO on Tuesday, September 25, 2007, the General Assembly decided to refer item 12 to the Group of Friends of the Chair. The Chair was expected to report back to the Assembly in the course of the current session.

43. He said that in arriving at the consensus decision on the Draft Agenda – discussions around which, as he had said, had dragged on for hours and could have adversely affected the proceedings of the Assemblies – it was pertinent to recall that it was also agreed that the action to be taken should not in any way:

(i) prejudice the rights of Members to bring forth any future agenda item that may be deemed appropriate, and that

(ii) Member States would retain the right concurrently to respond when the Report of the Friends of the Chair was presented to the Assembly.

44. The Chair informed the delegations that he wasted no time in commencing the work and, initially, his idea was to have the Group composed of one Ambassador from each of the regional groups, to be entirely inclusive and equitably representative. However, because of

the concerns expressed by some groups with this arrangement, the Friends of the Chair group was expanded to include a coordinator plus one from each of the regional groups.

45. On the substantive work, the Group met three times in formal sessions, to deal with the matter before it. Significantly, as it turned out, discussions centered on the nature of the Group's mandate, namely whether its task was to consider the procedural questions of the agenda item or the substantive matter of the issues raised in the agenda item.

46. The Chair indicated that whereas some members proposed that the issue was purely procedural and nothing to do with substance, others argued that the matter before the Chair's Group was "to study and discuss and pass recommendations on the allegations contained in the "Internal Audit Reports of WIPO issued since the last General Assembly."

47. He stated that the chasm in the view of the Friends of the Chair could clearly be gleaned from the written positions of the Friends on the Agenda Item which were attached as Annexes to the statement for the information of the General Assembly.

48. The Chair wished to underline and also thought that, before starting the meeting, he would request the Friends of the Chair to hand in three paragraphs, totally unfettered, without pre-conditions, on how they thought the matter should be dealt with. He said, indeed, they did provide him with written views on their positions and informed the Assembly that he had the said written paragraphs and which any delegate could read if it so wished. As a result of the said meetings, the Chair said that there was clearly what one could categorize as emerging consensus.

49. He noted that in spite of the difficult nature of the matter, and the divergence of the views of the Friends of the Chair as to how best the situation could be addressed, there were basic areas in which common agreement was reached.

50. First, that the issue at stake must not be handled in an arbitrary manner, but in accordance with due process, that is to say, in conformity with the existing rules and regulations of WIPO.

51. He said that the second subject on which there was broad agreement was that the matter in question should also be handled in a manner that may not be construed as targeting any individual or group of individuals, but intended primarily to uphold the integrity of WIPO as a UN specialized agency.

52. Consequently, the Chair noted, that the majority position was – and he emphasized on underlining the words "majority position" as this could be statistically proven –:

(i) that the issue should be referred to the appropriate mechanism of the Organization for dealing with audit matter, in this case, the Audit Committee;

(ii) that the Audit Committee should review the audit reports and submit its findings to the Chair of the Assembly and to the Member States, which reports should be marked confidential.

(iii) that the Audit Committee should include in its report appropriate recommendations including follow-up actions to be taken by the General Assembly.

53. He said that now he had to come to what may be described as the unsettled issue. The Chair noted that in spite of the cordiality and frankness which characterized the discussions, one issue which could not be settled, however, was the matter of time-frame, for the consideration of the subject by the General Assembly. He listed the three points of view that were discernible:

(i) a group of delegations (the preponderant view) stated that the current Assembly could not make a substantive assessment of the report at this stage, because to do so would be prejudging the issue and making a culprit of an individual, even before any determination was made. This group wanted the matter to be referred to the next regular session of the General Assembly;

(ii) another group thought that the debate on time-frame was no longer relevant if the matter would be referred to the Audit Committee for its review and recommendations;

(iii) a delegation wanted the matter to be debated at the current session of the General Assembly and not remitted to the Audit Committee.

54. The Chair stated that he had finished with the formal report, but if the Assembly did not mind, he wished to ask a question: "Where would the Assembly go from here?" He said that it was obvious, at that time, especially in the context of the ongoing debate on Agenda Item 12 that WIPO was at a crossroad, but as frankly noted in part of what he had presented, this sensitive matter must be handled carefully and in line with due process. He said that this was important, not only to ensure that the action of the General Assembly would stand the test of time but also that the important work of the Organization and its stature of importance, which it had acquired over the years, was not degraded nor diminished.

55. He urged all delegations to show utmost restraint in exercising their rights of response. He noted that like every human effort, the work that had been carried out by the Friends of the Chair was not definitive. It did not come down from heaven but indeed the outcome of this work was borne out of good faith; out of a firm determination to achieve consensus and address the issues before the General Assembly in the overall interest of WIPO.

56. The Chair stated that his conviction was that there was something in it for everybody. After all, the process of reconciling competing national or group policies did not at all mean that the General Assembly should settle for the production of least common denominator resolves. Neither did it require some Member States or group of Member States to surrender while others basked in celebratory victory. Instead, the process necessarily required mutual understanding, and a willingness to adjust and accommodate group or national positions in the interest of serving the collective good.

57. He further stated that the collective good as he saw it in this case was for the esteemed Assembly to do what was needful, legal, as well as appropriate, in the best interest of all humanity. It is for that reason that he wished to encourage the distinguished delegations present to see themselves not merely as representatives of national governments, which they were, but crucially and importantly, as partners with a common objective of assuring that WIPO continued to discharge its responsibilities satisfactorily.

58. The Delegation of Algeria, speaking on behalf of the African Group, said that, although as the delegates could imagine, he had not had time to consult them on what the Chair had just said. He congratulated the Chair, on behalf of his delegation, for a very balanced and objective report on what had happened in the Group of Friends, and thought it was very helpful that they look for solutions to the present predicament. The Delegation said that at the opening of the present session, and adding that he was speaking in the name of the African Group – unless he was challenged later – he was also speaking in the name of the African Group on what he had just said — at the opening of the present session, the adoption of the Agenda was blocked by some Member States who insisted that it should include a supplementary item on the follow-up to an internal report of November 26, 2006.

59. The Delegation of Algeria speaking on behalf of the African Group expressed two series of legal concerns which it considered deserved notice if the General Assembly were to respect due process.

60. First, internal audit reports were of a confidential nature and Member States could only access the said reports individually in the Internal Audit Office. This was stipulated in items 10 and 15 of the WIPO Audit Charter adopted by the General Assembly which should comply with the rules it had itself approved. Purposeful leaks organized by some interested parties in no way should justify official endorsement by the Assembly. The Delegation noted that, of course, the General Assembly may take a decision to waive the confidentiality, but it would not be legal or ethical for the current session to waive its own decisions unless in this instance, a case of grave misconduct had been confirmed. He went on to quote “following a procedure enabling the individual concerned to defend his or her case effectively before an independent and impartial body” to use the terms of the ILO Administrative Tribunal Judgment no. 2232 of 16 July 2003.

61. The Delegation warned that disregarding the Audit Charter and recent case law in this regard would destabilize the Organization and cause moral prejudice to its Chief Executive for the likes of whom the above-mentioned Tribunal recognized the unlawful nature of the decision taken giving rise to entitlement to substantial financial compensation.

62. Secondly, the Delegation said that according to Rule 6 of the Rules of Procedure of the General Assembly, this body deliberated on the agenda items on the basis of working documents which, he quoted “were sent out at the same time as the letter of convocation or as soon thereafter as possible”.

63. The Delegation said that the audit report was not one of the working documents and indeed could not have been sent out to Member States in violation of the Audit Charter in the absence of an explicit decision of the Assembly to waive confidentiality. The Delegation insisted that information documents or copies of correspondence distributed during a session are not working documents and cannot therefore substitute for the latter.

64. The Delegation stated that out of deference for the 175 delegations coming from all parts of the world who had waited idly by for a day and a half to get down to business because of the stalemate on the agenda, and in a spirit of compromise, the African Group accepted not to push the issue to a vote that it would most likely have won, but to include an item on “Internal Audits issued since the General Assembly of 2006” without any reference to a specific text having no legal existence and as an Assembly document, and without mention of “follow-up”.

65. There had been discussions as to what should be brought up under the item, whether it should be discussed on substance or whether it should be a procedural discussion on the way of ensuring due process before the substance of the issue becomes officially public by coming to the Assembly for decision, if need be.

66. The Delegation warned that to discuss substance now would imply waiving confidentiality and therefore implicitly recognizing a case of gross misconduct by the Director General, presumably since his last re-election by acclamation four years ago.

67. Referring to the ILO Tribunal case law it had mentioned, the Delegation said that it appeared that reelection by acclamation was significant in terms of recognition of full satisfaction concerning the stewardship of any such official in the discharge of his/her mandate. The view expressed by the overwhelming majority of Member States during the general debate on item 3 a few days ago and the clean bill of health of the institution delivered to the current session of the General Assembly by the External Auditor pointed in the same direction.

68. The Delegation said that while its acceptance of this agenda item was an expression of a readiness to compromise with one group that does not agree with the broadly shared assessment, the African Group was committed to the respect of due process. In this case, it meant that the Audit Committee, which had not even received so far the Annexes concerning the evidence in support of the fact-finding audit report, should be tasked to determine the legality or *locus standi* of the report as well as the legitimacy of measures taken so far in relation to the said report as well as review evidence contained in all relevant Internal Audit reports under the present agenda item which was or may become available in this regard. It should include in its review all relevant documentation such as the last External Audit Report, the factual report of the proceedings of the PBC's ninth session of January 2006, the Ernst and Young report, the PricewaterhouseCoopers report, and any relevant correspondence on file, whether signed or anonymous. Finally, it should give the opportunity to the Director General to defend his case effectively and should also consult the Legal Counsel and review all legal opinions given by him in this regard.

69. The Delegation advised that in discharging its task, the Audit Committee should be mindful of its mandate and of the Audit Charter.

70. Pending consideration by the Audit Committee of the issue, the African Group considered that the current session of the General Assembly could not prejudge of its outcome and therefore saw no reason why the Committee should draw up its report within 60 days, even if it can humanly do that; that is before its next session in December 2007, or why the issue cannot be considered normally at the next regular session of the Assembly. The Delegation reiterated that there was no evidence to indicate that one should proceed otherwise.

71. The Delegation considered that it was usual practice where the rule of law prevails to consider any individual to be innocent until he or she had been found guilty and impartial body. It challenged those who did not believe in that principle to bring to the public gaze of the current session the substance of the claims included in one report drawn up by one interim Internal Auditor and in so doing, disregard the statutory mechanisms of the Organization and call, if they wished, for punitive action against the Director General. But let not the General

Assembly itself be tainted by such an approach, thus avoiding condemnation for wanton behavior by the UN Tribunal as was the case with a similar intergovernmental body only a few years ago.

72. The Delegation recalled that it was not only talking about avoiding the financial consequences of unfair action in terms of wasting part of the WIPO budgetary surplus on the payment of damages but was also referring to the dignity of the sovereign body of WIPO and also, why not, to that of its Director General.

73. The Delegation wondered how could one in the same breath deny due process and express concern for the credibility of WIPO which such negation of due process was undermining more than all else. If a Head of Agency can thus be targeted without due process, what would be left of the independence of the Chief Executives of UN agencies that was claimed as vital, even by those who disagreed with the Delegation but fought tooth and nail to uphold independence for their nationals heading other UN agencies?

74. The Delegation quoted the ILO Tribunal which stated in the case of another Chief Executive who was summarily dismissed before completion of his second mandate that, "Independence of international civil servants is an essential guarantee not only for the civil servants themselves but also for the proper functioning of international organizations. That independence is protected *inter alia* by the fact that they are appointed for a limited term of office. To concede that the authority in which the power of appointment is vested may terminate its appointment in its unfettered discretion, would constitute an unacceptable violation of the principles on which international organizations' activities are founded by rendering officials vulnerable to pressure and to political change".

75. The Delegation recalled that over 32 centuries ago, the King of Babylon, Hammourabi, prefaced his famous Code by saying, and it quoted "I prescribe these laws so as to prevent the powerful from oppressing the weak." This was still relevant to Africa, to the African Group and African Heads of international agencies today. The Delegation called for the respect of the law to uphold fairness because that was their only shield from the superior force of those who challenged such fairness of treatment.

76. The Delegation of the United States of America expressed its thanks to the Chair for his faithful report as to the Friends of the President Group, as he had committed to do so and for having done so. The Delegation begged the Chair to forgive it as it did not have the talent for confusion, distortion and double-speak so prevalent in these days. The Delegation said that it would instead speak very plainly, and very clearly. It recalled that one week ago into the current WIPO General Assembly, the delegations were still in a stalemate on Agenda Item 12: the Internal Auditor's report about something so absolutely fundamental as the judgment, integrity and character of the Director General of WIPO. The Friends of the Chair Group had spent a week and had not even yet decided if the Internal Auditor's report was a valid one, if it should be reviewed at all, and as many Friends of the Chair had represented, they had not even yet availed themselves of the opportunity to read the Report, even though it had been available for some eleven months, much less what the serious concerns and conclusions in the Report meant for the future of the Director General and for WIPO. The Delegation said that the United States of America was committed to a strong and vibrant WIPO. The vital work ahead for the important Organization demanded of its top leadership a Director General that was above reproach and not surrounded with serious questions, allegations and evidence, which seriously questioned his character, integrity and judgment. The Delegation simply said

to all the Member States of WIPO, the Director General and to the people who work at WIPO, there was evidence in the Internal Auditor's Report, which was clear and incontrovertible, that the Director General's conduct constituted a violation of WIPO's staff regulations and staff rules, and that those acts could not be considered mere administrative errors, and that with the repeated use of an incorrect birth date, the Director General's career path would not have been the same, and that those repeated series of errors in judgment rose to the level of violations of WIPO staff regulations and rules. The Delegation stated that while they were asking questions, it wished to ask a simple question. Did the Director General deny that the repeated series in errors of judgment had cast a serious pall on his leadership, both within and outside the organization, and that these errors in judgment constituted a violation of WIPO staff regulations and rules? The Delegation wished to receive a yes or no answer. It said that the concept of integrity was enshrined in the Charter of the United Nations. The standards of conduct for the international civil service stated that the concept embraced all aspects of behavior of an international civil servant, including such qualities as honesty, truthfulness, impartiality and incorruptibility. The standards of conduct emphasized that these qualities were as basic as those of competence and efficiency. The highest official of any agency in the United Nations system must therefore be above reproach and of the highest integrity. The Report that was the subject of the discussion, WIPO internal audit IAOD INV 2006/2 had been available in accordance with the WIPO Audit Charter to all Member States since it was issued in November 2006, some eleven months ago. The Report also concluded that the Director General made false statements on his original application for employment at WIPO and in the official submissions thereafter, and in so doing, violated both the Organization's staff rules and regulations and the principles that the Delegation had just cited – those which governed the conduct of international civil servants. The Report revealed that during the period of 1982 to 2006, the Director General used at least two different birth dates – one for employment purposes at WIPO and another for personal purpose. The Report also concluded that the Director General knew that in this filing, his original application for employment at WIPO in 1982, the birth date reflected on that document was incorrect. The Report stated that, notwithstanding the Director General's admission that he was aware of the inconsistencies and despite the numerous opportunities that presented themselves to rectify this error, he failed to rectify the discrepancies. As the internal auditor's report explained, those actions appeared to violate WIPO Staff Regulations and Staff Rules and standards of conduct for UN civil servants and led the Director General to receive positions and benefits to which he would not otherwise have been eligible. Moreover, his newly asserted age seemed likely to provide additional financial benefit. The credibility of an Organization like WIPO depended on its honest and ethical administration. All staff members, but in particular those who lead the Organization, must be held to the highest standards of ethical behavior. The Director General, like any civil servant, must be held for his or her conduct.

77. To that end, the Delegation of the United States of America called for an urgent convocation of the WIPO Coordination Committee to review, evaluate and take appropriate action on that Report and to demonstrate to the United Nations community that WIPO as an Organization was committed to implementing the ideals enshrined in the United Nations Charter. As Member States they had the high moral obligation and owed it to the Nations that they represented, and to the United Nations Charter they had pledged to uphold, to fulfill their duty to exercise leadership and organization of the Organization without fear or favor. The Delegation stated that failure to do so, that is, failing to address the serious alleged misconduct on the part of the highest official of this agency would call into question the integrity and perhaps the very future of the Organization. The Delegation called on the Director General to clearly and convincingly, answer the allegations against him in an open

forum of the current General Assembly before Member States, or heed the calls of those calling for new leadership at WIPO. It respectfully and strongly urged fellow Member States to take action now.

78. The Delegation of Pakistan speaking on behalf of the 57 members of the Organization of the Islamic Conference (OIC) said that the OIC believed in and supported transparency, credibility and efficiency of the Organization. It greatly appreciated the efforts made by the Chair, and the Friends of the Chair, to bridge the gaps between different points of views. The Delegation also appreciated that under the Chair's able guidance the process had moved forward. In response to the question posed by the Chair – where do we go from here? – the OIC believed that it was fair and logical that due process should be followed. And in this case, neither Member States, nor the Audit Committee or any other subsidiary body be permitted to short-circuit, or by-pass due process. The OIC fully endorsed the recommendation by the vast majority of the Friends of the Chair that due process should be followed, before the General Assembly started debating the issue. It suggested that the Audit Committee be requested to review this subject's report in an independent and impartial manner at its next session in December 2007 without any kind of pressures. The OIC supported the position of the African Group on the issue.

79. The Delegation of South Africa wished to extend its appreciation to the Chair for the objective and balanced reflection of the work of the Friends of the Chair, and his excellent steering of the matter. The Delegation also wished to register its strong support for the statement by His Excellency, the Ambassador of Algeria, in his capacity as coordinator of the African Group. It noted that the issue under discussion raised fundamental questions of procedure. In approaching the question regarding Agenda Item 12 relating to the WIPO Internal Report of November 2, 2006, it was imperative that objective criteria of due process be consistently adhered to. Any attempt to deviate from standard internationally accepted labor practices as applied within the UN system risked inflicting damage on a number of entities and generating possible counter-measures. The Delegation stated that, firstly, this would concern the potential damage to the image of WIPO for not upholding principles that it publicly articulated for itself and its constituents. Secondly, potential damage to the United Nations system as a whole since WIPO was a member of specialized agencies operating within the UN system and, thirdly, potential foregone outcomes of potential actions available to the individual under discussion against the institution. The Delegation said that it was therefore imperative that Member States reflect carefully on the implications that their chosen approach might have on the long-term interest of the Organization. Reforming the statement made by the African Group Coordinator, the South African Delegation wished to state that, in compliance with the World Intellectual Property Organization's rules of procedure, in particular Rule 6.2, which necessitated that working documents be provided in advance to Member States for deliberation and decision-making at the General Assembly, the Delegation therefore fully supported the proposal that the Agenda Item 12 be referred to the Audit Committee, which should consider all documents related to this matter, and for its recommendations to be considered at the next regular session of the General Assembly. The Delegation underscored that the South African position essentially maintained that the balanced and just finding would only be possible if they as the WIPO membership ensure that the procedures that they adopted was beyond reproach and was underpinned by unscrupulous integrity and transparency applicable to all.

80. The Delegation of Portugal said that it wished to take the floor on behalf of the European Union and expressed its appreciation for the efforts undertaken by the Chair as

Chairman of the Group of Friends to deal with Item 12 of the Agenda appropriately. The Delegation regretted that the Group could not reach an agreement and that the Director General had not been able to participate in the discussion. The Delegation stated that the EU was deeply worried about the impact the present situation was having on the credibility and image of WIPO, and on WIPO's capability to fully discharge its mandate and that the EU had conveyed this message to the Director General. It noted that the way in which the current session of the General Assembly had functioned so far was a sad proof that the Organization had begun to feel the negative effects of the current situation. It wished to inform the General Assembly that in the current regrettable situation, the EU had advised the Director General that it would be in the best interests of the Organization for him to consider his position. There was a leadership crisis in WIPO that needed to be solved. The EU was firmly convinced that the current General Assembly should address the Internal Auditor's report, and decide on the most appropriate follow-up consistent with the urgency and seriousness of the matter.

81. The Delegation of Italy thanked the Chair for his objective and balanced Report, as well as for his enlightened guidance of their Group. The Delegation was proud to be working in the Group and was glad that, starting with the Group's common work, it was counted among the Chair's personal Friends. It stated that Italy, as an EC member, and at the same time in its capacity as the current Chair of Group B, wished to express its full support for the statement by the European Community delivered through the Portuguese presidency. As regional coordinator of the B Group, the Delegation simply wished to recall that the European Community statement was unanimously approved by all 27 Member States and therefore faithfully reflected the views of 15 EC members within Group B. Furthermore, the Delegation wished to underline that it fully shared with all Group B members, and EC member States, as pronounced in the statements which had already been delivered before the Delegations, the sense of priority and urgency of this matter. It should not be interpreted, however, either as a sign of disregard for the rules and procedures of this Organization, nor as a personalization of an individual case, but on the contrary referred, as had been said, to the need of immediately ensuring the orderly and effective function of WIPO in the months to come.

82. The Delegation of Ethiopia also fully supported the African Group position read out by the Delegation of Algeria on behalf of the African Group. It thanked the Chair and his Friends who tried their level best to bring the General Assembly to a common position on the matter. The Delegation considered the Report to be balanced. It said that in the grand scheme of things, it believed that the current session of the General Assembly had much more urgent relevant actions requiring its utmost priority. It reiterated that the Delegation's position was not based on sentimentalism but on legal grounds. It called on the Assembly to respect the legal opinion given by the Legal Counsel and the relevant procedures of WIPO. Doing so was required by the relevant legal instruments and the experience of the proceedings of the current General Assembly, which was a solid practice. The Delegation pointed out that Member States had staked so much in the Organization. The least developed countries needed the Organization to deliver, there was so much to do. It took examples, in terms of the WIPO Development Agenda and the IGC and saluted his leadership and those who made it possible that, despite earlier risks, the Assemblies were not entirely bogged down with the issue. It was with that spirit that the Delegation fully supported the African position on this matter so eloquently delivered by the Algerian Ambassador. It stated that it was strongly convinced that Delegations which showed respect and support to individuals who ran this institution in the past should treat in the manner every innocent human being deserves, until

of course proven guilty. The African Group positions came not of the group's blind support but of procedural correction and legality. No institution would emerge and start from politicized proceedings. The Delegation said that the current General Assembly could not be a disinterested jury. It called on the General Assembly to invest its energy in entrenching rules that ensured institutional vitality rather than diminish the dignity of individuals who had done so much for the institution. If the Director General were to be held accountable, that should be done following procedures that respect the rule of law and transparency.

83. The Delegation of Egypt wished to express its Delegation's gratitude for the excellent manner in which the Chair had been conducting the General Assembly's work and assured him of its support to facilitate the successful conclusion of the current session of the General Assembly. The Delegation associated itself with the statement of the distinguished Ambassador of Algeria on behalf of the African Group. It wished to thank the Chair for his report on the deliberations of the Friends of the Chair to handle Agenda Item 12. The Chair's presentation had definitely enlightened the membership, and was a demonstration of his strong adherence to transparency. The Delegation stated that it would be noted though that consensus was not achieved in those deliberations, and thus as the recognized rule, would stipulate that nothing was agreed upon until all parties agreed. The Delegation commended all those who had participated in the deliberations of the Friends of the Chair and was confident that they had undertaken this responsibility in good faith and with the interest of the Organization as the overwhelming driving force and priority. The Delegation said that at that juncture, its Delegation found difficulty to address the substance of Agenda Item 12 since there was no documentation which had been officially submitted. It could only encourage the Chair to continue his consultations on this matter, to arrive to a consensual position that preserved the sanctity of the rules and procedures of the Organization, due process and its credibility. The Delegation was confident that further consultations might be productive, so as to refer this item to the appropriate mechanisms of the Organization so as to review fairly, impartially and comprehensively all its aspects, and to take whatever action in accordance with the applied rules and procedures of the Organization.

84. The Delegation of Kyrgyzstan expressed its respect for the Chair for his wise direction of the Assembly. It also wished to express its satisfaction with the Report prepared by the Chair with the help of the Friends of the Chair. The Delegation believed that it was in the best interests of the Organization to carry out the work gradually, step by step, following what the Member States had established as the rules and regulations. In conclusion, the Delegation expressed its support for the statement by the distinguished delegate of Algeria, and also the distinguished Delegation of Pakistan on behalf of the OIC.

85. The Delegation of Switzerland expressed its thanks for the efforts the Chair had made in the current context. In particular, the Delegation wished to thank him for having reminded the General Assembly of the need to respect the rules. Item 12 was on the agenda of the Assemblies. It was therefore in line with the rules that delegations should speak on the substance of the Internal Audit Report. It was in fact difficult to consider that Report as being confidential while it had been open to consultation by delegations for months now. It was in the hands of the media and it had been published on the Internet a long time previously. The Delegation called on the Assemblies not to forget their duty as the supreme body of the Organization, and it was also their duty to exercise their supervisory role. Member States could not remain silent while everyone was talking about a crisis at WIPO. The Delegation said that first of all it wished to express its surprise at not seeing, among the members of the International Bureau present in the room, the Director General of WIPO himself, who was the

first one to be concerned by the agenda item. Having said that, the Delegation wished to make the following statement.

86. “For an Organization such as WIPO, for it to be able to function in the best possible way, it is appropriate that at every level and particularly its Head, it should show integrity, transparency, dependability, and a strict respect for the rules. It is on that basis that the image of an Organization is built, setting an example and providing motivation for its staff. It is on that basis that Member States can have trust in it. My Delegation was very concerned and worried when it read in a report of the Internal Auditor of WIPO that it was able to consult in its offices, as stipulated in the Audit Charter, that the Auditor had noted after a thorough study of many documents that the Director General of the Organization had used, for more than 20 years, at least two different birth dates for the purposes of his professional career in the Organization and that he had done this, as stated in the Report, with full knowledge of the facts and in a repeated manner. The fact of using, at a particular time and with full knowledge of the facts, an incorrect date of birth implies that the WIPO staff rules and the rules of conduct for UN officials have been violated, allowing the Director General to occupy positions that he would not have been able to occupy at the time because they were reserved for people of a higher age group. The case law of the ILO Administrative Tribunal contains a number of precedents which illustrate the assessment we can make of this type of action. For my delegation—the important thing at present—is to consider the integrity and credibility of our Organization, which for years now, has been the subject of criticism as regards its management, whether in the press or, more importantly, in the internal and external audits, which have noted serious problems in the management of WIPO. One of these reports even characterizes these problems as factors that could be considered irregularities. I refer to the Ernst & Young External Review Report concerning the World Intellectual Property Organization, page 3. In order to ensure the integrity of this Organization and to overcome the present crisis, so that both delegations here and the staff can finally and calmly discuss substantive issues of intellectual property, it would now be appropriate to draw lessons from this immediately, and adopt the necessary decisions so as to get back to work with a management, in which both the Member States and the staff of WIPO can put their trust. It is not a document such as A/43/INF/8, distributed at the beginning of the session, that will re-establish our trust. Quite the reverse. Its tone and content, which imply criticism of the internal audit to which the Joint Inspection Unit (JIU) has already replied in a letter of September 25, 2005, leave us puzzled. We will reserve the right to come back to this letter at the appropriate time. Clear facts have been established in the Internal Auditor’s Report, backed up by many pieces of evidence that any delegation has been able to consult, since they have appeared in the Internal Auditor’s Office. It is on these facts that we should now base ourselves to decide on appropriate action to restore the integrity of our Organization, basing ourselves on management that shows integrity, competence in management and technical expertise, all of which the Organization needs so much. Having said that, Mr. Chairman, we would like to emphasize that if we are referring to consequences and lessons to be learnt, this is above all in the prospects for change at the Head of the International Bureau, which should, irrespective of the current crisis, take place in November 2009 at the latest. So we should consider now the process and the timetable to ensure that the next generation of leaders of this Organization will be selected calmly and with an insurance mechanism that will avoid situations in the future such as the one we are experiencing currently. It would also be appropriate to provide, in the period until the hand-over of power, safeguard measures to stabilize the situation and avoid any other damage being caused in the meantime”.

87. The Delegation reiterated that all that should be done on the basis of the facts that had been established and documented in the Internal Auditor's report. Specifically, the Delegation thought that it was up to the Coordination Committee, based on the evidence, to prepare the process that should lead to the change of generation at the head at WIPO, be it in November 2009, or earlier. The Delegation assured the Chair that he could rely on its active contribution, just as it had always done in trying to find results in the interests of the Organization and all its Member States. That was a concern particularly close to the Delegation's heart, both as a Member State of WIPO but also as the host country.

88. The Delegation of Benin spoke on behalf of the Least Developed Countries and supported the position expressed by the Ambassador of Algeria on behalf of the African Group as well as the statement by the Delegation of Pakistan on behalf of the Organization of the Islamic Conference (OIC). The Least Developed Countries adhered to a legalistic approach and respected the procedures in force in the Organization. The issue under discussion should therefore be submitted for consideration by the Assemblies of Member States in 2008.

89. The Delegation of Slovenia appreciated the efforts undertaken by the Chair and was honored to be part of the Group of Friends. The report of the Chair was very accurate and illustrated differences among friends. It was regrettable that a common position was not found but it was basically agreed that we disagreed. The credibility and integrity of the Organization was of the utmost importance and the allegations related to the Organization and its Director General were serious. More importantly the present situation had had a negative impact on WIPO capabilities to fully discharge its mandate. It was both regrettable and deplorable. The Delegation was of the opinion that the current General Assembly should address all relevant issues in a manner consistent with seriousness of the matter.

90. The Delegation of the United Republic of Tanzania associated itself fully with the statement made by Algeria on behalf of the African Group and also by Benin on behalf of the LDCs. It also wished to commend the Chair and all the Friends of the Chair for the efforts made and the report which had now been made available to the General Assembly. The Delegation upheld due process and the rule of law in dealing with the delicate issue before the Assemblies.

91. The Delegation of Japan noted that the situation was of a serious concern to all and must be normalized as soon as possible. Certain principles had to be followed: One, solve the issue as soon as possible. Two, try not to politicize the problem as much as possible. Three, follow the due process. That was so important and was not to be sacrificed. Four, from this the following could be said. One, it was not possible to wait until the next General Assembly. Two, the Coordination Committee could give advice to the General Assembly in accordance with Article 8 of the WIPO Convention. That Committee could therefore discuss the present situation and specifically the classified Internal Audit Report, or the Audit Committee Report referred to in the Chair's remarks, or the Secretariat's explanatory note which was handed out on the first day. If the Audit Committee Report was to be made in sixty days it should be made to the Coordination Committee. If it not made within 60 days, the Coordination Committee should make its judgment and make its report to the General Assembly based on all other documents referred to. It was noted that WIPO was in crisis, and that it was stared at by the International Community. It is important not to be irresponsible, not to make any mistakes. The issue was to be overcome together.

92. The Delegation of Poland was grateful for the factual balanced report that the Chair prepared. The statement made by Portugal on behalf of the European Community was supported. It was of the opinion that the negative impact that the implications of the report could have on the work of the organization required urgent measures to be taken immediately. The transparency of a UN system organization such as WIPO requires that the developments regarding the top management be publicly discussed in view of coming to a common understanding of underlying issues. It was sad that the present General Assemblies had proven so far unable to effectively address this issue.

93. The Delegation of Slovakia supported the statement made by the Portuguese Presidency of the European Community and underlined the fact that the issues related to the management and the leadership of the organization had been preoccupying both the deliberations and the first week of the General Assemblies. The whole membership was called on to take up these issues in a transparent and fair way in order to create conditions which would open the door for overcoming the current impasse and create preconditions for improving the credibility and integrity of the organization. Taking into account everything that had been said a clear answer which would provide an exit from the current negative situation was expected from this Assembly.

94. The Delegation of Spain expressed gratitude for the work done by the Group of Friends of the Chair and noted that item 12 on the Agenda adopted by the Assembly on September 24 only had a point if it were discussed at the current Assembly in the same way as other agenda items. The apparently internal nature of the report could not prevent consideration of the issue by the Member States since the report which had been classified as confidential had been available on the Internet for a number of months. Legally speaking the reality should not be denied. The Delegation considered that it was illogical to maintain the view that the discussion was not the preserve of the General Assembly as the sovereign authority of WIPO, since Article 9.4(c) of the Convention of WIPO made the Director General responsible to the General Assembly. Not submitting the report to a transparent debate in the Assemblies would in fact achieve the contrary; it would leave doubts in the minds of Member States as to the conduct which efforts were being made to analyze. It was undeniable that damage had been caused to the image of WIPO before the international community and in particular the United Nations Agencies. The question did not relate to a person or to a position. It was a question of whether or not the law was respected or complied with, if the interpretation of the law depended on who it applied to or whether there was one law for all, in this case the officials of an organization, or whether the interpretation of the law changed depending on the position occupied by the official. It was unacceptable to try to avoid the issue by means of legal argument. If there were evidence that an irregularity had occurred then the legal consequences should be assumed. The aim was to restore the calm necessary for the Assemblies of the Member States of WIPO to continue working. That was in order to come back to a situation where a consensus could be found among the Member States and indeed for the peace of mind of the staff of WIPO. The Director General should assume his responsibilities in particular with regard to respect for the dignity of the Institution that he represented and in accordance with the consensus on the basis of which he was elected.

95. The Delegation of Sweden supported the EC statement made by Portugal that the General Assembly should address the internal auditors report and decide on the most appropriate follow-up.

96. The Delegation of Kenya supported the statement made by the Ambassador of Algeria on behalf of the African Group and commended the able and effective manner in which consultations were made and for the fair and balanced report, that was presented to the Assembly. The issue here revolved around the cardinal principle of due process. It was not trying to prejudge the guilt or otherwise of an individual, but the insistence on a fair and impartial treatment based on the principle of due process under the rule of law. The matter should be approached with impartiality and maturity so there could be a win/win situation. This could only be achieved through the due process and appeal to the Assembly to avoid the temptation of lynching an individual allegedly caught. Developing countries should be the ones advocating the need to respect the due process, a principle which was held as sacrosanct and championed by all countries that believed in democracy and respect for the rule of law. Any attempt to circumvent the process would be calamitous for the integrity of the Institution and the United Nations System as a whole. There may be doubts as to the credibility of the Director General. Depending on how the matter was handled it would be the integrity, credibility and reputation of WIPO and the international system as a whole that would be impugned and compromised. That would be truly regrettable considering the importance of the organization. WIPO was too important an organization, especially for those from developing countries and from Africa. There was a need for sobriety, impartiality and maturity in handling this matter.

97. The Delegation of Bangladesh had taken careful note of the various statements made under this agenda item, including the arguments put forth by the Ambassador of Algeria speaking on behalf of the African Group, and the statements on the matter made by the Delegation of Pakistan on behalf of the OIC and Benin, on behalf of the Least Developed Countries. It was stressed that due process be adhered to by referring the matter to the Audit Committee for consideration, with a view to making recommendations to the next General Assembly.

98. The Delegation of Ireland supported the statement of Portugal on behalf of the EU. The report of the Internal Auditor had been read and it was believed that there was now a leadership crisis in WIPO which was having a serious impact on the image and credibility of the Organization. The report should be discussed and dealt with at the General Assembly.

99. The Delegation of the United Kingdom thanked the Chair you for the report given and the outcome of the work of the Group of Friends of the Chair. It was noted that some urgency had been injected in suggesting that the Audit Committee should report back after 60 days but that note of urgency was almost immediately rejected by one group within the room. The statement of the European Community and of Group B was supported that morning. It was hoped for a proper discussion of the substance of the internal audit report among the Group of Friends, but that had not proven possible. A debate on the clear and serious conclusions of the report of the Internal Auditor in that group and here had been sought. The note distributed by the Director General on day one of the General Assembly took issue with elements of the report but the report was not available in the room. A letter from the Head of the JIU had been seen. The former Internal Auditor, who had written the report, which had also had comments on his reputation circulated by the Director General. The Internal Audit report was of course available on the Internet and it was sure that those who had an interest in the subject would have studied it. Among other things the report of the Internal Auditor set out the discrepancy in the Director General's birth date and the consequent doubt which must be attached to the basis on which he was originally employed by WIPO. The European Community had clearly stated that confidence no longer existed in the leader of the

Organization. Serious allegations had been directed at the Director General, procedural ploys had been used to avoid addressing them in this body. Certainly, these allegations should be answered by due process but they could not simply be averted by being swept under the carpet by reference to procedural ploys, however eloquently this might be deployed. The Delegation was quite prepared to continue working together with all the members of the Organization to preserve and further develop the common ownership that had made WIPO the organization that it was for developing and developed countries, for industry, science, academia, users and consumers alike. Many in the room would be aware of the particular efforts of the UK Delegation to further the development agenda. The commitment to the needs of developing countries was clear. WIPO was at a crossroads. Sadly, what was said was right; the UK Delegation would continue to listen with care to all the speakers, particularly, to address the substance of the important issues. It was particularly impressed by the thoughtful intervention of the representative of Switzerland to whose country and to whose views we attach particular importance.

100. The Delegation of Canada associated itself with the numerous remarks made by various delegations concerning the unfortunate impasse that had beset the Group of the Friends of the Chair. It was disappointing that strong efforts to facilitate a productive dialogue had been stymied and that the impasse had the potential to affect the work of the General Assembly and the Organization. In Canada, the Government had made accountability one of its essential priorities as evidenced by the enactment of the Federal Accountability Act, which provided specific measures to help strengthen political and management accountability. This legislation had prompted the Government to develop governance plans for increased transparency, effectiveness and oversight in its operations. Canada's commitment to accountability, however, wasn't limited to the domestic stage. Similar standards for international bodies to uphold the integrity of global institutions should be sought. Last September, in his address to the Opening Session of the United Nations General Assembly, our Prime Minister noted that UN Member States had the right to expect "more robust accountability for how funds are spent, and human resources practices that are based on merit. "In this light, Canada looks forward to continuing to work with the Secretariat and Member States to address governance in WIPO, as we do in other international organizations." The Delegation supported the view that the serious contents of the WIPO Internal Audit Report (WIP/IAOD/INV/2006/2) must be properly investigated and reported to all Member States, with respect to what was being discussed today, and that this General Assembly had a responsibility to discuss, in an open and transparent manner, the content and implications of the Report. It was for those reasons that all Member States were encouraged to collectively demonstrate not only their ability but also their willingness to address governance and accountability at WIPO.

101. The Delegation of China expressed its appreciation for the tremendous efforts made on this issue and the wise and impartial way it had been handled so far. They expressed satisfaction with the faithful report delivered to the General Assembly and fully supported the methodology and the way ahead pointed out in that report to address the issue. Given the importance of this issue, the view that due process must be followed was expressed.

102. The Delegation of Iran (Islamic Republic of) supported the declaration by the Delegation of Pakistan on behalf of OIC. The Delegation also supported the statement made by the Ambassador of Algeria on behalf of the African Group.

103. The Delegation of Zambia associated itself with the statement made by the Ambassador of Algeria on behalf of the African Group and with the Representative of Benin on behalf of the Least Developed Countries and believed that due process should be followed.

104. The Delegation of Zimbabwe associated itself with the statement made by the Ambassador of Algeria on behalf of the African Group. Due process should be followed on the matter under consideration. It declined to call this a mouse and an elephant. The supposed gravity of whatever the Director General was said to have done simply had not injured the organization of WIPO. On the contrary, the Organization had never done better. Justice could only be done and be seen to be done if proper processes were transparently followed. The Audit Committee should be allowed to do its work and report to the next regular session of the Assembly. Haste must be avoided. There was no need for the Director General to consider his position before all avenues of due process had been explored. The Assembly must decline to be led to fight battles that belonged in other places. That misdirection was what would harm WIPO more than anything that the Director General may or may not have done. The Delegation commended the Chair on his wise direction as well as the dedicated work done by the Friends of the Chair. Finally, there remained much to be done. However it was self evident that WIPO was working and everyone must desist from pretending otherwise.

105. The Delegation of Chile thanked the Chair and stated that it had participated with great interest in the Group of Friends of the Chair, which it did as a friend of the Chair and not necessarily as part of the Group of Countries of Latin American and the Caribbean. The Delegation stated that Chile was a small country and so it attached considerable importance to institutions, rules and disciplines because of the protection they offered. Similarly, the Delegation believed that respect for due process in a legal case was one of the cornerstones of civilization and that any allegation that called into the question the credibility of the institution needed to be investigated urgently. In its view, a way out to the dead-end on agenda item 12 needed to be found that complied with the aforementioned principles. In other words, it believed that the report in question should be submitted to the Audit Committee. It also believed that the Audit Committee should submit its report urgently in early December 2007 and that the report should contain conclusions and recommendations. Thirdly, it believed that, if the result of that report called into question the credibility of the institution, there were mechanisms within WIPO allowing an extraordinary session of the General Assembly to be held. The Delegation even considered that a tentative timeframe should be established for that extraordinary session in the event that it was necessary. In that way, Member States would have time to assess the original report and the report of the Audit Committee, and be able to adopt a well-informed position on the matter. However, as a compromise the Delegation thought that the General Assembly might instruct the Coordination Committee to analyze the issue, as had already been proposed. Obviously, there was insufficient time for that to take place during the current week. Finally, the Delegation called upon all members to show reason because if a way out were not found, that would further call into question the credibility of the Organization which had already been damaged. It stated that it was not necessary to be very intelligent to realize that for as long as there were no an agreement on the issue, WIPO would be seriously affected in terms of the way it worked over the coming months and that that would not help anyone. It would not be good for Member States, for trust in the Organization, or for WIPO's agenda. Nor would it strengthen the rules on integrity or help to improve standards of accountability within all United Nations agencies.

106. The Delegation of Croatia congratulated the Chair and thanked him for the work done during the course of the session, and the way in which he now was steering the work. Concerning the issue under consideration, Croatia fully supported the statement given by the Delegation of Portugal on behalf of the European Community and its Member States. It associated itself with the delegations who called upon the General Assembly to take its responsibility and act without delay on this very delicate and controversial issue.

107. The Delegation of Brazil stated that it had participated under the guidance of the Chair in the Group of Friends of the Chair, had followed the discussion and tried to contribute towards a successful outcome of the discussion in the course of the General Assembly. It stated, however, that, in its participation in the Group of the Friends of the Chair, it always made clear that it would not go into the substance of the matters and that it would only deal with the issue of procedure because it considered that that was the correct way to deal with item 12 of the Agenda. Despite not dealing with substance and only with procedure, it hoped that the Delegation of the United Kingdom would hear what it had to say with attention. It stated that to refer substance to Member States was to prejudge and to try to pass judgment in the absence of fact and based on allegations. This was contrary to the basic concept of justice and would be followed by the rendering as null and void of the due procedure of referring the matter to the Audit Committee. The Delegation rejected this approach and would not support any motion to that effect. It stated that the sole decision that could be supported by the Brazilian Delegation would be one on procedure, along the lines of what had been suggested in paragraphs 7 and 8 of the Report of the Chair. As to the unsettled issue of timing, the Delegation did believe that the urgency and the importance of the issue was guaranteed by a presentation to the Audit Committee in 60 days. That report should, as stressed by many delegations, contain recommendations to the General Assembly, and due to its importance should be considered by this, the highest body of the Organization. The question of whether there should be a special or a regular session should be left open. If the report had conclusions that would warrant immediate consideration, it would be natural to convene a special session. If, on the other hand, the Committee's report could find no support for the allegations made, it could go to the regular session. The Delegation stated that it was impossible to prejudge this issue now. Acting otherwise would go against justice and due process, values shared by all. The central issue was whether Member States were prepared to pass judgment based on allegations or whether they were prepared to wait for the final assessment of the Audit Committee and the confirmation or otherwise of the allegations. That, to the Delegation, was the sole due process open for the Assembly to consider and the only way to guarantee the credibility of WIPO and of its highest body, the General Assembly, above everything. It believed that this was the only course that could unite everyone.

108. The Delegation of Denmark fully aligned itself with the statement by the European Community. Also on a national basis, it expressed its concerns over the credibility and image of WIPO, including WIPO's capacity to discharge its mandate being seriously damaged by the situation in which the Organization currently found itself. It regretted that no agreement was reached in the Group of Friends. It stated that its assessment was that the leadership crisis of the Organization had reached such dimensions and had such consequences for WIPO that urgent action was needed in order to safeguard the integrity and credibility of such an important Organization. It added that it would cooperate in the General Assembly to find urgently the most constructive outcome.

109. The Delegation of Nigeria commended the Chair for a very objective report. It stated that the Report simply underscored the integrity of the Chair in following the due process, as

he had given the Assembly a chance to do. The Delegation endorsed the statement of the Ambassador of Algeria on behalf of the African Group. The fact that the Chair had emphasized matters of due process was not surprising, taking cognizance of its own President, since his election had emphasized due process in the school system in Nigeria. Both for those who wanted urgent action against those that had committed certain crimes or in the opposite case, the President had emphasized due process. The Delegation believed that the competent authorities of the WIPO Assemblies should be given the responsibility to deal exactly with this matter. Whatever was said, it wanted the Assembly to deal with the issue, and that stated that there was a tendency to forget what Assemblies all over the world, whether in the United Nations General Assembly, in the Conference of Parties of multilateral organizations, a legal binding instrument, did. They simply did two things: number one, to make a statement of expression of the national identification of issues; secondly, to adopt decisions, with any matters not reconcilable in the Assemblies usually being referred to a subsidiary body, with that subsidiary body doing an expert body of work and returning back to the Assembly. It stated that this was the notion of an Assembly and asked if it was possible to prove otherwise. In effect, the Delegation said, Member States could sit and argue that this Assembly would deal with this matter, not taking care as to what usually happened in Assemblies, and that if the usual Assembly process was followed, Member States would simply have to refer the matter to a subordinate body to the Assembly, which would sit down, do its work, and bring it back to the Assembly for a decision. In effect, this brought Member States back to due process. The Delegation believed that, if the Assembly took its cue from what the Chair had advised, and followed process, it would make a lot of difference.

110. The Delegation of the Czech Republic expressed its appreciation for the Chair's efforts as Chairman of the Group of Friends. The Delegation strongly supported the various statements of the EC Member Countries. It considered the discussion on the Internal Auditor's Report to be a very important item of the Agenda of the current General Assembly. It hoped that the discussion would help Member States to find a mutually-acceptable solution to the current unsatisfactory situation regarding WIPO's management.

111. The Delegation of Belgium thanked the Chair for his efforts over the last few days and expressed its great appreciation for those efforts. The Delegation associated itself fully with the statement made by Portugal on behalf of the European Community. It was extremely concerned by the current situation, the crisis of confidence resulting from it and its impact on the work of WIPO at a time when the Organization had to meet new challenges. It recalled the commitment of Belgium to multilateralism, international law and the Organization. It was for all those reasons that it called for a strong gesture in order to re-establish confidence.

112. The Delegation of Australia thanked the Chair for all his efforts and for his report on the Friends of Chair process. It stated that the Internal Auditor's report raised serious issues concerning the conduct of the Director General of the Organization which must be addressed quickly and rigorously in accordance with relevant procedures. It noted that the report came about as a result of a thorough and impartial UN Joint Inspection Unit assessment. The allegations and issues raised in the Internal Auditor's report were of a kind that should engage and concern all members of the Organization. Australia supported inclusion of the Internal Auditor's report in the General Assembly Agenda, item 12, because it considered the General Assembly to be a governing body that had a right and responsibility to consider formally and substantively the allegations and issues raised and to take or recommend appropriate action at that session. It stated that, of course, consideration should be transparent and should accord due process by allowing the Director General to respond formally and directly to the

allegations and issues raised. It added that the damage that the allegations and issues had done to the standing and the credibility of WIPO could not be allowed to continue indefinitely.

113. The Delegation of Morocco thanked the Chair for his praiseworthy efforts and the objectivity of his report. It associated itself fully with the statement made by Algeria on behalf of the African Group and also that made by the Delegation of Pakistan on behalf of the Organization of Islamic Countries. Faced with the current situation, it stated that there was a need to show sobriety and to take up the duty to preserve the integrity of the Organization and not to compromise the common goal sought by all, that was the consolidation of the achievements and the various progress made on all levels, be it in terms of substantive issues or a solid financial situation. It should do everything to implement the Development Agenda, the SPLT, the decisions on traditional knowledge, genetic resources etc, i.e. all the negotiating processes which required joint efforts in a spirit of compromise and understanding for their successful implementation.

114. The Delegation of the Russian Federation thanked the Chair for his efforts in coordinating the Group of Friends and for the document which they had prepared and made available that morning. The Delegation stated that it had been an honor for it to work in the Group of Friends of the Chair and called for strict observance of the Organization's rules in examining such issues. It considered that it was appropriate to ask the Audit Committee to examine the matter and to report its conclusions together with corresponding recommendations to the Chair and Member States. Depending on the results of the work of the Audit Committee decisions could perhaps be taken.

115. The Delegation of Ghana thanked the Chair for his excellent consultations with the Group of Friends of the Chair. It fully supported the position of the African Group as stated by the distinguished Ambassador of Algeria. The Delegation stated that it would like to uphold the emerging consensus reached by the Group of Friends of the Chair and asked the Assembly to adhere to due process, always bearing in mind the integrity and credibility of WIPO. It urged that the issue be referred to the appropriate mechanism of the Organization for the necessary guidance.

116. The Delegation of the Democratic People's Republic of Korea appreciated the efforts made by the Chairman and the Group of Friends of the Chair. It welcomed the balanced and objective report presented and fully supported the African position expressed by the Delegation of Algeria on behalf of the African Group. In its view, any attempt to punish with unsubstantiated allegations should not be allowed. Impartiality and fairness were vital to the solution of the matter. That said, the Delegation insisted that the matter in question should be handled by due process in a manner that may not be construed as targeting an individual or group of individuals, as indicated in the Chair's report.

117. The Delegation of Honduras, speaking as Chairman of the Group of 77 and China, stated that it had read the report submitted by the Chair and considered that the terms in which it was drafted were appropriate. It said that it did not want to support the various statements made, but to support the rule of law and due process that should guide the actions of the Organization and everyone else. There was a legal principle to be respected, enshrined in the founding texts of WIPO. The crisis of confidence was being generated by the Delegations in that they were not respecting due process as set out in the Convention of WIPO. It firmly believed, on behalf of the developing countries, that hasty decisions that would cause serious

damage to WIPO as an institution could not be supported. In the United Nations system and the Bretton Woods institutions, due process had been followed in order to resolve problems and clarify accusations. From the Delegation's point of view, the rules should be followed and the internal audit report should be sent to the Audit Committee, as the proper higher authority, for an appropriate decision to be taken. It added that the Assembly was not a court and its task was not to judge anyone. It urged that due process had to be followed in order to achieve an outcome, in line with what the Delegation hoped for.

118. The Delegation of Sudan attached itself to the statement made by Algeria on behalf of the African Group and of the Delegation of Pakistan on behalf of the OIC. It thanked the Chair for his great efforts and wise leadership and for his balanced report. It supported the call for the respect of due process, including a fair hearing, transparency, credibility, integrity and fairness.

119. The Delegation of Indonesia stated that it wished to join other delegations in commending the report on showing fairness and a balanced reflection of the work of the Friends of the Chair. It aligned itself with the Delegation of Pakistan which had spoken on behalf of the OIC. The Delegation respected and appreciated all the views expressed by Member States. Nevertheless, it stated that it was quite unfortunate that there was a long way to go before achieving an overwhelming consensus, which for so long had been the Member States' way of reaching decisions. In the light of this, the Delegation shared the views that Member States should uphold due process and the rule of law existing at WIPO in particular, and the UN in general. It respected the view that at this juncture WIPO was in crisis, but it hoped that the crisis would not be solved by creating another crisis through neglect for the rule of law.

120. The Delegation of Oman joined those who had praised the objective and neutral report presented. It considered that the credibility of the Organization in this instance depended on its application of due process in dealing with such as sensitive and important matter. On that basis, it supported the statement made by the Delegation of Pakistan on behalf of the OIC, and the statement made by the Delegation of Algeria.

121. The Delegation of Djibouti thanked the Chair for his efforts on the report on agenda item 12 and stated that bypassing the procedures and rules in place was not helpful, and that was why it supported the statement made by the Delegation of Algeria on behalf of the African Group, the statement made by the Delegation of Pakistan on behalf of the OIC and the statement made by Benin on behalf of LDCs.

122. The Delegation of Namibia strongly supported the African position as stated by the Delegation of Algeria. It highly appreciated the balanced report that had been presented and the maturity with which the Chair and the Friends of the Chair had attempted to craft a consensus position on the delicate issue under discussion. It stated that the deliberations of the Assembly should, as a matter of principle, be guided by the rule of law. Inasmuch as it appreciated the seriousness of the matter, it could not support any bending of the rules of procedure. It added that two wrongs could not constitute a right. If wrong doings in the conduct of the Director General were observed, the rules and procedures could not be flouted, thereby committing a wrong in order to correct an existing wrong within the WIPO. It therefore advocated that the position of the African Group for the application of the rules and procedures of the United Nations system in this matter be followed. The Delegation regarded governance and accountability as an extremely important principle in managing an

organization such as WIPO, inasmuch as it considered the unaltered application of the rules and procedures. It called, therefore, for due process to be followed.

123. The Delegation of Uganda supported the statement made by Algeria on behalf of the African Group and also supported all delegations who had recommended compliance with the principles of corporate governance. Principles of good corporate governance meant compliance with institutional rules and procedures and of course principles of natural justice. The Delegation therefore saw no material contradiction in the agenda item under discussion, by recommending a follow-up to the Auditor's Report because such a follow-up would not mean breaching the rules of the Organization.

124. The Delegation of Costa Rica thanked the Chair for the work that he had done with the Friends of the Chair and the objective and balanced report that he had submitted during the morning on everything that had happened over the past three days. The Delegation considered that the issue under discussion was of extreme importance and should be dealt with by the Audit Committee in accordance with the procedures laid down in WIPO's rules in a transparent way, following due process that guaranteed the participation of all interested parties. That due process was the cornerstone of the rule of law in which Costa Rica firmly believed. However, in view of the importance of the issue and the implications it had for the credibility of the Organization and its work, the Delegation considered that it was of great importance that the matter be dealt with as a priority way and a matter of urgency so that the Member States of WIPO could adopt a decision if necessary. The cooperation of the Delegation of Costa Rica could be relied on in trying to achieve a proper solution to the issue.

125. The Delegation of Togo thanked the Chair for the balanced document submitted on item 12. The Delegation was very sad that some delegations wished the item to be dealt with at the current Assemblies. It also realized, however, that not all delegations had studied the Audit Report so it fully supported the statement made by the Ambassador of Algeria on behalf of the African Group and the statements made by the Delegation of Pakistan on behalf of OIC and that of Benin on behalf of the LDCs.

126. The Delegation of Paraguay recognized the seriousness of the matter and indeed its urgency, however, it did not think that that should lead the Assemblies to make mistakes or detract from a calm and fair-minded approach, and so it was ready to find a result that implied compliance with rules and the respect for due process that gave all those involved the chance to defend themselves, taking into account that WIPO would find it very difficult to work normally before the issue was resolved. It therefore believed efforts should be made to deal with the matter fairly urgently.

127. The Delegation of the Netherlands first of all thanked the Chair for his report to the General Assembly and secondly said that it fully supported the statement made by Portugal on behalf of the EU. In its national capacity the Netherlands stressed that it was deeply worried about the impact the current situation was having on the credibility and image of WIPO and WIPO's ability to discharge its mandate fully. The impact regarding the Director General was being increasingly felt by the Organization and all had the collective responsibility to move beyond the state of procedural arguments and tackle the real issue. The Netherlands fully supported what had been said by the Portuguese President of the EU, namely that the current General Assembly should address the Internal Auditor's report and decide on the most appropriate follow-up, consistent with the urgency and seriousness of the matter.

128. The Delegation of Venezuela thanked the Chair for his report on the consultations carried out concerning Agenda Item 12 and thanked the Group of Friends of the Chair for their efforts on items 7 and 8 of the report. It agreed with the need for the respect of due process in this case, otherwise the substance matters of the issue, which it considered very important for the credibility of the Organization and indeed for the whole of multilateral system, should not be prejudged.

129. The Delegation of Tunisia supported the statements by the representative of the Group of 77 and China, and that by the African Group and representative of the OIC. It noted that it had always worked on the base of transparency and respect for the rules. Those principles kept a balanced interaction between delegates on the basis of mutual respect. It was surprising that the rules and procedures were not being scrupulously respected at the moment; that some delegations were referring to confidential documents that were illegally posted on an Internet site, which was not even the WIPO Internet site; that there were attempts to discuss substantive matters with regard to an agenda item that had not yet been adopted by the Assembly. Other important agenda items needed to be discussed and the image of WIPO needed to be preserved, as an Organization that respected due process.

130. The Delegation of the former Yugoslav Republic of Macedonia thanked the Chair and the Group of Friends of the Chair on all their efforts so far. The Delegation fully supported and aligned itself with the statement made by Portugal on behalf of the European Community. It also strongly believed that it was a duty to find a way out of the situation during the Assembly, thus preserving the strength and unity of WIPO so much needed at the moment.

131. The Delegation of Mali subscribed to the statement made by the Delegation of Algeria on behalf of the African Group and to the statements of Benin and Pakistan on behalf of the LDCs and OIC respectively. It was not a question of covering up for someone if he were guilty but of respect for a principle. The rules in force envisaged a certain procedure in such cases. Why should that procedure be violated at the current stage? Proof of discernment and responsibility should be shown. The Delegation also believed that it was the Audit Committee to which the matter should be referred and that the Audit Committee should submit a report to the General Assembly, as provided for by the rules in force at WIPO.

132. The Delegation of Luxembourg would also like to supported fully the statement made earlier by the representative of Portugal on behalf of the European Community. It was taking part in the discussion with a view to helping the smooth running and strengthening of the Organization. It was the objective of all present, there were other sensitive issues, were they helping this Organization by denying or sweeping under the carpet some of those issues. In fact the Delegation believed that it would better to help the Organization to deal with those issues concerning allegations immediately and try to shed light on all the allegations. The documents that had been available since the beginning of the Assembly were clear and a decision needed to be taken as quickly as possible on the matter. That was why support was expressed for those who had indicated the view that they wanted to deal immediately with the difficult issues faced. The Delegation believed that that was in the interests of the future and smooth running of the Organization.

133. The Delegation of the Seychelles congratulated the Chair on the manner in which he had presided over the Assemblies and associated itself with the statement made by the Algerian Ambassador on behalf of the African Group in relation to item 12.

134. The Delegation of Serbia supported the position expressed by the Delegation of Portugal on behalf of the European Community and all other Delegations that had expressed themselves in the same vein. The Delegation underlined that the issues related to management of the Organization were very important and that the current General Assembly should find a solution to them.

135. The Chair recalled and summarized yesterday's candid and cordial debate. It was noted that a two paragraph suggestion of the course of action that had been provided, which could be taken as a basis for further work today.

136. The Delegation of Algeria, speaking on behalf of the African Group, thanked the Chair for his much appreciated efforts to help them find a consensus on the issue and stated that the African Group was in the process of finalizing its response to those suggestions, and perhaps it would be good if at some stage General Assembly could move into some more informal context to pursue, and review and try to keep consensus on possible contributions of all parties concerned in terms of finding appropriate language. Advantage was taken to note that as was normal when UN meetings in Geneva consider delicate subjects, the media coverage of such events included some degree of misinformation especially where the position of developing countries was concerned. The Delegation emphasized that contrary to the claims made by the *Tribune de Genève* today, the Delegation was yesterday speaking for the African Group in its entirety. That statement was not intended to take a position on the substance of Item 12, as it involved the person of the Director General, but to insist that the General Assembly, for the sake of its own dignity and credibility, should uphold due process and the rule of law as well as recent case law. That therefore pointed to the necessity to entrust to an independent and impartial body, in this case the Audit Committee, the review of allegations directed against an international civil servant that happened to be the Director General of this Organization. It was thought that all the speakers that took the floor from the developing world expressed a similar position. It was expressed that this statement above should be fully reflected in the minutes of the present meeting.

137. The Delegation of Portugal, speaking on behalf of the European Community and its 27 Member States, appreciated the efforts and proposals concerning the follow-up of Item 12 of the Agenda. It was affirmed that the European Community agrees in referring to the Audit Committee the Report of the Internal Auditor, for review. They also agreed that the Audit Committee should report to the Chair of the General Assembly and to all WIPO Member States within 60 days. The high relevance of this subject to the European Community was acknowledged and it was recommended that an Extraordinary Session of the Coordination Committee should be convened no later than the third week of December 2007, to evaluate the Report of the Internal Auditor and the conclusions and recommendation of the Audit Committee. Finally, the European Community and its 27 member States considered that an Extraordinary Session of the General Assembly should be held no later than February 2008, in order to analyze the Internal Audit Report, taking into account the Report of the Audit Committee on this matter, and the recommendations of the Coordination Committee, and decide on appropriate action. The Delegation wished to thank the Chair for his good suggestion for informal consultation.

138. The Delegation of Greece thanked the Chair for his report on the results of the work of the Friends of the Chairman. Greece fully supported the statement made by Portugal on behalf of the European Community and shared the opinion that it should not remain silent while the international community considered that there was a crisis within WIPO. The

Delegation believed that it fell to the General Assembly to ensure the integrity and credibility of the Organization and that the present General Assembly should discuss the contents of the internal audit report within item 12 of the agenda.

139. The Delegation of Bosnia and Herzegovina noted that this was a very delicate and urgent issue that must be resolved as urgently as possible and discussion on the issue would enable progress to be made and a solution to be found.

140. The Delegation of Hungary fully supported the statement by Portugal on behalf of the European Community.

141. The Delegation of St. Lucia was rather pleased with the delicate manner in which the very sensitive matter was being handled, bearing in mind the accountability and integrity of WIPO as well as the need to impose the rule of law. In that context, it believed that the Audit Report should be submitted to the Audit Committee as early as possible and the findings of the Audit Committee submitted thereafter to the General Assembly.

142. The Delegation of Senegal thanked the Chair for the initiatives to reconcile the different positions of the Member States concerning the examination of item 12. The Delegation fully supported the statements made by the Delegations of Algeria, on behalf of the African Group, Pakistan on behalf of the Organization of the Islamic Conference (OIC), and Benin, as coordinator of the Least Developed Countries. It considered that failure to respect the rules in force meant that there was no guarantee that the Organization would function appropriately, and said that all present held the Organization in high esteem.

143. The Delegation of Belarus proposed that this item be forwarded to the Audit Committee for examination.

144. The Delegation of Guinea associated itself with other delegations in congratulating the Chair on the manner in which the work had been conducted. The Delegation also thanked the Chair for the good balanced document which the Group of Friends of the Chair had submitted to the Assemblies. It endorsed the statement made by the Delegation of Algeria on behalf of the African Group.

145. The Chair thanked every single delegation for their calmness and profoundness in many cases, the clarity of the positions that had been laid down and did not see anyone spoiling for a fight, so to speak, but rather what was discerned was a willingness for dialogue and compromise, a willingness to show understanding, flexibility and all those very essential elements that were needed as diplomats, to bring the world more effectively together so in that spirit he wished very plainly to propose a way forward. He had two small paragraphs which he would first read out and which he would not comment at that time but also would like to look at really carefully within the context of the very productive discussions that had taken place. Take them home, take them away for lunch and by the way today was the national day of Nigeria and he happened to be wearing two caps. He had a national day reception in Berne at which he was primarily accredited so as a duty he would be away from lunchtime to represent Nigeria in Berne and he asked all delegations to take the document away to pour over it, and then the following morning reaction would have been made to it, by which time he prayed that everyone would find the elements in the two short statements to move this very important process forward. He sincerely pleaded that everyone continue to demonstrate the same spirit of understanding, same spirit of respect for due process which

developing countries were striving very hard to grapple with in their respective countries. He believed that that this was the way to go and everyone must play completely by the rules and ensure fairness, equity, propriety, decency and all those very useful elements that they aspired to have. He would read them out but also asked the Secretariat to ensure that they were distributed. If the proposal, the way forward were agreeable, he would proceed along those lines. The Assembly might wish to (i) direct the Audit Committee, to review the reports of the Internal Auditor within 60 days and submit its findings to the Chair of the Assembly and to the Member States. The Assembly might wish also to direct the Audit Committee to include in its report recommendations and or conclusions as to the next follow-up steps that may be taken by the Assembly, including the time-sensitive nature of the matter before it. The two paragraphs contained thoughts that he had put on paper as what he felt was the gist of the several very wise views that had been pronounced in the Assembly that morning. He encouraged delegations to take copies home with them, think about them and then the following morning the Assemblies would have a reaction and possibly an adoption of a decision. On that note he gave the floor to the Legal Counsel.

146. The Secretariat stated that a few items were still outstanding and proposed that the meeting be convened at 3.p.m. to deal, in a session of the WIPO Conference, with the composition of the Coordination Committee. The Assemblies would then move on to item 30 dealing with staff matters and then if the Chair of the PCT Union Assembly were available, she would then undertake her informal consultations in respect of Item 8 the PCT Assembly. Depending on the outcome of the informal consultations, the Assemblies would move on to items 9, 10, 11 and 13 respectively. That was the plan for the afternoon and night sessions.

147. The Chair reconvened the Plenary in the morning of October 3, 2007, on this Agenda Item 12. He stated that after having gone through informal consultations and open debate on the subject he regretted to inform the delegates that all possible efforts in search of a compromise solution on that item had failed as far as the Chair and this Assembly was concerned. The Chair further stated that it was important this Assembly must conclude this debate, and it was the duty of the Chair to pronounce a ruling.

148. The ruling by the Chair was “The Assembly did not agree on this matter” which will be reflected in the report.

149. The Delegation of the United States of America stated that the Chair had faithfully recorded what had happened with characteristic candor as well as goodwill, that is there was no agreement on the matter. The Delegation asked a question with due respect: what would the Chair see as the disposition from this point forward?

150. The Delegation of Canada stated that it would like to hear more about the issue of disposition before deciding whether it had anything else to say.

151. The Chair, in reply to the question raised by the Delegations of the USA and Canada, stated that his disposition was that this matter would be reflected in the report, with the ruling of the Chair that “the Assembly did not agree on this matter.” He further stated that his disposition was that after this ruling had been accepted, it would be up to Member States to decide in future, how the matter should be treated. Member States would exercise their sovereign rights and chose whatever options that they might consider appropriate. Because the matter was now within the purview, not of this Assembly, but of Member States. It considered that the Chair’s ruling was adopted.

152. The Delegation of the United States of America stated that if the Delegation understood the Chair correctly, which it believed so, the Chair stated that the Report would show that there was no agreement on this Agenda Item. Was that accurate? And further, the Chair had stated that disposition of the item, or further action on that item would be retained under the purview of the sovereign rights of Member States. Having said that, the Delegation stressed that it was not prepared to accept that ruling.

153. The Delegation of Switzerland stated that it was of the view that indeed, the conclusion that had just been taken might have been a bit hasty. The Swiss Delegation was certainly not in a position to react before it got to know what the Chair's intention was considering the other points on the Agenda, which still had to be covered. If Item 12 had been closed, Switzerland would have a great deal of difficulty in covering the Items that still had to be dealt with, so with all due respect, the Delegation would like the Chair to indicate what his intentions were considering the other points on the Agenda, so that Delegations could have a clearer idea of how things would unfold.

154. The Delegation of Portugal, speaking on behalf of the EU, stated that despite all the efforts undertaken by the Chair during the last days, it regretted that it was not possible to reach an agreement concerning the follow-up of Agenda Item 12. The European Community presented the previous day a constructive proposal that addressed the concerns of many Member States, particularly concerning due process. To its regret, the latest proposal on Item 12 did not meet their essential positions and apparently could not provide the minimum assurance for an appropriate follow-up consistent with the urgency and seriousness of the matter. Whatever the outcome of the Assembly might be, the European Community and its Member States would continue to consult with other Members bilaterally and in the appropriate WIPO fora on ways and means to address the current institutional crisis. It hoped that other delegations would join this endeavor.

155. The Delegation of the United Kingdom stated that the United Kingdom would like to associate itself with the statement made yesterday by the Delegation of Italy, on behalf of Group B, and today by Delegation of Portugal on behalf of the European Community. From the beginning of the meeting, Delegations had been prepared to take a constructive and flexible approach to reach a balanced conclusion which would address the concerns of all Member States. The Delegation had serious concerns with respect to issues which Agenda Item 12 raised. The process over the past nine days had failed to alleviate these concerns. Furthermore, the process had not enabled us to even address those concerns in a manner consistent with the urgency and seriousness of the situation. The Delegation believed that Member States could not close their eyes to those concerns. If the discussion today was closed without those concerns being addressed, the problem behind those concerns would not go away.

156. The Delegation of Japan expressed its gratitude to the Chair and all those who had worked tirelessly for several days to arrive at a conclusion, and it was very sorry that no agreement had been reached on how to follow up this issue. The Delegation suggested that in view of the present situation, and in addition to what the Chair had said, the Chair's ruling could be added and then read as "The General Assembly did not agree on this matter, and the matter would continue to be discussed amongst the Member Countries". The Delegation was of the view that in adding the additional part in the Chair's Ruling it became a more fair

reflection of what the Chair had suggested in his statement. Not only just one line but adding some lines would make a balanced conclusion of the said ruling.

157. The Delegation of Spain expressed its full solidarity with the statement made the previous day by the Delegation of Italy on behalf of Group B, and also that made by the Delegation of Portugal a few moments previously on behalf of the European Union. As other delegations had pointed out over the past few days, the Delegation of Spain was hoping for results from the meetings of the Friends of the Chair on Item 12. However, the Delegation noted failure in that regard. Spain had noted that right from the start there had been a tendency among certain Member States to resist any kind of dialogue. That had started with a refusal to discuss Item 12. If there were nothing to hide, there could be no reason to refuse discussion. One delegation had stated clearly that it would not agree to any discussion on the text submitted or to any change. Therefore a vicious circle was being created, both starting and finishing with a refusal to negotiate. That attitude was not held by any of the countries in Group B. On the contrary, Group B had tried to find an agreement, and had not only continued to submit texts for negotiation, but had accepted the text proposed by another Group, based on the very interesting proposals made by Chile. The Delegation expressed unconditional support for that draft which allowed a meeting of minds but could not conceal its surprise when it was informed that while Group B had accepted that proposal, the other Group had withdrawn it. It was not the Delegation of Spain that had broken the bridges by declaring that there would be no further negotiations. The last paragraph of the statement by Portugal was further proof of the breadth of vision that Spain, along with other European Union States, had always maintained. Spain would never have supported an idea that would have led to confrontation between States, groups or continents. Others had transformed an individual's conduct into the flagship of ideology of States that barricaded themselves behind a wall of silence. Spain considered, however, that no conduct and no individual could take precedence over an institution or force the will of States. No social group, political party, State or society was guilty of the possible irregularities in the conduct of one of its members, but they were responsible for the response to that conduct, and for the attitude to the possible cause of the irregularity. Covering up a possible irregularity was the same as participating in it. Spain had repeated that it had not understood that there was one rule for one and a different rule for another, or double standards. So it did not support the defense made of a particular case. In the 1970s, when an official of the same Organization had given certain false personal information, he had been summarily dismissed. The previous year, another United Nations agency in Geneva had dismissed an official when he lied over the number of years of professional experience he had. It had been said that Dr. Idris should not be judged because the current forum was not a court. Spain considered that those who had prevented discussion of Item 12 had already given their verdict on the matter. In that sense, Spain noted with great disapproval the absence of the Director General and wondered whether he had any reason to hide. Spain would always be in favor of dialogue because it considered it unacceptable that the future of an Organization should be held hostage by the conduct of a permanent absentee. Nobody should interpret the situation as being one of confrontation, but rather one of compliance with the law with the same rigor as in the two cases previously cited. Dialogue and negotiation would not endanger an Organization – but intolerance and a refusal to engage in free discussion did ruin institutions.

158. The Delegation of Switzerland stated that it had listened with great interest to what had taken place during the morning, and would like to put forward its opinion and position. First of all, the Delegation wished to support the statement made by the spokesman of Group B on the previous day. It believed that the discussion on agenda item 12 should not be closed at the

current stage. Item 12 was on the Agenda, in order to resolve a very deep crisis of confidence within the Organization. Over the past ten days, all possible efforts had been made to find a way to deal calmly with Item 12 with full transparency, and the Delegation wished to congratulate the Chair on the work he had done, and on the wisdom with which he had led the debates thus far. Unfortunately, none of the proposals designed actually to resolve the crisis of confidence had led to constructive dialogue. Constructive dialogue, according to the Delegation, should lead to open dialogue, enable the General Assembly to discuss the substance of the internal audit within agenda item 12, and allow the Director General to respond to the questions put by the Organization's supreme authority to which he was responsible. That was a basic principle of good governance. The dialogue between the Director General and the supreme authority of the Organization had been made impossible throughout the Assemblies, if only owing to the absence of the Director General. In the absence of dialogue, the crisis could not be resolved, either by recognizing that the Director General was at fault or by clearing his name. At all events, doubt over that issue could not continue to hang over the Organization for the coming few months. Item 12 could not be considered closed. That said, the Delegation did not feel that it would be possible to deal with other items before item 12 had been resolved, in particular concerning the PCT and the Budget. The Delegation of Switzerland therefore did not feel able to enter a discussion on those two pending items before agenda item 12 had been resolved to its satisfaction.

159. The Delegation of Canada stated that it was fully behind the statement made by the Group B spokesman on the previous day, and the most recent intervention by the Delegation of Spain. As the Delegation previously mentioned, Canada believed that for WIPO to be a strong and efficient Organization, it must ensure that governance and accountability are above reproach. Canada also believed that it was in the best interest of WIPO and indeed all Member States to quickly and transparently bring resolution to the matter which was undermining public and Member States' confidence in the Organization.

160. The Delegation of United States of America stated that it very closely aligned itself with the views expressed by the distinguished Delegations of Switzerland and Spain about the importance of that item. Two days before, the Delegation had asked a question to the Director General, and it was quoted here: "Does the Director General deny that his repeated series of errors of judgment have cast a serious pall on his leadership both within and outside this Organization, and that these errors of judgment constitute a violation of WIPO staff rules and regulations?" The Delegation was of the view that he had an obligation to clearly and convincingly answer the allegations against him in an open forum of this General Assembly before Member States, or should instead heed the calls of those calling for new leadership at WIPO. In as much as the Director General had not done so, the United States and, as this Delegation understood, Switzerland's position to be, was not prepared to join consensus to move the remaining items on our Agenda forward.

161. The Delegation of Australia stated that heeding the call of the Chair for brevity, it would be so. Delegation of Australia wished to just have on the record that this Delegation supported the sentiments and concerns expressed by Group B colleagues.

162. The Delegation of the Netherlands stated that it supported very much the position taken by the Portuguese Delegation on behalf of the European Community, and the statement made yesterday on behalf of Group B. The Delegation of the Netherlands wished to add that it echoed very much the statement made by the Delegation of the United Kingdom, merely stating that closing the debate today would not make the problem go away. And that, it must

add, would be mostly to the detriment of the Organization. The Netherlands felt that this item must be dealt with as soon as possible, but dealing with it as soon as possible meant that it must be dealt with properly and seriously. The Delegation would continue to seek solutions and cooperation with other Member States of this very Organization and would continue to seek consensus on it.

163. The Chair stated that due note had been taken of the views expressed from the floor on this subject, and he assured all the distinguished delegates that they would be reflected in the Report accordingly.

ITEM 13 OF THE CONSOLIDATED AGENDA:

COMPOSITION OF THE PROGRAM AND BUDGET COMMITTEE

164. Discussions were based on document WO/GA/34/2.

165. The Secretariat stated that further to informal consultations among the Group Coordinators, and taking into consideration the need expressed by the Group Coordinators to increase the representation in the Program and Budget Committee, from a membership of 41 to a membership of 53. Each of the six regional groups was given an additional two seats. As a result of that, the following proposal on the composition of the Committee was made to the WIPO General Assembly: Algeria, Argentina, Bangladesh, Barbados, Belarus, Brazil, Bulgaria, Canada, Chile, China, Colombia, Croatia, Cuba, Czech Republic, Egypt, Estonia, France, Germany, Greece, Hungary, India, Iran (Islamic Republic of), Italy, Japan, Kazakhstan, Kenya, Kyrgyzstan, Mexico, Morocco, Netherlands, Nigeria, Oman, Pakistan, Philippines, Poland, Republic of Korea, Romania, Russian Federation, Senegal, Singapore, South Africa, Spain, Switzerland (*ex officio*), Thailand, Tunisia, Turkey, Uganda, Ukraine, United Kingdom, United States of America, Uruguay, Venezuela, Zambia (53).

166. The General Assembly approved the composition of the Program and Budget Committee, as described in paragraph 165 above, for the period October 2007 to October 2009.

ITEM 15 OF THE CONSOLIDATED AGENDA:

MATTERS CONCERNING THE ADVISORY COMMITTEE ON ENFORCEMENT (ACE)

167. Discussions were based on document WO/GA/34/10.

168. In introducing the above document the Secretariat informed the Advisory Committee on Enforcement (ACE) that the Member States would be provided with an opportunity, in its next session in November 2007, to exchange information and experience on coordination and cooperation in the field of intellectual property enforcement.

169. The Delegation of Italy thanked the Secretariat for document WO/GA/34/10. During the last few years, in spite of the efforts at the international, regional and national levels to make intellectual property enforcement more effective, there had been a significant increase in counterfeiting and piracy activities. WIPO should therefore improve its instruments to fight such phenomena in order to meet the needs and the expectations of both the Member States and the users. Up to now, the main WIPO body which dealt with IP rights enforcement had been the Advisory Committee on Enforcement (ACE). During its five years in activity, the ACE had represented an important forum for international review and debate on topical issues related to IP enforcement. Thanks to the activities of the Committee, it had become possible for Member States to exchange information and experiences in the field of IP rights enforcement and, using WIPO expertise, to integrate IP in national policy and programs designed to strengthen the enforcement infrastructure and institutions. Nevertheless, it had also become evident that such an important activity should be carried out with instruments that are more effective than those aimed at the mere exchange of information among Members of the ACE, in order to deal with the increasing need of Member States to be more effective in the fight against counterfeiting and international piracy. In this regard, a suitable way to improve the Committee's efficiency could be developed to evolve the current mandate of the ACE beyond the activities of education and sharing of information in order to develop instruments such as best practices, guidelines and recommendations. This would give the Committee more effective tools to achieve its goals in the field of enforcement of IP rights, a subject which was perceived by both Member States and private users as an issue of paramount relevance for the development of a functioning international system of intellectual property.

170. The Delegation of Brazil, speaking on behalf of the Group of Latin American and Caribbean countries (GRULAC), acknowledged the importance of the ACE and the issue of enforcement. It further stated that the Committee should continue developing its important work as a forum of dialogue, and for exchange of national experiences. Consequently, it did not support changing the mandate and nature of the Advisory Committee as proposed by the Delegation of Italy. Speaking for Brazil, the Delegation pointed out that the issue of enforcement in this Organization, in fact, should evolve to one of compliance and not one of enforcement. The Delegation of Brazil would favor changing the nature and the denomination of the ACE to one of compliance. The Delegation believed that the issue here was whether Member States were compliant with their international obligations with regard to the protection of intellectual property rights, and there were several important elements in these obligations. One of them had, in fact, been adopted unanimously during the last PCDA meeting as Recommendation No. 45 of the Development Agenda Proposal, namely "to approach intellectual property enforcement in the context of broader societal interest and especially development-oriented concerns with a view that protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations", in line with Article 7 of the TRIPS Agreement. This issue had been raised by some Members in the TRIPS Council and Brazil, among other Members of the TRIPS Council, had responded by indicating that, if there was an issue of compliance, it should be brought to the dispute settlement mechanism of the WTO, which was the appropriate body for discussing issues of compliance. To interpret enforcement as added or selective obligations of Members under existing treaties would not be acceptable to Brazil. In fact, there were several other obligations that had to be taken into account. As set out in

paragraph 5 of document WO/GA/30/10, presented by the International Bureau, the fourth session of the ACE would allow Member States and Observers to share their experience and future plans when discussing the main theme of the meeting, namely coordination and cooperation in the field of IP enforcement. First, the issue should be approached under the idea of IP compliance with international intellectual property obligations. Secondly, agreed Recommendation 45 of the PCDA should be taken on board as the main issue for the fourth session of the ACE. Other important elements derived from the TRIPS Agreement, relating directly to issues of enforcement, included measures taken in the name of intellectual property enforcement which should not themselves generate disguised barriers to trade, especially trade from developing countries. The Delegation of Brazil, after having indicated great concerns during discussions on these issues in the TRIPS Council, was of the view that this was an important subject for the fourth session of the ACE to look into on the basis of exchanging information and national experiences of Member States. The fact that many countries were stepping up their border controls in the name of IP enforcement could be generating barriers to trade, especially trade from developing countries, and that would be not in compliance with the obligations under Article 41.1 of the TRIPS Agreement. Another commitment and obligation that all Member States of WIPO were also bound by the TRIPS Agreement was that no single Member of TRIPS was required to modify its internal legal system and the allocation of resources within that system in order to favor IP enforcement to the detriment of other national priorities. These national priorities were of course different from country to country, and it was the sovereign right of countries to establish what their priorities in terms of legal and judicial systems were.

171. The Delegation of Portugal, on behalf of the European Community and its twenty seven member States, welcomed the work undertaken by the ACE during the last five years. In this respect, it wished to underline the importance it had attached to the effective measures that could improve and strengthen the fight against counterfeiting and piracy. Counterfeiting and piracy were longstanding problems which appeared to have grown in both scope and magnitude. One should not underestimate the negative impact of counterfeiting and piracy, these were not just the economic losses, loss of confidence in the markets, threats to innovation and creativity, loss of tax revenues and legitimate jobs, but also the threat that it posed to human health and security. It should be born in mind that protection and enforcement of IPR was vital for innovation and competition. The European Union had been active in improving its own legislative, judicial and administrative framework to help in the fight against counterfeiting and piracy internally and at its borders. It had also been active in promoting international cooperation, through technical assistance and capacity building programs in third countries. In that context, the Delegation emphasized the importance of the issue of public awareness and education, including training, in the fight against counterfeiting and piracy. The European Community and its member States also welcomed the proposal to have a discussion on the mandate of the ACE at its fourth session, and looked forward to the fourth session of the ACE in order to exchange views on coordination and cooperation at the international, regional and national levels in the field of enforcement.

172. The Delegation of the United States of America associated itself with the statements made by the Delegations of Italy and of Portugal on behalf of the 27 member States of the European Community. It believed that the current mandate, while excluding norm setting, should not prevent the Committee from moving beyond simply education and sharing of experiences. The Delegation saw great merit in exploring best practices, guidelines, recommendations and the like. With regard to the issue whether the words IP enforcement or compliance should be used, the United States of America believed that the term IP

enforcement was a very well-known term, whereas the term compliance implied something WIPO should not engage in, namely judging compliance by Member States with their obligations, particularly under other organizations' treaties such as the TRIPS Agreement. Finally, concerning to PCDA Recommendation No. 45, the Delegation stated that it could not support this proposal as the General Assembly had yet to discuss the PCDA Report or any implementation of the proposals. The PCDA item would be taken up later under Item 18 of this Agenda.

173. The Delegation of Poland, on behalf of the Group of Central European and Baltic States, attached great value to the work of the ACE. The issue of counterfeiting and piracy was currently among the most pressing problems in the domain of intellectual property protection. Therefore, strengthening the international effort to combat the two phenomena was of a primordial and pressing nature. The scope of harm being done by counterfeiting and piracy was much further reaching than what could be implied by the traditional economic understanding of the issue. This posed a threat to the adequate development of a State, to human security or to personal health. It welcomed the work of the ACE and hoped to further strengthen international cooperation and coordination of enforcement and also welcomed all initiatives that could add to the international understanding of the seriousness of the issue, including the Global Congress which was co-hosted by WIPO earlier this year.

174. The Delegation of Uruguay expressed its support for the proposal made by the Delegation of Brazil and expressly opposed the Italian proposal and those of the countries that had associated themselves with this proposal.

175. The Delegation of Algeria, speaking on behalf of the African Group, stated that it had already expressed its position on these issues in previous meetings. The mandate of this Committee, i.e., the exchange of views, coordination and cooperation, was the mandate the Committee had always worked with, and the African Group was not in favor of extending or broadening this mandate but wanted to continue along the same lines. It recalled that the idea of reviewing the implementation of the national regulations on intellectual property was an idea which was supposed to allow countries to exchange various experiences in order to allow particularly least-developed countries to implant those regulations by bearing in mind the development dimension in their countries.

176. The Delegation of Australia stated that it supported the proposal for the future work of the ACE. As the name of the Committee indicated, its role was advisory. However, it would be within the scope of that role to render advice on instruments such as were proposed, namely guidelines, best practice and recommendations. It was the understanding of the Delegation that "enforcement" referred to action against intentional copyright infringement on a commercial scale, i.e., criminal activity. Enforcement required much more than laws: it was an operational matter. There was ample scope for development of guidelines and best practices on enforcement. The ACE had afforded valuable opportunities for exchange of information on member countries' national experience in carrying out enforcement against piracy. The Delegation thought that the ACE could go further and discuss drawing on this valuable repository of experience and distil best practice which could be translated into guidelines. These could be designed to take account of the needs of countries according to their level of development. Australia had recently been active in refining its laws against copyright piracy. It had also been putting greater efforts into coordinating relevant government enforcement agencies and the relevant copyright owners' organizations. Australia supported initiatives at the international level, such as the Italian proposal, to foster

the development of best practice guidelines as a resource for countries seeking to intensify the effectiveness of anti-piracy operations.

177. The Delegation of Nigeria supported and endorsed the statement by the Delegation of Algeria on behalf of the African Group. It also pointed out that in matters of enforcement it was important, particularly for the developing world, that the Secretariat helped a lot more in technical assistance, because of the low-level of exposure and awareness on the issue of enforcement. It agreed with the statement made by the Delegation of Algeria that the interactive process in terms of bringing people together to share experiences should be maintained.

178. The Delegation of Switzerland endorsed the proposal made by the Delegation of Italy, and shared the concerns and motivations mentioned by Italy, as well as that of the other Delegations that had supported the said proposal.

179. The Delegation of Norway drew attention to amendments to their Customs Act, which came into force on September 1, 2007, and which also provided for *ex official* actions by customs officials. The Delegation alluded to the positive impact that these amendments would have in assisting right holders in enforcing their rights and in curtailing the flow of counterfeit and pirated goods. Attention was drawn to the fact that the inspiration for these amendments was in fact found in the EC legislation. The Delegation pointed out that it was convinced that recommendations and best practices were indeed valuable and had good precedents in this respect from recommendations in regards to well-known trademarks, as well as to the use of trademarks on the Internet.

180. The Delegation of France associated itself with the proposal made by the Delegation of Italy and the Delegation of the European Community. The Delegation endorsed the Italian proposal, which it thought represented a good evolution of the activities of the Group, which had already been fruitful.

181. The Delegation of China supported the statement made by Algeria on behalf of the African Group and stated that it also reflected the position of China.

182. The Delegation of Cuba expressed its support for the proposal made by the Delegation of Brazil.

183. The Delegation of Canada welcomed the intention of WIPO to host the next session of the Advisory Committee on Enforcement in early November. It pointed out that, in its view, the Advisory Committee on Enforcement provided a useful forum for discussion and exchange of views on matters related to enforcement, particularly technical assistance. In addition, the Delegation expressed its support for the next theme of the Advisory Committee on Enforcement, being coordination and cooperation in enforcement matters at the international, regional and national levels, as Canada viewed counterfeiting and piracy as a global problem that warranted global solutions, hence the need for international coordination and cooperation. The Delegation further stated that it had also engaged in discussions on this theme in other forums, such as APEC, the G8 and the North American Security and Prosperity Partnership, with its US and Mexican counterparts. Although it was looking forward to participating in the Advisory Committee to discuss these important issues, it also emphasized the importance of avoiding duplication of similar work being undertaken in other international forums.

184. The Delegation of Chile expressed its support for the proposal made by the Delegation of Brazil and stated that it did not agree to amend the mandate of the ACE. It believed that the impact of this proposal was too great to take such a hasty decision. Instead, Recommendations No. 45 of the PCDA should guide the work of the Advisory Committee on Enforcement.

185. The Delegation of the Russian Federation proposed continuing the work of the Committee within its existing mandate. The Russian Federation expressed satisfaction that the Fourth Session of the Advisory Commission was devoted to such a topical issue as the enforcement of intellectual property rights, within which the Member States would be able to exchange opinions on matters relating to coordination and cooperation at the international, regional and national levels. As regards the proposal to use, in relation to the Advisory Committee, the recommendations discussed within the Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA), the Russian Delegation was of the opinion that PCDA issues should be examined only within the framework of that body.

186. The Delegation of Kenya identified itself with the views of the African Group as articulated by the Delegation of Algeria.

187. The Delegation of Denmark underlined that the enforcement of intellectual property rights was one of the most important topics and, as such, supported the proposal made by the Delegation of Italy.

188. The Delegation of Italy stated that it had carefully listened to the views expressed by other delegations and had taken note of these interventions, but maintained its proposal and looked forward to the next session of the ACE to discuss these matters.

189. The General Assembly took note of the contents of document WO/GA/34/10 and its Annex.

ITEM 16 OF THE CONSOLIDATED AGENDA:

THE PROTECTION OF AUDIOVISUAL PERFORMANCES

190. Discussions were based on document WO/GA/34/7.

191. In introducing the item, the Secretariat recalled that at its session in September 2006, the WIPO General Assembly had decided that the issue of protection of audiovisual performances would remain on the agenda of the General Assembly for its session in September 2007. On that occasion the General Assembly also noted the intention of the Director General to organize national and/or regional seminars in order to promote developments on the issue, both at the levels of national legislation and international consensus-building. Following the decision of the 2006 General Assembly, a number of regional and national Seminars had already taken place, and others were scheduled to take place before the end of 2007. In preparing these events the WIPO Secretariat had followed a flexible and balanced approach to the protection of performers at the national level, in such

practical areas as contractual relations and collective bargaining, the exercise and transfer of rights and remuneration systems. Seminars had been organized in Africa, Latin America and Asia. In some cases the issue of audiovisual performances had been part of the agenda of events not exclusively focused on performers' rights but with a larger scope and purpose. The discussion on the international protection of audiovisual performances remained at a merely informative level, with the purpose of raising awareness among governments and stakeholders about the current status of the issue. No developments had been registered indicating new conditions and willingness to reopen international negotiations on the protection of audiovisual performances. Participating governments, performers and other stakeholders had agreed that the WIPO Seminars had an impact in promoting the protection of audiovisual performers. In order to further promote the development of mechanisms for that protection, both at the levels of national legislation and international consensus-building, the WIPO Secretariat would continue organizing regional and national seminars on the issue in the coming year.

192. The Delegation of Sudan stated that national and regional intellectual property offices closely followed the issue and were aware of the need to protect audiovisual performers. Consequently, the issue should remain in the agenda of the General Assemblies of 2008.

193. The Delegation of Portugal, speaking on behalf of the European Community and its Member States, recalled that since the 2000 Diplomatic Conference the issue of the protection of audiovisual performances had remained on the agenda of the General Assembly. Meetings and seminars had been organized by WIPO in the meantime, and continued reflection on the issue had been on-going in many countries and certainly within the European Community. The European Community and its member States felt that progress had been made and that the protection of audiovisual performances was still an important issue. It would only be fair that the protection of performers which already existed in the WPPT were extended to performers in the audiovisual sector. The European Community and its member States invited the WIPO Secretariat to present Member States with an evaluation of the situation in that area, including the stocktaking of positions and the possibilities to move forward.

194. The Delegation of Kenya stressed the importance of retaining the issue of the protection of audiovisual performances on the agenda and commended the Secretariat for organizing regional and national seminars on that topic. Kenya realized the importance of audiovisual performances and the fair remuneration thereof. In that context it was involved in developing a solid legal framework where audiovisual performances and other key elements of the creative industries would be duly regulated. It was important for WIPO to continue organizing national and regional seminars in such practical areas as contractual relations and collective bargaining, the exercise and transfer of rights and remuneration systems.

195. The Delegation of El Salvador emphasized that in 2000 the Treaty on the protection of audiovisual performances had not been adopted for lack of agreement on one single article. As at previous occasions it was necessary to retain the issue in the agenda of the next General Assembly.

196. The Delegation of Mexico regretted the little progress that had been made at the international level on the important issue of the protection of audiovisual performances. It supported holding national and regional seminars on the issue over the coming year, and keeping the item on the Agenda of the General Assembly in 2008.

197. The Delegation of Brazil did not object to the issue of the protection of audiovisual performances being retained on the Agenda of the General Assembly for 2008. With respect to the proposal put forward by the Delegation of Portugal on behalf of the European Community and its member States, concerning an evaluation of the evolution of positions on the issue to allow a resumption of discussions, the Delegation stated that the Secretariat should include advice concerning abusive contractual practices involving audiovisual performers. For any discussions concerning a future instrument for the protection of audiovisual performances, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) should not serve as legal models, but alternative approaches should be considered that would allow the views of all stakeholders to be taken into account. A multi-stakeholder forum or other type of open consultation hearing for non-governmental organizations, Member States and other stakeholders would allow all such views to be taken into consideration.

198. The Delegation of Argentina expressed its interest in keeping the issue of the protection of audiovisual performances on the Agenda of the General Assembly for 2008. It hoped that consensus could be found in the future on a treaty for the protection of audiovisual performers. It was important to organize seminars that would allow broad participation by all interested sectors.

199. The Delegation of Nigeria supported keeping the issue of the protection of audiovisual performances on the Agenda of the General Assembly for 2008. An international agreement on the issue was important to realize the gains offered for the national development of creative industries.

200. The Delegation of China thanked the Standing Committee on Copyright and Related Rights (SCCR) for its work on the important issue of the protection of audiovisual performances, and supported the continuation of the work. The issue should remain on the agenda of the General Assembly for 2008, and seminars should be held at the regional and international levels in order to explore the issue further.

201. The General Assembly:

(i) took note of the information contained in paragraphs 3 and 4 of document WO/GA/34/7; and

(ii) decided that the issue of Protection of Audiovisual Performances would remain on the Agenda of the WIPO General Assembly in its session in September 2008.

ITEM 17 OF THE CONSOLIDATED AGENDA:

REPORT ON THE SPECIAL SESSIONS OF THE STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS REGARDING THE PROPOSED DIPLOMATIC CONFERENCE ON THE PROTECTION OF THE RIGHTS OF BROADCASTING ORGANIZATIONS

202. Discussions were based on document WO/GA/34/8.

203. Referring to document WO/GA/34/8, the Secretariat summarized the previous discussions and the recommendation from the Second Special Session of the Standing Committee on Copyright and Related Rights (SCCR).

204. The Delegation of Portugal, speaking on behalf of the European Community and its member States, acknowledged the importance of the two special sessions held in January and June 2007 in the framework of the discussions of the draft treaty on the protection of broadcasting organizations and thanked the Chairman of the SCCR for its consistent and untiring work. After so many years of negotiations, the inconclusive result of the discussions had been disappointing as had the lack of commitment to a Diplomatic Conference. Further consensus building was still possible, and therefore it encouraged the General Assembly to mandate the SCCR to continue devoting time and efforts to the topic and to the issues that had prevented the discussions from moving forward.

205. The Delegation of Costa Rica noted that the development of information and communication technologies as well as of the Internet had made it necessary to step up efforts in the discussion on an updated protection for broadcasting organizations, but consensus still needed to be reached on the specific scope and object of the protection under the draft treaty. A third special session of the SCCR should be convened and the issue of the protection of traditional and cablecasting organizations should remain on the agenda of the SCCR.

206. The Delegation of Kenya recalled that it had actively contributed to the work carried out over the last nine years on the proposed broadcasting treaty and it had actively participated in the deliberations at national, international and regional levels. Due to the stalemate in the current discussions, the diplomatic conference had to be postponed until such a date when consensus could be achieved by the Member States on the contentious issues raised in the SCCR. The item had to remain on the SCCR agenda in order to enable it to discuss the outstanding issues, prior to the convening of a diplomatic conference.

207. The Delegation of Japan noted that the SCCR had been discussing the issue since 1998 and that many positive proposals had been submitted by a number of Member States. Despite the disappointing outcome of the second special session of the SCCR in June, there was still a need for an early adoption of the draft treaty, considering that it would complement the protection provided under the WIPO Copyright Treaty (WCT) and the WIPO Performance and Phonogram Treaty (WPPT). Member States should continue working towards an agreement and the Delegation supported the recommendation contained in document WO/GA/34/8 in order that the diplomatic conference could eventually be convened.

208. The Delegation of Algeria, speaking on behalf of the African Group, stated that the item had to be kept on the agenda of the SCCR. Additional efforts had to be made with a view to reaching consensus on the protection of traditional broadcasting and cablecasting to reach an agreement before a diplomatic conference could be convened. Webcasting could not be granted any form of legal protection since developing countries were still affected by the negative effects of the digital divide. The protection to be granted to broadcasting organizations should be balanced against the rights of other rightsholders and users. The agenda of the next sessions of the SCCR should also contain other items connected with the implementation of the development agenda and relating in particular to the use of broadcasting for education.

209. The Delegation of Australia supported the contents of the recommendation contained in document WO/GA/34/8 and stated that qualified experts in the latest broadcasting technologies might be invited to speak before the SCCR as they had done at the invitation of WIPO several years ago. Broadcasting was a rapidly evolving area of technology and Member States could usefully be informed about the latest developments through updated expert presentations which would enable them to finalize their positions.

210. The Delegation of Argentina regretted that agreement could not be reached at the special sessions and indicated that the item was of particular interest to its country. It supported the recommendation contained in document WO/GA/34/8 with a view to achieving progress in the negotiations.

211. The Delegation of Indonesia expressed its appreciation of the process which had taken place on the deliberations related to the draft broadcasting treaty and welcomed the recommendations of the Committee which reflected long but substantive debates between the Member States. Further clarifications and agreement were necessary on some of the basic principles such as the concept of exclusive rights or "by any means". The diplomatic conference could not be held in the near future if some of the fundamental questions had not been properly addressed. The Delegation was willing and ready to be substantively involved in the negotiations.

212. The Delegation of the Islamic Republic of Iran stated its readiness to continue the negotiations in the framework of the regular sessions of the SCCR. The scope of the draft treaty had to be limited to traditional broadcasters and their traditional activities and should be focused on a signal-based approach and the fight against piracy. No overlap should be created between the rights of traditional broadcasting organizations and rights holders in the program content, and neither should a new or secondary layer of protection for traditional broadcasting organizations be established which could restrict the free access of the public to knowledge, information and science.

213. The Delegation of Poland, speaking on behalf of the Group of Central European and Baltic States, acknowledged that despite the decision made and the holding of the two special sessions of the SCCR, time was not ripe for convening a diplomatic conference. A fruitful exchange of views had taken place, which had led to a better understanding of the positions of Member States and had shown that no effort had been spared to produce a normative outcome. Development of technology and the growing use of information and communication networks had necessitated the adoption of measures to secure an adjusted level of protection of broadcasters' rights. Discussions should continue in the framework of the regular sessions of the SCCR.

214. The Delegation of El Salvador looked forward to achieving progress and stated that the item had to be retained on the agenda of the regular sessions of the SCCR, while the agenda should also include other items of interest to developing countries.

215. The Delegation of China stated that the protection of broadcasting organizations was not only linked to the interests of broadcasters, but also to those of other right holders and for the public interest. The SCCR had already achieved considerable progress and the level of protection currently afforded to broadcasting organizations was inadequate. Therefore the

item had to be retained on the agenda of the regular sessions of the SCCR, so that further agreement could be reached on the essential elements of the draft treaty.

216. The Delegation of Turkey acknowledged the importance of the protection of broadcasting organizations and the efforts made towards reaching agreement and expressed its support for the adoption of the recommendation contained in document WO/GA/34/8.

217. The Delegation of South Africa supported the statement made by the Delegation of Algeria, on behalf of the African Group. It stressed the importance of protecting public interest and ensuring access to information, issues that should not be compromised by any treaty. It pointed out that some proposals made during the SCCR sessions ignored fundamental issues, such as the limitation to signal protection and the consideration of access to knowledge. It urged Member States to continue the discussions in consistency with the Development Agenda and supported the recommendation to the General Assembly to retain the issue in the SCCR agenda.

218. The Delegation of Mexico reminded the General Assembly of the importance of updating international rules to prevent signal piracy and to maintain an equitable balance between the different stakeholders. It supported very strongly the continuation of discussions of the issue in the SCCR.

219. The Delegation of Morocco supported the statement made by the Delegation of Algeria on behalf of the Group of 77. Several breakthroughs had taken place to achieve the desired consensus and an additional effort was necessary to reach an agreement to organize a diplomatic conference in the future to update the rights of traditional broadcasters. It supported retaining the issue on the SCCR agenda.

220. The Delegation of Chile recalled that it had participated with great interest in the discussions on protection of traditional broadcasters and cablecasters. No stakeholder was indifferent in relation to the implications of such a new protection of existing rights and other interests, but more information and experience was needed to continue the discussions. It acknowledged the efforts, time and dedication of the Secretariat to clarify the different doubts on the issues and to bridge the differences. However, it was evident that no agreement could be reached on the objectives, specific scope and object of protection of the proposed treaty at the moment. It could be useful to slow down or pause the process so as to determine the different issues at stake. Such a pause would allow Member States to focus on other issues such as limitations and exceptions and access to information. It would also allow time to get more experience on new changes and developments. Finally, the Delegation agreed to retain the issue on the SCCR agenda on equal footing with other issues.

221. The Delegation of Brazil noted that consensus on the issue was very elusive and, for that purpose, the recommendation of the latest special session had been carefully drafted. There was no doubt that the nine years spent on the process had been very useful, but the issue had proven to be extremely controversial. Conditions were not ripe for a diplomatic conference in the near future. It recalled that other important issues, such as the limitations and exceptions relevant for science, health and education, public domain, access to knowledge, among others, were also of great interest. If seminars were to be held in the area of protection of broadcasting organizations, they should be preceded by impact studies as well as open-ended discussions and public consultations. Studies should encompass the impact of protecting new stakeholders as well as traditional broadcasters, and should look at evolving

trends, markets and public policy issues. Participation of speakers in the seminars should be balanced, bearing in mind the different views and interests, including those of developing countries.

222. The Delegation of Ukraine pointed out that the protection of broadcasters and cablecasters should be resolved in the area of related rights, and had to be granted against the illegal use of signals. Discussions in that respect deserved a constructive examination with a view to holding a diplomatic conference in the future. Since no agreement had been reached at the second special session of the SCCR, the Delegation agreed with the retention of the issue on the SCCR agenda. It also urged Member States to step up their work to reach a compromise on the problematic issues.

223. The Delegation of India expressed its disappointment regarding the differences among delegations and lack of agreement on the basic issues. It recalled that US\$668 million had already been lost by India due to piracy, and urged Member States to reiterate its earlier mandate to continue discussions on a treaty for the protection of broadcasters in the traditional sense. No protection related to computer networks should be directly or indirectly included in any such treaty. It also stressed the need to prepare impact studies of new layers of protection on the right of creators and other stakeholders, access to knowledge and other issues considered by the PCDA. As pointed out by the Delegations of Australia, Brazil and Chile, a new set of documents should be prepared bearing in mind the PCDA recommendations, because reverting to document SCCR/15/2 Rev. would serve no purpose. The Delegation agreed that the issue be retained on the SCCR agenda and reiterated the three main points in its position: (i) that any future protection be confined to signal protection and traditional broadcasting only; (ii) that impact studies be prepared as previously put forward by different delegations; and (iii) that fresh documents be prepared on the issue.

224. The Delegation of the Russian Federation acknowledged the progress made during the SCCR special sessions. It had no objection to keeping the item on the SCCR agenda and, when consensus was reached, Member States could again consider the issue of convening a diplomatic conference.

225. The Delegation of Pakistan expressed its appreciation for the SCCR Chairman's efforts to work out the differences among proposals. Despite the fact that the special sessions had helped to clarify various issues, the discussions were not ripe and a time-out would be the best option at the current stage. It agreed to keep the issue on the SCCR agenda.

226. The Delegation of Uruguay welcomed the efforts made to discuss the protection of broadcasters and joined previous delegations that recommended first reaching a consensus on the objectives, specific scope and object of protection of the proposed treaty. As proposed by the Delegation of Chile, a time-out was advisable and discussions of the SCCR should then focus on a broader agenda, including other issues such as the limitations and exceptions to copyright.

227. The Delegation of Nigeria joined other delegations in acknowledging the progress made in the last years. It stressed the need to limit any future protection to traditional broadcasting and agreed to retain the subject on the SCCR agenda.

228. The General Assembly:

(i) took note of the current status of the work in the SCCR on the protection of broadcasting organizations and cablecasting organizations;

(ii) acknowledged that progress was made in the process towards better understanding of the positions of the various stakeholders;

(iii) recognized the good faith efforts of all participants and stakeholder organizations throughout the process;

(iv) expressed the wish that all the parties continue to strive to achieve an agreement on the objectives, specific scope and object of protection, as mandated by the General Assembly;

(v) decided that the subject of broadcasting organizations and cablecasting organizations be retained on the agenda of the SCCR for its regular sessions and consider convening of a Diplomatic Conference only after agreement on objectives, specific scope and object of protection has been achieved.

ITEM 19 OF THE CONSOLIDATED AGENDA:

MATTERS CONCERNING THE ESTABLISHMENT OF A WORK PROGRAM FOR THE STANDING COMMITTEE ON THE LAW OF PATENTS

229. Discussions were based on document WO/GA/34/5.

230. The Delegation of Chile expressed its agreement with the proposal made in document WO/GA/34/5. It observed, however, that in the appendix under item 7(b) in the English document the word “standards” was used, which in the Spanish version had been translated by “*normas*”. The Delegation stated that it would prefer “*normas técnicas*” in Spanish because that was the WIPO terminology normally used. The Delegation further thought that the same language problem would concern the French version as well.

231. The Delegation of Algeria, speaking on behalf of the African Group, expressed its thanks to Ambassador Manalo for the work he had done which led to the proposal relating to the future work program of the Standing Committee on the Law of Patents (SCP). The African Group was of the opinion that a fresh impetus to the work of the Committee was very necessary. The decision emerging from the informal consultations conducted by the Chair of the General Assembly to ensure that the WIPO Secretariat prepared the report on issues related to the international patent system, to define the future work program of the SCP, should put new life into the work of the SCP. The report should cover the major difficulties developing countries faced in discussions on the harmonization of patent legislation. This would help to ensure that their concern related to the development aspect of patent law would be duly taken into consideration and that it would be a central part of the work to be done by the SCP.

232. The Delegation of El Salvador stated that, concerning the new work program for the SCP, it was very happy that positive results had been achieved through the consultations conducted by Ambassador Manalo. On the future work more specifically, it thought that each Member State had identified points which it believed should be put on the work program for future sessions of the Committee. Flexibility had been shown, however, with respect to the future work program and that was positive given that the work done by the Committee was of particular interest to developing countries and very important, in particular, to the system in El Salvador.

233. The Delegation of Brazil stated that its country had engaged constructively in the consultations carried out by Ambassador Manalo, identifying patent issues that would form the backbone of the report to be prepared by the Secretariat with the view to facilitating the discussions of the future work of the SCP. Understanding that the report to be prepared by the Secretariat would provide additional information to guide discussions on the future work of the SCP and would therefore not prejudge the outcome of the discussions, the Delegation agreed with the orientation by Ambassador Manalo that the report should limit itself to a factual assessment of patent issues and should not contain any conclusions. The Delegation noted that, in the process of consultations, it had presented a number of suggestions on issues that, in its view, should be dealt with in order to prepare a balanced account of the best patent system and one that would enrich the debate on how the patent system should cope with the challenges caused by the changes brought about by the shift from the industrial economy to a knowledge and information economy. Recognizing that document WO/GA/34/5 incorporated some of the proposals presented to the International Bureau and that Brazil was the only country which had submitted proposals during the last round of consultations, the Delegation was of the view that some issues which were directly related to patentability requirements were bundled together in a clear and unambiguous fashion, while other matters which had been brought to the floor by developing countries and which were dear to them, such as the preservation of intellectual property flexibilities, did not stand out as unequivocally in the document. The Delegation, however, wished to participate in the consensus that would form around document WO/GA/34/5, and would give the International Bureau a vote of confidence that it would deal with the matter in a balanced, objective and inclusive approach. The Delegation nevertheless proposed to the General Assembly two amendments that were considered to be very important for the Delegation, but that were the minimum possible, so as not to have an impact on the building of consensus on the document. The first suggestion was to replace the word "Demand" in the title of Section III with the word "Rationale". The second amendment suggested was to delete the text of item (d) and to move the current items IV(d)(i) to (x) to items IV(d) to (m) so that there would be a single list of items under title "IV. Patent System and Existing Forms of Cooperation". The Delegation considered it important to provide a single listing without any different characterization of certain elements with respect to others, such as opposition, search and examination, and the application itself.

234. The Delegation of Poland, speaking on behalf of the Group of Central European and Baltic States, thanked Ambassador Manalo for his hard work in the inter-sessional period, for his involvement in the informal consultations and the recommendations that resulted there from. The Delegation supported the approach based on the establishment of a state-of-play report as a step towards the continuation of the work of the SCP. The Delegation attached great importance to the functioning of the Committee, and it looked forward to engaging in future work regarding the Substantive Patent Law Treaty (SPLT).

235. The Delegation of the United States of America thanked Ambassador Manalo for his efforts in undertaking the consultations on this very difficult issue. The Delegation stated that it continued to consider that the proposal to limit the scope of work of the SCP to discussions regarding harmonization of prior art, grace period, novelty and inventive step provided the best opportunity for achieving near-term agreement in the interest of all WIPO members. In that light, the Delegation continued to be disappointed at the inability of all WIPO members to reach consensus on a work program for the SCP that would result in meaningful near-term results. Nonetheless, in light of the wide and strongly-held divergences that existed among Member States, the Delegation supported the Secretariat establishing the report as recommended. The Delegation, however, did not support convening a formal session of the SCP simply to consider a report that would have no conclusion in light of the existing wide divergences of views. Instead, the Delegation proposed that Member States be invited to submit comments on the report that would be collected by the International Bureau and made available to members in order to inform the debate that might take place at the next meeting of the General Assembly in 2008 when a more detailed work program for the SCP could be established.

236. The Delegation of Saint Lucia stated that foremost on the list of needs of the Registrar of Companies and Intellectual Properties was the need to exert WIPO, more specifically the legislative and legal advice division, to assist Saint Lucia to complete the patent regulations. As a very small country which aspired towards industrialization, the Delegation was of the view that the finalization of the patent regulations was one of the most important steps in promoting the goals of its industry. The Delegation, therefore, was looking forward to the assistance of WIPO in this regard.

237. The Delegation of Canada stated that it continued to believe that the best chance for success in this program was to work toward a reduced package of the priority items that had initially been identified, namely, prior art, grace period, novelty, non-obviousness and inventive step. The Delegation, however, supported the proposal to undertake a survey of issues related to the patent system, while noting that any duplication of work, including the work done in other Standing Committees at WIPO, should be avoided.

238. The Delegation of Portugal, speaking on behalf of the European Community and its 27 member States, took note of the information contained in document WO/GA/43/5 and appreciated the work done by the former Chair of the WIPO General Assembly, Ambassador Manalo, in conducting extensive informal consultations in an efficient and constructive manner. The Delegation also expressed its appreciation to the WIPO Member States for the proposals presented in order to enhance the process of establishing a new work program for the SCP. The Delegation stated that the European Community continued to believe that only the full commitment of Member States would make possible the development of an international patent system which would promote innovation and growth. Considering the importance of harmonizing substantive patent law at the international level, the European Community remained committed to move forward on the basis of a mutually agreeable, focused and defined work program. The EC believed that this was an area of WIPO's core business, and therefore it called the attention of all parties to the importance of the resumption of the SCP and the establishment of a working program. The European Community and its 27 Member States therefore supported the recommendation regarding the establishment of a work program for the SCP, particularly on the basis of Sections I, II, III and IV of the Appendix enclosed in document WO/GA/34/5.

239. The Delegation of the Russian Federation acknowledged the efforts undertaken by Ambassador Manalo and expressed support for his recommendation concerning the future work program of the SCP. The Delegation supported, in particular, the WIPO Secretariat preparing a report on the international patent system covering the various needs and interests of all Member States, which would constitute the working document for the session of the SCP scheduled for the first half of 2008, and expressed agreement with the fact that the report would put in context the international patent system, including the WIPO Development Agenda dimension, and would contain no pre-conceived conclusions. According to the Delegation, the work on the future harmonization of patent law should pay particular attention to the definition of concepts such as prior art, inventive step, and the like, and should also include the grace period and other points. It also stated that the future work of the SCP should be based very strictly on the existing mandate.

240. The Delegation of China recalled that it had always participated in the SCP with a positive and responsible attitude. The Delegation stated its high appreciation for the efforts made by the past Chair of the General Assembly, and agreed to the conclusions of document WO/GA/34/5, that is, to establish a report on the international patent system treaties that would address all the interests of Member States. It also expressed the hope that, in the SCP session to be held in the first half of 2008, a more balanced and comprehensive report could be discussed.

241. The Delegation of the Islamic Republic of Iran welcomed the establishment of the new work program for the SCP, which would contribute to the positive effects of the patent system on human scientific promotion and to the development of new conceptual issues which arose in respect of some international conventions. The Delegation therefore believed that any kind of modification in the Committee's work program should be considered with respect to norms widely accepted by the international community, in particular those relating to development, food security, the preservation of the environment and the protection of local communities' interests. Such modifications should also include issues which related to developing countries' concerns regarding the inappropriate implementation and unilateral use of patent rules to monopolize knowledge and technology. These issues may be addressed in the light of the outcome of other Committees' work, such as the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore or the Provisional Committee on the Development Agenda. In addition, the Delegation expressed the view that, in light of norms of other international bodies, such as the CBD or the FAO Treaty, and of a fair and equitable enforcement of patent rules, patent law harmonization will take into account the rights of all parties and stakeholders. Against this background, the Delegation supported the renewal of a comprehensive work program for the SCP.

242. The Delegation of Colombia acknowledged the work accomplished by Ambassador Manalo in the consultations. With respect to the document, it observed that there were various fundamental differences, as it was known, because countries tended to attach different levels of importance to the issues and to look at them from different angles. Some countries felt that all the issues should be looked at on an equal footing and some did not. Since the beginning of the work on a draft SPLT, the Delegation had considered that it was necessary to take into account the basic requirements of patentability so that everybody could ensure that his applications would be dealt with in an identical way without impinging on countries' ability to deal with issues such as inventive step, novelty and other issues. The Delegation considered that the Treaty should be a balanced instrument, an inclusive instrument, one which would include, *inter alia*, clauses on the necessary flexibility to ensure

public interest, transfer of technology, the countering of anti-competitive practices and ensuring and protecting biological diversity. It should also be in accordance with the development approaches of various countries. Some countries did not consider those issues as to be as fundamental as others. The Delegation believed that, when the Secretariat could prepare its report in accordance with the Chair's recommendation, it should bear in mind the need to include the basic requirements which the Delegation considered so essential for developing countries. The Delegation stated that it did not want a report which would fail to achieve that. It urged Member States to reach a consensus on the various points of the work plan for the SCP so as to ensure that it could make headway with its work and above all could take into consideration the interests of developing Member States.

243. The Delegation of Japan stated that it attached importance to the activities of the SCP for the sake of sustaining and promoting the patent system. Currently, about 1.6 million applications were filed around the world per year and among them hundreds of thousands of applications were filed in more than one country for the same invention, causing duplication in processing. In this inter-dependent situation, patent harmonization and mutual utilization of examination results were essential and urgent to achieve high-quality and expeditious patent examination and to secure the predictability of examination results in each country where patent protection was claimed for the invention. The Delegation observed that, in that connection, Japan advocated a focused approach to patent harmonization regarding prior art, grace period, inventive step and novelty to reach a practical and meaningful conclusion of the patented acquisition phase swiftly. The Delegation expressed regrets about the current situation of the SCP and hoped that the Committee would start practical and constructive discussions again especially as the PCDA had reached a conclusion.

244. The Delegation of South Africa joined the other delegations in congratulating Ambassador Manalo for his work on the issue and stated its agreement with the proposal. It further observed that it was very pleased that the Development Agenda issues would be given due consideration and expressed its belief that the proposed approach could lead to a fruitful future work of the SCP.

245. The Delegation of Argentina expressed its thanks to Ambassador Manalo's able chairmanship on the issue. It also highlighted the importance of dealing with issues which were of interest and concern to developing countries in the future work program for the SCP. These would include flexibilities, exceptions and limitations and transfer of technology.

246. The Delegation of the Dominican Republic expressed its gratitude for the work done by Ambassador Manalo in respect of a new work program for the SCP on the basis of the consultations undertaken with all members and proposing a report of the Secretariat. The Delegation believed that this would allow positive steps with respect to the work of the SCP taking into account everybody's interests, including those relating to the development agenda flexibilities and other issues which were of public interest to all Member States. Further, the Delegation expressed support for the two editorial changes to the appendix of the document proposed by the Delegation of Brazil.

247. The Delegation of Pakistan expressed thanks to Ambassador Manalo for his efforts in producing the working document and reiterated its support on the four following issues: firstly, all the issues should be given the same importance; secondly, the report should be a balanced one; thirdly, it should be all-inclusive and, finally, public interest issues, such as transfer of technology, should be taken into account.

248. The Delegation of Venezuela joined previous speakers in congratulating Ambassador Manalo for the work he had done and expressed its gratitude for the results achieved on the work program of the SCP. In addition, the Delegation emphasized its support for the amendments proposed by the Delegation of Brazil. The Delegation was grateful for the results of the consultations on the work plan of the SCP, and expressed its support for the series of amendments proposed by the Delegation of Brazil.

249. The Delegation of Chile also congratulated Ambassador Manalo. The Delegation highlighted the importance of resuming the work of the SCP, which, in its view, set out some of the important issues being tackled in that Committee, particularly those of interest to the developing countries. The Delegation considered that it was an excellent opportunity to discuss those topics which were of importance to many delegations, such as exceptions relating to research exemptions, as suggested by Chile with respect to the SCP work plan. Further, the Delegation expressed its support for the amendments proposed by the Delegation of Brazil.

250. The Delegations of Cuba and Uruguay supported the amendments proposed by the Delegation of Brazil.

251. The General Assembly:

- (i) took note of the information contained in document WO/GA/34/5; and
- (ii) unanimously adopted the recommendation as set out in the Annex of document WO/GA/34/5, with the amendments to its Appendix as referred to in paragraph 3.

ITEM 21 OF THE CONSOLIDATED AGENDA:

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

252. Discussions were based on document WO/GA/34/9.

253. The Secretariat introduced document WO/GA/34/9, drawing attention in particular to its recommendation concerning the renewal of the mandate of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the IGC) in the terms set out in paragraph 9 of that document, as well as the successful launch of the WIPO Voluntary Fund for Indigenous and Local Communities (the Voluntary Fund), including the generous contributions and pledges made to the Fund and the IGC's call for further contributions to the Voluntary Fund.

254. The Delegation of China, in its capacity as Deputy Chair of the IGC, delivered the following report on behalf of IGC Chair, His Excellency Ambassador I Gusti Agung Wesaka

Puja of Indonesia, on the work of the IGC:

“The WIPO IGC met for three sessions since its mandate was last renewed by the WIPO Assembly in 2005. As Chair for each of those sessions - the ninth, tenth and eleventh sessions - I would like to provide a brief overview of the progress recorded, as backdrop to the decision before the Assembly on the renewal of the mandate of the IGC. The overview briefly covers participation and inclusiveness, the substance of the work, and the capacity building dimension.

“Beginning with participation. The number of observers accredited to the IGC has risen to nearly 200, the majority representing indigenous and local communities or other holders or custodians of TK and TCEs. The past three sessions have seen a number of innovations in the meeting procedure, with the goal of ensuring that the voice of these communities is central to the work of the Committee. Each session now commences with a panel of indigenous representatives, who have provided invaluable guidance and practical insights for the Committee.

“This period has also seen the successful launch of the WIPO Voluntary Fund established by the WIPO Assembly in 2005. This has now been put into operation very effectively, thanks to a series of generous donations, and the excellent work of an independent Advisory Board, ably chaired on my behalf and with my warm thanks, by a Deputy Chair of the IGC, Mr. Abdellah Ouadrhiri of Morocco. I express appreciation to the contributors to the Fund and to the beneficiaries of funding who have brought fresh voices and ideas to the IGC. I endorse the call for further contributions to the Fund and for continued awareness raising about the Fund among potential beneficiaries.

“Second, on content. The Committee has worked through a series of substantive documents that represent the breadth and depth of policy thinking on intellectual property and traditional knowledge, traditional cultural expressions and folklore. The Committee has made solid progress towards a deeply rooted international understanding of the central issues and possibilities for a concrete international outcome. While it was not possible to achieve full consensus in the course of these three sessions, there is undoubted consensus on the importance of the issues and the overarching need for an effective international response to the needs and concerns of the holders of TK and TCEs. If the Assembly agrees to the renewal of the Committee’s mandate, I am confident that this very solid foundation of substantive work, and the enhanced scope of participation and dialogue that has been achieved, will together lead to concrete outcomes in the coming biennium.

“Third, on capacity building. The Committee is also an important clearing house for capacity building, with reports, analysis and side events on a host of practical measures taken to ensure that the general norms and legal mechanisms discussed in the Committee are appropriately and effectively implemented at the grass-roots levels. The Committee has also helped promote partnerships for capacity-building and South-South cooperation initiatives to strengthen the practical recognition and protection of TK and TCEs in the IP system.

“It has been an honor to serve as Chair of this important and unique Committee for the past three sessions, with the invaluable advice and support of the Deputy Chairs of the Committee. It plays an important role in broadening and balancing the

international landscape of intellectual property, and has reached a significant stage of maturity in its work, which I hope will be fully realized in its future activities.”

255. The Delegation of Algeria, on behalf of the African Group, expressed appreciation to the Chair and two Deputy Chairs of the IGC for what they had achieved in the course of the last session of the IGC and expressed gratitude to the Secretariat for its support. The question of protection of traditional knowledge (TK), expressions of folklore (EoF) and genetic resources (GR) was of cardinal importance to the African Group. The interest in protecting TK and GR resulted not only from their linkage to traditional cultural and scientific heritage, but also from the benefits gained from this traditional knowledge as a source of wellbeing and economic development. There were many examples of plants and traditional methods having been analyzed and examined for use to give effect to new product or new varieties with particular properties. At the national level, certain laws had already been adopted giving effect to *sui generis* measures for protection of TK and associated GR. At the regional level, African Member States had, for example, also adopted a model law for the protection of biological diversity and the interests of local communities. Further, OAPI, the African regional organization, had just adopted, through a diplomatic conference, a legal instrument for the protection of TK and EoF, while ARIPO, the other African regional organization, was in the process of adoption of such an instrument. Even so, the misuse and misappropriation of TK and traditional cultural expressions (TCEs) remained problems of a global scale, which required a global solution. International protection of this knowledge and these expressions was necessary to buttress these national efforts. The proposed protection would permit those countries and those communities endowed with such traditional richness, most often developing countries, to draw benefit and to take part more actively in the global economy. The interests of these communities in the domain of TK, TCEs and GR could only be well protected if they formed the object of an internationally binding instrument. That legal instrument should offer, as in the case of other intellectual property rights, the possibility of sufficient remedies against the violation of the rights of holders of TK, GR and TCEs. In conclusion, the African Group supported the recommendation of the IGC that its mandate be extended by two further years. Its new activities would notably be focused on the international dimension of these questions. The IGC would be encouraged to accelerate its work so as to present a progress report to the Assembly in September 2008.

256. The Delegation of Poland, on behalf of the Group of Central European and Baltic States, welcomed the progress achieved in the work of the IGC and reaffirmed the great importance it attached to the proceedings of the IGC. In this context, it was obvious for the group to support prolongation of the IGC under its current mandate. The Group further noted the steady progress of the implementation of the Voluntary Fund and welcomed the decisions of those Member States who had made contributions. It noted with satisfaction that the present amount of the funds available would suffice for several years to come for financing participation in the work of the IGC of accredited observers representing indigenous or local communities, or other holders of TK or TCEs, and encouraged those Member States who may wish so in future to contribute to the Fund.

257. The Delegation of South Africa aligned itself with the statement made by the Delegation of Algeria made on behalf of the African Group and welcomed the continued support and contributions made by Member States to the Voluntary Fund for indigenous and local communities that directly supported the participation of representatives of these committees in the work of the IGC. The voice and experience of indigenous and local communities had been vital contributions to the work of the IGC's work. South Africa's

pledge had in fact translated into factual funding. The Delegation welcomed the decision of the 11th session of the IGC to renew its mandate for the next biennium. It considered that the renewed mandate constituted an unparalleled opportunity to refocus the direction before us in the next two years and the comments subsumed in the factual extraction of the documents in order to make further progress towards consideration of an international dimension of those questions without prejudice to the work pursued in other for a. No outcome of this work would be excluded. The paramount consideration must be to ensure that the progress to date in achieving this aim was not inevitably jeopardized. It remained positive that the renewed mandate of the IGC will move towards the conclusion of an internationally binding instrument. South Africa was currently putting in place national laws and regional measures in helping protect genetic resources, indigenous knowledge and traditional cultural expressions, which required the support of an effective binding international regime. As contained in WO/GA/34/9, the IGC had already met for the eleventh session since its establishment. Having achieved much during these sessions, South Africa remained concerned at the current stagnation of discussions during the past few sessions. The Delegation wished to urge the IGC to continue its momentum with an understanding that any further work of the Committee must constitute a step towards developing an internationally binding legal instrument that aimed to protect indigenous knowledge, traditional cultural expressions and genetic resources. In order to illuminate a positive role on the continued work of the IGC, South Africa remained as committed and encouraged the IGC to work towards these goals in promoting and protecting the rights of the dignity of local indigenous communities. In conclusion, South Africa supported the decisions contained in paragraph 11 of WO/GA/34/9.

258. The Delegation of Switzerland welcomed and supported the work of the IGC on TK and TCEs and approved the progress made so far. There was still work to be completed, however. This work was useful and essential, the Delegation stated, because the questions before the IGC were complex. There was a need to establish definitions and objectives before consideration of any legal instruments. On GR, the Delegation referred to its proposal on a declaration of source in patent applications, contained in WIPO/GRTKF/IC/11/10, and stated that it was convinced that the IGC would make progress on this question. The Delegation supported the continuation of the work as proposed in paragraph 11 of WO/GA/34/9. The Delegation referred also to the 150,000 Swiss Franc donation made by the Swiss Federal Institute of Intellectual Property to the WIPO Voluntary Fund, which showed the importance the Delegation attached to the participation of indigenous and local communities in the work of the IGC.

259. The Delegation of Bangladesh appreciated the work done by the Chair and the Deputy Chairs of the IGC and welcomed the progress made by the IGC. The Delegation supported an extension of the IGC's mandate as proposed, and stated that there was a need to build on the progress made so far. The Chair of the IGC had shown great patience and understanding, and this had enabled the work to move forward. There was a need for a further convergence of views, and the Delegation called on all delegations to accelerate the IGC's work towards the adoption of legally binding instruments. Finally, the Delegation welcomed the successful launch of the Voluntary Fund.

260. The Delegation of Portugal, speaking on behalf of the European Community and its Member States, expressed its appreciation for the progress that the IGC had made so far. It believed that a constructive way forward was possible, particularly on those areas of the discussions where the IGC had already reached a certain consensus. The European

Community wished to continue the constructive work of the IGC in a spirit of open and responsible collaboration and to build upon what had already been achieved. Underlying the importance of wide stakeholder consultations in this process, it continued to support and welcome the participation of indigenous and local communities in the IGC. It remained committed to the activities of the WIPO Voluntary Fund, to which some Member States of the European Community had contributed. The work of the IGC over the past six years had demonstrated the importance of TCEs in the lives of all peoples and communities in the world and that all TCEs deserved respect. However, the successive meetings of the IGC had also made evident that there were significant differences in what were considered to be TCEs and how they should be dealt with. The European Community also recognized the importance of ensuring appropriate protection of TK. In this context, it acknowledged the work done on the list of issues, which represented a valuable contribution to the IGC's work, and supported further efforts towards the development of international *sui generis* models or other non-binding options for the legal protection of TK. It emphasized that, in line with its preference for internationally agreed *sui generis* models, the final decision on the protection of TK should be left to each contracting party. As indicated in its submissions to the IGC, the European Community believed that a constructive way forward was possible on those parts of the discussions on which the IGC had so far reached a certain consensus. The objectives and general guiding principles appeared to distil much of what was being sought after, and the European Community would, therefore, propose that the future work of the IGC concentrate on these two texts. The European Community continued to believe that consideration of the relationship between IP and GR was an important task of the IGC because of its expertise in this area and expressed the wish to see the IGC make progress in this field. It recalled that it had tabled several proposals on GR and the disclosure requirement and considered that such proposals, particularly the issue of the disclosure requirement, merited an in-depth discussion as soon as possible. The work of the IGC over the past years had exposed both similarities and differences between Member States, and therefore the European Community continued to believe that further discussion of the key issues and an exchange of experiences could bring important benefits in the short term. The European Community believed that the work of the IGC was making progress but was not yet finished and would encourage, therefore, the General Assemblies to renew the mandate for another biennium as set out in the conclusions of the eleventh session of the IGC in July 2007.

261. The Delegation of China was satisfied to see that since April 2001 the IGC had held eleven sessions with the active participation and support of all Member States. WIPO, in terms of protection of GR, TK and TCEs/EoF had done a lot of work, accumulated rich material, gathered opinions from all sides and achieved preliminary results. The Delegation believed that all these achievements were conducive to a better understanding of the mission and targets of the IGC and laid a good foundation for further discussions of related issues. It acknowledged that what the IGC was responsible for was an important task. The issues that were discussed related to environment, human rights, natural resources, cultural heritage and many other areas, and they related to the further development and improvement of the international IP system. The Delegation attached great importance to the issues. As an amendment to the patent law of China, China had added a clause requiring the disclosure of the origin of genetic resources. The Delegation had actively participated in previous sessions of the IGC and had made all efforts to promote the IGC's discussions. The Delegation supported the extension of the mandate of the IGC and stated that it would, as always, support the work of the IGC and actively participate in discussions of related issues. It expected that, with the joint effort of all Member States, the IGC could find a reasonable way, acceptable to all sides, to better satisfy the needs and concerns of all Member States. As mentioned by

some delegations in their statements and by the Delegation of China in its general statement, the Delegation reiterated the hope that in the future discussions some breakthroughs could be achieved so as to reach a preliminary consensus on developing a binding international instrument.

262. The Delegation of Norway stated that the IGC was dealing with issues of particular importance. During the last session of the IGC, the substantive discussion on the list of issues provided for a welcome focus that seemed to bring the discussions forward in a constructive manner. Norway had transferred its contribution to the Voluntary Fund and supported the renewal of the mandate of the IGC for the next two years. The Delegation emphasized the importance attached to a substantive outcome of the work of the IGC. It stated that it would continue to engage constructively in the IGC's future work.

263. The Delegation of Oman referred to its opening statement in which it had stated that GR and TK were extremely important for the country given the impact they had on communities in Oman. Therefore, the Delegation paid tribute to the IGC for the progress that it had made, in particular in relation to GR, TK and TCEs/EoF. It supported the recommendations made by the IGC at its eleventh session on the renewal of its mandate. The Delegation drew the attention of Member States to the need to use the official languages of the UN in the work of the IGC. It stated that the Arabic language should not just be limited to interpretation during meetings, and that the working documents of the IGC should also be in Arabic since its competent authorities at all levels were dealing with these issues in the Arabic language. This would also strengthen the qualitative and quantitative participation in the IGC of countries from the Arabic speaking region. The Delegation therefore invited all Member States to approve the inclusion of all the official languages of the UN in the work of the IGC, including for purposes of its working documents. The Delegation referred to proposals that had been adopted by Arab countries in a meeting held in Tunis, Tunisia in June 2007, organized by WIPO in collaboration with the Arab League. Documentation for the protection of GR, TK and TCEs/EoF was to be drawn up and to be preserved through the current regime and through databases. The Delegation stressed the need for WIPO to assist its Member States to strengthen human capacities. It concluded with the hope that an international binding instrument would be achieved.

264. The Delegation of the Russian Federation highlighted and appreciated the progress made so far in the IGC, and stated that it also appreciated the establishment of the WIPO Voluntary Fund. The basic direction of future work and the extension of the mandate were agreed upon. There should be a focus on the international dimension and this could include the development of an international instrument or instruments. The Delegation agreed with those who had called upon the IGC to speed up its work and that it should provide a report to the Assemblies in 2008.

265. The Delegation of Ghana welcomed and endorsed the recommendation to renew the mandate of the IGC for the next budgetary biennium to continue its work. The Delegation hoped that the work of the IGC would focus on and accelerate the development of an international legally binding instrument. The Delegation supported and aligned itself with the statement made by Algeria on behalf of the African Group.

266. The Delegation of Indonesia welcomed the document WO/GA/34/9 concerning the IGC particularly on the renewal of the IGC mandate. It was definitely the result of long and thorough discussions, especially during the last eleven sessions. The Delegation highly

appreciated the support of Member States and H.E. Ambassador I Gusti Agung Wesaka Puja of Indonesia who had chaired the last three sessions of the IGC. The support had indeed smoothed the deliberations in the IGC. The Secretariat, which had worked hard in preparing the bulk of informative and substantive documents, should also receive utmost appreciation. Besides welcoming the renewal of the mandate of the IGC, the Delegation highlighted the importance of the IGC accelerating its work so that it could report to the next General Assembly. The Delegation hoped that the work could be accelerated for concrete and tangible results, particularly on the protection of GR, TK and folklore with an international dimension. No single country, developed or developing, would deny that GR, TK and folklore needed international protection. It had been noted with great concern when during the last IGC session that some NGOs unveiled a number of cases of misappropriation of TK and TCEs, such as misappropriation of Indian yoga or Indonesian batiks which had been the TK or TCEs of the respective people for hundreds of years. Based on that observation, the Delegation fully supported the decision to urge the IGC to accelerate its work. Nevertheless, the next sessions should not merely be a forum for extending views or even making a repetition of what had been before asked for years. All should find out other creative ways of moving the work forward, beside regular consultations in Geneva. The PCDA was a success story in having informal consultations for the Geneva-based negotiators out of its regular sessions, and was worthy of mention as one of the examples. Indonesia would always be fully engaged in the deliberations of these important matters and looked forward to a further success of the next IGC sessions.

267. The Delegation of India shared the concerns of a large number of countries about the ongoing misappropriation of GR and the associated TK, and of TCEs and folklore. There had been numerous instances where India's TK had been misappropriated, the latest instance being yoga. The Delegation thanked the Delegation of Indonesia for flagging this issue. India was determined to oppose and prevent such misappropriation of its TK heritage. Indian legislation had already provided for disclosure of the origin of genetic resources and the associated TK in patent applications. It also provided filing prior informed consent and equitable benefit sharing to provide access to such resources. India had already put in place biodiversity authorities to regulate such provisions in the enactment. To facilitate and enable the other patent offices to prevent such misappropriation, India had compiled a traditional knowledge digital library to provide information to patent offices on the existing Indian TK so that they could have a look at the prior art in this area. India also provided for pre grant opposition and post grant revocation on non-compliance of the provisions enacted. It would be imperative to accelerate the work of the IGC, as the Indonesian Delegation had also underlined, so that an internationally binding and more instruments could be completed in a timely manner to prevent further misappropriation. Therefore, India would support the proposal for renewal of the mandate of the IGC as proposed. It also placed on record its appreciation for the tireless efforts of the IGC Chair, H.E. Ambassador Puja of Indonesia. The Delegation was also appreciative of the efforts of the Secretariat for the exhaustive and comprehensive documentation in this cause.

268. The Delegation of the Islamic Republic of Iran appreciated the IGC for its effective and continuous activities. It believed the continuation of this movement could promote cooperation and co-understanding among the Member States in the case that it comprehensively included the Member States' concerns. The decision of the eleventh session of the IGC was an excellent example of positive outcomes arising from the IGC's work. Therefore, the Delegation emphasized and supported the continuation of the committee's duties and work towards an international binding instrument. The Delegation believed that

the discussion in respect of TK and Folklore required to be in line with the IGC's past actions and should include the policies and principles which were referred in documents WIPO/GRTKF/IC/11/4 and WIPO/GRTKF/IC/11/5. However, there were some concerns about the slow progress on GR discussions. As a matter of fact, this part of discussion was followed completely different from others. Therefore, the policy and principles of this area should be identified actively and rapidly. The Delegation emphasized the necessity of close cooperation between the IGC and other international arrangements and organizations such as the Convention on Biological Diversity, the FAO International Treaty on Plant Genetic Resources for Food and Agriculture, UNESCO and UNEP. The Delegation believed that this cooperation was a positive approach to achieve the IGC's aims. Institutionalizing pending issues regarding GR, TK and folklore along with the application of other relevant international instruments would serve the purpose and interests of both stakeholders and users. Participation of local and indigenous communities might help the IGC to achieve its mandate. In this regard, the Delegation supported their participation in accordance with the voluntary fund mechanism.

269. The Delegation of Mexico participated in and followed very closely the deliberations of the IGC and completely supported in all cases the renewal of its mandate. The Delegation said that it had not the slightest doubt as to the usefulness of the forum which allowed the exchange of ideas and points of view on an extremely complex topic such as the protection of traditional knowledge, traditional cultural expressions/expressions of folklore and access to genetic resources. The Delegation said that the time had come to make positive progress in the debates in order to reach a consensus which would offer benefits to all parties. In the discussions Mexico had maintained a flexible position in debates where substantive issues were discussed and the suitability of implementing the requirement of disclosure of origin, without affecting the patent system, continued to be explored. In the decision taken to continue with the WIPO Development Agenda, the proposal by Ambassador Clark of Barbados, in paragraph 18 of Cluster B, was relevant, i.e. "to urge the IGC to accelerate the process on the protection of GR, TK and folklore without prejudice to any outcome, including the possible development of an international instrument or instruments". That recommendation should guide future work. The Delegation also expressed satisfaction at the way in which the Voluntary Contribution Fund had operated, since it had allowed representatives of indigenous peoples and local communities to participate in the deliberations of the IGC, and had without doubt promoted understanding between the interested parties. For Mexico, it was very important for the International Bureau to continue providing assistance for the IGC, by means of technical knowledge and documentation.

270. The Delegation of Sudan expressed deep gratitude to the IGC and full support to the statement made by the Delegation of Algeria on behalf of the African Group. The Delegation emphasized continuing cooperation with the IGC. In view of the fact that TK and TCEs constituted a vital element in Sudan, it was hoped that adequate funds would be allocated to TK and TCEs related activities in the budget for 2008. It stressed that work was under way for the development of a national law on TK and TCEs that would soon be submitted for approval. Finally, the Delegation supported the renewal of the IGC mandate and associated itself with other Delegations in hoping to see the development of a much-needed binding international treaty in that field.

271. The Delegation of Morocco offered its full endorsement to the statement made by Algeria on behalf of the African Group. It was aware of course of the importance of TK and TCEs as a driving force behind economic and social development. Also important was the

expression of the historical nationhood of a country. This being the case Morocco supported the prolongation of the mandate of the IGC so that it could consolidate the progress which had already been made and the understanding already built up over the last few years. The basic objective of the future work would be the establishment of an international instrument because that would be the best guarantee for effective and efficient protection of TK and folklore. This would mean overcoming the current divergences and differences and starting a frank dialogue based on honesty and openness. The Delegation welcomed the intention to work on an instrument without prejudice to the other issues already being dealt with by the IGC. Disclosure of origin was an issue which needed to be tackled as well. The Delegation welcomed the establishment of the Voluntary Fund which had made it possible to finance the participation in the work of the IGC of representatives of local communities and indigenous peoples, and it had chaired the Advisory Board that recommended funding of beneficiaries under the Fund. The Delegation expressed gratitude for the generous contributions of all the donors to the Voluntary Fund.

272. The Delegation of New Zealand pointed out that it had been a strong supporter of the IGC process since its inception over 6 years ago. The IGC had undertaken important and useful work, had helped to raise the profile of TK issues, in domestic, regional and international contexts. The IGC had encouraged domestic policymakers to focus on complex questions regarding the relationship between conventional IP systems and the interests of TK holders. The Delegation supported renewal of the mandate in the terms recommended by the IGC. The IGC should continue to consider both the international and domestic dimensions, with no outcomes excluded, including the possibility of internationally binding instruments further down the track.

273. The Delegation of Guinea expressed support for the statement of the Delegation of Algeria on behalf of the African Group. It was appreciative of the significant progress made by IGC and emphasized that thanks to the support of WIPO and other development partners, OAPI had been able to adopt a text for protection of TK in Niger on July 26, 2007. The Delegation welcomed the contributions by Member States and other partners to the Voluntary Fund which made possible the participation of indigenous communities throughout the future mandate of the IGC. The Delegation offered its firm appreciation of these contributions. Taking account of the importance of the issues concerned, the Delegation supported extension of the IGC mandate for a further two years.

274. The Delegation of Thailand recognized the importance of protecting and promoting GR, TK and folklore as the significant parts of cultural of a community, as the source also of food security and medical treatment for people in particular in a local community. It was very important to push forward the multilateral negotiation on international protection of those areas of the community's property. The Delegation fully supported the recommendation of the IC to renew its mandate to continue its work on IP and TK. Although some progress had been made in several years of onerous work by the IGC, the Delegation supported the positive spirit in addressing the far-reaching and challenging issues of GR, TK and folklore. It hoped for more substantive discussion and greater progress in its work under a renewed mandate. The Delegation urged the IGC to accelerate its work to come up with practical measures of protection and prevention of misuse, distortion and misappropriation of TK, folklore and genetic resources. The Delegation would exert all efforts to work closely with Member States to move towards a successful agreement.

275. The Delegation of Brazil supported the recommended decision for the renewal of the IGC's mandate for another two years. It commented on the elements of the decision that was to be adopted. The first element was an affirmation that progress had been made on the substantive work of the Committee to date. Of course all were willing to be as positive as they could in the portrayal of what had actually happened in the IGC in the recommendations to the General Assembly. This was, however, a quite rosy version of the real picture. The fact was that Member States had been working in the IGC for almost seven years and not much progress had really been made on the substantive work of the Committee. The exchanges, the work that had been done, and in particular the work by the International Bureau on the supporting documentation for the deliberations, had been very useful and of high quality and, in its view, was a sound basis for proceeding towards a significant and meaningful outcome for all members. Since its inception, the mandate of the IGC indicated that Member States should focus their attention to the international dimension of the questions and unfortunately many Member States during the discussions had refrained from doing this or had questioned the capacity of the Committee to actually deal with the international dimension of the issues. The Delegation made a plea at this point that if the Committee was to be renewed for yet another two years, Committee members should become more positive about addressing the international dimension and not insist that the only possible interchange one could have was the discussion of national experiences. It underlined this because discussing national experiences may be very useful and should be done, but it did not address the international dimension which was at the core of the mandate and the agreement as to what was the work of the IGC. The other element of the recommended decision on the extended mandate was that Member States should not prejudice the work pursued in other fora. The Delegation hoped that Member States did not point to the fact that the IGC had discussed issues related to the protection of TK, folklore and GR as an excuse for avoiding discussions elsewhere where they also occurred under agreed mandates. The Delegation referred in this context precisely to the Doha Round of trade negotiations in the World Trade Organization, where there was a mandate to address issues related for example to a mandatory disclosure requirement under TRIPS. No outcome of the work of the IGC was excluded. This had been agreed to by all members, and had been the mandate since 2000 when the first mandate for the IGC had been adopted. All had seemed to agree to this when Member States adopted the recommendations concerning the mandate in the General Assembly, but when meeting at the IGC many Member States refused to even accept a document prepared by the Secretariat that addressed the issue under different perspectives, a document that contained guidelines, possible principles for addressing the situation and including possible obligations at the international level. If no outcome was to be excluded, then IGC members should be open to discussing all possible alternatives, even the possibility of a legally binding obligation in this area. It did not mean that by discussing these legally binding obligations members agreed to adopting them in the end. The exclusion of no outcome from its work meant to the Delegation that IGC members should be allowed to discuss any aspect, even the possibility of an international treaty for the protection of TK and folklore. So, again, the Delegation insisted that the renewal of the IGC should mean a new commitment for IGC members to achieve significant work. The commitment was for IGC members to keep an open mind, to maintain flexibility and to show willingness, even to think outside the box. This was a new issue, not only for WIPO, but in terms of intellectual property as such. The Delegation acknowledged and agreed with those Member States who had pointed to the fact that this issue was extremely complex. There was no easy answer to the problems that were being posed with regards to misappropriation, for example, of TK and GR. The phenomenon that was referred to as 'biopiracy' was readily understood. The calls for answers within the IP system were coming from many sectors in developing countries, but not developing countries

alone, but the answers were not easy ones. Because of that progress could not be achieved in a very short period of time. Even so, the Delegation highlighted one element in the recommended decision which became, in the Delegation's view, part of the renewed mandate for the IGC, namely subparagraph 9 (iv) of WO/GA/34/9. It prompted all IGC members to agree to work towards further convergence of views on the questions included in the previous mandate. For the Delegation, this was a serious commitment: it meant all were agreeing to make an effort towards further convergence of views. That meant bridging differences, listening to each other, and accepting an open debate without placing limitations up-front as to what could or could not be discussed or dealt with in the Committee. If this was done, it would simply be preventing the Committee from fulfilling its mission to the fullest extent, even though all were apparently agreeing within the Assembly that that the IGC should address the issues and should develop an adequate response to the concerns that had been placed before it. In terms of practical measures to be taken, the Delegation pointed to the fact that a considerable amount of time was spent in negotiating the language of subparagraphs 9 (v), 9 (vi) and 9 (vii) of the document. Again this was a reflection of certain limitations that some IGC members tried to impose on the kind of work that could be actually developed in the IGC. Some members appeared to consider that the IGC should be only a forum for a seminar or a forum for exchange of views but no more than that. In any case, the language that was agreed upon gave enough latitude to the Secretariat to provide useful documentation for further debates. The Delegation referred to the obscure language in the decision, concerning a "factual extraction, with attribution, consolidating the view points and questions of Members and Observers on the List of Issues considered during the Eleventh Session including their comments submitted in writing for the Eleventh Session, subject to review of Member States and observers and without prejudice to any position taken on these issues". These were the new documents – one concerning TK and one concerning TCEs – to be prepared by the Secretariat for the next meeting. IGC members had to be sure about what they were doing. If they were renewing the mandate for another two years, they were going to spend money and time to finance people to come and spend a full week or even more in Geneva. The last meeting lasted more than a full week, eight working days altogether. The Delegation understood that this "factual extraction with attribution" etc. should be a meaningful document and that it had to be dealt with without placing any restrictions on the possibility of having an open discussion. The Delegation finally referred to another part of the decision, the phrase contained in subparagraph 9 (vii), which referred to the fact that the Secretariat should prepare a further update of international developments based on WIPO/GRTKF/IC/11/8(b) "which would include omissions identified in the current session." This referred to the fact that this document was supposed to inform IGC members of activities going on in other forums that were relevant to the subject matter of the Committee. A very important omission had been identified by some IGC members, in particular the evolving discussions in the Doha Round on a patent disclosure requirement for genetic resources. The Delegation believed those discussions had evolved considerably. That particular document (WIPO/GRTKF/IC/8/11(b)) had lacked reference to a proposal for an amendment to TRIPS with regards to disclosure requirement. The number of co-sponsors of that proposed amendment had jumped from 14 to over 50 following the whole of the African Group in the WTO had decided to co-sponsor the proposal. Further, all the LDCs had declared their support for the amendment. Hence an amendment to TRIPS was on the table in the WTO Doha Round that was supported by a majority of developing countries. Around 70 countries now supported this amendment to TRIPS. This issue was discussed in the WTO not as a stand-alone issue, was connected to the Doha Round as a whole and in close association with proposals coming from the European Community, for example regarding the extension of protection to geographical indications and the creation of a multilateral register under TRIPS

for the protection of GIs. This made the whole discussion of the disclosure requirement much more complex and multifaceted.

276. The Delegation of the Democratic People's Republic of Korea endorsed previous statements which had welcomed the progress made to date and supported the extension of the IGC's mandate as proposed.

277. The Delegation of Japan stated that it supported the renewal of the mandate of the IGC. There was still the need to clarify key issues relative to the IGC's work on TK and TCEs. The priority was for there to be an in-depth discussion on a list of issues before going further. On GR, issues of compliance with the CBD and the erroneous granting of patents should be discussed separately. Japan would continue to participate constructively in the work of the IGC, the Delegation concluded.

278. The Delegation of Turkey thanked the Chair and Vice-chairs of the IGC for their work. The last session of the IGC had been useful in clarifying the viewpoints of IGC participants. The Delegation remained open on the nature of the instrument to be developed by the IGC, and believed there was a need to agree on its form because agreement on the form would assist in determining its content. Both binding and non-binding instruments would be useful. The Delegation added that the last session of the IGC had also clarified the importance of the international dimension. On GR, a disclosure requirement was needed and should be developed in a careful manner. In concluding, the Delegation supported the renewal of the IGC's mandate.

279. The Delegation of Malaysia supported the recommendation made by the IGC after the eleventh session, especially the renewal of its mandate. It looked forward to the establishment of an international legally binding instrument in the near future and hoped that the IGC would accelerate its work so that a tangible result or outcome would be achieved.

280. The Delegation of Moldova supported the work of the IGC and agreed that over the last three years a considerable amount had been achieved. However, as had been made clear by other delegations, the IGC had not yet reached consensus on many issues which had been discussed in the course of its work. The Delegation stated that it was necessary to build upon the positive experience that Member States already had in the protection of GR, TK and TCEs/folklore at national level, because then it would be easier to transport those models and experiences to an international level. It was confident that all countries wanted to get to a point where Member States could have a mutually acceptable solution to the problems. That was certainly the wish of the Delegation. Therefore, it participated actively and constructively in the work of the IGC. It also supported the prolongation of the mandate of the IGC for a further two year period.

281. The Delegation of Pakistan appreciated the discussions that had been conducted during the last eleven sessions of the IGC on TCEs, TK and GR. It deeply appreciated and endorsed the recommendation for renewal of the mandate of the IGC for the next two years. It also appreciated the skillful steering of the IGC by its Chair. The Delegation thanked the Secretariat of WIPO for producing excellent documents on the issues. While it was encouraged with the continuation of the discussions at the IGC, it was seriously concerned with the lack of tangible progress. After eleven sessions of the IGC, the Member States were still at a stage of questioning and developing understanding of the issues. The IGC needed to move ahead expeditiously towards the logical conclusion of these discussions, in other words,

towards an international legal instrument. The cost of those prolonged and inconclusive discussions was borne by those whose rights were being continuously misappropriated. The Member States needed to take measures to stop this trend. The Delegation expressed serious concern with the strategy used by some Member States to extend discussions at the IGC on one pretext or another, using those discussions as an excuse to avoid discussions in other fora. Therefore, it expressed the need to pursue discussions in the IGC with clear, time-bound and result-oriented benchmarks, with a particular focus on the international dimension.

282. The Delegation of Nigeria supported the statement made by the Delegation of Algeria on behalf of the African Group. It expressed the view that the work of the IGC was crucial in raising awareness of the protection of the rich reservoir of GR, TK and TCEs/folklore as these in essence captured the totality of the way of living and culture of communities, particularly in developing countries. This historical heritage concerning matters such as traditional medicine, oral tradition and religion were being misappropriated. The mechanism for effective protection went beyond national laws and required an international legal binding instrument to be put in place without prejudice to ongoing discussions and negotiations in other fora. The Delegation appreciated the substantive work done by the IGC. However, it believed that the IGC should increase action in its work so as to fulfill its mandate. Nigeria supported the renewal of the mandate as recommended. The Delegation equally welcomed the successful launch of the WIPO Voluntary Fund and thanked the donors for their contributions. It further called on the international community to continue contributing adequately to the Fund as to ensure the effective participation by representatives of local and indigenous communities in the work of the IGC.

283. The Delegation of the Syrian Arab Republic praised the Director General's efforts in the development of WIPO's work in general, and in coordinating Member State processes in the implementation of IP-related international treaties. It also wished success to all WIPO staff and those servicing the meetings. It wished to thank in particular the Arab Bureau for its kind efforts and continuous assistance. However, it requested the Secretariat to ensure, in future meetings, the translation of all documentation into Arabic and Russian, as that was an internationally recognized right. The Delegation noted that in a time of globalization and uniform cultures, people and governments were reverting to their cultures which embodied their identity and reflected the diversity of their folklore. Every nation or community had their own wealth of TK and folklore that endowed them with distinct features that should not be prejudiced through misuse or misappropriation. In that manner, the Delegation believed, nations and communities could freely contribute to, and play a role in the enhancement of global cultural diversity. The Delegation pointed out that as cultural heritage and identity faced such threat, the international community had reacted by focusing attention on TK and TCEs through international and regional organizations. UNESCO, for instance, had adopted the Convention for the Safeguarding of the Intangible Cultural Heritage in 2003. The Delegation announced that the Syrian Arab Republic was one of the first signatories of this Convention. Concerning national activities in the compilation and registration of TK and TCEs, the Delegation advised that work had been initiated a few decades earlier and continued to be enhanced. The Ministry of Culture had requested the preparation of a strategic plan for the compilation and registration of intangible cultural heritage. The Department of Cultural Heritage, Ministry of Culture, established and implemented the requested strategic plan at district level. The Delegation was pleased to emphasize that significant results were achieved as manuscripts related to intangible cultural heritage were received and published by the Ministry free of charge in favor of their authors. Rewards were also granted to those authors for their continuous contribution to such an important field. Various initiatives were

also taken by researchers on oral intangible heritage such as narratives, proverbs, folk expressions, songs, choreographic works as well as other traditional knowledge in various parts of Syria. The Delegation added that the Ministry of Culture had a Department of Cultural Heritage responsible for the compilation and registration of cultural heritage. In addition, subsidiary committees had been established at district level for the compilation and registration of cultural heritage. In addition, the National Register of Intangible Cultural Heritage had been established in 2003. Concerning future work, the Delegation listed the continuation of the process of compilation and registration and the use of expertise through comprehensive field surveys with particular emphasis on distinctive features of time and location. The Delegation also mentioned the establishment, with WIPO's assistance and cooperation, of an official national reference on cultural heritage for researchers, artists and media. Finally, the Delegation supported the renewal of the IGC's mandate for a further two years.

284. The Delegation of Chad thanked the Chair and Deputy Chairs of the IGC for their efforts. The Delegation associated itself with the statement made by the Delegation of Algeria on behalf of the African Group. The Delegation emphasized the great importance of the work of the IGC and supported the recommendation to renew its mandate for the next two years.

285. The Delegation of Papua New Guinea noted that the IGC had made significant progress and thanked the Chair and Deputy Chairs of the IGC for their work. GR, TK and TCEs/folklore were important assets which required protection for the benefit of communities and indigenous rights holders. Papua New Guinea had collaborated closely with WIPO and had adopted the South Pacific Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture. The Delegation valued the work of the IGC and supported the renewal of its mandate.

286. The Delegation of Paraguay supported the proposal to renew the mandate of the IGC. The Delegation also wished to express its support for the progress made, in particular the launch of the Voluntary Fund. However, the need for more decisive progress was stressed towards the protection of GR, TK and TCEs/folklore through an effective instrument. WIPO needed to show the international community that it was alive and well and was taking part in efforts to develop intellectual creation in communities that needed that most. Empowering IP institutions by other institutions was the result of the lack of determination and bureaucracy seen in this organization for some time, and progress in this area would show the validity of the principles and objectives of WIPO, and help communities. This was an opportunity that should be taken up, the Delegation concluded.

287. The Delegation of the Republic of Benin, speaking on behalf of the Least Developed Countries, welcomed the efforts made by the Ambassador of Indonesia and all the other members of the Intergovernmental Committee aimed at drawing up legally binding instruments. Genetic resources, traditional knowledge and folklore were of major importance for that group of countries which often suffered from piracy in those areas. The Least Developed Countries had participated actively in the work of the Committee and would continue to do so in the future. For that reason, the Republic of Benin, on behalf of the LDCs, supported the proposal to renew the Committee's mandate for a further two years with a view to achieving specific results at the end of that period.

288. The Delegation of Mali associated itself with all the delegations wishing to extend the mandate of the IGC. The Delegation persisted in its insistence on the urgency of

implementing the recommendations in paragraph 9 of document WO/GA/34/9. The IGC should accelerate its work and present a progress report to the session of the General Assembly in September 2008.

289. The Delegation of Togo congratulated the Intergovernmental Committee on its work which had been accomplished successfully. The Delegation supported the statement of Algeria on behalf of the African Group and also supported the declaration of the Delegation of Benin for the LDCs. The Delegation approved the renewal of the mandate of the Committee.

290. The Delegation of Argentina supported the recommendation to renew the mandate of the IGC in the terms contained in document WO/GA/34/9.

291. The Delegation of Trinidad and Tobago supported the renewal of the IGC's mandate. For Trinidad and Tobago, areas of IP concerning GR, TK and folklore, were very important areas, particularly when it related to the invention of the steel pan music in Trinidad and Tobago along with other kinds of TK particularly with respect of indigenous people. The Delegation thanked all the delegations that had supported this move and again expressed its support.

292. The Delegation of Ukraine expressed satisfaction with the work of the Voluntary Fund, and said that the Fund should continue its activities. The Delegation wholeheartedly supported the decisions adopted at the eleventh session of the IGC to retain on the agenda of the IGC issues relating to the protection of IP and GR, TK and TCEs/EoF for further examination and discussion at future sessions; and the need to devise an international instrument (or practical guidelines) which would strengthen the recommended provisions concerning the protection and defense of GR, TK and TCEs/EoF.

293. Taking account of all views expressed by Delegations, and in the light of the recommendations of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) as recorded in document WO/GA/34/9, the Assembly:

(a) noted the agreement of the IGC that progress had been made on its substantive work to date, and that the IGC had agreed to work towards further convergence;

(b) welcomed the successful launch of the WIPO Voluntary Fund, called for further contributions to the Fund and encouraged further initiatives to ensure the effective participation of representatives of local and indigenous communities in the work of the IGC;

(c) approved the renewal of the IGC's mandate in the terms recommended by the IGC and set out in paragraph 9 of WO/GA/34/9, in particular:

– the Intergovernmental Committee will continue its work for the next budgetary biennium on questions included in its previous mandate;

- its new work will focus, in particular, on a consideration of the international dimension of those questions, without prejudice to the work pursued in other fora; and
 - no outcome of its work is excluded, including the possible development of an international instrument or instruments;
- (d) urged the IGC to accelerate its work and to present a progress report to the session of the General Assembly in September 2008; and
- (e) requested the International Bureau to continue to assist the IGC by providing Member States with necessary expertise and documentation.

ITEM 24 OF THE CONSOLIDATED AGENDA:

MATTERS CONCERNING INTERNET DOMAIN NAMES

294. Discussions were based on document WO/GA/34/6.

295. The Secretariat recalled that WIPO conducted two Internet Domain Name Processes. The First Process, which concerned the relationship between domain names and trademarks, resulted in the adoption of the Uniform Domain Name Dispute Resolution Policy (UDRP). Since December 1999, the WIPO Arbitration and Mediation Center had administered close to 12,000 UDRP cases involving more than 30,000 domain names. In 2006, the Center witnessed a 25% increase over the previous year administering a total of 1,824 cases, with further growth of 18% in 2007 so far. WIPO UDRP proceedings had, so far, involved parties from 143 countries and had been conducted in 13 different languages. As at September 2007, the Center provided domain name dispute resolution services to 50 ccTLD registries and was in consultation with a number of additional ccTLDs. The Center also worked towards enhancing the protection of trademark rights during the introduction of new gTLDs, and had administered over 15,000 cases under start-up policies including .BIZ, .INFO and .MOBI. In this regard, the Center was currently working with the registry for .ASIA.

296. The Second Internet Domain Name Process had examined the relationship between domain names and certain identifiers other than trademarks. Based on the findings of this Process, the WIPO General Assembly had recommended in September 2002 that the UDRP be amended to provide protection also for (1) the names and acronyms of international intergovernmental organizations (IGOs) and (2) country names against their abusive registration as domain names (the WIPO-2 Recommendations). The Secretariat had transmitted these recommendations to the Board of the Internet Corporation for Assigned Names and Numbers (ICANN) in February 2003. ICANN had informed the Secretariat that, while it was not likely that consensus would be achieved among ICANN's various constituencies to move forward with the WIPO-2 Recommendations as a whole, progress might be possible with regard to the protection of the names and acronyms of IGOs for which an established basis existed in international law. The Secretariat was aware that ICANN was

expected to present to ICANN's constituents in October, 2007 a draft Dispute Resolution Policy for the protection of the names and acronyms of IGOs.

297. The Delegation of the United States of America stated that it wished to continue to disassociate itself from the WIPO-2 Recommendations.

298. The General Assembly took note of the contents of document WO/GA/34/6.

ITEM 26 OF THE CONSOLIDATED AGENDA:

MATTERS CONCERNING THE PATENT LAW TREATY (PLT)

299. Discussions were based on document WO/GA/34/13.

300. The General Assembly took note of the contents of document WO/GA/34/13.

ITEM 29 OF THE CONSOLIDATED AGENDA:

PROGRESS REPORT ON THE NEW CONSTRUCTION PROJECT

301. Discussions were based on document WO/GA/34/11.

302. The Secretariat introduced the document and drew the attention of the General Assembly to the fact that the Program and Budget Committee has been regularly informed of the progress on the new construction project and has, at its twelfth session, noted the most recent report, as indicated in paragraph 2 of document WO/GA/34/11. In addition, the WIPO Audit Committee has been monitoring the project very closely, in particular through the audits carried out by the External Auditor and the Project Pilot, as well as the Project Risk Registers. The Secretariat emphasized that it has been benefitting from the legal advice of the *Institut pour le droit suisse et international de la construction* (Swiss and International Construction Law Institute) and, in respect of the bank loan, also from the advice of an independent financial expert recommended to WIPO by that *Institut*. The proposals received from general contractors, following an international tender procedure, are currently being evaluated, in particular by the Project Pilot. An independent Selection Board, composed of representatives of Member States and presided over by Ambassador Manalo, former Chair of the General Assembly, will proceed with the selection of the general contractor in a few weeks. Also before the end of the year, and following an international tender procedure, the same Board will select the bank that will provide the loan. The Secretariat indicated that the amount of the loan will depend on the decisions taken by the Assemblies insofar as they would relate to the possible use of reserves to finance the project. While noting that the new building model was on display in the lobby of the AB Building, the Secretariat concluded that construction should be able to start at the beginning of 2008, as planned.

303. The Delegation of the United States of America requested that the contribution of the United States of America not be used to pay interest on the bank loan, as that was prohibited by the policy of the United States of America.

304. The General Assembly took note of document WO/GA/34/11 and its Appendix.

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