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## WIPO General Assembly

**Fiftieth (27<sup>th</sup> Extraordinary) Session  
Geneva, September 24 to October 2, 2018**

### REPORT

*adopted by the WIPO General Assembly*

1. The WIPO General Assembly was concerned with the following items of the Consolidated Agenda (document A/58/1): 1, 2, 4, 5, 6, 10, 11(i), 11(iii), 12, 13, 14, 15, 16, 17, 18, 19, 20, 25, 29 and 30.
2. The reports on the said items, with the exception of items 10, 11(i), 11(iii), 13, 14, 15, 16, 17, 18, 19, 20, and 25 are contained in the General Report (document A/58/11).
3. The reports on items 10, 11(i), 11(iii), 13, 14, 15, 16, 17, 18, 19, 20, and 25 are contained in the present document.
4. Ambassador Duong Chi Dung (Viet Nam), Chair of the WIPO General Assembly, presided over the meeting.

## ITEM 10 OF THE CONSOLIDATED AGENDA

### COMPOSITION OF THE PROGRAM AND BUDGET COMMITTEE

5. Discussions were based on documents WO/GA/50/12 and WO/GA/50/14.

6. The Chair recalled the decision adopted at the previous year's Assemblies, according to which the Chair of the WIPO General Assembly would undertake consultations on an inclusive, transparent and effective PBC, taking into account, among other considerations, geographical representation with a view to making a decision at the 50<sup>th</sup> session of the 2018 WIPO General Assembly. In that respect, he had been actively consulting on the matter since the last Assemblies, and had held several informal consultations seeking to find a way forward. He expressed appreciation of the commitment of all delegations involved, as everyone had worked faithfully and in a constructive manner. He regretted, however, to inform delegations that consensus had not been achieved in the lead up to the current Assemblies.

7. The Delegation of Indonesia, speaking on behalf of the Asia and the Pacific Group, recalled that it had been more than 10 years since the regional group allocations of the composition of the PBC were considered. The current allocation of Groups in the PBC was not fair according to the proportions and representation of regional Groups in WIPO. In that regard, it recalled its proposal on the composition of the PBC as contained in documents WO/GA/49/20 and WO/GA/49/20 Corr. dated October 4 and 6, 2017, respectively, which had been resubmitted, for consideration, to the current session of the Assemblies in document WO/GA/50/14, that the PBC should be open to the full participation of all interested WIPO Member States. Decisions made by the PBC, as a key WIPO governing body, were directly relevant to all Member States. Therefore, all Member States who wished to be involved should be able to contribute in full as neither the WIPO Rules of Procedure nor the existing guidelines provided any legal basis for the current limitation on the number of seats in the PBC, nor the allocation of seats to each regional group. The Group stood ready to be constructive and flexible in the discussion under the agenda item with a view to finding a solution during these Assemblies for an inclusive, transparent, and effective PBC taking into account that it should also accurately reflect WIPO membership and relative sizes of the WIPO regional groups.

8. The Chair recalled that the issue had been the subject of long discussions at last year's Assemblies and during the informal consultations conducted since then. As in item 9, it was obvious that item 10 could not be concluded at this stage. He also pointed out that the Group Coordinators had expressed the wish to have more time for informal consultations and that he, therefore, wished to propose that they come back to the agenda item in Plenary as soon as possible. Under the circumstances, he preferred that delegations make their statements when the meeting returned to the item later.

9. Reverting to the agenda item, the Chair informed that delegations had been actively consulting on the matter and thanked the cooperation of all Coordinators and the delegations involved.

10. The Delegation of El Salvador, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), requested that the agenda item be suspended as they were still consulting on it. The Chair suspended the item.

11. Reverting to the agenda item, the Chair recalled that the item had been opened the previous week and again the previous day. He said that delegations had been actively consulting on the matter throughout the Assemblies.

12. The Delegation of Indonesia, speaking on behalf of the Asia and the Pacific Group, said that, as its Group had stated before, consideration of the composition of the PBC had last been

discussed more than 10 years ago. The Group recalled that it had put forward a proposal on the composition of the PBC as contained in documents WO/GA/49/20 and WO/GA/49/20 Corr. at the previous year's WIPO General Assembly, which had been resubmitted as document WO/GA/50/14, but had not yet been discussed in the present WIPO General Assembly. The Group was, however, flexible and stood ready to be constructive in the discussion with regard to the Group's proposals on the matter, with a view to arriving at an amicable solution at next year's Assemblies.

13. The Chair suggested that delegations continue with consultations right after the Assemblies with a view to reaching a conclusion on the issue at the next meeting.

14. The WIPO General Assembly decided to consider the composition of the Program and Budget Committee; in this context, the Chair of the WIPO General Assembly will undertake consultations on an inclusive, transparent, and effective PBC, taking into account, among other considerations, geographical representation, with a view to making a decision at the WIPO General Assembly at its fifty-first session in 2019.

## ITEM 11 OF THE CONSOLIDATED AGENDA

### REPORTS ON AUDIT AND OVERSIGHT

(i) Report by the Independent Advisory Oversight Committee (IAOC)

15. Discussions were based on documents WO/GA/50/1 and A/58/6.

16. The Chair of the WIPO IAOC, made the following statement:

"Your Excellencies,  
distinguished delegates,

"I am grateful for the opportunity to present the annual report of the IAOC. The report covers the period between July 7, 2017, and July 5, 2018, during which the Committee had four in-person meetings, and had a large number of e-mail exchanges to deal with matters of urgency between in-person meeting.

"Allow me to give you a short summary of some of the major activities of the Committee.

"Internal Oversight: throughout the year, based on quarterly activity reports prepared by the Director, IOD, the Committee reviewed the progress in implementing the workplan. The Committee was satisfied with the overall progress in implementing the plan, the oversight coverage achieved and the overall quality of the results produced. The Committee notes that this was achieved despite the challenging staffing situation that IOD faced during the period, which included numerous vacant positions and occasionally rather lengthy recruitment processes for some of these positions.

"External Audit: during the reporting period, the Committee held a video meeting with the outgoing External Auditor, Comptroller and Auditor General (CAG) of India. The Committee thanked the outgoing External Auditor for the audit work performed over the past years and for their contribution to enhancing governance of WIPO. The Committee was pleased to note that the External Auditor placed, once again, an unqualified audit opinion on WIPO's Financial Statements and commends Management on this result. On two occasions, the Committee met with the new External Auditor, the National Audit Office (NAO), United Kingdom, who briefed the Committee on their preliminary engagement activities and sought the Committee's input on their audit strategy and audit

planning. The Committee also discussed with the External Auditor the proposed amendments to its Terms of Reference with regard to external audit.

"Ethics Office: it remained a challenge for the Committee to fully discharge its Ethics related duties, therefore, to avoid ambiguities and misunderstandings in the future, the Committee suggests clarifying its role and responsibilities with regard to the ethics function and recommends to the General Assembly appropriate amendments to its Terms of Reference.

"During the period, the Committee conducted the following main Ethics related tasks:

"The Committee monitors the implementation of the recommendations stemming from the 2016 audit of the ethics framework. We noted with concern that, according to the IOD's records, the majority of the pending recommendations are beyond their initial planned implementation date and in one case even the revised implementation date.

"The Committee was pleased to note that the policy on financial disclosure and declaration of interests, which was aligned with financial disclosure policies in other UN system organizations, incorporates International Public Sector Accounting Standards (IPSAS) disclosure requirements, and contains adequate safeguards for the protection of confidentiality.

"Proposed Amendments to the IAOC Terms of Reference: the Terms of Reference of the IAOC were last amended in October 2015. As required by the Terms of Reference itself, the Committee has reviewed the current version and has shared the proposed amendments with Member States and the Secretariat for consultation. The proposed amendments focus on a complete revision of Section B, describing the Committee's function and responsibilities with a view to better structuring, streamlining, and clarifying the section in light of past experience.

"As some of the proposed amendments to the Terms of Reference will have an impact on the Internal Oversight Charter, the Committee considered it advisable to submit proposed amendments to both documents for simultaneous consideration by the Program and Budget Committee (PBC) and final approval by the General Assembly. In the past, the periodic review of these documents took place in different years, resulting in both documents never being fully aligned.

"With the permission of the Chair, I will be happy to address any questions or comments from Member States.

"Thank you very much."

17. Speaking on behalf of GRULAC, the Delegation of El Salvador thanked the IAOC for the report, its independent expert advice, its assistance to the WIPO General Assembly, and for complying with its mandate. Repeating what the Group had stated at the PBC meeting two weeks previously, particularly with regard to the Regional Bureau for Latin America and the Caribbean, which was mentioned in paragraph 18 of the report, GRULAC expressed its appreciation for the work of the Regional Bureau in coordinating and organizing activities to support the region, and in support of both Spanish and English speaking countries, as it showed the professionalism, dynamism and sensitivity of staff to the various sensitivities of each Member State. While acknowledging that any task could be done better, and recognizing the need for internal controls within any institution, the Group expressed concerns regarding the assessment so that they could be taken into account in future work of the Committee, and also to improve the oversight mandate within the Organization which would, in turn, lead to a positive impact on the Organization's work. Noting that countries from the region had supported and actively participated in the assessment activity, as was stated in the report, GRULAC had not

been given an opportunity to look at, and comment on, the preliminary results as it had received the final report with results that could no longer be changed. It would have appreciated having been able to participate in not just the drafting, but also later on, given that some of the findings of the assessment might have been based on internal requirements within each Member State, which could be significantly different from one to the other. It was felt that some of the recommendations to improve the study suggested increasing standardization *via* protocols which, unfortunately, because of the internal processes that each Member State had, would be a significant challenge and did not necessarily comply with the requirements of flexibility and adaptation by the bodies that were being assessed. Within the activities coordinated by the Bureau, there were other units of WIPO involved and the result of their actions or activities in those units had been applied to the Bureau in the assessment GRULAC said that it would be appropriate if some of the comments and recommendations made to the Bureau could be addressed to the responsible units, or taken to a higher level, so that the changes could be uniform, structural and applicable to the whole Organization. GRULAC took the occasion to reiterate those comments so that they would be taken into account for future assessments to be carried out within the Organization.

18. The Delegation of Switzerland, speaking on behalf of Group B, and the Delegation of Lithuania, speaking on behalf of the Group of Central European and Baltic States (CEBS), both deferred statements to the end of the three sub-items.

19. The Delegation of the United States of America expressed its appreciation for the valuable work that the IAOC had undertaken during the reporting period and supported the changes made to the Terms of Reference and Internal Oversight Charter, which it felt would further clarify roles and processes, as well as bring consistency to the documents. The Delegation acknowledged the IAOC's continuing support and helpful advice to Member States on oversight and finance-related matters, and appreciated the engagement of the Secretariat in that regard. It looked forward to both the Committee and the Secretariat continuing to facilitate that engagement.

20. The Delegation of Australia valued the IAOC's work and role in providing independent expert advice and oversight to the Organization, and was pleased to read from the Committee's report that it was generally satisfied with respect to many areas of work, including internal oversight, external audit, and financial reporting. Viewing the role of the WIPO Ethics Office to be essential, and as the IAOC played an important advisory role with respect to that function, the Delegation welcomed the collaboration between the IAOC and the Ethics Office to support best practice operations. It considered the work of the IAOC to be a priority and felt that sufficient resourcing for this function was important, taking into account the need to maintain the independence of the Committee.

21. The Delegation of Brazil also underlined the important role of the IAOC for the Organization and expressed its appreciation for the openness of the Committee towards Member States. The Delegation agreed with the review of the Terms of Reference and Internal Oversight Charter in parallel, and with the proposed amendments regarding the Terms of Reference of the IAOC which would align both documents. The Delegation felt that the proposed amendments reflected current practices in respect of international standards on auditing, allowing effective oversight of WIPO aimed at improving efficiency without unduly burdening activities. It thanked the Committee for the initiative, as well as Member States for their comments during the previous session of the PBC.

22. The Delegation of the Russian Federation thanked the IAOC for preparing the report and appreciated the new format within which the Committee was operating, stating that it considered that the Committee was now satisfactorily exercising internal oversight functions despite the difficulties and challenges that it faced, particularly with reference to certain staffing issues. The Delegation welcomed the roadmap drafted for risk management and took note of the decreased

number of recommendations that had not been completed. Hoping that, in the future, effective work would be concluded to implement all of the recommendations, the Delegation welcomed the Terms of Reference which had taken due account of comments made at the previous session of the PBC.

23. The WIPO General Assembly took note of the “Report by the WIPO Independent Advisory Oversight Committee (IAOC)” (document WO/GA/50/1).

(iii) Report by the Director of the Internal Oversight Division (IOD)

24. Discussions were based on document WO/GA/50/2.

25. The Director, IOD, in line with the Internal Oversight Charter, presented oversight activities undertaken by IOD during the reporting period, July 1, 2017, through June 30, 2018. The annual report was included in document WO/GA/50/2. The IOD Oversight Plan for 2018 was prepared taking into consideration a number of factors including: risk ratings, relevance, country impact, the oversight cycle, and feedback received from WIPO Management, Member States, and available resources. In line with paragraph 26(a) of the Internal Oversight Charter, prior to its finalization, the draft Work Plan was also submitted to the Independent Advisory Oversight Committee (IAOC) for its review and advice. At the reporting date, IOD had fully implemented the 2017 oversight plan and the implementation of the 2018 Work Plan was on track. During the reporting period, IOD audits and evaluations covered the following key operational areas: Management of Third Party Events Organized/Hosted by WIPO; Software Asset Management; Recruitment; the Language Division; Travel Management; WIPO’s Corporate Communications Activities and their Contributions to WIPO’s Brand and Reputation; the Regional Bureau for Latin America and the Caribbean; Program 18 on IP and Global Challenges; Capacity Development of Intellectual Property Skills and the Validation Report of the WIPO Performance Report 2016/17. During the reporting period, 40 new investigation cases were registered and 42 cases were closed. As of June 30, 2018, 12 cases were pending. Of the pending cases, five were opened in 2018, six in 2017 and one in 2016. As of July 1, 2017, the average length of time for cases to be processed was 7.1 months. IOD had continued to manage and report on recommendations using the web-based TeamCentral system, which enabled interactive dialogue with Program Managers, their delegates, and the External Auditor for an effective follow up of implementation of open recommendations. At the date of the report, there were 180 open recommendations including 96 of high and 84 of medium priority. IOD recommendations constituted 74 per cent of all open oversight recommendations. IOD initiated and concluded the first phase of its Business Intelligence (BI) Project enhancing reporting on recommendations and providing management with relevant information on recommendations through BI dashboards. During the reporting period, two recommendations were closed without implementation as management had accepted the related risks. The first one related to amendments to Staff Regulations, proposed by the IAOC, to consider an investigation as a prerequisite for instituting disciplinary proceedings. The second one was to automate the staff exit process. It was concluded that given the low rate of departure, the cost of implementation would outweigh the benefit. IOD agreed with that conclusion. In addition to its planned oversight work, IOD continued to provide professional advice on organizational policy and procedures, risk management and internal controls. IOD provided advice within the Department of Program Planning and Finance on fraud risk prevention activities. In particular, IOD was supporting online training on avoiding fraud and abuse in WIPO, which would be offered to WIPO staff in the second semester of 2018. IOD was also supporting a fraud-risk assessment exercise. IOD had continued interaction with the IAOC, discussing oversight results, and had benefited greatly from the IAOC’s valuable advice and support which had helped to improve IOD’s overall functioning and the quality of its work. IOD had maintained a good working relationship with the External Auditor by having regular meetings on audit, internal control and risk management issues. IOD also met with the incoming External Auditor from the United Kingdom National Audit Office and shared the Annual

Work Plan, Internal Oversight Charter, Internal Audit Strategy, and memoranda on continuous audit work, among others, with a view to ensuring efficient oversight coverage while avoiding potential duplication and oversight fatigue. IOD had cooperated closely with the Ombudsperson and the Chief Ethics Officer to ensure good coordination and complementary support. As part of its effort to better explain and advocate the internal oversight function, IOD had continued to reach out to colleagues within WIPO through presentations given to new staff in the induction training, the IOD newsletter, the IOD dashboard, and presentations to directors and senior managers as and when required. IOD had sought feedback from colleagues on the quality of its oversight work through client satisfaction surveys after each assignment. The analysis of consolidated survey results indicated an average satisfaction rate of 85 per cent for post-assignment surveys and 76 per cent for one-year-after surveys. The survey results had provided the opportunity to assess the impact of IOD's work on improvements in systems, policy, procedures, and processes. The additional comments that were sent by the audited/evaluated units through surveys helped IOD in identifying opportunities for improvement. During the reporting period, IOD continued its active and useful collaboration and networking with other UN system Organizations and entities. In particular, IOD actively participated in the annual networking meetings of the UN representatives of audit, evaluation and investigation. To discharge its mandate, IOD had been provided with a biennial budget of 5.163 million Swiss Francs, which represented 0.73 per cent of WIPO's budget. Overall, the resources were adequate for IOD to effectively cover the high priority areas as identified in its Work Plans. Changes in IOD staffing had been effectively managed with a view to minimizing their impact on planned oversight activities. The Head of the Evaluation Section was recruited and joined the Organization on September 1, 2017. The recruitment process for the Head of the Internal Audit Section was completed and the incumbent joined the Organization on August 1, 2018. A temporary investigator at the P3 level was recruited and joined the Organization on April 1, 2018. For continued professional development, IOD staff attended various training activities to acquire new knowledge, technical skills, and other competencies to increase IOD's operational effectiveness and efficiency in undertaking oversight arrangements. On average, each IOD staff member attended 10 days of training, which included fraud prevention and detection, investigative research techniques, data analytics, tableau visualization application, cybersecurity, conflict management, evaluation of science and innovation policies, internal audit quality assessment, auditing procurement, contracts, and outsourcing. The Director, IOD, thanked delegations for their kind attention and stated that he was available to answer any questions or receive any comments.

26. The Delegation of El Salvador, speaking on behalf of GRULAC, appreciated the important work of IOD. With regard to the evaluation in paragraph 52 of document WO/GA/50/2, under Agenda Item 11(iii), the Delegation pointed to its statement made under Agenda Item 11(i).

27. The Delegation of Lithuania, speaking on behalf of the CEBS Group, reiterated its appreciation for the work carried out by the External Auditor, as well as the IAOC and IOD, and thanked those bodies for ensuring diligent oversight of the organization. Furthermore, the CEBS Group commended the Secretariat for achieving an unqualified opinion by the External Auditor on the Annual Financial Statements. Once again, the CEBS Group expressed satisfaction with the work of the Comptroller and Auditor General of India as WIPO's External Auditor during the last six years, and wished every success to the United Kingdom National Audit Office in performing that important duty. The CEBS Group recognized that the recommendations of the external and internal oversight bodies were elaborated with the aim to further the effectiveness and efficiency of the Organization and the Group encouraged the Secretariat to continue working on their sound implementation.

28. The Delegation of the United States of America thanked IOD for its work and for the informative report. The Delegation appreciated the Secretariat's and IOD's efforts to implement and close audit recommendations. The Delegation looked forward to continued engagement with responsible managers to ensure those audit recommendations were closed in a timely

manner. The Director, IOD provided some greater detail earlier that day, but the Delegation would have appreciated some clarification regarding a few questions that maybe could be discussed with the Director at a later time. Regarding investigations, the Delegation would have appreciated clarification as to the number of cases open out of the number of new cases that had been reported during the 2017/2018 reporting period. The Delegation also asked if any of the open cases were from before 2017. The Delegation noted that there had been a significant increase in the number of allegations during the 2017 to 2018 reporting period compared to previous reporting periods. The Delegation understood that this might be due to a number of factors but welcomed IOD's insight as to the reason for that increase. The Delegation asked if IOD was concerned by an increase in allegations in any particular category of complaints, such as "insubordination or other inappropriate behavior", or "benefits and entitlement, fraud or abuse". Lastly, out of the 42 cases only 5 cases were substantiated, and the Delegation asked if, in IOD's opinion, the low number of substantiated cases compared to the number of allegations was common or a matter of concern.

29. The Delegation of Brazil thanked the Director, IOD for his report to the WIPO General Assembly. The Delegation highlighted the importance of the work of the Division in the Organization and supported the statement made by GRULAC regarding the evaluation of the LAC Bureau. The annual report stressed the high-level of satisfaction of stakeholders and clients with the service provided by the Bureau. On methodological parts, the Delegation was of the view that improvements were possible taking into account that all regional bureaus of WIPO would also be evaluated as per information made available to delegations.

30. The Delegation of China thanked the IAOC, the External Auditor and IOD for their reports and appreciated their professionalism and performance. The Delegation believed that better functioning of audits and oversight by IOD, the IAOC and the External Auditor, as well as other internal and external oversight mechanisms, was key for the Organization to improve management quality, achieve strategic goals of development, and increase transparency. The Delegation hoped that Management and the Secretariat would continue to adopt measures to implement the sound recommendations in those reports.

31. The Delegation of India complimented the IAOC and the Director, IOD for their detailed and comprehensive reports. The Delegation commended the efforts of IOD for the online training programs and the program on fraud risk assessment. The Delegation appreciated the interaction between IOD, the IAOC and the External Auditor for seamless coordination and better performance management. The Delegation underlined that the report of the Director, IOD made valuable recommendations, in line with the provisions of the Internal Oversight Charter. The Delegation was confident that the Organization would work toward early closure of open recommendations.

32. The WIPO General Assembly took note of the "Annual Report by the Director of the Internal Oversight Division (IOD)" (document WO/GA/50/2).

33. The Delegation of Switzerland, speaking on behalf of Group B, did not have any objection, but wanted to deliver the statement of Group B on Agenda Item 11 and the three reports on audit and oversight. Group B expressed its gratitude for the work and efforts of the IAOC, IOD and the External Auditor in relation to all oversight activities that were presented. Group B highlighted that a well-functioning oversight system was essential to maintain effectiveness, efficiency, and the relevance of the Organization. Group B thanked the Comptroller and Auditor General of India for their services for the 2012-2017 time-period and looked forward to the National Audit Office of the United Kingdom building on that standard of excellence. Group B encouraged the Secretariat to implement the recommendations from the Internal and External Auditors in a timely manner and to continue regular engagement with the responsible managers on these recommendations. Group B noted the increase in the reporting of misconduct in IOD's

annual report and welcomed more information as to the reason for the increase, understanding that it might have been due to recent policy changes or outreach efforts by IOD.

## ITEM 13 OF THE CONSOLIDATED AGENDA

### OPENING OF NEW WIPO EXTERNAL OFFICES

34. Discussions were based on document WO/GA/50/11.

35. Introducing the item, the Chair said that this item covered the opening of new External Offices and did not concern existing External Offices, which were discussed by the PBC under the WIPO Performance Report. The Chair recalled that a session would take place that week at which the Secretariat would update interested delegations on the work of the External Offices. The Chair referred to the decision of the WIPO General Assembly in 2017, which read as follows: "the 2018 General Assembly will consider opening up to four WIPO External Offices in the 2018/2019 biennium, including in Colombia". He noted that since the 2017 Assemblies, he had been consulting and had held several informal consultations, bilaterally and in groups, seeking to find a way forward. He expressed his appreciation for the commitment of all delegations involved and, in particular, that displayed by the applicant countries. He noted that everyone had worked in a constructive manner. However, consensus still eluded Member States. The Chair stated that in his most recent consultations with Regional Groups, willingness to engage in informal discussions during these Assemblies had been expressed. Therefore, he intended to appoint a Facilitator to conduct such informal discussions. The Chair promised to keep the Plenary informed. As such, he invited delegations to make their statements on this agenda item when reopening it later on. The Chair reminded that this matter had been the subject of long debate in the Plenary in previous years and that the views of delegations were recorded in the reports of previous sessions. The Chair reassured delegations that there would be ample time to make statements again when this item was reopened later in the meeting.

36. Reverting to the agenda item, the Chair noted that informal consultations had been held that afternoon and, in view of this, he passed the floor to Ambassador Mustafa Elamin (Sudan), Facilitator of those consultations.

37. The Facilitator recalled that the issue before delegations was the allocation of the four new External Offices among the 10 applicants under consideration. He recalled that the day before, he had come before the WIPO General Assembly with a proposal to conduct informal voting on the issue so that the views of the majority of the Assembly might be read. However, the Assembly did not endorse this proposal. Taking into consideration the complexity of the situation and that this was the final day of the Assemblies, and bearing in mind the hours of informal meetings which were held, the Facilitator said that he had two proposals. The first proposal was his preferred choice but should it not be accepted, he would table his second proposal. The Facilitator noted that the first proposal was based on the WIPO General Assembly decision of the previous year, that four offices should be available including one in Colombia. He underlined that GRULAC was solidly behind the proposal for Colombia to have an External Office. The Facilitator then read out his first proposal: "The WIPO General Assembly decided to open an External Office in Colombia in the 2018/2019 biennium and to request the Chair of the WIPO General Assembly to continue consultations with a view to making a recommendation to the 2019 General Assembly on opening up to three External Offices in the 2018/2019 biennium."

38. The Delegation of Oman thanked the Facilitator for his proposal, which it thought was very pragmatic, and expressed its support for the proposal.

39. The Delegation of the Republic of Korea noted that its basic position was that the remaining four External Offices should be decided together, at the same time. It was the Delegation's understanding from the informal consultations held that afternoon that there was both a first and a second option, as had been stated by the Facilitator. With respect to the proposal currently before the WIPO General Assembly, the Delegation noted that it did not have any instructions owing to the time difference between Geneva and its capital. As such, the Delegation regretted that it could not go along with this proposal and it awaited the second option.

40. The Delegation of the United Arab Emirates expressed its appreciation for the efforts made and extended its special thanks to the Facilitator. The Delegation underlined that it was not able to support the current proposal.

41. The Delegation of Iran (Islamic Republic of) thanked the Facilitator for his proposal and noted that, as it had stated, its preference was for all four offices to be decided together. The option proposed was extensively discussed last year and also throughout that afternoon but there was no consensus on this.

42. The Delegation of India thanked the Facilitator for the two proposals. The Delegation noted that there had been a long informal discussion that afternoon and that it had been very clear that, while it was not against any new applicant being allotted an office, in the Delegation's view it would be prudent to decide on all External Offices together. The Delegation stated that it would not, as of the present, be able to accept the first proposal.

43. The Chair noted that there was no consensus around the proposal which the Facilitator had read out and he passed the floor back to the Facilitator to make another proposal on the issue.

44. The Facilitator read out his second proposal: "The WIPO General Assembly decided to request the Chair of the WIPO General Assembly to continue consultations with a view to making a recommendation to the 2019 General Assembly on opening up to four WIPO External Offices in the 2018/2019 biennium, including in Colombia."

45. The Delegation of El Salvador, speaking on behalf of GRULAC, thanked the Facilitator for his proposal and noted that it had two contributions to make prior to considering the second proposal which had been submitted by the Facilitator. GRULAC stated that it wanted to make the proposal more precise and clearer and, so as to reflect last year's agreement in its Spanish language version, it proposed that the proposal read, ". . . including one in Colombia". GRULAC requested the language of the proposal be amended to reflect this change.

46. The Chair thanked the Delegation of El Salvador and submitted the proposal as amended to the WIPO General Assembly for its consideration.

47. The Delegation of the United Arab Emirates stated that it was not in a position to accept this proposal.

48. The Chair sought clarification from the Delegation of the United Arab Emirates that it did not accept the proposal as amended or the proposal as read out by the Facilitator.

49. The Delegation of the United Arab Emirates confirmed that it did not accept the whole proposal.

50. The Delegation of El Salvador, speaking on behalf of GRULAC, thanked the Chair and the Facilitator for their efforts to achieve a result on this agenda item. GRULAC underscored that it preferred the first proposal. It referenced the flexibility that was the spirit of GRULAC and asked that the methodology not be amended which made it clear that that an External Office would not

be allocated. GRULAC expressed its gratitude for the constructive attitude of other delegations, as the Group's own attitude had been over the years.

51. The Delegation of Oman underlined that its preference was for the first proposal of the Facilitator and added that, in the spirit of flexibility, it could agree to the second proposal. That said, the Delegation noted that it preferred the same language as in the 2017 decision to be reflected instead of the language currently under discussion.

52. The Delegation of Romania took the floor to seek clarification. The Delegation noted that it was not aware that the Spanish language version was different and it asked the Secretariat whether this misinterpreted translation was also present in the rest of the working languages of WIPO.

53. The Delegation of Oman stated that it had not checked the Spanish language version and it had only operated on the basis of the English language version. The Delegation also sought clarification whether the mistake was present in other languages.

54. The Chair clarified that the formulation of the present proposal had been taken from the English language version of the 2017 decision.

55. The Delegation of Romania stated that it did not want to block any decision. It added that it was the Delegation's reading that the Delegation of El Salvador, on behalf of GRULAC, was stating that the Spanish language version contained the word "one".

56. The Chair proposed that the discussion under this item be suspended for 10 or 15 minutes to allow delegations to consult. However, prior to that, the Chair passed the floor to the Delegation of the United Arab Emirates.

57. The Delegation of the United Arab Emirates recognized the efforts and commitment shown during the course of this session of the WIPO General Assembly and it expressed appreciation for the consultations and discussions which had been held. The Delegation stated that any particular decision in the multilateralism system was through consensus, by voting or in between. During this current session of the WIPO General Assembly, the appointed Facilitator conducted several consultations and political discussions to pass through the current deadlock. It had been confirmed that no applicant from among the 10 countries was willing to voluntarily withdraw and this had led to the impossibility of having a consensus-based decision. The Delegation referred to the Guiding Principles concerning the opening of new External Offices adopted in 2015. It also noted that the opening of new offices had been a long-standing issue in the Assemblies for several years and a time limitation was being faced as per the WIPO General Assembly decision of 2015 which referred to a review and evaluation of the External Offices by 2021 based on paragraph 22 of the Guiding Principles. The Delegation added that the opening of a new WIPO External Office was not on the normative agenda of WIPO and it had, in fact, become a purely politicized selection process. According to the WIPO Rules of Procedure and its Annex, namely Rule 25 and Rule 28, the Delegation called for a secret ballot to vote on the 10 External Office proposals, namely, from Azerbaijan, India, Iran (Islamic Republic of), Romania, the Republic of Korea, Oman, Saudi Arabia, Turkey, the United Arab Emirates and Colombia. This was to open four new External Offices during the next session of the WIPO General Assembly in 2019.

58. The Delegation of El Salvador, speaking on behalf of GRULAC, supported the proposal of the Chair to suspend the discussion.

59. The Delegation of Bahrain thanked the Chair and the Facilitator for their hard work and seconded the motion for a secret vote ballot as proposed by the Delegation of the United Arab Emirates.

60. The Delegation of Egypt wished to review how the discussion had arrived at this point. The Delegation noted that, over the last few years, Member States had agreed on the principle of opening new External Offices, the number of these offices, and the Guiding Principles to be used in choosing these offices or choosing the venue for these offices. Unfortunately, Member States had not been able to agree on the exact venues. This failure to reach a consensus decision on the venue for External Offices constituted a failure to implement the earlier clear mandate of the Member States for these External Offices. The Delegation felt that in order to avoid this failure, the only way out was to resort to voting as a last resort after many years of deadlock. Consequently, the Delegation supported the proposal from the Delegation of the United Arab Emirates to call for a vote at the 59<sup>th</sup> session of the Assemblies on the opening of these new offices.

61. The Delegation of India thanked the Chair and the Facilitator for their efforts in trying to reach out to new applicants and other Member States to find a solution to this long-pending matter. The Delegation regretted that this WIPO General Assembly had not found a solution. It noted the Guiding Principles formulated in 2015 to guide this WIPO General Assembly in making a decision to set up new External Offices. The Delegation stated that, unfortunately, all discussions under this agenda item centered on subjects which were well away from the Guiding Principles. During the course of the past few months, a number of ideas were floated and transformed. However, Member States were back to square one. There seemed to be an urge to move away from discussions on any technical and merit-based approaches even though there was talk of the Guiding Principles. The Delegation felt that Member States needed to understand that opening up new WIPO External Offices would go a long way towards improving the service delivery and efficiency of WIPO as an organization. Member States had tried, brainstormed and exhausted all possible creative options and ideas in the last few days on this subject. The Delegation believed in the long-held tradition of consensus in arriving at decisions in WIPO while noting that, on this subject, consensus had still eluded Member States. Indeed, there was a general understanding that this issue had become political and had moved away from the technical dimension. Hence, the Delegation urged the WIPO General Assembly to work in a constructive way to resolve this deadlock. If Member States could not build consensus and did not believe in technical, merit-based approaches, then it was time to consider resolving a political problem with a political, democratic process. The Delegation underlined its willingness to engage in discussions.

62. The Delegation of Lithuania, speaking on behalf of the CEBS Group, supported the proposal to suspend the discussions for 10 minutes.

63. The Delegation of the Republic of Korea expressed its sincere appreciation to the Chair and the Facilitator who had sought to move the negotiations forward. With respect to the discussions of the Facilitator, the Delegation noted that it could go along with the option to include Colombia in the four remaining offices. The Delegation regretted that no solution was found in this year's WIPO General Assembly. Consequently, the decision should be carried over to next year's discussions. To settle these issues, the Delegation had a long tradition that a methodology was needed. Prior to selecting a country to host an External Office, a methodology was needed. In this vein, the Delegation had made a proposal during the informal discussions that day, together with the Delegations of India and the United Arab Emirates, to designate an external evaluator to make a recommendation for External Offices. The Delegation proposed this as the only practical and realistic way to come to a decision on this long-standing issue. It highlighted that a methodology was needed to realize the Guiding Principles and to make a final decision.

64. The Delegation of Pakistan reiterated what it had said previously, that the idea of voting was an aggressive approach. It noted that WIPO took all decisions through consensus and this was the collective responsibility of all Member States. The Delegation underscored that it did not support procedural maneuvering or any other approach that was against the institutional

norms of WIPO. A blank cheque could not be afforded to any Member State of WIPO, providing political interest at the expense of other Member States by playing on the skewed idea of secret voting or informal voting. This would have damaging institutional implications for WIPO, and the Delegation stressed that it would never support it. The Delegation questioned that if voting was sought, why cherry pick two issues. Rather, Member States could open the Pandora's box of voting and either have voting on every issue or on none.

65. The Delegation of Colombia thanked the Chair for his leadership during the discussion on External Offices. It welcomed the statement made by the Delegation of El Salvador on behalf of GRULAC and it thanked the Group for its support. The Delegation noted that over the past three years, it had drafted a series of financially sustainable proposals. It had created a matrix for the External Office in Colombia which corresponded to the interests of WIPO and, by extension, its Member States. A preselection had then been undertaken within GRULAC, looking at other valuable options. At the regional level, the Group had decided to promote the institutional system which would allow Member States to reach a consensus. The Group had maintained its constructive and flexible approach from the beginning of this process. The Delegation noted the concern that the Guiding Principles had not been sufficient for some delegations to allow the Member States to reach a fruitful solution. It noted that proponent countries were, of course, promoting External Offices. However, the process was no longer exemplary. During the discussions, there had been an absence of will to deal with this agenda item. The Delegation was particularly concerned that this issue could have an impact on systems which would be beneficial for the Organization in the future. Furthermore, the issue of External Offices tended to distract Member States from other issues during the 2016/2017 and 2018/2019 biennia, which should have been resolved by today. The Delegation called upon the Secretariat to encourage those delegations which shared the same interest, namely to have an External Office within their regional group, to seek consensus. The Delegation urged the Organization to take the necessary steps bearing in mind the process adopted by GRULAC and which could be a model for the future. It noted that it was very important that Member States continued to discuss External Offices, noting that the lack of a decision in this area was prejudicial to this Organization. The Delegation called upon regional groups to take the same steps as GRULAC and to resolve this issue within their respective groups.

66. The Delegation of Switzerland, speaking on behalf of Group B, expressed the view that there was a considerable amount of confusion in the room. It noted that Group B supported what had been proposed by the Delegation of El Salvador on behalf of GRULAC, by the CEBS Group and others to suspend the Plenary for a few minutes to allow consultations within groups.

67. The Delegation of Japan took the floor to deliver a statement on the benefits of an External Office for Colombia. The Delegation explained that as a Member State which hosted an External Office, it believed that the presence of an External Office was extremely important. It noted that ever since the WIPO Japan Office (WJO), was set up, it had conducted promotional activities on WIPO's Global IP Systems, such as holding seminars, visiting companies and participating in exhibitions. From a financial standpoint, the Delegation explained that the WJO had not created an additional financial burden on WIPO. Furthermore, the WJO had continued to support developing countries through the WIPO-Japan Funds-in-Trust (FIT). From the perspective of the Delegation's government, stakeholders and partners, External Office activities were helpful and had added substantial value and effectiveness.

68. The Delegation of Qatar thanked the Chair and the Facilitator for their efforts and noted that two proposals were before the WIPO General Assembly from the Facilitator which would enable Member States to move forward. The Delegation stated that it could join consensus on either proposal. The first proposal would grant an External Office to Colombia and the Delegation said that it would like to see this. However, it noted that some Member States had expressed reservations on this proposal. It added that the second proposal was completely in line with previous language. The Delegation noted that this was not the first time that WIPO

had faced deadlocks and it stressed that all decisions in this house were taken by consensus. Voting would have serious systemic implications for other issues and, as such, the Delegation strongly opposed any sort of voting being undertaken. It noted that it wished to join any type of consultations taking place.

69. The Delegation of Oman thanked the Chair and the Facilitator for his proposals. It noted that as some previous delegations had mentioned, all decisions in this Organization were taken by consensus. The Delegation did not believe that any sort of precedent should be created by resorting to voting. If this was going to be the new way of doing business in this Organization, then there may be other issues that should be decided by voting, such as the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the IGC) and the Design Law Treaty (DLT), which had been under discussion for many years. The Delegation also expressed its support for the trend of working together to build consensus, the same as was being done with respect to other issues.

70. The Delegation of Indonesia, speaking on behalf of the Asia and the Pacific Group, expressed its support for the motion of Group B and GRULAC to suspend the session for 10 or 15 minutes to allow time to digest what had just happened.

71. The Delegation of El Salvador, speaking on behalf of GRULAC, reiterated as a point of order its request for the meeting to be suspended for 10 or 15 minutes. It explained that the issue before Member States was a new one and, as such, positions within regional groups needed to be clear. The Delegation noted that it was unable to continue this discussion without undertaking consultations within its group.

72. The Delegation of Iran (Islamic Republic of) expressed its sympathy for the Delegation of Colombia and for GRULAC, and it understood their frustration. The Delegation underlined that it was committed to a solution which guaranteed one office for Colombia and which satisfied the other applicant countries as well. As such, the Delegation noted that it could go along with the second proposal put forward by the Facilitator. The Delegation was of the view that Member States needed to expedite the process and examine all other options in order to make the best decision, hopefully, in the near future. With respect to recent ideas, the Delegation recalled that the decision of all WIPO bodies and committees had always been made by consensus as WIPO's institutional norm. Therefore, any proposal that may be against the consensus-making rule and which jeopardized the principle of transparency should be prohibited.

73. The Chair noted that, as all could see, there was no consensus on the different proposals at this stage. Consequently, the Chair suspended the meeting for further informal consultations. However, prior to that, the Chair requested regional coordinators and their groups to consult for 15 minutes. Thereafter, the Facilitator would hold informal consultations with interested delegations starting at 7.15 p.m. in room NB 0.107. At this point, the Chair suspended the meeting.

74. Reverting to the agenda item, the Chair expressed his apologies that he had not convened informal consultations after the promised 15 or 20 minutes as he had already consulted interested delegations. The Chair passed the floor to the Facilitator.

75. The Facilitator stated that it was clear that it was impossible to settle this issue as was hoped, that is, to decide on four External Offices out of the 10 applicants, or even to settle this matter partially during this session. It was also clear from interventions that the second proposal could possibly rally support so that there could be consensus. The Facilitator requested that the Delegation of the United Arab Emirates postpone its proposal this year so that consensus could be reached. The Facilitator thanked the Delegation of the United Arab Emirates for accepting to postpone its proposal for the current year and, as such, he requested that delegations accepted his second option which was the same as the language endorsed last

year and which he proceeded to read for a second time. The Facilitator explained that this language was taken from the decision of the previous year. He expressed his hope that this language would lead to an end to this issue, otherwise, he did not think that any conclusion would be reached on this subject.

76. The Chair thanked the Facilitator for his contribution and submitted the second proposal to the WIPO General Assembly, which raised no objection to it.

77. The WIPO General Assembly decided to request the Chair of the WIPO General Assembly to continue consultations with a view to making a recommendation to the 2019 General Assembly on opening up to four WIPO External Offices in the 2018/2019 biennium, including in Colombia.

#### ITEM 14 OF THE CONSOLIDATED AGENDA

#### REPORT ON THE STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS (SCCR)

78. Discussions were based on document WO/GA/50/3. Reference was made to document A/58/INF/6 Rev.

79. The Secretariat highlighted the information contained in document WO/GA/50/3, the "Report on the Standing Committee on Copyright and Related Rights (SCCR)". Over the previous year, the SCCR had made considerable progress towards trying to reach understanding on some of the key components on broadcasting. The Committee had been working on the Chair's text, which contained different elements of the proposed treaty, and this text had allowed the Committee to develop a solid basis of common understanding thanks to the renewed spirit of cooperation among Member States and the support of NGOs. Progress had been demonstrated by the Committee's agreement on a recommendation to the WIPO General Assembly, which had not been possible for several years. The WIPO General Assembly was invited to take action toward convening a diplomatic conference, subject to reaching consensus on certain fundamental issues. The SCCR had also continued to focus its discussions on limitations and exceptions on topics ranging from libraries, archives, and museums to educational and research institutions and persons with other disabilities. The Committee had approved two Action Plans regarding limitations and exceptions that included activities ranging from the development of typologies and studies to the organization of brainstorming exercises and regional meetings. The work under the Action Plans would conclude with a conference on limitations and exceptions to be held by the end of 2019. The Committee had also taken steps towards addressing new and emerging copyright topics as "other matters" on the agenda. As regards the artist resale right, which had been proposed for addition to the SCCR agenda by the Delegations of Senegal and the Congo, the Committee had agreed to set up a task force of members and stakeholders to deepen understanding of the practical elements of the artists' resale royalty right. Regarding the "Proposal for Analysis of Copyright Related to the Digital Environment" (document SCCR/31/4), the Committee had decided to undertake a study focused on activities regarding digital music services, which could be followed later by complementary studies on audiovisual and literary works. The Committee had also agreed to undertake a study on the rights of theater directors, as proposed by the Delegation of the Russian Federation. The Secretariat provided a brief update on the status of the Beijing Treaty on Audiovisual Performances. As was reported in document A/58/INF/6 Rev., the number of Member States that had joined the treaty had increased. A total of 20 countries had joined the Treaty and several other Member States were taking active steps to become contracting parties. Thirty ratifications or accessions were needed for the Treaty to enter into force. The Secretariat looked forward to working with Member States so that the Treaty would enter into force in the near future.

80. The Delegation of Kazakhstan, speaking on behalf of the Group of Central Asian, Caucasus and Eastern European Countries (CACEEC), commended the work of the SCCR. The Group supported the proposal made by the Delegation of the Russian Federation to include the issue of strengthening the protection of the rights of theater directors on the agenda of the SCCR. Theater directors played an important role in the cultural life of many countries. However, they were not referred to as beneficiaries in existing international treaties on copyright and related rights. It was necessary to carry out a comprehensive study of international experience and practice in the area of protection and defense of the rights of theater directors in order to be able to discuss the issue having in mind the approaches in different countries for the establishment and exercise of these rights.

81. The Delegation of Morocco, speaking on behalf of the African Group, noted the report submitted by the Secretariat contained in document WO/GA/50/3. The African Group thanked the Secretariat and the Chair and Vice-Chairs of the Committee for their commitment and professionalism. The issue of limitations and exceptions was of great importance and had to be prioritized on the agenda of the SCCR. The Group welcomed the action plans on limitations and exceptions with the work to be undertaken until the thirty-ninth session of the SCCR. The results of those action plans could serve as the basis of discussion in the creation of different legal instruments as mandated by the 2012 WIPO General Assembly. The African Group welcomed the agreement reached during the previous SCCR session on the convening of a diplomatic conference for the protection of broadcasting organizations. There was need for a specific roadmap to see exactly what progress had been made on those important treaty issues. On the issue of other matters, the Group encouraged Member States to support the proposal on the resale royalty right. The Group was looking forward to the report which would be presented by a group of experts at the following SCCR.

82. The Delegation of Lithuania, speaking on behalf of the CEBS Group, thanked the Chair and the Secretariat for their excellent work. The Group was committed to working toward the convening of a diplomatic conference on the treaty for the protection of broadcasting organizations. There was need for a contemporary treaty that would take into account different types of broadcasting developed based on rapidly evolving technology and that contained forward-looking provisions. The CEBS Group was looking forward to the development of an adequate and effective legal instrument. It favored the approach that gave equal protection to any transmission of broadcasting organizations over computer networks and that reflected contemporary technological realities as well as the rapidly evolving digital environment. The Group welcomed the progress made at the previous sessions of the Committee and looked forward to discussions based on document SCCR/36/6, the revised consolidated text on definitions, object of protection, rights to be granted, and other issues, during the following session. With regard to the Committee's work on exceptions and limitations, the CEBS Group appreciated the adoption of the two action plans contained in document SCCR/36/7 on limitations and exceptions for libraries, archives, and museums, and for educational and research institutions, as well as for persons with other disabilities. In the implementation of those action plans, the Group was looking forward to constructive, evidence-based discussions. On the topic of other matters, the CEBS Group supported the inclusion of the resale right as a standing item on the agenda of the Committee as that topic was highly relevant to the mandate of the SCCR.

83. The Delegation of Switzerland, speaking on behalf of Group B, expressed its gratitude to the Chair and the Secretariat. Group B continued to attach importance to the negotiation of a treaty for the protection of broadcasting organizations. WIPO, as a specialized agency for intellectual property (IP), had a responsibility to keep being relevant by updating the existing international framework, taking into account technological developments and the voices of stakeholders. No one questioned the significant value of broadcasting, nor the need for appropriate protection of such value. Keeping in mind that common ground, Member States needed to avoid pursuing outdated objectives and to respond to present and future challenges.

During the previous sessions of the Committee, the SCCR had achieved progress on various substantive issues related to the protection of broadcasting organizations. Group B welcomed that progress and recalled the recommendation of the Committee to the WIPO General Assembly to consider appropriate action towards convening a diplomatic conference for the adoption of a treaty on the protection of broadcasting organizations subject to reaching consensus on fundamental issues, including objectives, specific scope, and object of protection. The Group thanked the Chair for his updated text contained in document SCCR/36/6, the revised consolidated text on definitions, object of protection, rights to be granted, and other issues. Group B stood ready to continue to work on that subject matter during the following sessions of the SCCR. On limitations and exceptions, Group B welcomed the adoption of the two action plans contained in document SCCR/36/7, limitations and exceptions for libraries, archives, and museums, and for educational and research institutions as well as for persons with other disabilities. The Group looked forward to the typologies and studies mentioned in those action plans and was ready to continue the discussions on that subject matter. With regard to the topics discussed under other matters, the Group acknowledged the need for further information. Group B looked forward to examining the modalities of the studies and stood ready to continue the discussions on that topic.

84. The Delegation of the European Union, speaking on behalf of the European Union and its member states, thanked the Chair and the Secretariat for the work done over the course of that year. The Delegation continued to be an active participant in the discussions on the treaty for the protection of broadcasting organizations. That topic and its discussions were of great importance and had to ultimately result in a meaningful treaty, which efficiently responded to current and future needs of broadcasting organizations. The Delegation thanked the Chair for the document on definitions, object of protection, rights to be granted, and other issues, and indicated its support of the recommendation to the WIPO General Assembly on that topic. In order to ensure progress on that important and long-standing matter, a list of outstanding issues had to be highlighted together with a clear plan on future work on that treaty. The Delegation hoped that the Committee could make the progress necessary toward consensus and maturity of the text that would lead it to the convening of a diplomatic conference. On the issue of exceptions and limitations, the Delegation of the European Union and its member states was committed to engaging in fruitful discussions on that topic. The Delegation congratulated the Chair on the adoption of the action plans for the work under those respective agenda items. The action plans would serve as a good basis for deepening the Committee's understanding of challenges faced by libraries, archives, and museums, as well as educational and research institutions and persons with other disabilities, and would serve as a useful tool and framework for future work. The intention of the action plans was not to undertake any normative work. Based on the discussions undertaken in that Committee, there was no consensus to that end. A meaningful outcome of the work under those agenda items could be guidance to Member States regarding best practices, taking advantage of the flexibility of the international copyright legal framework to adopt, maintain, or update national exceptions that adequately responded to local needs and traditions. The Delegation reiterated that some of the agenda items of the SCCR had been discussed for a substantial period of time without tangible outcomes. Against that background, the European Union and its member states along with many other delegations would be in favor of including the topic of the resale royalty right on the permanent agenda of the SCCR. With regard to the future agenda of the SCCR, issues of common interest had to be identified in a concrete manner and the objective of the Committee's discussions had to be agreed upon to ensure the best chances for success. At the previous WIPO General Assembly, the Delegation had announced two legislative proposals to facilitate access to published works for persons who were blind, visually impaired, or otherwise print disabled. Those legislative proposals would become effective on October 12, 2018, and as such, the European Union was pleased that it could formally deposit its instrument of accession to the Marrakesh Treaty with WIPO in the context of the 2018 Assemblies.

85. The Delegation of Indonesia, speaking on behalf of the Asia and the Pacific Group, thanked the Secretariat for the report contained in document WO/GA/50/3. The Delegation stated that the topic of the protection of broadcasting organizations in response to technological developments had been under discussion in the SCCR and that progress had been made. On the issue of limitations and exceptions for libraries and archives, educational and research institutions, and persons with other disabilities, the Delegation welcomed the Committee's approval of the final version of the action plans on those topics; plans which would be used by the Committee to continue its work and deliver progress with regard to the issue of exceptions and limitations. The Delegation acknowledged the progress made on the issues of resale right, copyright in the digital environment, and the protection of rights of theater directors. The Delegation hoped that the WIPO General Assembly could direct the SCCR to continue its work regarding those issues as well as the important issues of exceptions and limitations. With regard to the recommendation of the Committee on broadcasting made at its thirty-sixth session, the Group would engage constructively in the discussions during the WIPO General Assembly on the appropriate action toward the convening of a diplomatic conference for the adoption of a treaty on the protection of broadcasting organizations, subject to reaching consensus on fundamental issues.

86. The Delegation of China thanked the Secretariat for its fruitful efforts of supporting the SCCR in moving forward in its discussions. The Delegation supported the discussions on the protection of broadcasting organizations, limitations and exceptions for libraries and archives, and for educational institutions and other persons with disabilities. It hoped that the Committee would reach an agreement on a treaty for broadcasting organizations as soon as possible. The Delegation was going to continue to participate in discussions supporting comprehensive investigations and studies that would facilitate substantive negotiations. The Delegation expressed its hope that all Member States would continue to support and promote the early entry into force of the Beijing Treaty and that Member States would recognize the significance of the Treaty to the work of the SCCR.

87. The Delegation of Iran (Islamic Republic of) expressed its gratitude to the Chair of the SCCR and to the Secretariat. On the issue of the protection of broadcasting organizations, careful balancing between the legitimate interests of all parties and the stakeholders in society was of utmost importance for Member States and had to be reflected in the body of the broadcasting treaty. As the 2007 WIPO General Assembly mandate was the starting point for those negotiations, discussions in the Committee should not deviate from that mandate, particularly for the scope of the protection. The Delegation took note of the recommendation made by the Committee to the WIPO General Assembly to consider appropriate actions towards convening a diplomatic conference for the adoption of a treaty on the protection of broadcasting organizations, subject to reaching consensus on fundamental issues. On the issue of exceptions and limitations for libraries, archives, museums, educational institutions, and persons with other disabilities, the Delegation highlighted the importance of having an effective and balanced limitations and expectations regime for the benefit of both rightsholders and the general public. The Delegation was of the strong conviction that the work of the Committee was not only intended to reach a common understanding among Member States, but was mandated to create a legal framework for exceptions and limitations. The Delegation was of the opinion that norm setting was the only way to ensure that WIPO Member States provided a basic level of harmonized limitations and exceptions. The adoption of the action plans introduced at the thirty-sixth session of the SCCR was a step in the right direction and the Delegation looked forward to the implementation of those work plans. With regard to the topics under the agenda item on other matters, namely the analysis of copyright related to the digital environment, the resale right, and the protection of the rights of theater directors, the Delegation stood ready to continue discussions.

88. The Delegation of Argentina thanked the Secretariat for the SCCR report contained in document WO/GA/50/3. The Delegation affirmed its interest in all the topics on the SCCR

agenda and supported continued discussions on those items. With regard to exceptions and limitations, the adoption of the action plans was an important achievement of the Committee. The Delegation was happy about the progress that was being made on the topic of copyright in the digital environment. A matter of great importance for the Delegation was the update of the treaty for broadcasting organizations. Even though there had been great progress on technical issues, some critical matters remained. The Delegation had constructively contributed to the discussions by introducing proposals that would reconcile various positions while maintaining the objective of having a treaty that would provide effective protection of broadcasting organizations in the face of technological changes. The Delegation announced its submission of a new document which had been published on the WIPO website on the web page for the 37<sup>th</sup> session of the SCCR and which featured a revised and simplified proposal on deferred transmissions. Referring to the SCCR recommendation to the WIPO General Assembly on the convening of a diplomatic conference, the Delegation stated that appropriate measures as referred to in that recommendation would be the adoption of an action plan or work program with the goal of concluding the work on the broadcasting treaty text at the next two meetings of the Committee so that a diplomatic conference could be held at the end of 2019. The aim of the proposed action plan should be to finalize the outstanding issues at the 37<sup>th</sup> SCCR session in November 2018, in order to have a basic proposal ready to be considered by Member States at the first meeting of the Committee in 2019. The Delegation stated that the proposed work plan would enable the Committee to make a preliminary proposal on a date and venue for the diplomatic conference at the 38<sup>th</sup> session of the SCCR, the first session in 2019. The proposal would be for the diplomatic conference to be held six months after that session. The date and venue of the diplomatic conference would be confirmed by the WIPO General Assembly in 2019. The Delegation believed that this proposed action plan was achievable and feasible given the present state of negotiations, provided that during the 37<sup>th</sup> session of the Committee sufficient time would be set aside for the subject of broadcasting. At the end of the 37<sup>th</sup> session, if there were any outstanding issues, the Committee could consider planning an additional session after the 38<sup>th</sup> session. The additional session would be devoted to finalizing the diplomatic conference arrangements, and if that additional session were held, the diplomatic conference would take place six months after the session. The Delegation hoped that Member States would respond to its proposal in a constructive spirit. If the action plan were to be adopted, that would enable the Committee to achieve the final aim, which was a treaty on the protection of broadcasting organizations.

89. The Delegation of India commended the Committee on the discussions and progress made on all pending issues on the SCCR agenda. The Delegation particularly applauded the text based discussions that had taken place with regard to the draft treaty on the protection of broadcasting organizations. The protection of broadcasting organizations, limitations and exceptions for libraries and archives and limitations, and exceptions for educational and research institutions and persons with other disabilities were key issues that are of high importance to the Delegation. The Delegation hoped that those three issues would receive equal attention and commitment by Member States in the SCCR. The Delegation looked forward to the finalization of a balanced text on the protection of broadcasting organizations after consensus on fundamental issues was achieved.

90. The Delegation of the Russian Federation appreciated the work of the SCCR which was inclusive of new ideas that had the goal of developing IP protection. One of the main directions for the future work of the Committee had to be the completion of the draft treaty on the rights of broadcasting organizations. The Delegation supported the consultations held at the previous session of the SCCR. In developing the text for that treaty, the Committee had to take into account new challenges that were dictated by the digital environment. There should be no consideration of adopting a document which at its very adoption was already out of date. The Delegation stated that the Committee should carry out the studies with respect to the digital environment and the resale right as those were very good areas for the Committee's work. The Delegation highly appreciated the work of the Committee regarding exceptions and limitations

for people with other disabilities. Research institutions, libraries and archives were looking forward to the documents that would provide guidance to enable the effective implementation of any proposed actions for the well-being of the public. The Delegation expressed its gratitude to the Committee and to the Member States who had supported the idea of the protection of the rights of theater directors. That was also an important area for future action by the Committee. Whether to adopt such a right and to carry out the recommendations from the studies on the various topics would be dictated by the interests of each of the countries involved. The Delegation expressed its gratitude to the Secretariat for organizing the themed briefings at the 36<sup>th</sup> session of the Committee and on preparing the agendas for the studies. The Delegation affirmed its belief that Member States would resolve their concerns about the protection of the rights of broadcasting organizations at the diplomatic conference and that Member States would eventually adopt a broadcasting treaty.

91. The Delegation of El Salvador appreciated the work of the SCCR Chair and the Secretariat. The Delegation attached great importance to the work being carried out in the Committee and was particularly interested in seeing balanced discussions. The Delegation supported the proposal by the Delegation of Argentina for a supplementary action plan complementing the recommendation adopted by the SCCR at its previous session. The Delegation hoped that the proposal would be considered by other delegations at that Assembly.

92. The Delegation of Senegal aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. The Delegation expressed its gratitude to the Secretariat for drafting and presenting the SCCR Report. The Delegation continued to have great interest in the mandate and work of the SCCR as described in that report and attached particular importance to the work on exceptions and limitations for libraries and archives, as well as for educational institutions, research institutions, and persons with other disabilities. The Delegation welcomed the proposed action plans on these topics and reaffirmed its view that the SCCR agenda had to contribute to introducing the idea of a fair balance between the interests of rightsholders and the general public. Like the African Group, the Delegation continued to be committed to the protection of the rights of broadcasting organizations, particularly through a treaty. The hope of the Delegation was that the 2018 WIPO General Assembly session would produce a more detailed work plan on broadcasting so that the Committee could proceed toward the convening of a diplomatic conference by the end of 2019. The Delegation could consider the organization of a three-day special session during the second half of 2019 in order to increase the chances of success of that diplomatic conference. The Delegation continued to attach great importance to its joint proposal with the Delegation of the Congo to include the resale right on the agenda of the SCCR and was looking forward to the conclusions of the experts who were going to study that topic. The work of the experts would supplement the work that had already been done on the resale right by Professors Graddy and Farchy. The Delegation expressed its thanks to all the countries who supported the resale right proposal and expressed its interest in the other topics under other matters, particularly the Delegation of Brazil's proposal on the digital environment and the Delegation of the Russian Federation's proposal on theater directors. The Delegation was looking forward to the studies on those topics.

93. The Delegation of Mexico expressed its gratitude to the Secretariat and the Chair. The Delegation attached great importance to the work being done by the SCCR and associated itself with the statements by Member States who indicated that more effort should be put into negotiations on the protection of the rights of broadcasting organizations. Given the level of maturity of that process, special attention had to be paid to that topic. As negotiations had been going on for more than 20 years, Member States had to intensify their efforts to make progress on concluding a treaty on that subject. The Delegation stated that it was possible to achieve an instrument providing signal protection. The Committee had to consider options related to the drafting of an instrument which would be open to any new technological developments. On rights to be granted, there had to be recognition of the exclusive right of broadcasting

organizations to authorize the retransmission of their program carrying signals to the public by any means, which implied broad coverage. The Delegation recognized the diversity of positions on that subject which could be resolved by looking to the objectives of international treaties, which contain general norms that included space for national legislation to deal with particular details. The Committee had to consider the possibility of including some agreed statements in the treaty text. At the 36<sup>th</sup> session of the SCCR, the Committee had agreed on a recommendation that the WIPO General Assembly should consider taking appropriate measures toward convening a diplomatic conference to produce a treaty on the protection of broadcasting organizations, providing consensus was achieved on the basic issues. Bearing that in mind, it was the view of the Delegation that the time had come to draw up a work program that was precise and specific, which would enable the SCCR to achieve that aim and conclude negotiations on a signal-based instrument in order to convene a diplomatic conference as soon as possible. The Delegation reiterated its support for the important work being done by the SCCR and appealed to all delegations to go back to the spirit of Beijing and Marrakesh and redouble their efforts and political will.

94. The Delegation of Tunisia aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. The Delegation expressed its gratitude to the Chair, Vice-Chairs and also the Secretariat. The Delegation reiterated the importance of continuing the negotiations on limitations and exceptions in order to arrive at the adoption of a legally binding instrument. The Delegation supported the action plans, which would enable the Committee to make progress in a reasonable and timely manner in order to achieve its goals. On the issue of broadcasting, the Delegation stated that it was extremely important to protect the rights of broadcasting organizations and reiterated its support for the convening of a diplomatic conference once a consensus had been reached on fundamental issues. The Delegation supported the inclusion of the resale right in the future work of the SCCR.

95. The Delegation of Uganda aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. The Delegation placed great importance on the work of the Committee including on the critical topics of exceptions and limitations for libraries, archives and museums, and exceptions for educational and research institutions and for persons with other disabilities. As the discussions on those topics were open-ended, the Delegation encouraged the Committee to adopt clear timelines to move the process from the current exploratory discussions toward text-based negotiations for a binding international instrument, in accordance with the decision of the 2012 WIPO General Assembly. Broadcasting for the public interest was central to the Delegation's effort to guarantee access to information and knowledge to its public. The broadcasting treaty should, as such, balance the rights of broadcasting organizations and the legitimate right of the public for access to affordable information. The Delegation supported the convening of a diplomatic conference to conclude a treaty for the protection of broadcasting organizations, subject to the SCCR reaching agreement on the core issues. The closest that the Committee had ever come to agreement on a text for broadcasting was when the scope was narrowed to cover only the protection of broadcasting organizations in the traditional sense. Broadening the discussions to include transmissions over computer networks introduced a multiplicity of issues that had prolonged the discussions. The broadcasting treaty should not create a new layer of rights over material that had been broadcast over the air in addition to existing copyrights over such material. Moreover, those rights could create barriers to the use of material that was never subject to copyright protection such as government works. The Delegation would continue to engage constructively in the broadcasting discussions and encouraged the SCCR to expedite its work on that issue. On the issue of other matters, the Delegation encouraged the SCCR to continue to work towards a balanced work program that took into account the interests of all Member States and that accorded equal treatment to all agenda items in terms of focus and time allocation. The SCCR needed to expedite the discussions on all proposals aimed at broadening the future work program of the Committee.

96. The Delegation of Brazil expressed its gratitude to the Chair and the Secretariat and reiterated its commitment to the work of the SCCR. It commended the work in the previous session of the Committee on the consolidation of the text on broadcasting, which clarified many pending technical issues and emphasized the shared objective to fight signal piracy and uphold the interests of domestic broadcasting organizations. In light of technological developments, the Delegation underscored the need to update the Rome Convention. The Delegation encouraged Member States to support the proposal from the Delegation of Argentina. The WIPO General Assembly presented an opportunity to finalize a timetable that would hasten the convening of a diplomatic conference for the adoption of the treaty. The Delegation referred to the agreed action plans on exceptions and limitations for libraries and archives and hoped for progress in the implementation of the mandate agreed upon at the 2012 WIPO General Assembly. The Delegation emphasized the importance of the digital environment and its interaction with copyright, particularly the difficulty for government regulators to strike the right balance to guarantee fair remuneration. During the 31<sup>st</sup> session of the SCCR, GRULAC had presented a proposal for an analysis of copyright in the digital environment. The key point of that proposal was to ensure that the growing portion of business taking place in the online environment was duly reflected in the remuneration of those who worked at the core of the copyright system, namely authors and performers. The Delegation looked forward to discussions on the studies approved at the previous session of the SCCR, which would help clarify the value chain, the structure of distribution of incomes, and the chain of rights for digital business models. The study would provide the Committee with digital inputs to ensure a solid and balanced discussion on this important current issue. Over the years, the SCCR had contributed valuable food for thought on the matter of copyright and related rights through the use of panels of experts. The Delegation congratulated the Committee on taking on such issues.

97. The Delegation of South Africa aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group and expressed its gratitude to the Secretariat for the comprehensive report on the state of play with regard to issues discussed over the year in the Committee. The Delegation attached great importance to all the subjects on the SCCR agenda and was committed to working constructively on all topics. The Delegation hoped to learn from the work of the SCCR as it reformed its copyright legislation. On the treaty for the protection of broadcasting organizations, the Delegation was of the view that the SCCR had made significant progress, drawing closer to a shared common understanding on the scope and object of the treaty. Enough work had been done and the Committee was now at a point where it could prepare a roadmap towards the convening of a diplomatic conference that was in line with the 2007 mandate for a signal-based approach and which took into account broadcasting using any technology platform. The broadcasting and film industries had become engines of growth generating employment opportunities and sociocultural development in many developing countries. However, those industries were confronted by the threat of signal piracy which, if not urgently addressed, had the potential to seriously threaten their existence. As a developing country, South Africa appreciated the importance of access to education and information, integral elements to development. Libraries, museums, and educational and research institutions played a critical role in providing access to information and in the dissemination of knowledge, empowering individuals to make well-informed decisions. The work of the Committee had to take into account the previous studies on limitations and exceptions on copyright which were useful in providing a holistic view of the current practices of WIPO Member States and identifying gaps that the Committee should endeavor to address.

98. The Delegation of Ecuador appreciated the work that had been done in the SCCR and noted that the issues addressed in that Committee were critical for the Delegation. The Delegation preferred a balanced view of things and expressed its interest in exceptions and limitations for libraries, archives, educational and research institutions, and persons with other disabilities. The Delegation had made several proposals on that issue and was interested in having the Committee continue its debate in an open and frank way. The Delegation

recognized the value of the action plans that were approved and adopted at the previous session. It was the hope of the Delegation that those plans would be effectively implemented and that they would lead to the generation of standards which would allow appropriate balance between rightsholders and users at the international level. That would help to guarantee fundamental rights such as access to education, information and knowledge. One of the issues of concern to the Delegation was copyright in the digital environment, which was an issue of interest to all Member States. The results of the pending study would offer very significant input in the discussions on that subject in the Committee. There was a very large community of creators who were looking forward to the outcome of those discussions and any progress made on that topic would allow Member States to ensure appropriate compensation for creative works.

99. The Delegation of Japan expressed its appreciation for the meaningful discussions during the 36<sup>th</sup> session of the SCCR, including the progress made on the protection of broadcasting organizations. The Delegation reiterated the SCCR recommendation to the WIPO General Assembly, which was reflective of the 2007 WIPO General Assembly mandate to convene a diplomatic conference following an agreement on the fundamental issues, which had yet to be reached. The Delegation hoped that the SCCR would engage in further discussions based on the 2007 WIPO General Assembly Mandate so as to reach consensus on those fundamental issues. On the issue of exceptions and limitations, an appropriate balance had to be achieved between the interests of rightsholders and the public. In that sense, the three-step test represented a balanced and suitable framework for the respective social and cultural backgrounds of each country. Discussions on that issue should focus on the sharing of national experiences and practices.

100. The Delegation of Malaysia aligned itself with the statement delivered by the Delegation of Indonesia on behalf of the Asia and the Pacific Group. It noted the work by the Committee on the protection of broadcasting organizations, exceptions and limitations, and the resale right, along with the recommendation to the WIPO General Assembly for the Committee to reach a common understanding on core broadcasting treaty issues such as the definition of the object of protection, rights to be granted, and other fundamental issues. The Committee was requested to accelerate work on the issue of exceptions and limitations, particularly for libraries and archives, educational and research institutions, and persons with disabilities, as contained in the action plans adopted during the 36<sup>th</sup> session of the SCCR. The Marrakesh Treaty provided a good example of harmonized exceptions to allow cross-border transfer of works for visually impaired persons. The Delegation expressed its gratitude to WIPO for the support which led to the success of the national seminar in August 2018.

101. The Delegation of Malawi thanked the Chair, the Vice Chairs and the Secretariat for preparing documents for the session. The Delegation aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group and expressed its enthusiasm to conclude the discussions with a view to convening a diplomatic conference in 2019, subject to reaching agreement on fundamental issues. The Delegation welcomed the action plans that formed the basis of work on exceptions and limitations for libraries and archives, educational and research institutions, and persons with other disabilities. The Delegation also expressed its interest in the discussions on other issues, including the resale right.

102. The Delegation of the United States of America announced that the United States House of Representatives had just passed the legislation implementing the Marrakesh Treaty by unanimous consent, an important step toward enabling it to ratify the Treaty. The Delegation expressed its support of the statement made by the Delegation of Switzerland on behalf of Group B with regard to the SCCR agenda. On the protection of broadcasting organizations, the Delegation reiterated its support of the 2007 mandate of the WIPO General Assembly. Protection should be narrow in scope, focusing on the key problem of unauthorized retransmission of the broadcast signal to the public over all platforms, including over the

Internet. Rapid technological changes in the broadcasting industry presented significant challenges in establishing specific international norms, and the Delegation planned to offer a new text that could serve as a bridge between different Member States' approaches, in order to promote greater consensus on common goals. Without agreeing on a specific date for the diplomatic conference, the Delegation supported the view that progress should be made on the text of the consolidated draft treaty to ensure success in future negotiations. On the issue of exceptions and limitations, the Delegation reiterated its suggestion to develop high-level principles and objectives for national copyright exceptions and limitations for libraries and archives and for educational activities. With such an approach, the Delegation hoped to establish agreement at the international level on areas where appropriate exceptions or limitations would be desired at the national level. As those principles were being developed, the Secretariat and the Member States would work together to improve and update national laws through seminars and workshops as well as technical assistance looking at developing national legislation. That approach would be beneficial and would be preferable to binding norm setting, because the international framework provided appropriate flexibility pursuant to well-established standards for countries to enact exceptions and limitations to advance their own social, cultural and economic policies. The Delegation supported the work aimed at deepening the Committee's understanding of national limitations and exceptions for persons with disabilities other than visual impairment. The Delegation stated that each topic of the SCCR should be addressed and considered separately in its own right in establishing any work plan for the SCCR for the following biennium. The Delegation noted that the work on the broadcasting treaty was considerably advanced, and more advanced than work on other items on the SCCR agenda.

103. The Delegation of Colombia expressed its gratitude to the Secretariat and the Chair of the SCCR. The Delegation endorsed the statement by the Delegation of El Salvador on behalf of GRULAC, in particular with respect to the protection of broadcasters. The broadcasting discussions in the Committee based on documents SCCR/35/12 and SCCR/36/5 included technical discussions where delegations took different positions on certain subjects. Thus, it was very important to decide on a comprehensive program of work that was balanced and would take into account progress made in discussions. The Delegation expressed its support for a binding document for the protection of broadcasters and emphasized the need for a consensus on the text in order to convene a diplomatic conference. The Delegation supported the action plans and underscored the importance of limitations and exceptions for libraries and archives, for research and educational institutions, and for persons with other disabilities. With regard to existing treaties, it emphasized the need for adherence to the three-step test.

104. The Delegation of Nigeria aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. The Delegation expressed its gratitude to the Chair and Vice-Chairs, and to the Secretariat for the preparation of document WO/GA/50/3. On the issue of broadcasting organizations, the Delegation urged Member States to maintain focus on signal piracy as per the mandate of the WIPO General Assembly and noted the Committee's recommendation to move toward a diplomatic conference to adopt a treaty on the protection of broadcasting organizations. The Delegation applauded the Committee's efforts on the issue of limitations and exceptions and its adoption of the action plans. The Delegation encouraged structured, text-based discussions with a clearer framework, in order to reach an appropriate outcome. The Delegation reiterated its commitment to the Committee.

105. The Delegation of Côte d'Ivoire aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. The Delegation reinforced its interest in the issues discussed in the Committee, in particular exceptions and limitations and protection for the rights of broadcasters. Enthused by the progress in the SCCR, the Delegation hoped that upcoming sessions would be even more fruitful and dynamic. The Delegation was pleased with the professionalism of the Secretariat and expressed its confidence in the Secretariat's efforts to respond to the interests of developing countries.

106. The Delegation of the Republic of Korea thanked the Secretariat and the Chair and Vice-Chairs of the Committee for their leadership and dedication. There was a dire need to update the rights of broadcasting organizations in accordance with the changing times and circumstances, including the term of protection for broadcasting organizations in the digital environment. Upon consideration of the opinions of all interested parties and further conceptual clarification, the Delegation hoped to reach a consensus on the core issues of the proposed treaty. On the issue of exceptions and limitations, the Delegation expressed particular enthusiasm for the studies conducted by the Secretariat on libraries, archives and educational activities and for persons with other disabilities. It was critical that the Committee achieved an appropriate and balanced system for copyright and related rights through constructive discussions and the beneficial exchange of experiences by Member States.

107. The Delegation of Costa Rica expressed its gratitude to the Secretariat. The Delegation attached tremendous importance to the support received in various areas, including programs and activities on copyright and the planning of meetings, workshops and seminars in the region. Specific mention was made of the activities undertaken by the Secretariat to establish negotiation forums to ensure continuity in the development of the international legal framework for IP. The Delegation highlighted its national priorities, which included training activities for public and private institutions and public dissemination of knowledge and information on copyright and related rights. Focused training had been provided for the central government regarding national regulations governing the legalization of software and also on the general principles of copyright and related rights. The Delegation highlighted the importance of the national program, "MIS CREACIONES VALEN," which was running for its third consecutive year and would continue for five more years, and through which much emphasis was placed on the importance of engaging with children and young people, educational institutions, educators, teachers and professors, and building respect for IP. Recognition of the work and rights of creators was emphasized.

108. The Representative of the International Federation of Library Associations and Institutions (IFLA) stated that as the importance of knowledge grew, so did the importance of the rights of access and use. Without those rights, knowledge risked deepening and not narrowing the development divide. The 20 targets across the Sustainable Development Goals (SDGs) had enabled governments to recognize the importance of access to and use of information. Ahead of the 70<sup>th</sup> anniversary of the Universal Declaration on Human Rights, the Representative encouraged the Committee to reflect on how to deliver the human rights of access to information and education, participation in cultural life, and benefitting from scientific progress. Exceptions and limitations for libraries, archives, museums, education and research institutions, and people with other disabilities permitted cross-border collaboration and were not a zero-sum game. They were a complement to fair and well-functioning markets and were an investment in the readers, creators, innovators and consumers of tomorrow. WIPO could make a difference thanks to the action plans that offered a welcome chance to look at what was needed on the ground. The Representative looked forward to the results and to the ongoing and meaningful discussion in the Committee, including around the proposal by the Delegation of Argentina. With a potentially unlimited term of protection in the broadcasting treaty and without meaningful exceptions and limitations, the Representative stated that the Committee risked seeing serious damage to education, research and the cultural promotion activities of libraries and archives.

109. The Chair stated that there was need for informal consultations on the topic of broadcasting. The Chair appointed the Chair of the SCCR, Mr. Daren Tang, as Facilitator to conduct those consultations on his behalf.

110. The Facilitator expressed his thanks to the Secretariat whose hard work made it possible to have the documents before the Committee and to have some measure of success. To

proceed with the discussions, the Facilitator requested informal consultations which would include Regional Coordinators and interested Member States.

111. Reverting to the agenda item, the Facilitator reported that thanks to the flexibility shown by Member States and Regional Coordinators during informal consultations, the members had reached consensus.

112. The WIPO General Assembly:

- (i) took note of the “Report on the Standing Committee on Copyright and Related Rights” (document WO/GA/50/3);
- (ii) directed the SCCR to:
  - (a) make best efforts to achieve consensus on the remaining outstanding issues related to the proposed treaty on the protection of broadcasting organizations during SCCR/37 and SCCR/38 and
  - (b) take stock of the progress made at SCCR/38 and if consensus has been reached on outstanding issues, propose a recommendation to the General Assembly to approve a date and venue for a diplomatic conference to adopt the treaty; and
- (iii) directed the SCCR to continue its work regarding the other issues reported on in document WO/GA/50/3.

## ITEM 15 OF THE CONSOLIDATED AGENDA

### REPORT ON THE STANDING COMMITTEE ON THE LAW OF PATENTS (SCP)

113. Discussions were based on document WO/GA/50/4.

114. The Secretariat noted that the document described the progress of discussions at the twenty-seventh and twenty-eighth sessions of the SCP, which were held in December 2017 and July 2018, respectively. During those two sessions, the SCP had continued to address the five topics, namely: (i) exceptions and limitations to patent rights; (ii) quality of patents, including opposition systems; (iii) patents and health; (iv) the confidentiality of communications between clients and their patent advisors; and (v) transfer of technology. The Secretariat put particular emphasis on the fact that Member States had proactively participated in the Committee by way of sharing information, making presentations, submitting proposals and being engaged in discussions in a constructive spirit. Their efforts and contributions had led to the adoption of a full set of SCP future work activities at the recent sessions of the Committee. The Secretariat further invited the WIPO General Assembly to take note of the information contained in the document.

115. The Delegation of Switzerland, speaking on behalf of Group B, thanked the Chair of the SCP for presiding over those two sessions, as well as the Secretariat for its hard work over the past year, including the preparation of the document for the WIPO General Assembly. Listing the five topics on the agenda of the SCP, the Delegation expressed the appreciation of its Group for the efforts and willingness of all Member States during the twenty-seventh and twenty-eighth sessions of the SCP that had resulted in the agreement of a balanced work program. The Delegation also welcomed the collaborative spirit of Member States that had resulted in three cross-regional proposals and stated that that showed an increasing openness to working together, which was of interest to all delegations. Noting that the SCP was a

multilateral forum in the field of patents, the Delegation expressed its strong belief that the SCP had a responsibility to provide a venue for technical discussions on issues of substantive patent law in line with its mandate. The Delegation continued that the Committee's work should be beneficial for the evolving real world including IP offices, innovators, patent practitioners and other users of the patent system. The Delegation stated, for example, that programs to improve the quality of IP offices' work product to utilize work sharing and other forms of technical cooperation to promote a healthy innovation ecosystem should yield practical benefits to all offices regardless of the size or experience level. The Delegation expressed its belief that the Committee should continue to build on the importance that many Member States placed on the work on technical topics that would contribute to a higher quality of patent prosecution, the national original patent examination processes and of the granted patents. Therefore, the Delegation stated that the topic of quality of patents, as well as the confidentiality of communications between clients and their patent advisors, remained priority agenda topics for its Group. The Delegation concluded that the objective of the SCP was to facilitate coordination and provide guidance concerning the progressive international development of patent law, including harmonization of national laws and procedures. The Delegation underscored that Group B continued to commit to the activities of the Committee, and appealed to all Member States to work together toward that objective.

116. The Delegation of Lithuania, speaking on behalf of the CEBS Group, thanked the Chair of the SCP for his guidance in the work of the Committee over the twenty-seventh and the twenty-eighth sessions. The Delegation also expressed its gratitude to the Secretariat for their work over the past year, including the preparation for the WIPO General Assembly. The Delegation highlighted the importance of the SCP as a forum where Member States could exchange experiences and share best practices in the area of patent law, as well as to gain from information and discussions on different important topics, especially in the field of substantive patent law. The Delegation was pleased to note that the constructive participation of delegations had allowed for tangible progress in discussions on the five main topics, and for the reaching of an agreement on balanced future work program. The Delegation further noted that the main areas of interest for the CEBS Group were the quality of patents and confidentiality of communications between clients and their patent advisors. In its view, it was crucial to continue the work of the SCP, *inter alia*, on the basis of the proposal made by the Delegations of the Czech Republic, Kenya, Mexico, Singapore and the United Kingdom (document SCP/28/8). Such work, the Delegation noted, would improve the quality of patents and would be beneficial to the whole patent system. The Delegation also stated that the work of the Committee enhanced international cooperation and facilitated the solution on cross-border challenges. In conclusion, the Delegation stated that it looked forward to engaging in future constructive work on various important topics included in the work program of the Committee.

117. The Delegation of Morocco, speaking on behalf of the African Group, took note of the information contained in document WO/GA/50/4. The Delegation thanked the Chair and the Vice-Chairs of the SCP, as well as the Secretariat for their dedication and professionalism. Noting that the SCP was a multilateral forum for discussing patent-related issues, the Delegation stated that its Group continued to attach great importance to its work. The Delegation continued that the work of the SCP was essential for the development and well-balanced use of the patent system and that it could play a significant role in the socio-economic development of Member States, in particular, of developing countries and least developed countries (LDCs). The Delegation further stated that its Group also considered that the discussions on the topic of patents and health were crucial in order to promote a more balanced patent system. Recalling the SDG 3, which was "ensure healthy lives and promote wellbeing for all at all ages", the Delegation stressed that the topic of patents and health was a priority for its Group. In addition, the Delegation referred to its proposal for the work program on patents and health, contained in document SCP/24/4. The Delegation stated that the proposal was an excellent basis for discussions on the priority areas in public health policies and that it suggested solutions to health problems and patents. Finally, the Delegation welcomed the

progress made at the previous session of the SCP and stressed the fact that Member States had been able to agree on a well-balanced future work program.

118. The Delegation of El Salvador, speaking on behalf of GRULAC, thanked the Secretariat for introducing document WO/GA/50/4, and the Chair of the SCP for his leadership and guidance in achieving progress within the Committee. The Delegation welcomed the continuity in the topics being examined. The Delegation noted that exchanges of information and a wealth of information produced within the Committee were very positive. The Delegation further stressed that the work of the Committee was important because it tackled matters that had a significant impact on their countries. In conclusion, the Delegation noted that the topics of exceptions and limitations to patent rights, patents and health and transfer of technology were particularly important to its Group.

119. The Delegation of Indonesia, speaking on behalf of the Asia and Pacific Group, thanked the Chair and Vice-Chairs of the SCP for their guidance in chairing the Committee, as well as the Secretariat for its excellent work in the preparation of document WO/GA/50/4. The Delegation wished to note that the Committee had agreed that its work for the following session would be confined to fact finding and not lead to harmonization at that stage. The Delegation further stated that its Group supported that the SCP continued to address the topics of exceptions and limitations to patent rights, quality of patents, including opposition systems, patents and health, confidentiality of communication between clients and patent advisors and transfer of technology. The Delegation welcomed the draft reference document on exception regarding acts for obtaining regulatory approval from authorities, updated responses to the questionnaire on the term "quality of patents" and cooperation between patent offices in search and examination. The Delegation looked forward to the draft reference documents on the research exception and compulsory licensing. The sharing sessions on approaches to ensure the quality of patent grant process within IP offices, including opposition systems, were also long awaited by the Group. The Delegation also welcomed a further study on inventive step. The Group also looked forward to a conference on publicly accessible databases on patent information status and data on medicines and vaccines, to be held at the twenty-ninth session of the SCP. In conclusion, the Delegation reaffirmed its commitment to the work of the Committee.

120. The Delegation of China expressed its support to the future work program on five topics under the agenda of the SCP. The Delegation expressed its high appreciation to other Member States for their efforts in advancing the discussion on those topics. The Delegation stated that it would continue to engage actively in the work of the Committee.

121. The Delegation of Austria, speaking on behalf of the European Union and its member states, thanked the Chair of the SCP for his very good and efficient chairing of the past two sessions. The Delegation also thanked the Secretariat for preparing the report for the WIPO General Assembly. The Delegation noted with appreciation that very constructive realistic and objective deliberations had led to considerable progress with regard to all of the five topics under the agenda of the SCP. The Delegation stated further that the sharing sessions proved to be a valuable tool to give deeper insight about the situation in various Member States. Especially, with regard to the topic of quality of patents, including opposition systems, the Delegation wished to emphasize that patents of high quality could guarantee a proper balance between the interest of inventors and of other stakeholders. The Delegation stated that they would continue to contribute to that work which consisted, *inter alia*, of future work on the inventive step as proposed by the Delegation of Spain, and ensuring the quality of the patent grant process as set out in the proposal by the Delegations of the Czech Republic, Kenya, Mexico, Singapore and the United Kingdom. The Delegation further stated that, apart from the mere technical quality of patents, it continued to believe that the SCP should also serve as a venue for discussions about existing differences of patent systems, and substantive patent law in the future. With respect to patents and health, the Delegation welcomed fact-based

discussions, notably in the area of increased transparency and facilitation of licensing of health-related patents. The Delegation noted that any further work in that area should be balanced and should take into account the various factors of relevance to patents and health. However, the Delegation stressed that such discussion needed to be limited to the mandate of the SCP and WIPO and that other factors of access to medicines should be left to other more appropriate fora. The Delegation stated further that it had attended with interest the sharing session on the confidentiality of communications between clients and their patent advisors and that it looked forward to discussing that topic in the upcoming session. The Delegation also stated that the information exchange session regarding technology transfer had been of high interest to its Group. Regarding the topic of exceptions and limitations to patent rights, the Delegation noted with satisfaction that a very constructive discussion took place based on an excellent and objective document prepared by the Secretariat on the acts for obtaining regulatory approval from authorities. The Delegation stated that while the European Union and its member states regarded all topics on the agenda as equally important, it wished to point out that of special importance to its Group was a topic relating to enhancement of international cooperation and improving the technical knowledge on patentability requirements. The Delegation continued that ensuring a more efficient effective and higher quality patent system in all Member States was a valuable tool to remove trade obstacles in a more united world, which would contribute to economic prosperity. Finally, the Delegation stated that it was very pleased that the Committee had been able to agree on a balanced program for future work. The Delegation stated that the European Union and its member states looked forward to continuing their contributions to the work of the SCP and expressed its hope that the SCP would bring even more results in the future.

122. The Delegation of the Russian Federation noted with satisfaction the positive outcomes of the Committee. The Delegation welcomed the studies relating to inventive step assessment. In addition, the Delegation was interested in the topic of disclosure of International Nonproprietary Names (INN) in patent applications and patents. The Delegation expressed its hope for constructive work on the topic of exceptions and limitations to patent rights and, in particular, on the topic of compulsory licensing. The Delegation further encouraged the exchange of experiences among Member States on the above topics. The Delegation stated that it also looked forward to the half-day conference on publicly accessible databases on patent information status and data on medicines and vaccines, to be held at the following session of the SCP.

123. The Delegation of India thanked the Secretariat for the preparation of the report on the work of the SCP, contained in document WO/GA/50/4. The Delegation stated that the discussions within the SCP touched upon the very foundation of the patent system. The Delegation appreciated the decision of the Committee that its work for the following session would be confined to fact finding and would not lead to harmonization. The Delegation stated that discussions within the SCP should not lead to harmonization as a one size fits all solution would not work due to the diversity of issues faced by different countries especially developing countries and the LDCs. The Delegation stated that WIPO as the principle norm-setting body has an enormous responsibility in ensuring a fine balance between innovation and socio-economic developmental priorities. The Delegation stressed the significance of the TRIPS flexibilities in the design of patent laws. The Delegation further stated that ensuring quality of patents was the most essential element of the patent process and that any substandard patent had an enormous social cost, which had serious implications for developing countries and LDCs. The Delegation continued that both the patent examination process and the opposition systems had an important role to play in ensuring the quality of patents and a well-defined opposition system adds value to the patent examination process serving as a deterrent and ensuring quality in patent claims. With regard to the topic of patents and health, the Delegation wished to highlight the UN Secretary General's High Level Panel on Access to Medicines (UNHLP) Report which recommended that countries should make full use of the policy space under Article 27 of the TRIPS Agreement to avoid evergreening of patents keeping

in mind the public health priorities. The Delegation also highlighted the importance of making progress on the subject of technology transfer and its relationship to the patent system. The Delegation stated that there is a lot of scope to work in this area and there is a need to graduate from preliminary studies towards tangible progress on this subject.

124. The Delegation of Uganda aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. The Delegation thanked the Chair of the SCP for his dedication to the Committee's work and also the Secretariat for preparing the report of the Committee. The Delegation placed great importance on the work of the Committee as it was the only multilateral forum in the field of patents. The Delegation stated that the patent system provided an opportunity to resolve existing challenges in the areas of public health, climate change, and the depletion of natural resources, among others. The Delegation continued that the patent system was important for balancing the interests of inventors and those of the public by providing incentives to creators of knowledge, and guaranteeing access to that knowledge by the public. Regarding the future work of the Committee, the Delegation prioritized the discussion on the topics of patents and health, exceptions and limitations to patent rights, and transfer of technology. The Delegation was very pleased that the Committee had agreed on a future work program that was a compromised consensus among Member States. However, the Delegation was discouraged by the lack of progress on the topics that were of great importance to developing countries. The Delegation urged the Committee to strive to build consensus towards delivering its work beyond the mere information sharing sessions to substantive discussions that would meaningfully contribute to the progressive deployment of the patent system guided by the principles of WIPO Development Agenda. The Delegation expressed its strong belief that the Committee should keep discussing those and other global issues to the benefit of all.

125. The Delegation of Iran (Islamic Republic of) expressed its appreciation for the work done by the Secretariat towards the preparation for the twenty-seventh and twenty-eighth sessions of the SCP. The Delegation noted that the activities of the Committee were of high importance for the Delegation. On patents and health, the Delegation recalled the SDG Agenda 2030. Specifically, SDG Goal 3 aimed at ensuring healthy lives and promoting wellbeing for all at all ages. In particular, the Delegation was of the view that SDG Goal 3 referred to universal health coverage, including access to safe, effective, quality and affordable essential medicines and vaccines. In that regard, the Delegation stated that the right to health was a fundamental and basic human right. With regard to exceptions and limitations, the Delegation believed that exceptions and limitations to patent rights were a fundamental mechanism to ensure a balanced patent and intellectual property system, able to achieve the objective of promoting innovation while respecting the rights and interests of all the stakeholders involved. The Delegation welcomed the reference document on exception regarding acts for obtaining regulatory approval from authorities (document SCP/28/3) that had been drafted in a well-structured manner. The Delegation was of the view that the SCP should advance its work in order to develop reference documents on other exceptions and limitations to patent rights. With regards to quality of patents, the Delegation reiterated its position that such topic should not be construed as a tool for harmonizing patent law or for norm setting in the future. The Delegation stated that technology transfer and the role of the patent system in facilitating knowledge and fostering innovation could not be separated in an independent manner. Therefore, in its opinion, the Committee was expected to discuss the issue of how patents could be a barrier to the transfer of technology. In conclusion, the Delegation expressed its willingness that the Committee would make significant progress in advancing discussions on issues of particular relevance to the common interests of the Member States.

126. The Delegation of the United States of America thanked the SCP Secretariat for the preparation of the twenty-seventh and twenty-eighth sessions of the SCP, as well as for the hard work done by the Secretariat towards the preparation for the meeting. The Delegation welcomed the spirit of cooperation in the SCP that allowed Member States to agree on future

work programs on five agenda topics. With regard to quality of patents, the Delegation noted the progress that had taken place on that topic. The Delegation was of the view that that work would promote practical ways to improve the operation of patent offices. Further, the Delegation noted that discussions on quality of patents, as well as on patent advisor-client privilege, would provide tangible benefits to all Member States that expressed an interest in improving the operation of their patent offices. The Delegation was pleased to note that its earlier proposals had been incorporated in the SCP work plan. The Delegation expressed its willingness to see further study of the SCP international work sharing programs. The Delegation expressed its belief that work sharing programs within the SCP would be very beneficial for patent offices of the Member States. The Delegation noted that work sharing programs were especially effective for patent offices with limited resources. The Delegation was of the view that adoption of the programs such as Patent Prosecution Highway (PPH) was in the interest of all countries. The Delegation expressed its belief that further work on the questionnaire on quality of patents would help to better understand the needs of many patent offices. Further, the Delegation supported the proposal by the Delegation of Spain (document SCP/28/7) to conduct further studies on quality of patents. In conclusion, the Delegation supported the statement made by the Delegation of Austria on behalf of the European Union and its member states in relation to future consideration on substantive patent law within the SCP.

127. The Delegation of Canada highlighted the positive tone and constructive atmosphere of the SCP. Further, the Delegation expressed its interest in cross-regional engagement on the range of patent issues discussed in the Committee. In that regard, the Delegation took note of the proposal made by the Delegations of Brazil, Canada and Switzerland (document SCP/28/9) and expressed its willingness that that proposal would be given favorable consideration by Member States at the next SCP session. In that regard, the Delegation was of the view that that proposal would serve as an important step in ensuring that discussions on patents and access to health were grounded on a high quality research.

128. The Delegation of the Dominican Republic supported the statement made by the Delegation of El Salvador on behalf of GRULAC. The Delegation was of the view that the quality of patents served real innovations and should be considered with regard to the work of the SCP. Further, the Delegation noted the increased interest among judges in intellectual property issues. In that regard, the Delegation reiterated the importance of legal judgments on patents. The Delegation was of the view that judgments gave a final interpretation on essential criteria for patent protection, such as patentable subject matter, obviousness, inventive step, etc. The Delegation therefore requested the Committee to evaluate the possibility of consolidating jurisprudence in that regard. The Delegation expressed its belief that it would be an excellent educational and reference tool for the intellectual property community. It added that such a collection would be for information purposes and not binding.

129. The Delegation of South Africa aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. The Delegation was of the view that the agreed future work program of the SCP would provide a balanced approach in the interests of all Member States. Further, the Delegation stressed the importance of the SCP, which was the only multilateral forum on patents. The Delegation stressed the importance of preserving the rights of innovators, on the one hand, and providing access to technology and affordable medicines, on the other hand. The Delegation was pleased that the Member States had agreed on a reference document on exceptions and limitations to patent rights. The Delegation was of the view that that topic remained one of the key challenges for developing countries and LDCs. The Delegation stated that constraints faced by developing countries and LDCs in making full use of patent flexibilities (document SCP/27/6) was discussed on many international platforms. The Delegation looked forward to receiving the report of the Secretariat in relation to challenges experienced by Member States in the implementation of exceptions and limitations. Further, the Delegation stated that patents and public health remained a key consideration for the

Delegation. In that regard, the Delegation noted that many poor people did not have access to essential medicines. Further, the Delegation requested the Secretariat to prepare a draft reference document regarding compulsory licensing. In that regard, the Delegation asked to give particular attention to paragraph 20 of document SCP/24/4, in order to assist developing countries to optimally use the TRIPS flexibilities, to enjoy greater competition, and to facilitate technology transfer and access to medicines. In conclusion, the Delegation expressed its willingness that the SCP would agree on a more ambitious work plan in line with the proposal of the African Group in that regard.

130. The Delegation of Nigeria expressed its appreciation for the work done by the Chair and Vice-Chairs of the SCP. Further, the Delegation thanked the Secretariat for the hard work and support done by the Secretariat towards the preparation for the meeting. The Delegation aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. The Delegation welcomed the continuous efforts to address the very important issues within the SCP. In that regard, the Delegation noted that the work program of the twenty-eighth session of the SCP, which was held in July 2018, was the right step in that direction. Further, the Delegation emphasized the priority of the issues on patents and health. In that regard, the Delegation encouraged a more ambitious work program in that field. The Delegation would continue to work together with all stakeholders in order to agree on meaningful future work program of the SCP.

131. The Delegation of Brazil stressed its appreciation for the excellent work done by the Chair of the SCP and the Secretariat. Further, the Delegation aligned itself with the statement made by the Delegation of El Salvador on behalf of GRULAC. The Delegation noted that the SCP had managed to compromise on a balanced work program, in particular, in relation to exceptions and limitations to patent rights, patents and health and quality of patents, including opposition systems. With regard to exceptions and limitations, the SCP provided a non-exhaustive reference document on exceptions and limitations to patent rights that would benefit all Member States and, in particular, developing countries. The Delegation was of the view that the structure of document SCP/28/3 was balanced and in line with the objectives of the proposal. The Delegation looked forward to the next documents on the research exception as well as on compulsory licensing. The Delegation was of the view that those documents would provide guidance for Member States in order to adopt and implement balanced and more effective patent laws and to protect the rights of patent holders. In its opinion, such balance contributed to strengthening the credibility of the IP system and encouraged its wider acceptance as an important tool for the promotion of innovation, creativity and development. On patents and health, the Delegation expressed its belief that innovation, bolstered by the patent system, had produced a number of important technologies that had improved health outcomes worldwide. The Delegation considered that, although important progress had already been made, it should be recognized that significant gaps in health, innovation and access persisted. The Delegation noted that, for example, according to the World Health Organization (WHO) and the World Bank, 400 million people worldwide lacked healthcare, including access to medicines, vaccines and medical devices, and three quarters of them lived in the middle-income countries. Furthermore, the Delegation stated that about 1,7 billion people in 185 countries needed treatment and care for neglected tropical diseases. In that regard, the Delegation, together with other Member States, had tried to provide a contribution to address some of the challenges in the area of patents and health. In that regard, the Delegation mentioned the proposal by the Delegations of Brazil, Canada and Switzerland (document SCP/28/9). The Delegation stated that that proposal would facilitate access to relevant information on the subject which would provide guidance for Member States in order to develop a balanced and effective international patent system. In addition, the Delegation supported the proposal contained in document SCP/28/10, which would give the opportunity to provide regular updates of databases on patent status to Member States. The Delegation was of the view that those databases would include precise information on the status of patents and would help policymakers to make informed and lawful decisions. The Delegation expressed its

belief that both proposals would reduce the asymmetry between profit driven innovation models and public health priority. The Delegation encouraged other Member States to join the Delegation in supporting those proposals.

132. The Delegation of Gabon thanked the Secretariat for the work of the Committee as well as for the report. The Delegation aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. The Delegation noted that the discussions within the Committee were of great importance especially for developing countries. Further, the Delegation stated that those discussions were in line with SDG Goal 3. The Delegation also stressed the importance of discussion on transfer of technology and patents and health. The Delegation was of the view that a middle way between ensuring quality of patents, on the one hand, and access to medicines, on the other hand, should be found.

133. The Delegation of Japan welcomed the fact that they had shared a great deal of information on various issues through the discussions at the twenty-seventh and twenty-eighth sessions of the SCP, and that the Committee had been able to reach an agreement on its future work at the previous session. The Delegation appreciated the Secretariat's efforts and Member States' flexibility in this regard. The Delegation stressed that the most important issues were the quality of patents and the confidentiality of communications between clients and their patent advisors. The Delegation expressed its belief in the importance of considering the quality of patents from a practical perspective and stressed that various factors, such as patent examination practices and opposition procedures involved with patent-granting procedures determined the quality of patents. The Delegation also noted that many countries shared a common understanding that work sharing activities contributed to improving the quality of patents. With respect to confidentiality of communications between clients and their patent advisors, the Delegation considered that allowing patent advisors to claim confidentiality would enhance the reliability and stability of the IP system, whether in developed countries or in developing countries and that it would contribute to protecting the interests of all the relevant parties. The Delegation expressed its hope that the issue would continue to be discussed at the following session of the SCP, so that Member States could agree on the importance of protecting communications between clients and their patent advisors. The Delegation expressed its strong belief that the SCP should continue to discuss global patent issues. In addition, the Delegation stated its commitment to continue to contribute positively in discussions on important patent issues, as it had been doing.

134. The Delegation of Costa Rica emphasized the work done in relation to the SCP Electronic Forum website. The Delegation believed that the regularly updated SCP electronic forum website was an important source of information on matters regarding national and regional patent law, such as prior art, novelty, inventive step, grace periods, sufficiency of disclosure, exclusions from patentability and exceptions and limitations to patent rights. In addition, the Delegation noted the importance of the work carried out by WIPO in relation to technical assistance for patent examiners, including training activities on search and examination, workshops in relation to WIPO CASE, distance learning programs, such as DL-318 "Patent Information Search", and training on International Patent Classification (IPC). The Delegation was of the view that such assistance activities constituted valuable experience sharing, which was vital for improving the patent system and would result in greater satisfaction among the users of the national patent office. Further, the Delegation welcomed the efforts made by the Secretariat in relation to further studies on inventive step, which were important consultation tools for its national office to substantially improve its services. Furthermore, the Delegation noted that the efforts of the SCP in which national offices participated in a productive brainstorming exercise on the provisions of patent law would aid effective technology transfer. In conclusion, the Delegation expressed its willingness to contribute to the work of the SCP in a fruitful manner.

135. The WIPO General Assembly took note of the "Report on the Standing Committee on the Law of Patents (SCP)" (document WO/GA/50/4).

#### ITEM 16 OF THE CONSOLIDATED AGENDA

#### REPORT ON THE STANDING COMMITTEE ON THE LAW OF TRADEMARKS, INDUSTRIAL DESIGNS AND GEOGRAPHICAL INDICATIONS (SCT)

136. Discussions were based on document WO/GA/50/5.

137. The Secretariat indicated that document WO/GA/50/5 referred to the two sessions held by the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) during the period under consideration. With respect to trademarks, the Committee had continued its work on the protection of country names. An Information Session on Country Names had been organized at the thirty-ninth session of the SCT. In addition, the SCT had considered two new proposals by Members, a report on trademarks and international nonproprietary names for pharmaceutical substances (INNs), as well as recent relevant developments in the Domain Name System (DNS). As regards industrial designs, the SCT had considered a document summarizing the main points emerging from the Information Session on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs, held at its thirty-eighth session, and had decided that further work was desirable on (i) the requirement for a link between the said designs and the article or product and (ii) the methods allowed by offices for the representation of animated designs. With respect to geographical indications, the SCT had adopted a work plan on geographical indications and had considered a list of questions proposed by Members and Intergovernmental Intellectual Property Organizations with observer status on topics referred to in the said work plan. The SCT had also considered a survey of the existing state of play of geographical indications, country names, and other geographical terms in the DNS. Finally, the SCT had requested the Secretariat to issue to Members and Intergovernmental Intellectual Property Organizations with observer status two questionnaires on geographical indications.

138. The Delegation of Indonesia, speaking on behalf of the Asia and the Pacific Group, thanked the Secretariat for the report contained in document WO/GA/50/5, as well as the Chair and Vice-Chairs of the SCT. The Group welcomed the progress made in the Committee, including the agreed work program on the three issues under the SCT. The Group looked forward to advancing work on Graphical User Interface (GUI), Icon and Typeface/Type Font Designs, and to further deliberations on the protection of country names. The Group also welcomed the agreed work plan of the Committee on geographical indications. Expressing the hope that the WIPO General Assembly would direct the SCT to continue its work, the Group reaffirmed its commitment to the work of the Committee.

139. The Delegation of Lithuania, speaking on behalf of the CEBS Group, took note of the report of the SCT and thanked the Chair of the Committee for guiding the work of the SCT. Recognizing the importance of the work carried out by the Committee, and the value of the discussions on various topics during the last two sessions, the Group thanked the Secretariat for the report and the preparation of the SCT sessions. The Group also expressed appreciation for the discussions held during the previous SCT sessions on the protection of country names against registration and use as trademarks, as well as for the valuable exchanges among the delegations concerning different practices, the efforts made to clarify practical issues and the new compromised proposal concerning implementation issues. The Group looked forward to further discussing those issues in the Committee. In addition, the Group acknowledged the valuable information provided on trademark-related aspects of the Domain Name System (DNS) and on Trademarks and International Nonproprietary Names for Pharmaceutical Substances (INNs). Concerning industrial designs, the Group pointed out that the expected

compromise solution in the area of the DLT had not been found yet. The Group therefore regretted the inability to reach agreement on the convening of a diplomatic conference for the adoption of the DLT, the text of which had already been finalized a few years ago. The Group held the view that the work should not revert back to the SCT and that the WIPO General Assembly should decide on the convening of a diplomatic conference on the basis of the worked-out text. In relation to geographical indications, the Group restated that the work of the SCT should not interpret or review the provisions of the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications. Welcoming the agreement reached on the work program on geographical indications, the Group looked forward to discussing the replies to the questionnaire on geographical indications, which had successfully been drawn up and presented to the delegations. The Group was in favor of exchanging experiences and practices on the different geographical indication protection systems, as well as on the protection of geographical indications on the Internet and of geographical indications and country names in the DNS.

140. The Delegation of El Salvador, speaking on behalf of GRULAC, thanked the Secretariat for the report and the Chair of the Committee for his leadership. With regard to industrial designs, GRULAC restated that Member States should tackle that issue with pragmatism, political will and flexibility to overcome the deadlock on the DLT. Regarding the work on GUI, Icon and Typeface/Type Font Designs, the Group would remain focused on the work that could be carried out, taking into account the rapid developments in innovation technology and bearing in mind the challenges such progress imposed, both to intellectual-property-system users and to the administering authorities. GRULAC stressed the importance of country names as a valuable tool for countries to benefit from, and generate, value through the use of the intellectual property system, including the development of a country brand. The Group therefore expressed concern concerning the lack of a uniform approach at the international level for the protection of country names. The Group reiterated its commitment to continue the discussion on the protection of country names, in line with the proposal put forward by the Delegation of Jamaica in various documents. Welcoming the new proposals received on that issue, GRULAC said it was prepared to examine them. Finally, GRULAC recognized the efforts made to implement the work program established on geographical indications and expressed its willingness to participate constructively in the discussion under that item in the Committee.

141. The Delegation of China stated that it paid attention to the protection of country names and INNs. The Delegation indicated that it was ready to further discuss these topics in the Committee. The Delegation said that it was also ready for further discussions on the issues related to geographical indications.

142. The Delegation of the European Union, speaking on behalf of the European Union and its member states, welcomed the significant progress made by the SCT during its last two sessions and noted with appreciation that the SCT had recently held fruitful discussions in all key areas of its work. The Delegation expressed the hope that, in the end, step-by-step progress, in accordance with the Committee's recently agreed work plan on geographical indications, could also lead to clear and tangible results within the SCT mandate and framework, which had a positive impact on stakeholders. The Delegation reiterated that the SCT should not aim at interpreting or revising provisions of the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration or the Geneva Act of the Lisbon Agreement, as any further revision of the Geneva Act fell within the exclusive prerogative of the member states of the Lisbon Union. The European Union and its member states appreciated the valuable updates regarding trademark-related aspects of the DNS, as well as trademarks and INNs, which had been shared within the SCT. In relation to industrial designs, the Delegation recalled that the issue of the DLT and the convening of a diplomatic conference had been on the table for a long time, but had reached a deadlock of a political nature. The Delegation therefore expressed the view that the DLT should not be discussed in the SCT and that the WIPO General Assembly should decide on the convening of a diplomatic conference for the adoption

of the treaty, on the basis of a draft text that could lead to consensus. Turning to an issue discussed more successfully in the industrial designs area, namely GUI, Icon and Typeface/Type Font Designs, the Delegation recalled that an information session had been organized to the general satisfaction at the thirty-eighth session of the SCT and that the Committee had commented on a revised analysis of current practices prepared for that session. Having noted that there seemed to be considerable differences in relation to additional or special requirements for the representation and the eligible subject matter for protection of GUIs appearing temporarily, the Delegation observed that jurisdictions did not demonstrate a uniform tendency as to the scope of protection of GUIs, in particular on the grant of protection regardless of the product in question. Pointing out that the SCT had made another important achievement at its thirty-ninth session by agreeing on the focus of future work concerning GUIs, the Delegation recalled that, after having looked into proposals for future work, the Committee had prioritized further work on the tie between the product and the design and on its effect on the scope of protection. The Delegation welcomed the fact that the SCT would look closer into the requirement for a link between GUIs and the product and explore office practices on the representation of animated designs. The Delegation also noted with approval that the SCT had decided to tackle the issues related to new-age designs at a later stage. With respect to geographical indications, welcoming the consensus on a work program on geographical indications, achieved by the SCT at its thirty-eighth session, the Delegation expressed the view that such work program, emerging from a particularly constructive spirit shown by all delegations, was a significant milestone in the Committee's work. Recalling that it had actively contributed to the compilation of both questionnaires on geographical indications and that, at the thirty-ninth session of the SCT, it had endeavored, alongside other delegations, to help the Secretariat in its efforts to creatively merge the proposed list of questions to a manageable length, the Delegation commended that, as a result of such efforts, the SCT had succeeded in significantly cutting down the number of questions and in tailoring the questionnaire into a more transparent format. Pointing out that such a way forward had allowed the Committee to follow through in accordance with its work plan within its mandate and framework, the Delegation announced that, in preparation for the upcoming SCT session in November 2018, the European Union and its member states had submitted responses to the majority of questions contained in both questionnaires on geographical indications, and that it looked forward to discussing the document, to be prepared by the Secretariat, compiling the responses to the questionnaires, for consideration by the SCT at its next session. Highly appreciating such positive tendencies, the Delegation concluded by saying that the European Union and its member states remained actively engaged in continuing work in all three key areas of the SCT.

143. The Delegation of Switzerland, thanking the Secretariat for the report and other delegations for their cooperation in the framework of the SCT, expressed its satisfaction with the information session on GUI, Icon and Typeface/Type Font Designs, which had been very interesting and had demonstrated the usefulness of protecting those products. Recalling that the majority of Member States had spoken in favor of continuing work on that topic, and stressing the fact that very rapid developments occurred in that area, the Delegation underlined the importance of keeping in mind what was already possible today and the necessity of remaining flexible and open to any development. Secondly, as regards trademarks, the Delegation indicated that Switzerland attached great importance to the protection of country names and geographical names of national significance, pointing out that the experiences shared at the roundtable during the thirty-ninth session of the SCT had shown that, in spite of the different approaches and trademark examination practices, some practices were similar, in particular that a very well-known country name or geographical name could not in itself become a trademark as the mark would lack distinctiveness. The Delegation indicated that the proposal contained in document SCT/39/8, put forward at the thirty-ninth session of the SCT, aimed, as a matter of priority, at having that principle recognized, and did not aim at creating new obligations. The proposal provided that States would remain entirely free to determine, according to their national legislation, requirements for registering country names and geographical names of national significance as trademarks. Underlining the fact that the

proposal did not only fall within the context of trademarks, but also within the context of domain names, and expressing concern for the protection of geographical names in the framework of the second round of granting of generic Top-Level Domains (gTLDs), the Delegation recalled that the rules for granting future gTLDs were currently being discussed by the Internet Corporation for Assigned Names and Numbers (ICANN). Expressing concern that the rules on the protection of geographical names, which had prevailed in the first extension in 2012, would not be maintained during the new round of assignments, the Delegation recalled that the information session on geographical indications, organized at the thirty-seventh session of the SCT, had highlighted that issue. Expressing the hope for a rapid progress towards a consensus, the Delegation said that it looked forward to continuing the discussions on the protection of country names and geographical names in the SCT, and, in particular, on the proposal contained in document SCT/39/8. Finally, as regards geographical indications, observing that exchanges of information on national protection systems - although complex - had continued during the last SCT sessions in a constructive way, the Delegation welcomed the continuation of those exchanges through answers to the questionnaires on geographical indications, developed at the previous session of the SCT, so as to improve the mutual understanding of SCT members about their varied national systems.

144. The Delegation of Brazil, aligning itself with the statement delivered by the Delegation of El Salvador on behalf of GRULAC, underlined the fact that in the last sessions of the SCT the discussions had evolved positively on various topics of the agenda, and noted that, on trademarks, the gap between different proposals regarding the protection of country names appeared to be narrowing. The Delegation reported that, although its intellectual property law did not provide for specific procedures for the registration of country names or geographical indications, names of states were excluded from registration as trademark, if the trademark was considered descriptive, misleading, or deceptive as to the origin of the goods or services. The Delegation expressed its willingness to continue assessing how to find ways to reconcile national intellectual property laws with some of the elements contained in the proposal in document SCT/39/8, and said that it remained constructively engaged to help Member States to find common ground on the subject. Expressing particular interest on geographical indications, the Delegation pointed out the exponential growth in geographical indication registrations in Brazil over the last years. In 2002, the first geographical indication had been registered, and 68 geographical indications were currently registered. Therefore, due to the growing importance of this topic in Brazil, the Delegation said that it would continue to engage constructively in the discussions, and that its national office was making efforts to provide replies to the questionnaire on national and regional geographical indications systems. The Delegation also reiterated its position on the importance of protecting country and geographical names in the DNS. Finally, the Delegation said that it looked forward to working with other Members States to develop and implement a balanced proposal that would take into account the competing interests between countries, domain names registrations and general Internet users. Regarding the DLT, the Delegation indicated that it would express its position on the relevant agenda item.

145. The Delegation of Iran (Islamic Republic of) thanked the Secretariat for its continuous efforts in the preparation and organization of the Committee's sessions, as well as the Chair for his professionalism and skillful leadership. The Delegation indicated that it attached great importance to the work of the Committee and the discussions undertaken on the topics currently in the agenda. Concerning the DLT, the Delegation expressed the view that an eventual decision depended on the recognition of all State priorities and also on the constructive and positive approach by all. Accordingly, bearing in mind the decision taken by the WIPO General Assembly last year, the Delegation urged all Member States to work based on mutual respect, with the objective to overcome the remaining differences and submit the draft instrument to a diplomatic conference. With regard to GUIs, considering that the current international framework already provided adequate flexibility for ensuring the protection of new technological designs, the Delegation stated that further discussions on the issue should be restricted to the

sharing of experiences between delegations and should preserve Member States policy space to adopt their national legal requirements, based on their needs and priorities. Concerning trademarks, recalling that the lack of protection of country names at the international level was a loophole in the international intellectual property system, the Delegation reiterated the view that the protection of country names was extremely important. The Delegation said that it was necessary to continue discussions on that subject as a matter of priority, and to develop a framework to prevent the undue registration or use of country names as trademarks. On the issue of geographical indications, the Delegation recalled its position that the work of the SCT should not in any way interpret or review the provisions of the Lisbon Agreement and the Geneva Act of the Lisbon Agreement. The Delegation expressed the firm belief that the Committee should remain within its mandate and avoid duplicating the work already covered by the Committee or by existing treaties and systems administered by WIPO.

146. The Delegation of India took note of the efforts made to bring consensus among Member States on the protection of country names. In this respect, the Delegation recalled its support for the prohibition of the use of a country name as a trademark because this created a link with the origin of the product or the service and had implications on the sovereignty of the State. Therefore, the Delegation was of the view that country names should be used only after due authorization of the concerned competent authority.

147. The Delegation of the Russian Federation, expressing its interest in continuing work on all items on the agenda of the SCT, welcomed the holding of comprehensive discussions on the protection of country names and the prevention of their use as trademarks. Expressing its satisfaction with the results of the information session on GUI, Icon and Typeface/Type Font Designs, the Delegation believed that the information sessions were useful for sharing the experiences of different countries. Informing the WIPO General Assembly of the fact that the Parliament of the Russian Federation was discussing a draft law aimed at granting legal protection to geographical indications through registration with the Intellectual Property Office, the Delegation said that the substantive results of the information session on geographical indications had been taken into account in the development of that law. The Delegation concluded by expressing the hope that the practice of organizing information sessions in order to exchange the best practices of intellectual property offices would be continued.

148. The Delegation of the United States of America, thanking the Secretariat for the work over the last year at the SCT, welcomed the spirit of cooperation in the SCT, which had allowed progress in trademarks, designs and geographical indications. Turning specifically to GUI, Icon, Typeface/Type Font Designs and other emerging technology, the Delegation expressed its support for the work on that topic, informing the WIPO General Assembly that it had provided comments and questions in relation to the Secretariat's invitation on the following two issues: (a) the requirement for a link between GUI, Icon and Typeface/Type Font Designs and the article or product and (b) the methods allowed by offices for the representation of animated designs. The Delegation looked forward to a questionnaire or paper from the Secretariat, as well as to a further exchange of views on other related matters, including novel technological designs. Turning to the WIPO Digital Access Service (DAS), the Delegation welcomed the continued focus on that topic at the SCT, including continued stock-taking of participation and use of DAS for designs. Expressing its interest in hearing any new developments from other SCT members regarding use of WIPO DAS for designs, the Delegation was extremely pleased to announce that the United States of America would join the group of Member States that serve as both depositing and accessing offices with regard to design priority documents *via* WIPO DAS on October 1, 2018. Assuring its continuous support for increased participation in DAS for design priority documents for the benefit of users and applicants, the Delegation expressed the willingness to share its experience with other delegations considering participation in the near future. Reiterating its support for simplifying filing procedures and formalities for industrial designs applicants, the Delegation said that finding commonalities and best practices in those procedures and formalities would help design innovators, especially

small and medium-sized enterprises (SMEs) and individual designers, to navigate the sometimes complex filing procedures for pursuing protection for their designs. Recalling the long-standing and widespread agreement in the SCT on the core provisions of the DLT, the Delegation expressed the hope that those widely agreed provisions could be moved forward, for the benefit of design applicants across the globe, especially SMEs and individual designers that eagerly awaited their implementation. Considering that extensive time and discussion had been dedicated to finding a solution in relation to the proposal for the inclusion of disclosure requirement provisions, the Delegation noted that the Chair of the SCT had offered a series of proposals aimed towards moving the draft DLT forward to a diplomatic conference. Expressing its regret that the requestors of those new provisions were still not in a position to support moving forward to a diplomatic conference without inclusion of those disclosure requirement provisions, the Delegation said that it continued to have significant concerns regarding those provisions, specifically because, in its view, they lacked relation to the subject matter of industrial designs, as genetic resources were not a matter arising in the context of evaluating the ornamental appearance of articles of manufacture before intellectual property offices. The Delegation also believed that those provisions appeared to go well beyond the purview of DLT - a draft agreement on procedural formalities in the context of designs. Finally, the Delegation remained concerned as to the fact that those provisions would undermine the very goal of the DLT to streamline and simplify design formalities for the benefit of applicants, including and particularly for SMEs and individual designers. Instead of streamlining and simplifying design application procedures, the disclosure requirement provisions would add significant uncertainty and burdens on industrial design applicants. In fact, those burdens would be felt most significantly by SMEs and individual designers, who were the least likely applicants to have sophisticated legal counsel to navigate the additional requirements set forth by the proposed provisions. Recalling that many delegations throughout the discussion had highlighted that the disclosure-related provisions were contradictory to the aim of the DLT and undermined the commonly agreed objective of simplifying industrial design application procedures for applicants, the Delegation reiterated that those provisions would hurt rather than help applicants, particularly SMEs. For those very reasons, the Delegation said that it would not support a DLT text that included provisions which significantly undermined the purpose of the DLT and acted to the detriment of design applicants.

149. The Delegation of Jamaica indicated that it aligned itself with the statement made by the Delegation of El Salvador on behalf of GRULAC. The Delegation thanked the Secretariat for the report and for facilitating an extremely useful information session on the protection of country names during the thirty-ninth session of the SCT. The Delegation recalled that its consistent view, and the view of a growing number of members of the Committee, was that, although protection was available in theory for country names through existing trademark laws, such protection was often limited to particular circumstances, leaving ample opportunities for persons and entities to unfairly abuse and free ride on the goodwill and reputation of a country's name. Therefore, the Delegation observed that the protection that theoretically existed for country names through current trademark law, interpretation and practice, was incomprehensive, inadequate and insufficient. The Delegation encouraged members to review document SCT/32/2 and the Joint Recommendation on Country Names, with a view to agreeing on possible language that would capture the areas of convergence, seeking for a collective and effective protection of country names against registration and use as trademarks. The Delegation hoped that, through constructive engagement, the SCT could find effective means for protecting country names, reflecting the consensus of WIPO Member States.

150. The WIPO General Assembly took note of the "Report on the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT)" (document WO/GA/50/5).

## ITEM 17 OF THE CONSOLIDATED AGENDA

### MATTERS CONCERNING THE CONVENING OF A DIPLOMATIC CONFERENCE FOR THE ADOPTION OF A DESIGN LAW TREATY (DLT)

151. Discussions were based on document WO/GA/50/6.

152. The Secretariat introduced the item and stated that, with respect to the convening of a diplomatic conference for the adoption of the Design Law Treaty (DLT), two remaining topics had been outstanding for some time, namely technical assistance and disclosure of the origin or source of traditional knowledge (TK), traditional cultural expressions (TCEs) or genetic resources (GRs) utilized in the industrial design. These two questions were discussed at last year's General Assembly, but delegations did not reach agreement to convene the diplomatic conference in 2018. That being the case, last year's WIPO General Assembly decided that, at its next session in 2018, it would continue considering the convening of a diplomatic conference on the DLT, to take place at the end of the first half of 2019. In line with this decision, the convening of a diplomatic conference for the adoption of the DLT was again on the agenda for this year's WIPO General Assembly. Since last year's General Assembly, the SCT held two sessions, namely the thirty eighth and thirty ninth sessions. While the DLT was formally on the agenda of both sessions, the matter was not actively discussed by delegations. At the 38<sup>th</sup> session, the Chair concluded that, while the DLT would remain on its Agenda, the SCT should abide by the decision of the WIPO General Assembly. At the end of the thirty-ninth session of the SCT, the Chair concluded in the same way, and furthermore observed that the remaining gaps in positions regarding the convening of the diplomatic conference had been further narrowed at the 2017 WIPO General Assembly, and urged all Member States to make a concerted effort and display the necessary flexibility with a view to overcoming these final hurdles.

153. The Chair considered that the item required further consultations, and appointed Ms. María Inés Rodriguez (Argentina) to facilitate these. The Chair promised to keep the Plenary informed. As such, he invited delegations to make their statements on this agenda item when reopening it later on. The Chair reminded that this matter had been the subject of long debate in the Plenary in previous years and that the views of delegations were recorded in the reports of previous sessions. The Chair reassured delegations that there would be ample time to make statements again when this item was reopened later in the meeting.

154. Reverting to the agenda item, the Chair thanked the Facilitator for her availability and for all her efforts in conducting consultations in different formats, as well as all regional coordinators and the delegations involved in the informal consultations for their cooperation.

155. The Facilitator informed the Plenary that some delegations had indicated that they required more time for the consideration of the item and that an agreement to come back to that topic next year had been reached. Thanking all the delegations for their cooperation, the Facilitator indicated that delegations had agreed on the following draft decision:

“The WIPO General Assembly decided that, at its next session in 2019, it will continue considering the convening of a diplomatic conference on the Design Law Treaty, to take place at the end of the first half of 2020.”

156. The Chair submitted the decision paragraph read by the Facilitator to the consideration of the WIPO General Assembly.

157. The Delegation of Switzerland, speaking on behalf of Group B, thanked the Chair of the thirty-eighth and thirty-ninth sessions of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), as well as the Secretariat, for their hard work over the past year, including the preparations for the WIPO General Assembly. Recalling

the long history of the issue under discussion, the Delegation expressed its regret that considerations falling outside of the treaty's scope were currently preventing users from a simplification of formalities in the industrial design system. The Delegation also recalled that, at the 2014 WIPO General Assembly, Group B had stood ready to agree on sending documents SCT/31/2 Rev. and SCT/31/3 to a diplomatic conference in 2015. The Delegation also reminded the WIPO General Assembly that, at the thirty-fifth session of the SCT, Group B had also been ready to join a consensus to send the Chair's proposal, subject to the deletion of Note 3.08, as a framework for negotiation for the diplomatic conference. The Delegation, thanking the Facilitator for her efforts in trying to reach a consensus and for putting forward a concrete proposal during the present Assemblies, indicated that Group B had been ready to engage constructively on such proposal. Unfortunately, the Delegation had noted that some members were not willing to engage in a constructive manner on the issue under consideration, or were not even ready to engage in the discussion. The Delegation said that Group B hoped to find a mutually satisfactory solution at the next WIPO General Assembly, with the ultimate goal of the text being finalized without a reference to disclosure requirements.

158. The Delegation of Lithuania, speaking on behalf of the CEBS Group, thanked the Facilitator for her efforts to find a compromise solution and said that it wished to put on record the regrets shared by the members of the Group. The text of the treaty had been finalized already a few years ago and the Delegation believed that designers around the world would benefit from a treaty on formalities. Although the Group had demonstrated its constructive spirit in the process, the Delegation had noted, however, that some delegations from one regional group were not prepared to engage in the discussions on the basis of the text proposed by the facilitator. The Delegation expressed its regret that the WIPO General Assembly had been unable to move forward to a decision on convening a diplomatic conference. The Delegation reiterated its commitment to participate constructively in the process of bringing negotiations forward at the next WIPO General Assembly and expected a similar approach from other Member States. The Delegation hoped that solutions on the outstanding issues allowing the convening of a diplomatic conference for the adoption of the DLT were within reach.

159. The Delegation of Indonesia, speaking on behalf of the Asia and the Pacific Group, took note of the decision which guided Member States to consider, at the 2019 WIPO General Assembly, the convening of a diplomatic conference for the adoption of the DLT, to take place at the end of the first half of 2020. After commending all Member States and regional groups for their positive contributions to the discussions on the DLT during the WIPO General Assembly, the Group expressed its appreciation for the excellent work of the Facilitator in smoothing the process and putting forward a concrete proposal. The Group concluded by reaffirming its commitment to continue to constructively engage towards a complete resolution of the outstanding issues so that a decision on the convening of a diplomatic conference could be considered.

160. The Delegation of Morocco, speaking on behalf of the African Group, thanked the Chair of the WIPO General Assembly, the Chair and Vice-Chairs of the SCT as well as the facilitators, Mr. El Maliki and Ms. Rodriguez, for their professionalism, leadership and efforts to push forward the negotiations on the DLT. Recognizing the significant role played by industrial designs in innovation and the importance to have an international instrument on registration formalities for that type of intellectual property rights, the Group reiterated its regret that the 2017 WIPO General Assembly, as well as the current WIPO General Assembly, had not been able to reach an agreement on the convening of a diplomatic conference for the adoption of the DLT. Regretting that the subject had not been discussed at previous sessions of the SCT, in accordance with the decision of the 2017 WIPO General Assembly, the Group believed that negotiations in the framework of those sessions would have enabled delegations to reach consensus on the pending issues. Restating that an inclusive approach was needed to take into consideration each other's concerns, the Group expressed the view that the text of the draft DLT, in its present form, was neither balanced nor inclusive and did therefore not meet the

interests of a large part of WIPO Member States. For that reason, the Group reiterated its position, supported by many Member States, aiming at including a disclosure provision under Article 3 of the DLT and at having a binding provision on technical assistance, so as to enable developing countries and LDCs to fully benefit from the implementation of the DLT. Pointing out that additional efforts by all Member States would contribute to push the process forward and allow substantive progress on the outstanding issues, the Group stated that it still remained optimistic that a mutually agreed solution, taking into account those concerns, would be achieved. Finally, the Group expressed the hope that, in a near future, a consensus would be reached to convene a diplomatic conference, while taking into account the legitimate and essential concerns of developing countries.

161. The Delegation of the European Union, speaking on behalf of the European Union and its member states, thanked the Facilitator for her efforts and regretted that, despite the willingness to engage in discussions to facilitate a text, again this year no positive decision to convene a diplomatic conference for the adoption of the DLT could be reached. The European Union and its member states therefore supported the decision that the WIPO General Assembly would continue to consider the item under consideration at its next session in 2019.

162. The Delegation of El Salvador, speaking on behalf of GRULAC, regretted the lack of agreement on the agenda item under consideration. Thanking nonetheless the Facilitator for her efforts and support in trying to achieve a decision on the matter, the Delegation said that GRULAC stood ready to cooperate with the aim to convene a diplomatic conference for the adoption of the DLT.

163. The Delegation of South Africa aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group, and thanked the Facilitator for her efforts. The Delegation held the view that much had been said in support of the inclusion of an article on disclosure in the main text of the treaty during the past years. The proposed provision aimed at allowing countries having provisions for protection of TK, TCEs and GRs in their national laws, to comply both with national requirements and with international obligations at the time of joining the DLT. This was particularly important, since Article 3 of the draft DLT contained a closed list of requirements for design registration. The Delegation expressed the view that it would be extremely difficult for several countries to sign a treaty that did not contain such a provision, and stated that compelling arguments had been put forward for disclosure of GR, TK and TCEs in the draft DLT. Calling for political will and understanding, the Delegation stood ready to continue negotiating in good faith, and hoped that other delegations would have the same attitude.

164. The Delegation of Egypt expressed its support for the statement made by the Delegation of Morocco on behalf of the African Group and said that Egypt was fully involved in all the discussions that would lead to an understanding on the convening of a diplomatic conference. The Delegation believed that the draft treaty was an extremely important document that could be of great benefit to developing countries and LDCs, due to the obligations and duties that would arise therefrom.

165. The Delegation of Nigeria, echoing the intervention made by the Delegation of Morocco on behalf of the African Group, regretted that no decision on the convening of a diplomatic conference for the adoption of the DLT could be reached. The Delegation hoped that, at the next WIPO General Assembly, there would be readiness on all sides to listen to each other and try to find a workable solution, meaningful for all delegations and all regions. The Delegation expressed the view that the idea of requesting one regional group to drop a request or a position, which had been explained in-depth and articulated very well over several sessions of the SCT, was not a workable approach and should be reconsidered before the next WIPO General Assembly.

166. The WIPO General Assembly decided that, at its next session in 2019, it will continue considering the convening of a diplomatic conference on the Design Law Treaty, to take place at the end of the first half of 2020.

## ITEM 18 OF THE CONSOLIDATED AGENDA

### REPORT ON THE COMMITTEE ON DEVELOPMENT AND INTELLECTUAL PROPERTY (CDIP) AND REVIEW OF THE IMPLEMENTATION OF THE DEVELOPMENT AGENDA RECOMMENDATIONS

167. Discussions were based on documents WO/GA/50/7 and WO/GA/50/13.

168. The Chair stated that there were two documents for consideration under the agenda item, as stated in the List of Documents, namely the “Report on the Committee on Development and Intellectual Property (CDIP) and Review of the Implementation of the Development Agenda Recommendations” (document WO/GA/50/7), and the “Contribution of the Relevant WIPO Bodies to the Implementation of the Respective Development Agenda Recommendations” (document WO/GA/50/13).

169. The Secretariat introduced the two documents. With regard to the first document (WO/GA/50/7), it recalled that the CDIP had met twice since the last session of the WIPO General Assembly in October 2017. The CDIP had met from November 27 to December 1, 2017, and from May 14 to 18, 2018. As agreed by the Committee, document WO/GA/50/7 contained the Summary by the Chair of those two sessions. It also contained the ninth annual “Director General’s Report on Implementation of the Development Agenda for 2017”, discussed by the Committee at its 21<sup>st</sup> session in May. The second document (WO/GA/50/13) contained the Contribution of the Relevant WIPO Bodies to the Implementation of the Respective Development Agenda Recommendations. In that regard, the document included the report of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), contained in document WO/GA/50/8, Section V. The WIPO General Assembly was requested to take note of the information contained in document WO/GA/50/13 and forward it to the CDIP.

170. Ambassador Hasan Kleib (Indonesia), delivered a statement in his capacity as the Chair of the CDIP. Noting the report contained in document WO/GA/50/7, he expressed gratitude to Ambassador Walid Doudech (Tunisia), for his able leadership as Chair of the CDIP at its 20<sup>th</sup> session. He stated that the achievements of the last CDIP session would not have been possible had they not been built upon the achievement of previous sessions, as well as the full support of WIPO towards integrating the Development Agenda (DA) and its underlying principles into the work of the Organization. IP continued to be an important driver for social, economic and cultural development. The work in that CDIP session was crucial in advancing discussions on the topics related to the role of IP and development and its current challenges. The CDIP Chair recognized the high expectations that Member States and other stakeholders had for the CDIP and hoped that a mutually acceptable solution to fulfill those expectations were within reach. At its 20<sup>th</sup> session, the CDIP had discussed the progress achieved in the implementation of the six ongoing DA Projects, among other issues while monitoring and assessing the progress on the implementation of all DA Recommendations. At its 20<sup>th</sup> session, the CDIP had also discussed and taken note of the “Report on the Roundtable on Technical Assistance and Capacity Building: Sharing Experiences, Tools and Methodologies” (document CDIP/20/3) as part of the implementation of the six-point proposal on WIPO Technical Assistance in the Area of Cooperation for Development, agreed at the 18<sup>th</sup> session of the CDIP. At its 21<sup>st</sup> session, as the first CDIP session of the year, the Committee had considered the “Director General’s Report on the Implementation of the Development Agenda” (document CDIP/21/2) and the annual “Report on WIPO’s Contribution to the Implementation of

the Sustainable Development Goals and its Associated Targets" (document CDIP/21/10). At its 21<sup>st</sup> session, the CDIP discussed important subject matters under the three main standing agenda items: (i) monitoring of the implementation of DA Recommendations; (ii) consideration of a work program for the implementation of adopted Recommendations; and, (iii) the agenda item on IP and development. He further highlighted some progress achieved during those deliberations. On the forum for technical assistance, at its 21<sup>st</sup> session, the CDIP had agreed to convene an interactive dialogue on technical assistance and, at the same time, had requested the Secretariat to provide a document on the feasibility of establishing a web-forum. The interactive dialogue would be convened at the next CDIP session in November. The CDIP Chair encouraged all Members to agree on the concept note on interactive dialogue and looked forward to their active participation in November. At that session, the CDIP had also agreed on a way to address the SDGs in future CDIP sessions. The Committee decided that any discussion on SDGs in CDIP sessions would be undertaken under the standing agenda item on IP and Development. The CDIP Chair further informed that, at the 21<sup>st</sup> session, the CDIP had also agreed on the future proceedings with the new standing agenda item on IP and Development. The Committee had considered the compilation of Member States inputs and agreed that, at its 22<sup>nd</sup> session, it would address the topic of Women and IP and, at its 23<sup>rd</sup> session, the topic of "IP and Development in the Digital Environment". Furthermore, it had also agreed that other future topics under the agenda item of IP and Development should be based on a proposal from Member States on the basis of the timing of their submissions. With regard to DA projects, the 21<sup>st</sup> session of CDIP had approved the "Project Proposal from the Delegations of Canada, Mexico and the United States of America on Increasing the Role of Women in Innovation and Entrepreneurship, Encouraging Women in Developing Countries to Use the Intellectual Property System" (document CDIP/21/12 Rev.). In addition to all the progress made at the 21<sup>st</sup> session, that session had also resulted in some homework that needed to be addressed and solutions to be found to move forward. First was the Proposal of the African Group concerning the biennial organization of an international conference on IP and development. Second was the discussion on Recommendations 5 and 11 of the Independent Review of the Implementation of the DA Recommendations. Both issues were discussed in depth at the 21<sup>st</sup> session, and the Committee was very close to an agreement on how to move forward. The CDIP Chair expressed his hope that members could build on from their last deliberations, with a view to finding a mutually acceptable solution to both issues at the upcoming 22<sup>nd</sup> session of CDIP. At the upcoming 22<sup>nd</sup> session, the CDIP would also discuss the modalities and implementation strategies of the adopted Recommendations of the Independent Review, as well as the DA project proposals from the Delegation of Kenya on "IP and the software sector in African countries, and the proposal from the Delegation of Peru on IP, tourism and gastronomy in Peru. He expressed confidence that if members could maintain the constructive and positive spirit shown in previous sessions of the CDIP, the upcoming sessions would yield positive results that were acceptable to all Member States. He concluded by expressing his appreciation to all Member States for their active participation and contributions, and to the Secretariat for their excellent arrangements during the last session. He looked forward to another productive session in November.

171. The Delegation of Lithuania, speaking on behalf of the CEBS Group, recognized the important work carried out by the CDIP and took note of the report contained in document WO/GA/50/7. The Group believed that the DA was incorporated into the work of WIPO as an integral part. It appreciated the work that had led to the implementation of the 45 adopted DA Recommendations, discussing IP and development related issues. The Group remained committed to working towards implementing the DA Recommendations in an appropriate manner and saw progress made in that regard. It was of the view that WIPO played, and should continue to play, a central role in ensuring the functioning of a balanced and effective international IP system that boosted creativity and innovation. It encouraged Member States to make good use of the IP system while pursuing developmental goals. The Group welcomed the results of the two last CDIP sessions that had adopted a number of interesting and meaningful projects, in particular on technology transfer (document CDIP/19/11 Rev.), and

on women in IP (document CDIP/21/12 Rev.). The demand driven projects were the most effective, and further proposals that could respond to the particular needs of Member States were encouraged. The Group supported the start of the Committee's work under the agenda item on IP and Development, with the topics on IP and Women and IP and Development in the Digital Environment as these topics were highly relevant those days. At its last session, the Committee had been very close to achieving a compromise solution as regards the proposal of the African Group on the biennial organization of an international conference on IP and development. It hoped that the positive spirit of compromise would prevail at the next CDIP session and would allow the adoption of universally acceptable decisions on pending issues. At the last CDIP session, the Committee had been unable to close the discussion on Recommendations 5 and 11 of the Independent Review. The Group believed that Recommendation 5 had already been implemented while the implementation of Recommendation 11, which was considered sufficient and no further action was needed. The Group expressed its hope that, during the next CDIP session, Member States would be able to close that long-standing item. It remained committed to further work of the CDIP, giving particular attention to demand-driven projects.

172. The Delegation of Kazakhstan, speaking on behalf of the CACEC Group, welcomed the holding of the thematic session on IP and Development in the Digital Environment during the 23<sup>rd</sup> session of the CDIP, as proposed by the Delegations of Brazil and the Russian Federation. The economic transformation fueled by the growth of digital economy and the Internet had impacted IP. In recent years, the number of applications related to digital technologies had grown substantially. New technologies created new ways of improving the efficiency of the patent offices. The Group hoped that the current session would contribute to the exchange of views on the prospects of IP and development in the digital economy, and an assessment of benefits and risks, as well as the approaches of IP offices to the use of new technologies.

173. The Delegation of Morocco, speaking on behalf of the African Group, took note of the "Contribution of the Relevant WIPO Bodies to the Implementation of the Respective Development Agenda Recommendations" (document WO/GA/50/13). The Group found the work of the CDIP very important. It continued to support the work of the Committee and hoped that it could ensure the implementation of the DA taking into account the interest of developing countries. Transfer of technology and capacity building were very important topics not just for the African region but for all developing countries and LDCs. The Group believed that the mainstreaming of the DA was important. It was also important to work together with all United Nations (UN) agencies in ensuring the achievement of the SDGs. WIPO needed to continue to provide resources for the work of the DA. It was important to continue to provide technical assistance in an efficient, coherent and consistent way. The SDGs were universal and closely linked to each other. WIPO should be interested in all SDGs and have a major role in their achievement. The work of the CDIP should continue to ensure the implementation of the DA. The Group recalled that, at the 19<sup>th</sup> session of the CDIP, it had put forward a "Proposal of the African Group Concerning the Biennial Organization of an International Conference on Intellectual Property and Development" (document CDIP/19/7). It had presented a revised proposal at the 20<sup>th</sup> session of the CDIP (document CDIP/20/8). It hoped that the debate on the African proposal would conclude at the next session of the CDIP.

174. The Delegation of China noted the achievements of the CDIP in the past year. It appreciated WIPO's contribution to the implementation of the DA and the flexibility and the spirit of cooperation shown by all members. The Delegation referred to the decision of the CDIP to discuss SDGs under the agenda item on IP and Development, as well as other specific topics. It looked forward to participating actively in those discussions with other Member States. The Delegation would continue to deeply and extensively engage in a cooperative and open manner in relevant WIPO work aimed at implementing the DA and the SDGs.

175. The Delegation of Austria, speaking on behalf of the European Union and its member states, reiterated their continued commitment and support for the work carried out by the CDIP, based on its mandate agreed in 2008 which, *inter alia*, requested the Committee to develop a work program for the implementation of the 45 adopted DA Recommendations and to discuss IP and development-related issues. It further referred to the Summaries by the Chair, which constituted the reports to the Assemblies, as well as the Director General's Report on the Implementation of the DA for 2017. The European Union and its member states noted that considerable progress had been achieved in mainstreaming the DA and SDGs across all WIPO strategic goals. In particular, they appreciated the wide range of technical assistance and capacity building activities. They highlighted the increasing role of the WIPO Academy in development oriented activities since its establishment 20 years ago. The European Union and its member states assured their commitment to achieving the SDGs and expressed their conviction on the importance of the role that WIPO had played, and should continue to play, in supporting Member States to achieve the SDGs. WIPO should focus on the SDGs that were most relevant to the mandate of the Organization. The European Union and its member states looked forward to starting discussions under the new agenda item on IP and Development, notably the topics on IP and Women and IP and Development in the Digital Environment at the next two sessions of the CDIP. They acknowledged the vast amount of work already performed, as well as the work that remained in front of the CDIP. The European Union and its member states reiterated their commitment to contributing to further progress in all areas relevant to the CDIP, bearing in mind the mandate of WIPO to promote the protection of IP throughout the world and through cooperation among countries.

176. The Delegation of El Salvador, speaking on behalf of GRULAC, took note of the report contained in document WO/GA/50/7. It gave an overview of all activities in WIPO that integrated the DA Recommendations. It highlighted the importance of the mainstreaming of all 45 DA Recommendations in the work of the Organization. The 21<sup>st</sup> session of the CDIP addressed the important topic of SDGs. The Group took note of the work done by WIPO in achieving the SDGs and hoped that, in future, discussions on this subject would continue. Several members of GRULAC had presented a number of topics for discussion under the agenda item on IP and Development and the Group hoped that those proposals would be considered in the future.

177. The Delegation of South Africa, speaking on behalf of Brazil, Russian Federation, India, China and South Africa (BRICS), supported the discussion in the CDIP on IP and Development in the Digital Environment. Based on the recent exchanges of views and experiences, and on the outcomes of the International Conference on Digital Transformation held under the auspices of BRICS in Moscow, discussions on this subject were welcomed with the view of exchanging best practices in that domain including consideration of respective proposals previously made by Brazil and the Russian Federation with a view to exchange best practices in this domain.

178. The Delegation of India commended the achievements of the CDIP at its 20<sup>th</sup> and 21<sup>st</sup> sessions. It noted that for a balanced and effective IP system it was essential to take a holistic view of its impact. The benefits of IP needed to be factored in with respect to fostering innovation as well as the costs entailed on the ability of developing countries and LDCs in meeting their socio-economic development concerns. With respect to the 17 SDGs, the Delegation emphasized that WIPO's role could not be confined to a specific number of SDGs, as they were universal, integral and indivisible in character. It appreciated the inclusion of the agenda item IP and Development as a permanent item on the CDIP agenda and the decision of the CDIP to discuss SDGs under that agenda item. The Delegation was positive that the discussion on WIPO Technical Assistance in the Area of Cooperation for Development would bring uniformity, better organization and clarity to existing processes and practices. It also welcomed the decision of the Committee to convene, at its next session, an interactive dialogue on technical assistance. The Delegation supported the proposal made by the African Group on holding a biennial international conference on IP and development and looked forward to the

discussion on the topic of IP and Women at the next session of the CDIP. It found the discussion on transfer of technology very important. However, the issue remained under discussion since decades without any concrete future actions. Hence, the CDIP needed to discuss this issue in a more action-oriented manner.

179. The Delegation of Switzerland, speaking on behalf of Group B, reiterated its strong position that WIPO should lead a balanced and effective international IP system that enabled innovation and creativity for the benefit of all. Its main objective was to promote the protection of IP throughout the world while noting that development considerations were an integral part of its work, enabling Member States to use IP as a tool for development. The Group noted with great satisfaction that, during the 20<sup>th</sup> and 21<sup>st</sup> sessions of the CDIP, new projects in the field of technology transfer and "Women and IP" were adopted. In addition, several project proposals were in the pipeline. The Group welcomed such demand-driven proposals with strong ownership from countries. It expressed the hope that, during the next CDIP session, the Committee would be able to close the long-standing discussion on the implementation of Recommendations 5 and 11 of the Independent Review. The Group believed that Recommendation 5 had already been implemented in the current practice of the Organization, while Recommendation 11 would significantly burden WIPO's work. It extended its appreciation and trust to the Chair of the CDIP in his efforts to build bridges at the next CDIP session.

180. The Delegation of Indonesia, speaking on behalf of the Asia and the Pacific Group, stated that a fair and balanced IP system was an important tool for economic development. The Group welcomed the important steps initiated by WIPO and its Member States in enhancing the development-oriented work of the Organization. The CDIP was an important Committee and should continue to be guided by the principles of mainstreaming development in all WIPO activities and making development an integral part of the Organization's work. The Group welcomed the report of the Director General and the report of the relevant WIPO bodies on the implementation of the DA. It also welcomed the report on WIPO's contribution to the implementation of the SDGs and its associated targets. The outcomes of the 20<sup>th</sup> and 21<sup>st</sup> sessions of the CDIP included the way to address SDGs in future sessions and a methodology for addressing topics under the agenda item IP and Development. The Group looked forward to the interactive dialogue on technical assistance and hoped that the upcoming CDIP session would be able to find mutually acceptable solutions on the proposal by the African Group concerning the biennial organization of an international conference on IP and development and on Recommendations 5 and 11 of the Independent Review. The Group expressed its hope that the WIPO General Assembly could direct the CDIP to continue its work and reaffirmed its commitment to the work of the Committee.

181. The Delegation of Mexico stated that the elements on the agenda, the way they had been implemented, and the way in which WIPO's activities had been interrelated with the 2030 Agenda and the DA, had enriched the work of the CDIP and made it increasingly important. It believed that the SDGs were very important for the work of the Organization, in particular SDG 9. Many other SDGs depended in some way on the creation and dissemination of innovative technologies. Innovation and creativity were not goals in themselves but means affecting the achievement of many of the SDGs, as well as the search for creative solutions to development problems. The Delegation urged WIPO to ensure that it kept carrying out concrete activities to help achieve those SDGs together with the Member States. Over the previous two years, the CDIP had been able to make headway on the implementation of the DA and it had ensured the link between development and IP. The Delegation considered the CDIP as a platform where Member States could share experiences and good practices in using IP tools, such as collective marks and appellations of origin. It had been able to share some of its experiences in the past. The CDIP was a forum where very concrete activities could take place to ensure that they could assist in the development of IP in the countries. One very important project was the one put forward by the United States of America, Canada and Mexico on the strengthening of the role of women in entrepreneurial activities. Encouraging women in

developing countries to use the IP system sought to ensure greater understanding of the problems faced by innovative women, and to ensure that they could make the best use of IP in the commercialization and development of their inventions, as well as share their experiences by identifying women who would act as mentors within the networks. The Delegation was very pleased to be participating in the pilot project and believed that it would bring great benefit to women in many countries. Another decision that the Delegation applauded was that the next session of the CDIP would discuss IP and women under the new agenda item IP and Development. The role of women was relevant in all fields. Gender inequality still existed in the area of IP in spite of many advances that women had made around the world. The Organization recognized that only 30 per cent of the applications for patents included at least one female inventor, so the challenge was evident. Mexico was one of the countries that had proposed that the CDIP focused on women in IP and development. It expressed hope that the rest of WIPO Member States could share their experiences in relation to the role of women in IP and development. The Delegation wished the CDIP to maintain the positive spirit of recent sessions and for Member States, together with the Secretariat, to manage to better know and understand the areas in which work could be carried out in order to make progress in using IP for the benefit of development.

182. The Delegation of Ecuador highlighted the work that the CDIP had done at its 20<sup>th</sup> and 21<sup>st</sup> sessions. It subscribed to the statement made by the Delegation of El Salvador on behalf of GRULAC. Development was an essential cross-cutting issue that should guide the work of Member States. Therefore, the Delegation wished to reiterate its support for all the work towards the implementation of the 45 DA Recommendations. It also highlighted the role played by the CDIP, which was an ideal but not exclusive forum for dialogue on the progress made in WIPO towards contributing to the SDGs. In that sense, it looked forward to continuing to contribute in tackling issues related to the SDGs at forthcoming sessions, bearing in mind their global and interdependent character. The CDIP was vital in achieving the goals towards which all Member States worked. Being part of the pilot countries of the project on tourism, culture and IP had enabled the creation of internal work with the competent authorities which, in turn, had driven the generation of intangible assets by relevant actors in the tourism sector. Additionally, as a result of that action and in cooperation with the WIPO Academy, the field of IP could be added to the curricula of graduate, post-graduate and continuous learning programs. Projects like that showed the importance and influence of IP in different areas of the economy and of knowledge more broadly. The Delegation also highlighted the valuable work of the WIPO Academy. The establishment of a national academy had contributed to the creation of a new department within the national system which would be exclusively in charge of IP management for the promotion of innovation and the achievement of the country's development goals.

183. The Delegation of Iran (Islamic Republic of) welcomed and acknowledged the work and progress made during the 20<sup>th</sup> and 21<sup>st</sup> sessions of the CDIP on different agenda items. Developing a balanced and accessible international IP system that rewarded and stimulated creative innovation and contributed to economic development was one of the main mandates of WIPO. Mainstreaming development in the various WIPO committees should not be seen as a one off effort. The Delegation was of the view that all WIPO committees should submit detailed reports on the implementation of the respective DA Recommendations. It supported efforts made to implement the recommendations of the Independent Review team and called for further action and follow-up in the implementation of those recommendations. It also invited all Member States to constructively engage in the discussion regarding this matter, in particular on the adoption of Recommendations 5 and 11. Development considerations and the SDGs were cross-cutting topics which should be mainstreamed across all WIPO strategic goals. Innovation was an important tool for creative solutions to development challenges and had an impact on many SDGs. In the Delegation's view, the Secretariat should maintain cooperation with other UN agencies relevant to WIPO's mandate and continue monitoring and contributing to various processes. It considered WIPO's engagement and activities in the framework of the UN

interagency task team a positive contribution in addressing the SDGs. Promotion of WIPO activities and resources related to technology transfer was of high importance. It encouraged the Secretariat to continue the promotion of WIPO activities and resources related to technology transfer. In conclusion, the Delegation reiterated its support for the organization of periodic conferences on IP and development.

184. The Delegation of the Russian Federation wished to offer its support to the statement made by the coordinator of its regional group and the statement made by the Delegation of South Africa on behalf of BRICS. It underscored the great productivity of the CDIP, reflected on the information on the work of its 20<sup>th</sup> and 21<sup>st</sup> sessions and, of course, the WIPO DA. It believed that the DA was integrated within the work of other main bodies of WIPO and it expressed its satisfaction with the positive assessment given by independent experts on various projects carried out by WIPO as part of the DA. It supported WIPO's efforts to increase practical work on projects under the DA and to improve the methods on the basis of which they were carried out. It also supported the implementation of projects on the transfer of technology and technical assistance. The Delegation wished to mention the very constructive discussion that had taken place in the Committee on a new agenda item, welcoming the decision to organize sessions on Women and I" and on IP and Development in the Digital Environment, which would take place at the forthcoming sessions of the CDIP. The Delegation trusted that those discussions would be positive and helpful.

185. The Delegation of Pakistan aligned itself with the statement made by the Asia and the Pacific Group. The CDIP had an important role in assisting Member States to facilitate their IP related development goals. The Delegation appreciated the annual Report by the Director General to the CDIP on the implementation and mainstreaming of the DA Recommendations. The report identified positive initiatives as well as the implementation and mainstreaming of the DA within WIPO Programs and Budget. It believed that the implementation of the programs and activities for the benefit of SMEs and the research sector was another area where WIPO should enhance its programs. The subsequent report should also focus on issues of fair and affordable access to IP protected technology or knowledge in order to effectively implement the SDGs in their full dimension. It urged WIPO to come up with a roadmap to ensure SDGs are implemented in a holistic and non-fragmented manner. It suggested the Secretariat to develop more tools as part of the DA Recommendations on IP related flexibilities, access to knowledge and transfer of technology, demand-driven technical assistance and development cooperation. It looked forward to the next session of the CDIP and the convening of an interactive dialogue on technical assistance. It expressed hope that the Committee could discuss new projects constructively in the next session and find solutions on the proposal for organizing international conferences on IP and development, since it would help to have a substantive discussion on future projects in a sustained manner. It also looked forward to progress on discussions of Recommendations 5 and 11 of the Independent Review of the implementation of the DA Recommendations.

186. The Delegation of the United Republic of Tanzania aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group.

187. The Delegation of Tunisia associated itself with the statement made by Morocco on behalf of the African Group. It welcomed the work done in the CDIP during its last sessions, which had been possible thanks to the consensus building and constructive spirit among Member States. It expressed hope that such goodwill would continue to prevail at forthcoming discussions. It wished to reiterate its support for the African Group's proposal to hold an international conference on IP and development. It also reiterated its interest on technical assistance and capacity building activities. It welcomed the initiative taken by the United States of America, Mexico and Canada to discuss the issues of women in business and women and IP. It also wished to mention the need to strengthen WIPO's contribution to achieving the SDGs, particularly focusing on the Organization's role in rationalizing mechanisms agreed to that end

in the 2030 Agenda. The Delegation also wished to pay tribute to the efforts made to develop the report on WIPO's contribution towards achieving the SDGs and welcomed the tireless efforts put in to that effect. It also highlighted the fundamental role of WIPO in achieving the SDGs and noted the activities and initiatives undertaken in that regard, particularly the high number of programs related to SDGs.

188. The Delegation of Senegal endorsed the statement made by the Delegation of Morocco on behalf of the African Group. It referred to the CDIP project entitled "Strengthening and Development of the Audiovisual Sector in Burkina Faso and Certain African countries". Having benefitted from that project and, after consultation with other beneficiary countries, it wished to submit a formal request for the extension of the project, given the positive results and the expectations raised by many people in the audiovisual sector in those countries. It also wished to see it integrated into the regular program of activities of WIPO. That would also allow other interested countries to benefit from it. That project, which had been very well run and managed, owed its success to a coordinated and holistic approach by the audiovisual sector and a very practical approach on the ground. It had come at a crucial moment for African countries. The audiovisual sector in West Africa could only reach its full potential if those involved in working in it received the professional training they needed and if the strategic role of IP was taken into account. Without those elements, a weak or non-existent collective rights management that undermined the position of right-holders would remain. As new digital forms of running an economy emerged, they would constantly be playing catchup. Furthermore, it made it difficult for them to use their assets in a sector which could bring great benefits to their economy, despite the overall weakness of the cultural ecosystem.

189. The Delegation of Chile associated itself with the statement made by the Delegation of El Salvador on behalf of GRULAC. It attached great importance to the 2017 Director General's Report on the implementation of the DA. The Delegation believed that considerable progress had been made on implementing the DA Recommendations and it encouraged the Organization to continue working to implement them. It reiterated the importance of the consensus that had been reached on the new agenda item on IP and Development, which would be an opportunity to look at the development dimension in WIPO in a broader sense. The Delegation believed it was very important that the CDIP would discuss the SDGs under this agenda item. This would make it possible not only to explore how the Organization contributed to achieving the SDGs but also how it could work to meet the targets within the next 15 years. It believed that the initiatives related to the work program for the implementation of the DA Recommendations were extremely important. In that sense, it highlighted the proposal by the Delegations of the United States of America, Canada and Mexico on strengthening the role of women in entrepreneurship and innovation, which covered an issue of major importance and which would surely bring positive results. It also expressed the hope that it would be mainstreamed in WIPO's permanent activities. In the same vein, it considered that the work on women and IP, which would also be developed under the agenda item on IP and Development, was crucial. It had great expectations on the report to be made by the Secretariat on activities under those issues at the CDIP session in November.

190. The Delegation of Malaysia aligned itself with the statement made by the Delegation of Indonesia on behalf of the Asia and the Pacific Group. IP had a central position in the economic system and its intrinsic link with development was increasingly recognized as a cross-cutting policy issue that touched everyday lives. The Delegation supported the work of the Committee, which played a central role in pursuing a balanced global IP system. The inclusion of IP and development as a permanent agenda item of the CDIP had allowed the Committee to have a more focused discussion on the integration of the development dimension into WIPO's activities. That had resulted in a pilot project in enhancing the role of women in innovation and entrepreneurship, which was of interest to Malaysia. It encouraged WIPO to continue mainstreaming the SDGs and the DA in its work. It welcomed the CDIP's decision to address the SDGs under the standing agenda item of IP and development and hoped for more results-

oriented discussions. It believed that the Committee would work towards finding mutually acceptable solutions on all outstanding matters, namely on the proposal of the biennial international conference on IP and development and the adoption of Recommendations 5 and 11 of the Independent Review of the implementation of the DA Recommendations. The Delegation reiterated its commitment to the important work of the Committee and looked forward to engaging further at the 22nd session.

191. The Delegation of Brazil aligned itself with the statement made by the Delegation of El Salvador on behalf of GRULAC. Development undoubtedly remained one of the most daunting challenges faced by the international community. The creation of wealth without its fair distribution remained one of the world's main problems which had rendered globalization increasing unpopular in every region of the world. In light of such a backdrop, Member States ought to reaffirm their commitment to cooperation, multilateralism and constructive spirit. They had never been so necessary. Since its establishment in the 2007 WIPO General Assembly, the DA had become one of the cornerstones of the Organization. The CDIP, in turn, played a key role in the mainstreaming of the DA into WIPO's activities. In fact, the importance of the CDIP went much beyond the implementation of the DA, since it was the only multilateral forum where meaningful discussions and assessments on the interplay between IP and economic development took place. The Delegation remained of the view that bringing the development dimension into WIPO's activities had strengthened the credibility of the IP system and had encouraged wider acceptance as an important tool for the promotion of innovation and development. The last sessions of the CDIP had witnessed concrete advances in some of the topics in the agenda. After years of discussions, the Committee had been able to agree on the creation of a permanent agenda item entitled IP and Development, which would facilitate the implementation of the third pillar of the DA, since it provided not only greater transparency to the discussions in the Committee, but also helped to engage in focused, balanced and results-oriented discussions for the benefit of all Member States. That guideline would also help Member States to explore different dimensions and linkages between IP and development, which could eventually help in devising better policies in the field, for the benefit of all Member States. Since development and solidarity were hallmarks of Brazil's foreign policy, it had been actively engaged in the Committee's discussions and had submitted substantive ideas to help translate the DA Recommendations into concrete actions. Thanks to the close coordination among BRICS and other countries, Brazil and the Russian Federation had received support for the topic IP and Development in the Digital Environment, which would be addressed under the item IP and Development in the 23<sup>rd</sup> session of the CDIP. Brazil also remained a strong supporter of the proposal on women and IP tabled by the United States of America, Canada and Mexico, which was approved in the last session of the Committee. In fact, such a proposal was in line with Brazil's view that the IP system had a lot to benefit from the increasing participation of women. Notwithstanding the progress made in the Committee, a long path lay ahead. Pending issues remained in the CDIP and efforts to maintain development at the center of the discussions in WIPO was an ongoing and never-ending process. As highlighted in the last session of the Committee, the Director General's Report on the implementation of the DA fell short of its potential since many of the flaws that were contained in previous ones, underscored by many delegations, had not been properly addressed. In the last meeting of the CDIP, Brazil had made concrete suggestions to improve it and it hoped to see them incorporated in future versions of the report. The Delegation also reiterated its position that, being a specialized UN agency, WIPO should provide further substantive contributions to the implementation of the SDGs. Member States, together with the Organization's experience and human resources, should not evade their responsibility. They should all play a more active role towards mainstreaming the SDGs and the CDIP was the appropriate forum to do that. Another challenge related to Recommendations 5 and 11 of the Independent Review, which had not been approved and adopted yet by the CDIP Member States. The objective of such recommendations was to assess the relevance, effectiveness, impact, sustainability and efficiency of WIPO's activities undertaken to implement the DA between 2008 and 2015. By linking WIPO's activities to the expected results contained in the Program and Budget of the

Organization, Recommendations 5 and 11 played a pivotal role in mainstreaming the DA Recommendations into WIPO's work. In that vein, the Delegation urged all Member States to show flexibility and make further progress in the first pillar of the CDIP. Lastly, the Delegation wished to reiterate its strong support for the proposal of the African Group concerning the biennial organization of an international conference on IP and development, contained in document CDIP/20/8. It would provide increased opportunities for dialogue among Member States. The African colleagues had shown enough flexibility to incorporate most of the suggestions made by Group B. It was to be expected that the same flexibility would be shown in return. By addressing those critical issues, WIPO would contribute to reaching a more inclusive, balanced and development-oriented system that would increase economic growth to the benefit of all Member States and all sectors of society.

192. The Delegation of the United States of America aligned itself with the statement made by the Delegation of Switzerland on behalf of Group B. It further noted that the CDIP and WIPO had achieved great success in implementing the DA Recommendations. Those development-related activities had had a positive impact in the countries where they had been carried out. It recommended that WIPO continued its efforts in promoting the positive role of IP in development. It could do so, for example, by increasing access to patent information, supporting technology innovation support centers (TISCs), national IP academies, national IP offices, SMEs and creative industries, and building capacity in the areas of IP protection, management, and commercialization in LDCs, developing countries and countries in transition. It continued to support focusing proposals for in-country DA related projects on endeavors that could produce concrete and practical benefits and a direct and sustainable impact. It was pleased that one such proposal on increasing the role of women in innovation and entrepreneurship, encouraging women in developing countries to use the IP system, co-sponsored by the Delegations of Canada, Mexico and the United States of America, had been enthusiastically supported and approved by Member States at the 21<sup>st</sup> session of the CDIP in May. That project intended to encourage, assist and support women innovators in developing countries in using the IP system to protect and commercialize their inventions. It looked forward to the implementation stage of the proposal.

193. The Delegation of Peru aligned itself with the statement made by the Delegation of El Salvador on behalf of GRULAC. It submitted that it had presented the project on tourism and gastronomy in order to promote the use of the IP system in the tourism and gastronomy sectors. This would allow, on the one hand, to boost the development of Peruvian gastronomy and, on the other, to ensure the sustainability of the work done by the people of Peru. The project would last 36 months, focusing on strategies on joint work among the main actors in the tourism, gastronomy and IP sectors, with the aim of preparing a practical project to develop tourism and gastronomy through the use of IP tools. It would also aim at preparing a report on the situation of IP in the tourism and gastronomy sectors. The Committee had taken note of the project and had requested that the Delegation of Peru revise it, with the support of the Secretariat, for it to be examined at the next session of the CDIP in November. The Delegation was awaiting comments from other countries and the Secretariat. That project could be extended to other countries interested in the development and recognition of their gastronomy.

194. The Delegation of China supported the statement made by the Delegation of South Africa on behalf of BRICS.

195. The Delegation of Japan expressed great appreciation for WIPO's steady work towards implementing the DA Recommendations. It attached great importance to development activities, including technical assistance and capacity building. It had been providing various types of assistance through the WIPO-Japan FIT. One of those funds was for Member States in Africa and LDCs. Another one was for Member States in the region of Asia and the Pacific. FIT activities included organizing regional, sub-regional and national seminars, workshops, training courses, expert advisory missions, long-term fellowship programs and translation of selected

WIPO materials. Through those channels, Japan had supported a number of WIPO-administered projects and activities. It had also shared its experience in the use of IP to create wealth, enhance competitiveness and develop economies. It believed that improving IP systems would achieve sustainable economic development in developing countries as well as contribute to developing the global economy.

196. The Delegation of South Africa aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. IP and any associated rights were never the end goal, but played a role in innovation where new products, processes and services embodying IP had societal impact. Within the mandate of the CDIP, Member States focused on the implementation of the DA Recommendations. Cluster A of those recommendations was titled technical assistance and capacity building. It noted that technical assistance played an important role in many developing countries and LDCs. Technical assistance enabled the development of a foundation. The so-called establishment of minimum infrastructure, once in place, actually required country specific capacity development. The Chinese proverb “you give a man a fish and you feed him for a day, you teach him to fish and you give him an occupation that will feed him for a lifetime” applied. Technical assistance and capacity building was deployed in the CDIP through projects aligned with one or more DA Recommendations, which in turn should align to an expected result. Should the DA Recommendation not have an expected result, it would not be possible to implement the project as no budget would be allocated. The Delegation was concerned that no agreement could be reached at the 21<sup>st</sup> session of the CDIP on Recommendations 5 and 11 of the Independent Review. Following the lack of progress on that agenda item related to the Independent Review, no progress could be made on the African Group’s proposal on a biennial conference. The Delegation maintained its strong support for a biennial conference; a platform to achieve the third pillar of the CDIP mandate discussing IP and development related issues. Hence, it looked forward to concluding both those matters in the next CDIP to be held in November. It was particularly excited about the progress made in the “Project on Intellectual Property Management and Transfer of Technology: Promoting the Effective Use of Intellectual Property in Developing Countries, Least Developed Countries and Countries with Economies in Transition Proposed by South Africa”. It looked forward to Member States receiving an update in that regard. Finally, it expressed its support for the statement delivered by the Delegation of South Africa on behalf of BRICS and looked forward to the discussion on the topic IP and Development in the Digital Environment at the 23<sup>rd</sup> session of the CDIP.

197. The Delegation of Côte d’Ivoire aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. It appreciated the satisfactory results of the work of the CDIP and the DA, in particular the second stage of the project Strengthening and Development of the Audiovisual Sector in Burkina Faso and Certain African Countries. Within that project, the different actors participating from the audiovisual sector were able to receive training in order to improve their capacity. It appreciated that there was a significant value added to the audiovisual sector in that country. It requested the extension of the project in order to ensure the sustainability of new achievements. It looked forward to the outcomes of the project submitted by Canada, the United States of America and Mexico that aimed at encouraging women to use the IP system.

198. The Delegation of Gabon aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. It believed that the work of the CDIP was necessary for WIPO to continue implementing the SDGs and to participate in multilateral efforts in this context. It realized that a great deal had been done to ensure the implementation of the DA Recommendations, particularly regarding training and technical assistance to establish administrative structures to promote IP in developing countries. It encouraged WIPO to continue along those lines. The Delegation believed that transfer of technology needed to be the goal of cooperation activities carried out by WIPO in order to allow developing countries to put in place industries transforming on their own soil their assets and commodities. That was

the reason why it supported the activities under the new agenda item on IP and Development. It also stated that the organization of a biennial conference on IP and development would be an important forum to discuss new ideas on that topic.

199. The Delegation of Kenya appreciated the good work done by the CDIP. It had always believed that it was important to align the WIPO DA with the national agenda. It was in the process of enhancing its manufacturing capacity and that could not happen if SMEs and small industries were not assisted to reach their maximum potential. That is why WIPO had a role to play in assisting countries like Kenya to achieve their national agenda. It was looking for less costly technologies that could be easily adapted to their environment. The acquisition of technology by SMEs was still a challenge. The lack of a basic link between SMEs and technology databases had been the main contributor to a low rate of technology transfer. More effort should be put on the promotion of WIPO activities and resources related to technology transfer, especially for SMEs. The Delegation noted with sincere appreciation WIPO's continued support of the TISCs project for increased access to available scientific and technical information for developing countries. By improving access to scholarly literature from diverse fields of science and technology, the TISCs project had high potential in supporting researchers in developing countries towards creating and developing solutions to technical challenges faced by the resilient society in day-to-day life. The Government of Kenya continued to encourage and promote the establishment of TISCs centers in academic institutions, including those for research and development. There was an increased number of institutions signing MoUs for establishing TISC centers. The Delegation welcomed more discussions during future CDIP sessions.

200. The WIPO General Assembly:

- (a) took note of the "Report on the Committee on Development and Intellectual Property (CDIP) and Review of the Implementation of the Development Agenda Recommendations" (document WO/GA/50/7).
- (b) with respect to document WO/GA/50/13 entitled "Contribution of the Relevant WIPO Bodies to the Implementation of the Respective Development Agenda Recommendations",
  - (i) took note of the information contained in the "Contribution of the Relevant WIPO Bodies to the Implementation of the Respective Development Agenda Recommendations" (document WO/GA/50/13); and
  - (ii) forwarded to the CDIP the report referred in that document.

#### ITEM 19 OF THE CONSOLIDATED AGENDA

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

201. Discussions were based on document WO/GA/50/8.

202. The Secretariat stated that, in terms of the mandate of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the IGC) for the current biennium, the IGC had been requested to provide a factual report to the WIPO General Assembly on its work up to that time with recommendations. The factual report and recommendations were contained in document WO/GA/50/8. The document reported on the IGC sessions that had taken place so far in 2018, namely IGCs 35, 36, and 37, and attached the latest drafts of the texts on genetic resources (GRs), traditional knowledge (TK) and

traditional cultural expressions (TCEs) that were under negotiation in the IGC. Document WO/GA/50/8 also contained recommendations agreed on at IGC 37 for transmission to the WIPO General Assembly. The document further contained the statements made by the delegations at IGC 37 on the contribution of the IGC to the implementation of the Development Agenda recommendations. Finally, the document reported on the *ad hoc* expert group on GRs, which had met in June 2018. The WIPO General Assembly was invited to consider the factual report and the recommendations contained therein.

203. Noting that the IGC was halfway through its current mandate, the IGC Chair, Mr. Ian Goss, believed that it was important for him to provide his perspective on the work of the IGC so far, including status, challenges and opportunities. He emphasized that his comments were his alone and without prejudice to any Member States' positions. It was worth highlighting that the IGC had commenced its discussions in 2001 and that, in 2010, it had commenced negotiations on an instrument(s) relating to intellectual property (IP) and the protection of GRs, TK and TCEs. Over that time, the international landscape had changed significantly within and outside the IP system. At a multilateral level, there were, for example, the United Nations Declaration on the Rights of Indigenous Peoples, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (the Nagoya Protocol), the International Treaty on Plant Genetic Resources for Food and Agriculture, and two UNESCO Conventions, namely, the 2005 Convention for the Protection and Promotion of the Diversity of Cultural Expressions and the 2003 Convention for the Safeguarding of Intangible Cultural Heritage. There had been a significant growth of national and regional laws relating to the protection of GRs, TK and TCEs within and beyond the IP system. In particular, over 25 domestic patent disclosure regimes relating to GRs had been established and the number continued to grow. In the absence of agreement at the international level, these domestic regimes varied, in some cases considerably. This rapidly changing environment sent a clear message or was perhaps a challenge to the IGC. After nearly 20 years of work, the IGC needed to expedite its work or it risked being overtaken by domestic and regional efforts, with the potential for a fragmented international policy and regulatory environment. That implied transactional and regulatory costs and burdens, legal uncertainty and barriers to accessibility to GRs, TK and TCEs with potential negative impacts on innovation and creativity. This fragmentation was also likely to prejudice efforts by the holders of GRs, TK and TCEs to protect, within the IP system, their legitimate moral and economic interests. In terms of the status of the IGC's work, the Secretariat had prepared the factual report with the three drafts of the texts specific to each subject matter. He also noted that a number of Member States had put forward recommendations and working documents for consideration by the IGC. There was also a wealth of material produced by the Secretariat over the past 18 years, much of it under the auspices of the IGC, such as the two recently updated draft gap analyses on TK and TCEs, and the WIPO publication "Key Questions on Patent Disclosure Requirements for Genetic Resources and Traditional Knowledge", 2017. The IGC Chair then specifically reviewed the status of each subject matter, and the challenges and opportunities to move forward those negotiations. Regarding GRs, the text incorporated two broad approaches, which were yet to be agreed: (1) the introduction of a mandatory disclosure regime; and (2) the introduction of defensive measures relating to preventing the granting of erroneous patents. In relation to those approaches, there was broad support for some form of a mandatory disclosure regime in the patent system. However, there remained differences between Member States who supported such a regime in relation to the scope of disclosure, nature of the sanctions, and relationship with international regimes relating to access and benefit-sharing. At the same time, some Member States had publicly stated that they did not support a mandatory disclosure regime based on concerns which had been raised by industry observers at the IGC. Those concerns were potential impediments to accessing GRs and associated TK, increasing regulatory burden and high transactional costs involved in such a regime, legal uncertainty which it created, and subsequent negative impacts on innovation. To address these issues, those Member States had put forward an approach based on a range of defensive measures, such as use of databases to support prior art search,

voluntary codes of conduct, etc. The aim during the recent negotiations had been to provide clarity around each approach so Member States could make informed decisions on which approach, or combination of approaches, met their needs. In terms of clarity in relation to a disclosure regime, he believed that the IGC had reached a point where it should be able, subject to a willingness to compromise on some issues amongst the disclosure regime proponents, to produce a proposal which had sufficient clarity to enable policymakers and those Member States who had raised concerns regarding such a regime to make informed decisions regarding the merits and validity of a disclosure regime based on a clear model. The model attempted to balance the legitimate concerns of the users and the holders, regarding misappropriation of the GRs and associated TK, and a lack of transparency within the IP system relating to the utilization of GRs and associated TK. He suspected, for example, that the concerns of industry and some Member States were being assessed against a disclosure regime which had not been on the table for some time. With regard to the second approach based on defensive measures, that approach was also incorporated within two joint recommendations, proposed by a number of Member States. Most of those proposals had not changed significantly since they had first been introduced in 2012. To date, those proposals had not received broad support within the IGC. However, it was recognized by the majority of Member States that a number of the proposals had merit, including as complementary measures to a disclosure regime. Regarding how to move those negotiations forward, noting that two broad approaches were on the table, the IGC Chair noted that at IGC 36, the IGC had been unable to agree to transmit the latest revision of the GR draft text to IGC 40 for consideration during the stocktaking session, though it was included in the report of IGC 36. In an attempt to overcome the current divide, he had committed at IGC 36 to produce a Chair's text on GRs prior to IGC 40. The text would attempt to produce a proposal for consideration by Member States, which took account of the interests of all Member States and attempted to balance the interests of all stakeholders. In essence, he believed that the IGC was at the point where it needed to make a decision on GRs and associated TK. Otherwise, it would be overtaken by initiatives at national and regional levels with all the potential risks and implications thereof. Member States should see that as an opportunity for WIPO to take the lead and shape policy in this area, learning from the experiences at the national level, rather than leaving resolution of these IP issues to other forums. He recalled the strong position taken in the TRIPS Council and during the Nagoya Protocol negotiations that WIPO was the appropriate forum for discussion of IP issues relating to GRs, including disclosure regimes. Regarding TK and TCEs, the IGC Chair noted in the first instance that the negotiations were highly complex and they involved consideration of moral and economic rights with potential impacts across the full spectrum of IP rights. In addition, environments within which indigenous peoples and local communities operated across the world were widely divergent, including differing legal frameworks. There was also the challenge of how to address TK and TCEs which were publicly available, particularly those made available without the prior informed consent of the holders. The IGC also importantly needed to recognize that there was a fundamental conceptual and legal divide in relation to how indigenous peoples' belief systems, customary laws and practices interacted with IP policies, laws and practices. From their perspective, the very conception of "ownership" in the conventional IP system was incompatible with notions of responsibility and custodianship under customary laws and practices. That divide was also captured in the updated draft gap analyses on TK and TCEs. They highlighted a number of key concerns of indigenous peoples and local communities on the protection of their interests and rights within the IP system, such as ownership of derivative works; the originality requirement; ownership within a collective context; terms of protection; and limitations and exceptions which allowed access and in some cases rights to be conferred to third parties without the free, prior and informed consent of indigenous peoples and local communities. However, while recognizing those issues, the IGC also needed to protect the fundamental role the IP system played in promoting and supporting innovation and creativity, transfer and dissemination of knowledge, and economic development for the benefit of all. In that respect, ensuring legal certainty within the IP system, and supporting an accessible public domain were key elements in preserving the

integrity of the IP system. That perhaps was the greatest challenge, balancing those interests. Many indigenous peoples understood that, as they often reflected, they lived in two worlds. This was not necessarily their choice, but their reality. In relation to TK and TCEs negotiations, there were two working documents on each subject matter and they had both incorporated a number of alternate positions reflecting the various views on the objectives of the instruments and approaches to implementing the objectives, such as a rights or measures-based approach. Notwithstanding those divergent positions, significant shifts had occurred. Expectations in relation to the scope of protection had been narrowed, aided by the introduction of a possible tiered approach as an analytical tool to attempt through practical example to explore the central issues. There had been a shift towards framework documents which established a set of standards (minimum and maximum) and mechanisms which provided flexibility for implementation at the domestic level. There also were eight additional documents that had been presented by some Member States for consideration by the IGC, which included joint recommendations, requests for studies and information papers. As alluded to earlier, the recommendations and requests for studies had not received support within the IGC. However, they remained on the table for consideration. Regarding the next steps, noting there were three further IGC sessions devoted to TK and TCEs under the current mandate, the IGC first needed to accept a compromise position on policy objectives, reflecting the need to balance all the interests. This should be achievable with good faith. The IGC should then continue its focus on establishing a principles-based framework instrument(s). That framework instrument should reflect agreement on issues where agreement was possible, and leave more complex issues for further discussion and resolution over time, perhaps in the form of protocols to the initial framework instrument which would provide the foundation for the future work. That framework instrument should also recognize the complex issues and the reality regarding the policy challenges, particularly in balancing all interests. Clearly the IGC had much work to do over the next three sessions, but he saw that as an opportunity rather than a challenge. The IGC Chair emphasized the critical importance of the participation of the indigenous peoples in the work of the IGC. In that respect, he noted that the WIPO Voluntary Fund was depleted and he strongly encouraged Member States to consider contributing to the fund and/or consider other alternative funding arrangements as detailed in the recommendations. It was critical that the voices of indigenous peoples and local communities were heard, reflecting a commitment to the UN Declaration on the Rights of Indigenous Peoples. In conclusion, the IGC Chair thanked the Vice-Chairs of the IGC, the Regional Coordinators and the IGC Secretariat.

204. The Delegation of Indonesia, speaking on behalf of the Asia and the Pacific Group, thanked the IGC Secretariat for the excellent work done and for the preparation of document WO/GA/50/8. The Group also thanked the IGC Chair and the Vice-Chairs for their stewardship. It noted the progress made on GRs at IGCs 35 and 36. It hoped that the positive and constructive spirit in the discussion on TK and TCEs would be maintained, as shown at IGC 37. The Group noted and welcomed the agreement on the establishment of the *ad hoc* expert groups at IGCs 35 and 37, and valued the expert groups' contribution to the deliberations of the IGC. It welcomed the recommendations of the IGC to the WIPO General Assembly. It hoped that the WIPO General Assembly would call upon the IGC to reaffirm its commitment and to expedite its work in accordance with the mandate of the IGC. It was important for the Group to see the finalization of the text(s) of an international instrument(s) for effective protection of GRs, TK and TCEs. The Group reaffirmed its commitment to the work and the mandate of the IGC.

205. The Delegation of Morocco, speaking on behalf of the African Group, took note of the report contained in document WO/GA/50/8 and was grateful to the Secretariat for preparing it. It thanked the IGC Chair, the Vice-Chairs and the Facilitators for their tireless efforts over the last three IGC sessions. They did not have an easy job, but they had currently brought the IGC to the point where some achievements had been made. It emphasized the great importance of GRs, TK and TCEs. The African Group had been involved in the discussions on all three subject matters. It believed that the current IP regime could not provide proper protection to

GRs, TK and TCEs. The lack of an internationally binding instrument had led to imbalance in the global IP system. The goal of the IGC remained unchanged. It expected the IGC to reach an agreement on a text(s) of one or several international legally binding instruments which would ensure effective protection of GRs, TK and TCEs. The mandate of the IGC for the 2018/2019 biennium clearly indicated that the IGC should negotiate one or several international legally binding instruments so as to ensure effective protection of GRs, TK and TCEs. The African Group had fully committed itself in good faith to those negotiations in accepting the agreed methodology to help the IGC move the work forward. It gave due recognition to the progress that the IGC had made thus far. It also welcomed the recommendations to the WIPO General Assembly, without which the IGC would not have been able to reiterate its commitment to speeding up to reach an agreement on international legal instrument(s). The African Group welcomed the fact that some Member States had been flexible in their approach during the IGC meetings and adjusted their positions in a very constructive manner. It urged those Member States who still had different views to showing flexibility. It was regretted that some Member States had committed themselves to negotiations but then denounced the outcome. A positive attitude should be taken, so that in the remaining sessions the IGC would be able to achieve its final objective in a significant and practical manner. The African Group encouraged Member States to continue the ongoing negotiating process and, in so doing, commit themselves fully in an open minded way. Consistency and logic were essential if the IGC was to complete its mandate and come back to the 2019 WIPO General Assembly with the possibility of concluding its long running work with the convening of a diplomatic conference. It believed that the IGC needed to find an appropriate mechanism for indigenous peoples and local communities to participate in its work, because their participation was crucial in giving it legitimacy. It hoped that a solution could be found.

206. The Delegation of Switzerland, speaking on behalf of Group B, thanked the IGC Chair for his continued dedication and efforts to furthering the work of the IGC, and the Vice-Chairs, the Friend of the Chair and the Facilitators for their important contribution. It also thanked the Secretariat for preparing the documents in a timely manner. It acknowledged the progress made by the IGC on GRs during IGCs 35 and 36 as noted by the IGC in its recommendations to the WIPO General Assembly. It also noted the progress made by the IGC on TK and TCEs during IGC 37. At the same time, it emphasized that more work needed to be done in order to narrow existing gaps and to reach a common understanding on core issues related to those three subjects. There were three remaining sessions of the IGC under the current mandate. According to the agreed work program, TK and TCEs would be considered during all remaining sessions, while GRs would next be considered at the stocktaking during IGC 40. It was critical that during the next sessions, the IGC made meaningful advancements based on sound working methods supported by an evidence-based and inclusive approach which took into account the contributions of all Member States. Consistent with the mandate, the IGC should build on the existing work with a focus on narrowing gaps and reaching a common understanding on core issues. It remained important to include discussions of the broader context and of the practical application and implications of any proposals. It reiterated its firm belief that the protection of GRs, TK and TCEs should be designed in a manner that supported innovation and creativity and recognized the unique nature and importance of those three subject matters. It acknowledged the valuable and essential role of all participants and stakeholders for the work of the IGC. In particular, it recognized the importance of the active participation of indigenous peoples and local communities in the work of the IGC. It took note with concern that the WIPO Voluntary Fund was depleted. It remained hopeful that the Fund would be replenished in time. Noting the recommendations from the IGC to the WIPO General Assembly, it remained open to consider other alternative funding arrangements. Group B was committed to contributing constructively towards achieving a mutually acceptable result in the work of the IGC.

207. The Delegation of Lithuania, speaking on behalf of the CEBS Group, thanked the IGC Chair, for his tireless work in advancing the IGC's work, with a view of having positive outcomes

on all three subject matters during the current biennium. Equally, it appreciated the efforts of the Vice-Chairs, Mr. Jukka Liedes and Mr. Faizal Chery Sidharta; the Friend of the Chair, Ms. Margo Bagley; and the Facilitators, Mr. Paul Kuruk and Ms. Lilyclaire Bellamy. It also thanked the Secretariat for their dedication to the work of the IGC. The CEBS Group noted the progress made by the IGC on GRs during IGCs 35 and 36. It attached great importance to the debate during meetings of different formats, including the innovative setting of contact groups and *ad hoc* expert groups. Divergent views on certain core issues remained. It was confident that the debate had contributed to better understanding of the potentially achievable compromises and landing zones. While GRs would next be considered at the stocktaking at IGC 40, it took note of the IGC Chair's intention to submit his own text on GRs to IGC 40. It also noted that the progress made on TK and TCEs at IGC 37 with unanimous support for continuing the work on the basis of Rev. 2 texts showed the positive engagement of the Member States. However, important gaps on core issues still remained to be narrowed and more efforts in that respect were needed during the three remaining sessions of the IGC under the current mandate. The CEBS Group remained supportive of an evidence-based approach and inclusive working methods. It was important to assess all challenges and implications of the practical application of any proposal. It underscored that any new instrument should not discourage creativity and innovation. It acknowledged the importance of the active participation of indigenous peoples and local communities in the work of the IGC. It noted with concern that the WIPO Voluntary Fund was depleted and hoped for additional voluntary contributions to the Fund. It was open to considering alternative funding options to ensure the representatives of indigenous peoples and local communities could participate in the further work of the IGC. The CEBS Group would continue its constructive engagement in the work of the IGC with a view to reaching a realistic and universally acceptable outcome in fulfilling the current mandate.

208. The Delegation of El Salvador, speaking on behalf of GRULAC, thanked the Secretariat for the presentation of the report and the support for the work of the IGC. It thanked the IGC Chair for the detailed report and for his tireless efforts to make the IGC move forward and bring the positions of Member States closer. It also thanked the IGC Vice-Chairs who had been actively involved, and the Facilitators who had supported the IGC with their tireless work. It reiterated its interest in advancing the work of the IGC to ensure a balanced protection of GRs, TK and TCEs as reflected in the mandate. It also reiterated its commitment and called on all delegations to address the issues with openness and flexibility to narrow gaps and to lay solid foundations for the road ahead in the remaining time of the biennium with a view to achieving text(s) that represented a balance of interests of users and holders of GRs, TK and TCEs.

209. The Delegation of the European Union, speaking on behalf of the European Union and its member states, recognized the unique importance of the work carried out by the IGC. It acknowledged and commended the commitment of the IGC Chair, the IGC Vice-Chairs, the Facilitators, and the Friend of the Chair, to promote progress in the IGC through their hard and excellent work. It also thanked the Secretariat for all their precious support in preparing and administering the IGC sessions. The IGC had held two thematic sessions dedicated to GRs in accordance with the current mandate and work program. At IGC 35, the IGC Chair had introduced a change to the methodology. For the first time, and as a pilot, small contact groups had been established to discuss key issues. Another new element in IGC methodology had been the establishment of an *ad hoc* expert group on GRs before IGC 36, followed by the establishment of an *ad hoc* expert group on TK and TCEs before IGC 38. While recognizing the potential of the discussions in such smaller formats to bridge gaps, it reiterated that transparency and inclusiveness were its key concerns. It was crucial to find compromise in good faith. Revised texts should not lose touch with realistically achievable outcomes which could be supported by sound and factual consensus. Regarding the substantive progress made on GRs, it recalled with disappointment that Rev. 2 could not be considered by all IGC participants as a basis for future work. Against that background, it believed that it had been important to have discussions at IGC 37 on possible recommendations to the WIPO General Assembly. It was hopeful that the recommendations adopted by consensus had helped to

maintain a constructive spirit of cooperation in the work of the IGC. It thanked the IGC Chair for his report on recent progress made on GRs. Regarding further work in the second half of the current mandate of the IGC, it was prepared to continue discussing TK and TCEs with a focus on addressing unresolved and cross-cutting issues, and considering options for draft legal instrument(s). It welcomed that there had been general support at IGC 37 for Rev. 2 documents as bases for further work. It looked forward to participating in the *ad hoc* expert group on TK and TCEs established at IGC 37 as well as in the next IGC sessions on the same topic. The Delegation appreciated that the IGC's current mandate placed an evidence-based approach at the heart of its methodology. It looked forward to using the various possibilities provided for in the mandate. In particular, it recalled that it had recently resubmitted slightly updated versions of two proposals for the IGC to consider. Those were a proposal for a study relating to TK and a proposal for a study relating to TCEs. It remained convinced that such studies could contribute to the ongoing discussions with practical examples and concrete national experiences in the context of various outstanding issues where gaps remained. In view of all those considerations, the Delegation remained engaged in continuing negotiations in the IGC on all three subject matters.

210. The Delegation of Indonesia, speaking on behalf of the Like-Minded Countries (LMCs), thanked the Secretariat for the excellent work done and for the preparation of the report. It also conveyed its appreciation to the IGC Chair and Vice-Chairs for their stewardship. IGC 37 had recommended to the WIPO General Assembly to call upon the IGC, based on progress made, to expedite its work in accordance with the mandate of the IGC for the biennium 2018/2019. It was pertinent to recall that, according to the mandate, the objective of the deliberations in the IGC was to reach an agreement on an international legal instrument(s), without prejudging the nature of outcome(s), relating to IP which would ensure the balanced and effective protection of GRs, TK and TCEs. The LMCs agreed that all Members States had been engaging actively in the negotiations. However, the intentions of engagement seemed to be of different colors. Engagements had mostly been towards bridging gaps, moving forward and making progress, to expedite the work of the IGC in reaching its objective. However, unfortunately, some engagements had had just the opposite effect, namely, delaying, widening gaps, or even blocking progress, which was against the mandate and the objective of the IGC. As reflected in the report of IGC 36 (WIPO/GRTKF/IC/36/11 Prov.), last minute disagreement to treat the result of the negotiations, Rev. 2 document, as a basis for further work had prevented the IGC from moving forward. The Rev. 2. Document, built at IGC 36, had reflected progress and narrowed gaps. The document was currently focusing mostly on the patent system and had moved from a substantial disclosure requirement to an administrative one. The document reflected a lot of flexibilities and a constructive spirit towards an outcome that bridged gaps and expectations. Unfortunately, it would never be enough to just narrow gaps and bridge expectations unless all parties in the negotiations had a similar belief in the process. There was nothing that stopped the LMCs building their own national and plurilateral regimes to protect GRs and TK associated with GRs. Taking that into account, the LMCs had been engaging, with good faith and in trust, with the belief that every Member State of WIPO would come to the IGC, get constructively involved in the IGC process, and invest time, resources and energy to achieve the same objectives that all delegations had agreed on in the mandate of the IGC. It did not want to lose confidence in the IGC, but it would need a lot of effort for trust to be re-established in the potential for good faith negotiations. While reminding delegations that the IGC did not have a monopoly on initiatives in this Organization, it noted that Member States needed each other's collaboration in other committees. Unless everyone's concerns were addressed, multilateralism could not thrive. Its confidence in the process of the IGC had been shaken. The LMCs strongly believed that IGCs 35, 36 and 37 had made significant progress, especially on GRs, as reflected in the report of IGC 36, it did not want to accept that said progress would be lost. The IGC had recommended the WIPO General Assembly to call upon the IGC to expedite its work to achieve its objective. The main question that the WIPO General Assembly needed to address was how the work of the IGC could be expedited if there were expectations of no outcome and no progress. With that, the LMCs urged the WIPO General Assembly to direct the IGC on how

to move forward, and in particular for the outcome of IGC 36 to be the basis for further discussion. It was time for the IGC to reach the final line, and the LMCs were committed to staying constructive for so long as the expectations were in line with the mandate and the objective of the IGC, for an effective and balanced protection of GRs, TK and TCEs. The normative agenda to conclude a legally binding instrument(s) could not be stalled. It could not ignore the progress made and undo the process since 2001 when IGC had been established and progress made through text-based negotiations since 2010.

211. The Delegation of Brazil supported the statement made by the Delegation of El Salvador, on behalf of GRULAC, and the statement made by the Delegation of Indonesia, on behalf of the LMCs. It stressed its gratitude and appreciation to the outstanding IGC Secretariat. The IGC had also been lucky to count on the leadership of Mr. Ian Goss, a committed, dynamic and loyal Chair, and of his very able Vice-Chairs, Mr. Jukka Liedes and Mr. Faizal Chery Sidharta. It also wished to thank the Facilitators, Mr. Paul Kuruk and Ms. Lilyclaire Bellamy, as well as the Friend of the Chair, Ms. Margo Bagley. A special word of appreciation to the co-Chairs of the *ad hoc* expert group on GRs, Mr. Pedro Roffe and Ms. Krisztina Kovács, for their excellent work. The IGC had started its negotiations almost 20 years ago. This was an issue of central importance for countries with a great amount of biodiversity and number of indigenous communities, but not restricted to developing countries. As it had been stating repeatedly, the IGC had a strategic role for WIPO and it could not conceive of this Organization without the IGC. The mandate agreed upon in the last WIPO General Assembly had instructed the IGC to expedite text-based negotiations and to reduce existing gaps. The IGC Chair, along with the Facilitators at each session, had made their utmost efforts to produce consolidated texts in that direction. The Delegation had actively participated in those discussions, with a spirit of compromise aimed at finding a solution that could work for everyone. To its frustration, it had not been possible to find common ground on the revised consolidated text on GRs. It had been encouraged to hear the statement made by the Delegation of the European Union and its member states, and urged all delegations to show a constructive spirit in order to reach agreement on the matter, failure of which could give rise to other options outside the multilateral environment. This would not be the best way to address those important issues, and it hoped that all delegations would remain committed to a multilateral solution. The legitimacy and effectiveness of the multilateral system depended on its responsiveness to the concerns of Member States. It referred to the Director General's acceptance speech back in 2008, in which he had stated: "There is a need to recognize explicitly the contribution to human society of collectively generated and maintained innovation and creativity and to protect the artefacts of that innovation and creativity. The Organization has undertaken a long process of discussion and negotiation on the means of meeting this need. I believe that it is time to move this process to concrete outcomes that will see WIPO embrace a broader base of constituents and a more universal mission." The Delegation called upon the IGC to draw on the extensive body of knowledge and expertise that it had built up and to learn from successful negotiations such as the Nagoya Protocol and the Marrakesh Treaty. The need for action was urgent. In spite of national efforts, biopiracy and misappropriation of TK and TCEs continued to occur. An international legal instrument would ensure cooperation between countries, reduce uncertainty for stakeholders and curb illegal activities related to the matter. An implementation in the IP system of international rules aimed at the protection of biodiversity was feasible, and there were ways to ensure it would not unduly burden the tasks of patent offices. At the next session of the IGC, the Delegation would present a new booklet which included, in a clear and concise format, everything there was to know to have access to Brazil's biodiversity. It would also present examples of companies which had been taking full advantage of the legal certainty and streamlined procedures which the Brazilian 2015 Biodiversity Law provided. Brazil was the home of many indigenous communities, with very diversified cultures. It also had a rich African heritage, as demonstrated by its Carnival, music and food. Brazil was, in addition, a melting pot where immigrants from all over the world – Portuguese, Italians, Germans, Poles, Syrians, Lebanese, Jews, Japanese and many others – had contributed to the creation of very original forms of expressions. The Delegation was fully committed to the effective protection of TK – whether or not associated to GRs – and to TCEs.

It was just as committed to the preservation of a world where different cultures could meet, dialogue and mutually enrich themselves, indeed cross-fertilize themselves. It was convinced that a breakthrough at the IGC would reinforce the view that IP rules could work for the benefit of all countries and stakeholders. Its vision was known to everyone: reaching an agreement on one or more of the three instruments under discussion in the near future, convening a diplomatic conference and turning the IGC into a standing committee. One of the most important issues before the IGC was the preservation of the WIPO Voluntary Fund. The Delegation wished to express its appreciation to the Government of Australia and to all those who had contributed over the years to the Fund, and urged Member States to explore ways to ensure the continuous participation of indigenous groups at the IGC. Their presence and their interventions were important to the activities of the IGC and contributed to the legitimacy of the IGC's work. This duty was currently before all delegations, and it hoped that all delegations would come with a positive and constructive spirit. It pledged to listen attentively to everyone's concerns, as long as they were clearly expressed, and to work towards solutions that accommodated the whole Membership without failing to address the legitimate interests of demander countries.

212. The Delegation of India extended its deep appreciation to the IGC Secretariat for having prepared and presented a very comprehensive report. It aligned itself with the statement made by the Delegation of Indonesia, on behalf of the Asia and the Pacific Group, and appreciated the efforts of the IGC Chair. It believed that there was a need to expedite consolidating the intended provisions for IP and GRs, TK and TCEs. It emphasized the importance of different forms of TK, including codified and non-codified forms of TK, particularly related to health care and medicine. It understood that the IGC had made significant progress in its last three sessions that different approaches were required to effectively address the IP issues of codified and non-codified TK. It strongly believed that the different approaches were required to effectively address the IP issues related to TK, particularly the codified and non-codified TK. Therefore, the intended legal instrument should contain appropriate provisions in a holistic and inclusive manner, and should factor in the principles of disclosure of TK source, prior informed consent and equitable access and benefit-sharing. It wished that the IGC would make forward progress on those aspects for a logical outcome in accordance with the methodology adopted in the past by the IGC and which was agreed upon by consensus.

213. The Delegation of South Africa, speaking on behalf of BRICs, stated that the IGC had made considerable progress thanks to the combined efforts of the IGC Chair, the Secretariat and Member States. The texts of GRs, TK and TCEs had been refined, improved and consolidated with clear options and variations reflecting different positions. It reiterated the call for a balanced and equitable global IP system that accommodated all legitimate interests of WIPO Member States, consistent with the Development Agenda of WIPO and the UN Agenda for Sustainable Development. It wished to see the substantial progress made by the IGC at its upcoming sessions. It recommended that the WIPO General Assembly noted document WO/GA/50/8 and considered the relevant outcome document of IGC 36.

214. The Delegation of China believed that the IGC had been playing an important role in promoting the creation of an international system to protect GRs, TK and TCEs. Under the active coordination of the Secretariat and the skillful guidance of the IGC Chair, Member States had exchanged national experiences fully and actively advanced the discussion on the international systems at IGCs 35, 36 and 37. Many countries had demonstrated tremendous flexibility and a proactive attitude. It was, however, undeniable that despite the progress made, the IGC was still quite far away from the expectations. The Delegation supported the establishment of an effective system to protect GRs, TK and TCEs through finalizing one or several legally binding instruments. It wished to call upon Member States to speed up the negotiations and demonstrate political will to achieve substantive outcomes. It supported the statement made by the Delegation of South Africa on behalf of BRICs.

215. The Delegation of Iran (Islamic Republic of) extended its sincere appreciation to the Traditional Knowledge Division of WIPO for the hard work undertaken in organizing the IGC sessions. It thanked the IGC Chair for his leadership and for his comprehensive report. It also thanked the IGC Vice-Chairs. It aligned itself with the statement delivered by the Delegation of Indonesia, on behalf of the Asia and the Pacific Group, and the statement made by the Delegation of Indonesia, on behalf of the LMCs. The work of the IGC and the protection of GRs, TK and TCEs remained a priority for the Delegation. As it had reiterated on other occasions, lack of international legal regimes for the protection of GRs, TK and TCEs continued to be the main loophole in the international IP system. The rationale behind establishment of the IGC was well known. To realize the objective of the establishment of the IGC, there was no other way than developing international legally binding instruments to protect GRs, TK and TCEs. It was an unfortunate fact that, despite so much effort made in the past 18 years, the IGC's work had not led to desirable outcomes. It recognized the significant progress made on GRs at IGCs 35 and 36. It was grateful to those delegations who had engaged with good faith and constructiveness in the IGC's deliberations, aiming to fulfill the mandate of the IGC. However, due to the lack of good faith and goodwill from some Member States, the outcome had been faced with some challenges. It believed that undermining the work of the IGC and its mandate did not benefit anyone. The Delegation remained committed to the IGC and its mandate. Meanwhile, as the fulfillment of the mandate had again been jeopardized given certain positions, it urged the WIPO General Assembly to direct the IGC to expedite its work by identifying specific actions.

216. The Delegation of Thailand aligned itself with the statement made by the Delegation of Indonesia on behalf of the LMCs. It underscored the need for a legally binding instrument(s) that provided a balanced and effective protection of GRs, TK and TCEs. It attached great priority to the timely conclusion of international legal instrument(s) at the IGC. Member States had engaged in long discussions on this issue and had come a long way in this process. It urged all Member States to intensify their efforts to narrow the gaps in order to reach a common ground on the pending issues. It strongly believed that the IGC would eventually overcome the differences. In that regard, political will and flexibility were absolutely essential. The Delegation was ready to discuss constructively and actively on the issue. It hoped that the text-based negotiations would be concluded in the near future. It expressed its deep appreciation to the IGC Chair and the Vice-Chairs for their tireless efforts in ensuring that the negotiations in the IGC could move forward.

217. The Delegation of Pakistan aligned itself with the statements made by the Delegation of Indonesia on behalf of the Asia and the Pacific Group and the LMCs. It thanked the IGC Chair, the Vice-Chairs, the Friend of the Chair and the Facilitators for their able leadership and guidance to the work of the IGC. It also complimented the Secretariat for the excellent work done and the preparation of the report. The balanced evolution of the international normative framework for IP was crucial for inclusive and equitable benefits of IP for all Member States, and should be pursued as a collective responsibility. The Delegation appreciated the recent progress made on producing a set of recommendations to the WIPO General Assembly to call upon the IGC to continue its work towards an agreement on an international instrument(s) to ensure the balanced and effective protection of GRs, TK and TCEs. This was one of those important areas which was still not covered in the current IP system, and norm-setting in that area was crucial to add credibility to the global IP system. It looked forward to a constructive approach for agreement on the finalization of the text-based negotiations for an international legal instrument(s) and expediting the IGC's work in the next three sessions.

218. The Delegation of Ghana aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. It wished to reaffirm its commitment to engaging in constructive dialogue towards achieving the objectives for which the IGC had been established. It continued to believe in the need to protect TK holders from the infringement of their rights through misappropriation and misuse beyond the traditional context. Ghana was endowed with

GRs, TK and TCEs and had a rich culture. It had over the years made efforts to protect its customs and culture. It observed that the IGC had not been able for almost two decades to move forward in a direction that inspired hope for the right-holders. It was of the conviction, however, that the IGC had made strides towards concrete outcomes at IGC 36. The IGC had deliberated at length, over many years, on conceptual issues based on research, studies, consolidated views, collected experiences from national and regional levels and the Rev. 2 documents produced at IGC 37. The Delegation commended the Secretariat for the workshop it had organized on TK and TCEs in Ghana in April 2018, which had enabled stakeholders to deliberate and reflect on the ongoing discussions at the international level. As a result, Ghana was poised to support, promote and protect TK, TCEs and their associated innovations and practices. Mindful of the Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore adopted by ARIPO Member States in 2010, a draft instrument on TK and TCEs in Ghana would endeavor to ensure that communities had effective control over their TK and TCEs. It wished to urge the IGC, based on progress made as reflected in document WO/GA/50/8, to expedite its work in accordance with the IGC's mandate with the aim of reaching an agreement that ensured a balanced and effective protection of TK and TCEs. The Delegation hoped that the IGC would focus on the content and the process to secure a legally binding instrument that served the interests of all parties.

219. The Delegation of Nigeria thanked the IGC Chair, the Vice-Chairs, the Facilitators, the Friend of the Chair, and the Secretariat for their hard work, professionalism and immense support in allowing Member States to negotiate up to that point. It aligned itself with the statement delivered by the Delegation of Morocco on behalf of the African Group, and the statement made by the Delegation of Indonesia on behalf of the LMCs. Its opinions on the negotiations within the IGC were well recorded over a long period. Its thinking had not really changed. It would not take much time to reiterate what it had said over so many sessions. It especially thanked the IGC Chair for his detailed and elaborated report which provided the details of the negotiations so far. The Delegation wished to point out that the recommendations were what the IGC had had in the past because the mandate of the IGC for the 2018/2019 biennium had spoken to expediting its work, narrowing gaps and reaching a common understanding, and these had been the criteria on which the IGC had worked for a number of years. Thus, going forward, the IGC needed to make a meaningful recommendation to the WIPO General Assembly for next year. It invited all Member States and stakeholders to consider deeply how the IGC could ensure the inclusion of TK assets and systems in the prevailing international IP system. The Delegation of Brazil mentioned that it was a strategic negotiation and a strategic issue for WIPO. It fully agreed with that because reaching a meaningful conclusion would be confidence building and make everyone feel part of the international IP system which acknowledged their rights, assets and knowledge. The IGC should try its best not to create the conditions that put multilateralism on trial. As indicated by the Delegation of Indonesia on behalf of the LMCs, the IGC's Member States could find the balanced protection through plurilateral agreements. It urged Member States to think deeply and come back to the negotiations with a commitment to achieving success and outcomes in line with the IGC's mandate of narrowing the gaps and deciding on a legal instrument(s) for the protection of GRs, TK and TCEs.

220. The Delegation of Colombia aligned itself with the statement made by the Delegation of El Salvador on behalf of GRULAC. It thanked the Secretariat for presenting the report, and welcomed the collective work that had been done throughout the year. It also thanked the IGC Chair, the Vice-Chairs and the Facilitators for the efforts that had been made. It wished that the IGC would have a constructive dialogue so as to overcome the differences. Regarding the sessions that had taken place in 2018 in line with the IGC's mandate and work program on GRs, contact groups and the *ad hoc* expert group had allowed the IGC to have productive discussions. Nonetheless, the IGC needed to make more effort to actually reach an agreement on one or several instruments. It welcomed the Rev. 2 document on GRs produced at IGC 36, because it showed that all Member States had demonstrated a constructive and flexible spirit.

Regarding TK and TCEs, the Delegation wished to have a new methodology which would allow the IGC to have effective deliberations to reach fundamental agreements on the texts. It believed that it was very important to continue the constructive exercise to achieve a legally binding instrument(s) for GRs, TK and TCEs, by convening a diplomatic conference. The IGC must have discussions that would allow it to move forward, and the IGC must do this in a constructive spirit. It believed that the IGC was running out of time. The Delegation reminded Member States that it was important for indigenous peoples and local communities to participate, because they were pivotal to these negotiations. It called for additional funds to ensure that indigenous peoples and local communities continued to participate.

221. The Delegation of the Russian Federation highlighted the very wide-ranging detailed discussion which had taken place in the IGC. It was essential to bring positions closer on the key issues in the draft documents under consideration. The IGC should continue the discussions beneficiaries and the scope of protection. Joint work needed to be done to seek a balanced protection of GRs, TK and TCEs. The Delegation believed that comprehensive research into the experience of patent offices would be very useful. It supported the need for a flexible approach if the IGC was to achieve results which were acceptable to all.

222. The Delegation of Ecuador aligned itself with the statement made by the Delegation of El Salvador on behalf of GRULAC, and the statement made by the Delegation of Indonesia on behalf of the LMCs. It welcomed the valuable work that had been done by the IGC on GRs, TK and TCEs. It also welcomed the report presented by the Secretariat and thanked the Secretariat for the continued support to the work of the IGC. It thanked the IGC Chair for his report and for all his work, and the Vice-Chairs, the Facilitators, and all those who had been part of the expert group for their work. Their work had been essential to the progress made in the IGC. As had been said in its opening statement, Ecuador was a very diverse country. It was multicultural, and that was recognized in its constitution. Therefore, the issues dealt with in the IGC were of the utmost importance. Effective protection of GRs, TK and TCEs meant that there must be correct use of and access to those resources which would promote research and knowledge, and also allow indigenous peoples and local communities to share the benefits that arose from the use of those resources and knowledge. The Delegation welcomed the significant progress that had been made in the IGC, and called on Member States to take part in a committed manner as well as being flexible and open so as to accelerate the IGC's work and reach an agreement on a binding instrument(s) which would ensure the effective and balanced protection of GRs, TK and TCEs. The work that had been done by the IGC would not have been possible and would not have progressed without the participation of the representatives of indigenous peoples and local communities. It was, therefore, concerned that the WIPO Voluntary Fund was depleted. It was essential to continue to have their voices heard. The Delegation called on all Member States to make efforts to find alternative options to ensure the participation of indigenous peoples and local communities.

223. The Delegation of Gabon aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. It thanked the IGC Chair for his professionalism and for the fairness in his analysis around the negotiations. The Delegation fully supported the methodology proposed by the IGC Chair. It welcomed the progress made. What had happened at IGC 36 was not because of the methodology, but rather the lack of willingness of certain Member States. Nonetheless, significant progress had been made and that meant that there was a glimmer of hope that the IGC could bridge gaps in the next sessions. The IGC would have consolidated texts in all the areas, and it could look forward to convening a diplomatic conference during the next biennium.

224. The Delegation of Jamaica acknowledged and recognized the work of the Secretariat. It also recognized the work of the Secretariat on the provision of substantive evidence-based documents that reflected the work and the legislation existing throughout the WIPO Member States on the work of GRs, TK and TCEs. It supported the statement made by the Delegation

of El Salvador on behalf of GRULAC, the statement made by the Delegation of Morocco on behalf of the African Group, and the statement made by the Delegation of Indonesia on behalf of the LMCs. The Delegation supported the IGC's work on having an instrument(s) dealing with the subject matters that the IGC had been discussing since the start of this century.

Document WO/GA/50/8 captured the IGC's work, and it thanked the delegations who had worked to achieve the progress obtained so far. It hoped, in the spirit of the mandate, that Member States would continue to work together to achieve full consensus on an instrument(s) which would reflect the deliberations, and address the issues. All stakeholders relied on the IGC to come up with a substantive document that would help the whole multilateral arena that had been mentioned by a number of delegations. It looked forward to the convening of a diplomatic conference in the very near future.

225. The Delegation of South Africa, speaking in its national capacity, aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group, and the statement made by the Delegation of South Africa on behalf of BRICS. It was disappointed that, after 18 years, the IGC had not concluded its negotiations on an international legal instrument for the effective protection of GRs, TK and TCEs. In its view, other multilateral platforms such as the United Nations Climate Change Conference and the UN Permanent Forum for Indigenous Peoples, albeit relatively recent engagements, had in fact superseded the progress made by the IGC. It reiterated the call for a balanced and equitable global IP system that accommodated all the legitimate interests of WIPO Member States, consistent with the Development Agenda of WIPO, and the 2030 Agenda for Sustainable Development. As previously stated, explanations as to why there was a need for an international legally binding instrument for the protection of GRs, TK and TCEs had been put forward. The IGC had made considerable progress in the last year. Currently, the three texts for the protection of GRs, TK and TCEs had been refined, improved and consolidated with clear options and variations reflecting the different positions. As the IGC Chair had reported, there were two major approaches, the rights-based approach and the measures-based approach. The challenges were more political than technical. It called upon Member States from other negotiating groups to demonstrate political will and good faith, and to be sensitive to the needs of developing countries and particularly indigenous peoples and local communities with respect to the complex issues involved.

226. The Delegation of Cuba reiterated the importance of the IGC's work. Political will should be shown by all Member States if they were to make the IGC's work easier and ensure full and complete participation in text-based negotiations. That was the best way of reaching an agreement on an international legally binding instrument to ensure effective protection of GRs, TK and TCEs.

227. The Delegation of Egypt aligned itself with the statement made by the Delegation of Morocco on behalf of the African Group. It expressed its appreciation to the members of the IGC, the IGC Chair and the Secretariat for the work they had done. It reiterated the importance of reaching an agreement within the IGC so as to convene a diplomatic conference to adopt a legally binding instrument(s) to protect GRs, TK and TCEs. The IP system should work to the benefit of all countries and peoples, not just a selected group who would benefit from advanced protection in limited fields. Making the IP system work for everyone was actually at the heart of streamlining development in WIPO. It was the only guarantee of having an IP system that enjoyed the support of all stakeholders at different levels of development. This would have a positive effect on the popularity of the IP system at large. The Delegation was ready to fully cooperate with other Member States over the next sessions of the IGC to achieve that goal.

228. The Delegation of Malaysia aligned itself with the statements made by the Delegation of Indonesia on behalf of the Asia and the Pacific Group and the LMCs. It thanked the IGC Secretariat for the excellent work and for the report in document WO/GA/50/8. It also thanked the IGC Chair, for his firm, fair and friendly manner in steering the work of the IGC in the last

and current biennium. The Delegation acknowledged the significant progress made on the GRs text at IGCs 35 and 36. However, it regretted the lack of consensus on moving forward with the Rev. 2 document at the close of IGC 36 as a basis for further work at IGC 40. It shared the view that the IGC was at a juncture where it needed to make a decision on the GRs text. In that regard, it believed that it was timely to bring the text to the finish line and to a diplomatic conference. On the issues of TK and TCEs, the Delegation noted the ongoing work undertaken at IGC 37 and called on the IGC to make progress and arrive at a common understanding on core issues, including definitions, beneficiaries, subject matter, objectives and scope of protection, as well as exceptions and limitations and relationship with the public domain. It wished to recall the decisions of the 2017 WIPO General Assembly which had clearly mandated the IGC to continue to expedite its work with the objective of reaching an agreement on an international legal instrument(s). To reach that goal, the decision had further given guidance on text-based negotiations, with a primary focus on narrowing existing gaps and reaching a common understanding on core issues. The IGC was halfway through the 2018/2019 biennium. The IGC should not unravel the progress made thus far but move ahead with its work, keeping in mind the current mandate of the IGC and WIPO Development Agenda Recommendation 18 which urged the IGC to accelerate the process on the protection of GRs, TK and TCEs. It looked forward to engaging with all delegations in the IGC and hoped that all Member States would adopt a constructive approach with good faith and trust.

229. The Delegation of the United States of America aligned itself with the statement made by the Delegation of Switzerland on behalf of Group B. It supported the work of the IGC. It had been a constructive participant in the IGC discussions since the establishment of the IGC. The United States of America was a mega biodiverse country with a wide range of stakeholders. Its stakeholders closely followed any work that could establish new international protection for TK and TCEs. Many stakeholders made use of existing subject matter to develop new creative works and new inventions, including new plants and new medicines. Therefore, it supported an inclusive process that included all relevant stakeholders. This process should also take into account the views of all WIPO Member States. The IGC had a significant amount of work to do in order to reach a common understanding of the objectives that supported its work. A common understanding of the objectives would pave the way for a common understanding on core issues, such as beneficiaries.

230. The Delegation of Japan stated that, although progress had been made at IGCs 35 and 36 on GRs and at IGC 37 on TK and TCEs, it was true that no consensus had been reached on the fundamental issues, such as objectives, subject matter and disclosure requirements. At the same time, huge differences in positions among Member States existed in the main articles of the texts. To fill in those gaps, it believed that the IGC should not focus only on the texts, but place more emphasis on national practices and conducting studies which would deliver evidence-based material. Given current circumstances, the Delegation firmly believed that it was inappropriate to hold a diplomatic conference unless all Member States had had exhaustive discussions on the major provisions and had agreed on them. In other words, it was inappropriate to set a certain time limit to end the discussion before the texts had been completed. It believed that the IGC should continue negotiations in order to ensure a thorough discussion of all technical matters. It wished to actively contribute to forthcoming discussions to be held in the coming three sessions before the next WIPO General Assembly in a constructive manner.

231. The Delegation of Uganda aligned itself with the statement made the Delegation of Morocco on behalf of the Africa Group, and the statement made by the Delegation of Indonesia, on behalf of LMCs. It reaffirmed its faith in the ongoing IGC negotiations and noted the progress made. Delegations were all cognizant of the fact that the current IP system was not sufficient to protect TK and TCEs. The WIPO documents (Updated Draft Gap Analysis on the Protection of TK, and Updated Draft Gap Analysis on the Protection of TCEs) had provided incontrovertible evidence of that. Despite that and other studies, and workshops and seminars

undertaken by the Secretariat, negotiations continued to suffer inertia under the guise of trying to reach understanding thereby prolonging the process for nearly twenty years. The Delegation was optimistic, based on the commitments of Member States during their opening statements to engage constructively, that positive results might be achieved sooner rather than later. The IGC Chair had done a commendable job in ensuring the process moved forward especially on the core issues that he had highlighted in his statement. It believed that those and any other outstanding issues were surmountable and called upon all Member States to exercise a maximum level of political will and flexibility to move the process forward. The Delegation believed that development was a shared destiny for all, and that WIPO could assure that destiny by providing protection for TK and TCEs.

232. The Delegation of the Republic of Korea expressed its appreciation to the IGC Chair, the Vice-Chairs and the Secretariat for the excellent work. The IGC had discussed core issues on GRs, TK and TCEs, including policy objectives, subject matter, beneficiaries, limitations, etc. The Delegation would continue to be a proactive participant in the upcoming IGC sessions in order to discuss the issues in a balanced and constructive way between providers and users.

233. The Delegation of Australia thanked the Secretariat for its detailed informative report on the IGC and for its tireless support for the IGC's work. It commended the IGC's commitment to continuing its critical work on GRs, TK and TCEs. Those were important issues for Australia and for its people. Indigenous representatives played a vital role in the IGC's work by providing their unique perspectives on the legal instruments currently being considered by the IGC. Bearing that in mind, it strongly urged Member States to consider making contributions to the Voluntary Fund. In the absence of such contributions, the WIPO General Assembly would need to consider alternative funding sources to support the participation of indigenous representatives in future IGC sessions. Without reliable funding that allowed them to attend the IGC sessions on a consistent basis, indigenous representatives would not be in a position to develop their expertise and experience in relation to the IGC's agenda. More broadly, it welcomed the good progress and renewed spirit of compromise by the IGC. It thanked the IGC Chair, for his continued leadership at the helm of the IGC. It was encouraged by the efforts to advance discussions on GRs and hoped this positive momentum would continue at IGC 40 when the issue was next considered.

234. The Delegation of Bolivia (Plurinational State of) expressed its gratitude for the work which the IGC had been doing. It reiterated its commitment to working constructively until there was a legally binding instrument. It had no doubt that the work would be very hard, and that Member States would have to really put their shoulders to the wheel. After so many years of work on this issue, the IGC had a moral obligation to hit its target and come up with something which was balanced and beneficial to all. It appealed to all other delegations to be constructive and transparent in taking their positions. Bolivia (Plurinational State of) had many traditional cultures and indigenous peoples, and had a broad cultural, ethnic and linguistic diversity. Balanced protection for the rights of indigenous peoples and effective mechanisms to prevent them being abused and to protect them and their knowledge and culture were critical, because indigenous peoples were the heart of the country and it needed them to be properly protected. That was why the Delegation wanted to work and reach an agreement by consensus. The recommendations made to the WIPO General Assembly were a step forward in recognizing and strengthening the IGC's mandate but it would not be satisfied until the IGC could call a diplomatic conference at least on IP and GRs. It believed that the IGC was pretty close to consensus on GRs.

235. The Representative of Maloca International thanked all delegations who had recognized the fact that indigenous peoples and local communities were the beneficiaries of whatever texts the IGC was negotiating. He stressed that the rights of indigenous peoples could only be respected on the basis of free, prior and informed consent, as part of due diligence. The use of databases to implement that had been proposed but he did not believe this was really possible

from a technological point of view. Databases would not guarantee free, prior and informed consent from indigenous peoples. Requiring information on the country and on the peoples living in that country should be part of the patent examination procedure carried out by the competent offices in individual countries. He paid tribute to the members of the Andean Community who had taken decisions on setting up a special regime to strengthen protection of innovations, knowledge and skills which were traditionally held by indigenous peoples and local communities in accordance with the ILO Convention 169.

236. The WIPO General Assembly **considered** the “Report of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)” (document WO/GA/50/8), and **called upon** the IGC, based on progress made, to **expedite** its work in accordance with the mandate of the IGC for the biennium 2018/2019:

- (a) **Noting** that at the conclusion of the 37th session all members of the IGC reaffirmed their commitment, based on the progress made, to expedite the Committee’s work, with the objective of reaching an agreement on an international instrument(s), without prejudging the nature of outcome(s), relating to intellectual property which will ensure the balanced and effective protection of genetic resources (GRs), traditional knowledge (TK) and traditional cultural expressions (TCEs); and to work in a constructive and open way using sound working methods.
- (b) **Acknowledging** the progress made at the 35th and 36th sessions on GRs, reflected in the report and draft report of the sessions respectively (WIPO/GRTKF/IC/35/10 and WIPO/GRTKF/IC/36/11 Prov.).
- (c) **Noting** that GRs will next be considered at the “stocktaking” during the 40th session, where the Committee will consider next steps in relation to GRs, as well as TK and TCEs, including whether to recommend convening a diplomatic conference and/or continue negotiations.
- (d) **Noting** progress made at the 37th session on TK and TCEs as reflected in the draft report of the session (WIPO/GRTKF/IC/37/17 Prov.).
- (e) **Noting** that during the 38th, 39th and 40th sessions, the Committee will continue its work relating to TK and TCEs.
- (f) **Recognizing** the importance of the participation of Indigenous peoples and local communities in the work of the IGC, **noting** that the WIPO Voluntary Fund is depleted, and **encouraging** Member States to consider contributing to the Fund and consider other alternative funding arrangements.

## ITEM 20 OF THE CONSOLIDATED AGENDA

### REPORT ON THE ADVISORY COMMITTEE ON ENFORCEMENT (ACE)

237. Discussions were based on document WO/GA/50/9.

238. The Secretariat reported on the thirteenth session of the Advisory Committee on Enforcement (ACE), which took place from September 3 to 5, 2018. The thirteenth session addressed: “Exchange of information on national experiences on awareness building activities and strategic campaigns as a means for building respect for IP among general public, especially the youth, in accordance with Member States’ educational or any other priorities; Exchange of information on national experiences relating to institutional arrangements concerning IP enforcement policies and regimes, including mechanism to resolve IP disputes in a balanced,

holistic and effective manner; Exchange of information on national experiences in respect of WIPO legislative assistance, with a focus on drafting national laws of enforcement that take into account the flexibilities, the level of development, the difference in legal tradition and the possible abuse of enforcement procedures, bearing in mind the broader societal interest and in accordance with Member States' priorities; and Exchange of success stories on capacity building and support from WIPO for training activities at national and regional levels for Agencies and national officials in line with relevant DA Recommendations and the ACE mandate". The exchange of information was facilitated through 30 expert presentations and four panel discussions. At the thirteenth session, the Committee had agreed to continue, at its fourteenth session, with the current work program.

239. The Delegation of Switzerland, speaking on behalf of Group B, thanked the Chair and the Vice-Chairs of the thirteenth ACE session. Group B continuously attached importance to the ACE and its subject matter, namely the enforcement of intellectual property rights (IPRs), and noted that without effective and balanced enforcement mechanisms, IPRs could not fulfil one of their central objectives of contributing to economic development through the promotion and protection of innovation and creativity. In that regard, enforcement was a subject that all WIPO Members should take seriously, remain sincerely engaged in and consider as an area of common interest, irrespective of their level of development. Group B also noted that the implementation of enforcement-related laws and regulations often lacked political support. Therefore, it was very important to learn lessons from the experiences of others, and the ACE was a very valuable place where Member States could do so. Group B emphasized that it was important for the work program of the ACE to be aligned with its mandate, namely technical assistance and coordination with a view to supporting the enforcement of IPRs and combating counterfeiting and piracy. The Group expressed its satisfaction with the balanced nature of the program of the thirteenth ACE session, which covered a wide range of topics and allowed for constructive technical discussions and exchange of experiences. Group B recognized the benefit of sharing diverse experiences during the ACE sessions and looked forward to continuing the work of the Committee.

240. The Delegation of Indonesia, speaking on behalf of the Asia and the Pacific Group, thanked the Secretariat for its excellent work and for the preparation of the report contained in document WO/GA/50/9. It was important for the Asia and the Pacific Group that WIPO continued to approach the issue of enforcement of IPRs in a holistic manner, in building respect for IP, to ensure that the means to enforce IPRs were in line with the objectives of Article 7 of the TRIPS Agreement as stated in Recommendation 45 of the WIPO Development Agenda. The Asia and the Pacific Group continued to support the balanced work program of the ACE, comprised of four thematic clusters, and remained committed to the work of the Committee.

241. The Delegation of Lithuania, speaking on behalf of the CEBS Group, attached great importance to the work of the ACE and thanked the Chair and the Vice-Chairs of the thirteenth session for their leadership, and the Secretariat for the organization of a very interesting session. The ACE was a unique international forum in which WIPO Member States could exchange experiences and best practices in the area of enforcement. One of the essential challenges was to build a balanced and coherent legal framework that took into account changes in economic and socio-cultural models, while at the same time safeguarding fundamental rights and freedoms. The Group was of the view that IP protection played an important role in encouraging creativity and innovation, as well as cultural development, and believed that it was important for the work program of the ACE to be in line with the Committee's mandate, namely technical assistance and coordination with a view to supporting the enforcement of IPRs and combating counterfeiting and piracy. While supporting the work program of the ACE, the Group was convinced that it was important to have an exchange of information on awareness-building activities and strategic campaigns, especially tailored to the youth, as well as on institutional arrangements concerning IP enforcement policies and regimes,

including mechanisms to resolve IP disputes. The Group looked forward to continuing the work of the ACE in sharing national experiences during upcoming sessions.

242. The Delegation of El Salvador, speaking on behalf of GRULAC, thanked the Secretariat for the report and its support of the work of the Committee, and the Chair for his work in conducting the thirteenth session. The members of GRULAC actively took part in the work of the ACE through the exchange of experiences. The Group was of the view that building respect for IP in a sustainable way, which was the mandate of the ACE, demanded the adoption of measures that not only helped to protect and enforce IPRs but also contributed to preventing their abuse by right holders. This type of abuse could curtail competition and innovation – the ultimate objective of the IP system. During the thirteenth session, the Group had supported the contributions of Brazil and Peru on administrative approaches to addressing the interplay of IP enforcement and competition law. The Group believed that the exchange of information on the intersection of IP enforcement and competition law could increase mutual understanding of the topic and help WIPO Member States to enforce IPRs and obligations in a balanced way. At the same time, the Group highlighted the importance of both interinstitutional coordination at the national and regional levels and the strengthening of legislative and institutional IP enforcement frameworks. For this reason, the Group expressed its support for the contributions by Mexico “Combating Software Piracy in Mexico”, Peru “Enforcement Systems in IBEPI Countries” and Colombia “Assessment of Damages to Intellectual Property – A View from the Colombian Legal System” under work program item B. The Group reiterated its commitment to continue to contribute to the Committee in the next sessions.

243. The Delegation of the European Union, speaking on behalf of the European Union and its member states, welcomed the important and useful discussions of the ACE and strongly supported the work of the Committee, which allowed building a common approach to stop IP infringements based on national and regional experiences. During the thirteenth ACE session, the European Union and its member states had welcomed the well-balanced work program and recognized the value of best practice exchange enabled by the introduction of the State-centric agenda point in the current work program, thus complementing the past issue-centric discussions in a useful manner. The Delegation had been pleased to discuss arrangements to address online IP infringement and, in particular, to exchange experiences on working with intermediaries to tackle IPR infringement. The European Union and its member states felt confident that fruitful collaboration would continue in order to combat IPR infringements more effectively and to ensure that a fair balance was kept between incentives to innovate and access to innovation. With regard to the future work in the ACE, the European Union and its member states would welcome a discussion under the current work program on the measures that supported small and medium-sized enterprises in their efforts to combat counterfeiting and piracy. The European Union and its member states believed that WIPO, as a multilateral hub for all IP-related issues, had an important role to play in coordinating enforcement activities across Member States to ensure the long-term integrity of the global IP systems.

244. The Delegation of Brazil aligned itself with the statement made by the Delegation of El Salvador on behalf of GRULAC and thanked the Chair, the Vice-Chairs and the Secretariat for the fantastic work during the thirteenth ACE session. Since the establishment of the ACE in 2002, Member States, with the invaluable support of the Secretariat, had set priorities and allocated resources to try to fulfill the mandate of carrying out technical assistance and coordinating efforts in the field of enforcement. The Delegation believed that the Committee's current work program was balanced and provided an effective contribution to ensure IPRs and obligations. Such a work program was in line with Brazil's understanding that building respect for IP had to be based on three pillars: raising awareness through public education, providing technical and legislative assistance through the implementation of well-functioning policies and implementing appropriate enforcement measures to combat counterfeiting and piracy. Enforcement was not an end in itself, but rather a means to ensure that the IP system could

provide effective contribution to the promotion, transfer and dissemination of technological innovation in a manner conducive to social and economic welfare. At the thirteenth ACE session, Brazil and Peru had introduced, for the first time in the history of the Committee, the topic of IP and competition policies. Brazil's anti-trust agency had shared some of its experiences in dealing with cases where the restriction of access or the abuse of IPRs had constituted an anti-trust violation. The primary message of the presentations had been that IPRs had to be respected and abuses had to be investigated. Otherwise, the very purpose of the IP system would be undermined. In a well-functioning market economy, IPRs provided incentives for competition, based on a promise to grant exclusive rights for products or services that eventually brought a benefit to society and, as a result, more competition in the medium and long term. Yet for this incentive mechanism to function, it was essential that existing IPRs were not employed abusively, harming competition and innovation in the short term, at the expense of IP users. In this sense, the implementation and enforcement of competition laws played a key role in ensuring that the exercise of exclusive IPRs did not give rise to abuses and anti-competitive practices, whether through the abuse of the dominant position of IP holders in the market or unlawful agreements among right holders themselves. Indeed, the IP system and competition policies reinforced and benefited each other. The Delegation urged other Member States to share their national experiences on the interplay between IP and anti-trust laws. The Delegation believed that this exchange of information enhanced the mutual understanding of WIPO Member States on the topic and helped members to strike an appropriate balance between the interests of right holders and the interests of society so as to develop a vibrant, effective and inclusive innovation system.

245. The Delegation of Thailand thanked the Secretariat for the excellent organization of the thirteenth ACE session and highly valued the opportunity to share its experience during that session on the topic of raising IP awareness *via* social media in Thailand. Like many other Member States, Thailand recognized the unique value of the ACE and assured the Secretariat of its active participation in and contribution to that forum. The Delegation noted that IP had played an important role for businesses and global economics. Thailand was currently working towards a Thailand 4.0 policy in which innovation and knowledge were the main engines of economic growth. IP protection and enforcement were of critical importance to the realization of that policy. The Government of Thailand attached importance to IP enforcement. The National Committee on IP Policies had been set up and was chaired by the Prime Minister. In addition, a subcommittee on IPR enforcement, chaired by the Deputy Prime Minister and consisting of 18 heads of enforcement agencies, was tasked with determining measures and overseeing enforcement operations in Thailand. Thailand had allocated large resources to improve the IP registration system and carry out amendments to that system with the ultimate goal of enhancing the overall IP protection system in line with international standards. The Delegation looked forward to sharing its experiences and learning from other Member States at the next session of the ACE.

246. The Delegation of Iran (Islamic Republic of) commended the Secretariat and the Chair of the ACE for the successful organization of the thirteenth session. The Delegation attached utmost importance to the work of the Committee, as the ACE provided a valuable platform for Member States to share their successful experiences and best practices in relation to awareness raising, capacity building and legislative assistance. The Delegation was committed to improving the enforcement of IP and fostering respect for IPRs in a balanced manner as a guiding principle for the protection and enforcement of IPRs. Effective enforcement systems should enable the legitimate protection of IPRs without restricting the dissemination of knowledge. The Delegation was of the view that one of the main purposes of the enforcement of IPRs was to promote, transfer and disseminate technological innovation to the mutual advantage of producers and users of technology and technological knowledge in a manner conducive to social and economic welfare to balance rights and obligations. The Delegation was of the view that the technical assistance provided by WIPO on IP enforcement should constantly be in accordance with the spirit of Development Agenda Recommendation 45, which

called upon WIPO to address IP enforcement in the context of broader social interests and especially, development-oriented concerns.

247. The Delegation of the United States of America supported the statement made by the Delegation of Switzerland on behalf of Group B and expressed its full commitment to working closely with WIPO to assist developing countries and LDCs in improving their enforcement of IPRs. The ACE provided a valuable forum for the exchange of information and best practices concerning the enforcement of IPRs. The experiences of individual countries shared in previous ACE meetings had been informative and useful in providing Member States with information on developing awareness raising, training and education programs in the field of IP enforcement. The Delegation congratulated WIPO's effort to coordinate and enhance the enforcement aspects of its technical assistance efforts and fully supported WIPO's work in reinforcing cooperation among enforcement authorities and relevant organizations in that field.

248. The Delegation of the Republic of Korea expressed its gratitude to the speakers and discussants who had contributed to the thirteenth ACE session. The Republic of Korea was pleased with the outstanding outcome of the project on raising awareness of copyright for students in Malawi. The project had been implemented through the Republic of Korea's FIT, and a video on the project had been aired during the thirteenth ACE session. The Delegation wished to extend its appreciation to the Secretariat for the successful cooperation with the Ministry of Culture, Sport and Tourism of the Republic Korea, which planned to further develop and implement various activities for copyright enforcement through FIT, and reaffirmed its commitment to active engagement in the fourteenth ACE session.

249. The WIPO General Assembly took note of the "Report on the Advisory Committee on Enforcement (ACE)" (document WO/GA/50/9).

## ITEM 25 OF THE CONSOLIDATED AGENDA

### WIPO ARBITRATION AND MEDIATION CENTER, INCLUDING DOMAIN NAMES

250. Discussions were based on document WO/GA/50/10.

251. The Secretariat noted that the document provides an update on the Center's activities as an international resource for time- and cost-efficient alternatives to court litigation of IP disputes. The Secretariat affirmed that the Center administers cases and provides legal and organizational expertise in alternative dispute resolution (ADR). The Secretariat noted that the document also provides an update on the domain name-related activities of WIPO. It covers the Center's administration of domain name disputes especially under the Uniform Domain Name Dispute Resolution Policy (UDRP). It furthermore covers policy developments, including the review by the Internet Corporation for Assigned Names and Numbers (ICANN) of the UDRP, and the status of the recommendations made by the Member States in the context of the Second WIPO Internet Domain Name Process.

252. The Delegation of Iran (Islamic Republic of) noted that the Center's experience and expertise in case administration and legal frameworks provided a sound support for Member State IP dispute settlement. Notably the Center provides useful tools to foster a culture of mediation and to integrate mediation in IP practice. The Delegation wished to highlight the Center's important role in assisting a growing number of IP and Copyright Offices in their establishment of ADR frameworks, including related promotional and training activities. The Delegation welcomed such collaboration.

253. The Delegation of Poland noted the conclusion by WIPO and the Polish Patent Office in April 2018 of a Memorandum of Understanding on ADR for IP disputes. In addition to IP ADR promotion amongst stakeholders generally, parties to trademark opposition disputes before the

Polish Patent Office now also had the option to settle through WIPO mediation; in future, this collaboration may also involve other IP rights. The Delegation further announced that the subject of resolving IP and technology disputes through ADR is now included in the curriculum of the new master's degree program in IP and New Technologies offered by the Jagiellonian University with the WIPO Academy and the Polish Patent Office.

254. The Delegation of the Republic of Korea expressed its appreciation for the excellent collaboration experienced from the Center. It noted that the development of the IP industry comes with an increase in related disputes, and that it may not be time- and cost-effective to rely exclusively on the court system for resolving these. Acknowledging the relevance of arbitration and mediation in that regard, the Republic of Korea supports the Center's work to promote and help implement ADR solutions. The Ministry of Culture and Tourism of the Republic of Korea, which administers a dispute resolution system for copyright- and content-related disputes, looks forward to continuing cooperation with the Center.

255. The WIPO General Assembly took note of the document "WIPO Arbitration and Mediation Center, Including Domain Names" (document WO/GA/50/10).

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