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WORLD INTELLECTUAL PROPERTY ORGANIZATION

GENERAL ASSEMBLY

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REPORT

adopted by the General Assembly

INTRODUCTION

1. The General Assembly was concerned with the following items of the Consolidated Agenda (document AB/XXV/1 Rev.): 1, 2, 9, 10, 11, 14 and 15.
2. The report on the said items, with the exception of items 9 and 10 is contained in the General Report (document AB/XXV/6).
3. The report on items 9 and 10 is contained in the present document.
4. Mr. Valery L. Petrov (Ukraine), Acting Chairman, chaired this session of the General Assembly.

ITEM 9 OF THE CONSOLIDATED AGENDA:

MATTERS CONCERNING THE DRAFT TREATY FOR THE SETTLEMENT OF
DISPUTES BETWEEN STATES IN THE FIELD OF INTELLECTUAL PROPERTY

5. Discussions were based on document WO/GA/XV/1.
6. The Delegations of the United Kingdom, Germany (speaking also on behalf of the States members of the European Union), Switzerland, Sweden, the Russian Federation, Romania, the Republic of Korea, Japan, Finland, China, the United States of America, Egypt, Canada, Paraguay, Italy, France, Mexico and the representative of the Commission of the European Communities stated that, since certain questions required further examination by the Committee of Experts, they supported the proposal of the Director General that the Committee of Experts meet again in 1995, before the September 1995 ordinary session of the General Assembly, and that in that session the General Assembly decide on any further steps.
7. The Delegation of the United Kingdom, as well as the Delegation of Sweden, stated that there was a place for the proposed Treaty despite the fact that dispute settlement would be covered in the TRIPS Agreement.
8. The Delegation of the United Kingdom added that there could be a need, in certain circumstances, for other fora to deal with disputes and it was confident that the proposed Treaty would facilitate the settlement of disputes in areas that perhaps the TRIPS Agreement did not deal with.
9. The Delegation of Germany, speaking also on behalf of the States members of the European Union, stated that the Committee of Experts should hold another session for two reasons: the first concerned the relationship of the dispute settlement system envisaged in the draft Treaty with other existing dispute settlement systems, particularly in the field of intellectual property; the second concerned an issue not explicitly mentioned in the recommendation of the Committee of Experts but which was of particular concern to the States members of the European Union, namely, the participation of the European Communities as a possible party to the proposed Treaty. That Delegation hoped that solutions to those outstanding questions could be found, and it was willing to contribute toward that end.
10. The Delegation of Switzerland stated that the Committee of Experts should be asked to draw up clear and precise conclusions so as to enable the General Assembly to take a decision as to whether a diplomatic conference should be convened.
11. In response to questions from the Delegations of Germany, Sweden, the Russian Federation, Romania, Canada and France, the Director General stated that it was the intention of the International Bureau to convene the seventh session of the Committee of Experts around June 1995 and to send a working document by the end of 1994 containing suggestions concerning the relationship between the dispute settlement system envisaged in the proposed Treaty and other dispute settlement systems. The Director General furthermore said that,

as mentioned by the Delegation of Switzerland, an important policy decision would have to be made. So far, only work on a draft of the Treaty had been undertaken but the convening of a diplomatic conference depended not only upon the preparation of a good draft but also on whether enough countries actively supported the Treaty and contemplated adhering to it and bringing it into force; naturally, it was not desirable to adopt a Treaty that was unlikely ever to enter into force. The Governing Bodies in their sessions in 1995 should take a decision on the convening of a diplomatic conference in the light of the results on the questions to be discussed by the Committee of Experts.

12. The Delegation of Japan recalled that, among the important issues still to be examined and resolved, were the question of the relationship between the dispute settlement systems under the proposed Treaty and the other dispute settlement systems, particularly that of the WTO and the question of the sphere of application of the Treaty. As concerns the relationship between the different dispute settlement systems, it could happen that, in the future, intellectual property disputes might be submitted simultaneously to two different procedures and some confusion could result; therefore, the Delegation of Japan was of the view that such a matter should be further considered. That delegation also supported the proposal made by the Delegation of Switzerland that, on the basis of conclusions to be drawn up by the Committee of Experts, the General Assembly should make a final decision on whether a diplomatic conference should be convened.

13. The Delegation of Finland stated that it was very important that WIPO have such a Treaty on the settlement of disputes since, in principle and as a practical matter, it was needed by WIPO and by its member States. That Delegation added that it was necessary that the dispute settlement systems under the proposed Treaty be coordinated with the dispute settlement system under the TRIPS Agreement.

14. The Delegation of the United States of America stated that there might be some benefit in scheduling the diplomatic conference only after there had been sufficient opportunity to observe the operation of the dispute settlement system of WTO under the TRIPS Agreement; on the basis of the results of such observation, a determination could be made as to the need for the establishment of a dispute settlement system in WIPO. That Delegation was of the view also that any documentation that related to the WTO dispute settlement system should be prepared in consultation with the WTO.

15. The Director General, referring to the suggestions made by the Delegation of the United States of America, pointed out that to observe the functioning of the dispute settlement system of the WTO might take some time, perhaps five or ten years, that the number of dispute settlement cases would not be so frequent and that it should be possible to draw conclusions in a shorter period of time. The Director General added that, in any event, the convening or not of a diplomatic conference would be a matter for the General Assembly to decide upon at its session in September 1995. As far as the suggestion by the Delegation of the United States of America that WIPO should cooperate with WTO in connection with the preparation of that part of the documentation dealing with the relationship between the WTO dispute settlement system and the dispute settlement system under the proposed Treaty, the Director General said that he would make a proposal, under the next item of the agenda (WIPO and the WTO and TRIPS Agreements), which, if adopted, would respond affirmatively to that suggestion.

16. The Delegation of Paraguay stated that the work being done in WIPO, in the field of dispute settlement, should not be affected by developments taking place in other organizations.

17. The Delegation of Italy stated that it also desired that the International Bureau work on this subject in cooperation with WTO.

18. The Delegation of Mexico stated that it supported the establishment in WIPO of a multilateral system for the settlement of disputes, since such a system would facilitate uniform interpretation of treaties in the field of intellectual property and would prevent any unilateral interpretation of those treaties. The preparation of the Treaty should take into account the need for cooperation between WIPO and WTO since both organizations would have dispute settlement systems.

19. The Representative of the Commission of the European Communities stated that work on the proposed Treaty needed to be continued even though final agreement had now been reached on a dispute settlement mechanism in WTO, which hopefully would enter into force soon. It was of the view that the Committee of Experts should meet soon and that at that meeting the Committee of Experts should address the question of how possible overlap between two dispute settlement systems could be avoided. That Delegation expressed the hope that at that meeting a satisfactory solution would also be found on the question of the status of the European Communities under the proposed Treaty so as to enable it to participate in the Treaty to the fullest extent possible.

20. The WIPO General Assembly approved the proposals contained in paragraph 4 of document WO/GA/XV/1, namely, that the Committee of Experts meet again in 1995, before the September 1995 ordinary session of the WIPO General Assembly and that that Assembly in that session decide any further steps in the matter, including the question of whether to hold a Diplomatic Conference for the Conclusion of a Treaty on the Settlement of Disputes Between States and, if so, when.

ITEM 10 OF THE CONSOLIDATED AGENDA:

WIPO AND THE WTO AND TRIPS AGREEMENTS

21. Discussions were based on document WO/GA/XV/2.

22. The Director General introduced the document and stated that it presented two proposals for consideration by the Assembly. The proposal made in paragraph 9 would establish the spirit in which cooperation between WIPO and GATT/WTO would take place, namely a spirit of mutually supportive, friendly, open atmosphere. The proposal made in paragraph 18 would authorize the Secretariat of WIPO to advise countries on the compatibility of their draft laws with all international obligations, including those under the TRIPS Agreement. The Director General stated that since that document had been drafted, further developments had occurred within the GATT as well as between WIPO and GATT, and suggested that the Representative of GATT be given the floor to summarize those developments.

23. The Representative of GATT made the following statement:

"The basic information on relevant developments in the GATT/WTO context is already set out in the memorandum prepared by the Director General of WIPO for this agenda item. As is stated in his memorandum, it is explicitly stated in the TRIPS Agreement that Members of the World Trade Organization desire to establish a mutually supportive relationship between the WTO and the World Intellectual Property Organization. Furthermore, the TRIPS Agreement requires the Council for TRIPS, the body open to all Members of the WTO that will administer the Agreement, to seek to establish, within one year of its first meeting, appropriate arrangements for cooperation with bodies of the WIPO. The TRIPS Council is also required to seek consultations with the WIPO on the possible establishment of a common notification system for national legislation.

"With respect to the timing of the entry into force of the Agreement Establishing the World Trade Organization, and therefore of the TRIPS Agreement, at the Marrakesh Ministerial Meeting in April this year, which adopted the results of the Uruguay Round negotiations, Ministers committed themselves to seek to complete all steps necessary to ratify the WTO Agreement so that it can enter force by January 1, 1995, or as early as possible thereafter. The target date of January 1, 1995, was reaffirmed at a meeting last week, on September 22, of the Preparatory Committee for the World Trade Organization, the Committee established in Marrakesh to do the groundwork for entry into force of the WTO Agreement. At that meeting, delegations committed themselves to accelerate ratification procedures to this end. The formal decision on the date of entry into force will be taken by an Implementation Conference, which will be convened for this purpose in early December if all goes according to schedule.

"Regarding the activities in the GATT/WTO context on the question of cooperation between the TRIPS Council and the WIPO, the Preparatory Committee for the WTO has already started giving consideration to the question of cooperation with WIPO. One of the Sub-Committees that it has established is responsible for work on institutional, procedural and legal matters, including questions of cooperation with other international organizations and any necessary preparatory work on procedural matters, such as notification procedures. This Sub-Committee has in turn established a number of informal Contact Groups on specific areas, one of which is devoted to TRIPS. The Contact Group on TRIPS, which is open to all members of the Preparatory Committee, has held two meetings so far, one in July and the second last week, on September 23, 1994. At these meetings, discussion has largely focused on the question of cooperation with WIPO, including cooperation with respect to procedures for the notification of national legislation and other notification procedures under the TRIPS Agreement.

"In the Contact Group, delegations have reaffirmed their desire for close and mutually supportive relations with WIPO. This is a desire which is shared by the GATT Secretariat. The Contact Group has adopted a three-stage approach to work on this matter. First, the GATT Secretariat has prepared, at the request of the Contact Group, a checklist of possible areas of cooperation between the WIPO and the WTO, including information on the operation of the existing WIPO systems for the

collection and publication of national legislation. In order to prepare this document, the Chairman of the Contact Group, Ambassador Kesavapany of Singapore, and the GATT Secretariat have benefited from very helpful contact with the Director General of WIPO and members of his staff. At the Contact Group's meeting last Friday, widespread satisfaction was expressed about the positive results of these initial contacts.

"As a second stage in its work, the Contact Group has initiated a discussion, with the help of the GATT Secretariat papers, of the question of cooperation between the two Organizations. The aim of this discussion is both to clarify what the WTO members themselves might wish to achieve on certain issues, such as notification of national legislation, and what forms of cooperation with WIPO might be most appropriate to seek in doing so. Some preliminary views have also been expressed in the Contact Group about how the consultations between the two Organizations might best be organized.

"The third stage will be the entering into consultations with WIPO to work out cooperative arrangements between the two Organizations.

"At the Contact Group's meeting last Friday, there was unanimous support for the Chairman's proposal that the WIPO be invited to be represented as an observer at the Contact Group's next meeting, which is likely to take place in the second half of October."

24. The Director General stated, with respect to the ways in which the contacts between WIPO and WTO should be organized, that he had a proposal, already known to the Chairman of the Contact Group on TRIPS, who had recently written a letter to him in which he remarked that the proposal should be looked at carefully and that a conclusion should be drawn at the appropriate time. The Director General felt that now was the appropriate time, especially as the General Assembly could only meet infrequently to discuss this issue. The Director General's proposal was that the competent organs of WIPO and GATT should decide the setting up of an ad hoc, informal WIPO-GATT Consultation Group on all matters concerning which possible cooperation between WIPO and WTO was mentioned in the WTO or TRIPS Agreements or seemed to be otherwise desirable. The Director General mentioned, as an example of a matter that seemed to be otherwise desirable, the suggestion, made by the Delegation of the United States of America, during the discussion on the agenda item concerning dispute settlement, that WIPO and WTO cooperate in the preparation of documents concerning WTO dispute settlement procedures.

25. The Director General explained that any member of WIPO and/or GATT could, if it so desired, be a member of the Consultation Group. He pointed out that 41 members of WIPO were presently not members of GATT. The Consultation Group would be served by the Secretariats of WIPO and GATT, which would be an instance of "mutually supportive" cooperation. The two Secretariats should endeavor to present joint--that is, agreed between them--working papers to the Consultation Group. If, on any question, they were unable to prepare a joint working paper, each Secretariat could present a paper of its own. The same would apply to the drafts of the minutes or reports of the Consultation Group, if any. The role of the Consultation Group would be to formulate advice, which would be communicated by each Secretariat to the competent organ of its Organization, for example, in the case of GATT, to the competent Sub-Committee of the Preparatory Committee or to the Preparatory Committee itself, and, in the case of WIPO, to the General Assembly or possibly to the Coordination Committee.

26. The Director General observed that it was apparent from the letter of the Chairman of the Contact Group on TRIPS which was recently received that there would be no immediate position formed at GATT on this proposal, but stated that the purpose of submitting the proposal to the WIPO General Assembly now was to seek authorization from it to try to obtain agreement with GATT along the lines stated.

27. The Delegation of the Netherlands, while stating that it was not yet in a position to comment on the proposal which had just been made by the Director General, expressed strong support for close cooperation between WIPO and WTO, in order to make the best use of the expertise of WIPO and to avoid duplication between the two Organizations. However, the Delegation stated that the talks were in their early stage, and some sensitive issues needed to be resolved. In particular, in order to avoid potential conflicts, the Delegation proposed adding the following words to the end of paragraph 18 (which deals with advice on national legislations and with certain studies) of document WO/GA/XV/2: ", subject to appropriate arrangements to be agreed upon between WIPO and WTO."

28. The Director General responded that the only agreement that was needed for WIPO to give advice to developing countries was that of the WIPO General Assembly and that it would not be appropriate to have to also obtain agreement from anybody else.

29. The Delegation of Zimbabwe, speaking on behalf of the African Group, supported the proposals made in document WO/GA/XV/2, especially the proposal for mutually supportive cooperation between WIPO and GATT/WTO. The Delegation further supported the assistance proposed on the basis of the recommendations made by the WIPO Permanent Committee for Development Cooperation Related to Industrial Property at its June meeting, as embodied in document WO/GA/XV/2, which asked the International Bureau to be at the disposal of developing countries. The African group further supported the proposal made by the Director General for the establishment of an ad hoc Consultation Group on cooperation, and stated that it would be beneficial for any member of either Organization to be free to become a member. The Delegation emphasized that it was important for the Consultation Group to begin its work immediately. The Delegation also supported the proposal that member States could seek advice from WIPO on legislation and confirmed the jurisdiction and competence of WIPO on issues of intellectual property. The Delegation did not believe that developing countries, especially African countries, should be bound to have the approval of GATT/WTO before seeking assistance from WIPO. Finally, the African Group supported the suggestion, made by Egypt earlier in the Governing Bodies meetings, for the holding of a forum organized by WIPO for attendance by both developing and developed countries to discuss the implications of the TRIPS Agreement on trade and economic development of developing countries.

30. The Delegation of Chile welcomed the positive spirit demonstrated by the International Bureau with respect to this issue. It described the TRIPS Agreement as an overall global effort to which WIPO should direct its attention. All efforts should be made to ensure a close link of cooperation between WIPO and the future WTO. It was very important to avoid duplication from the outset. The Delegation set out two situations which needed to be examined. The first was the need for a detailed study, by the International Bureau, of the TRIPS Agreement itself, of its implications and of the requirements imposed by its implementation, in order to be ready to give

assistance to any country requesting it. The TRIPS Agreement would be the principal reference point for international legislation in the field of intellectual property, and the study should therefore examine the links that would necessarily have to be established between WIPO-administered treaties and the TRIPS Agreement. The second situation referred to the future negotiations with GATT. The Delegation proposed the establishment, within WIPO, of a working party open to all the States and subordinated to the WIPO Coordination Committee. The working party could, with the support of the International Bureau, identify certain areas in which the expertise of WIPO would be useful for the implementation of the TRIPS Agreement. The objective was to allow part of the work to have started before the WTO Council for TRIPS dealt with the matter, thus avoiding lengthy rounds of consultations between the two Organizations which would delay and complicate any negotiation.

31. The Delegation of Paraguay expressed its pleasure with the proposal made by the Director General at this meeting which complemented and enriched the proposals made in document WO/GA/XV/2. The Delegation considered it to be essential that the work concerning the TRIPS Agreement went on in a complementary fashion and, since the areas of activity of WIPO and WTO would be similar, the work should be carried on in both Organizations, albeit in different ways, taking into account the experience of WIPO and its officials. The Delegation expressed strong support for the proposal just put forth by the Director General, since, if the secretariats were to work together effectively, there would be a need for a competent body to give mandates and to supervise that work. The Delegation supported the proposal of Delegation of Chile, which it considered to complement the proposal of the Director General.

32. The Delegation of the United States of America supported the proposal of the Director General contained in document WO/GA/XV/2 to establish a mutually supportive relationship with GATT/WTO. The Delegation expressed a high regard for the expertise of the WIPO Secretariat and the value of the work done by the International Bureau to assist developing countries. The Delegation believed that the question of giving advice on compliance with the TRIPS Agreement required careful consideration to avoid varying interpretations of the TRIPS Agreement outside WTO. Therefore, the Delegation supported the proposal of the Delegation of the Netherlands which required the working out of appropriate arrangements with WTO with respect to technical assistance concerning the TRIPS Agreement and the elaboration of studies. The Delegation stated that it was not yet in a position to comment on the proposal of the Director General with respect to a joint Consultation Group.

33. The Delegation of Kenya stated that, as a member of both WIPO and GATT, it had concerns about meeting its obligations under the TRIPS Agreement. The Delegation stated that its country was preparing draft amendments to its laws and was in need of advice from WIPO to ensure that such amendments would be in compliance its TRIPS obligations. The Delegation supported the proposal in document WO/GA/XV/2 that a mutually supportive relationship be established. It also supported the statement made by the Delegation of Zimbabwe on behalf of the African Group concerning the proposed forum, and said that Kenya was placing itself at the disposal of the African Group to host that forum.

34. The Delegation of Egypt stated that the situation needed a swift reaction from the two Organizations. It supported the proposal to establish a mutually supportive relationship and also supported the statement of the representative

of the African Group. The Delegation further supported the proposal of the Director General with respect to the establishment of a Consultation Group and stated that this group should start its work without any delay. The Delegation reemphasized its earlier proposal under agenda item 4 of the Governing Bodies meetings, for the organization of a meeting including both developed and developing countries to review the consequences of the TRIPS Agreement for developing countries.

35. The Delegation of Germany welcomed the approach of the Director General to the issue under discussion, which showed his dedication for the establishment of a mutually supportive relationship. The Delegation pointed out that a joint Consultation Group would require the authorization and participation of both WIPO and WTO. Any such proposal approved by the present Assembly could only be an offer to the competent bodies of the GATT to join in. The Delegation remarked that its information concerning the situation within the Contact Group at GATT indicated that there might be a certain reluctance, based only on current concerns about work within the GATT itself, to participate in such a joint Consultation Group. The Delegation wondered what action should be taken if the proposal was not accepted as the best way to go forward from the point of view of GATT. The Delegation also supported the proposal of the Delegation of the Netherlands and stated that the proposal was not aimed at questioning the authority or competence of WIPO to give advice on legislation, but its purpose was to point out that WIPO was not the body to judge in the final analysis on questions of interpretation of the TRIPS Agreement, which could only be decided on by the TRIPS Council. He stated that the proposal was only for "appropriate arrangements" and not for "appropriate agreements."

36. The Director General, responding to the Delegation of Germany, asked what would happen if the reluctance on the part of the GATT bodies for the creation of a joint Consultation Group continued. He considered that the proposal of Chile would provide a transitional solution, namely that WIPO would establish a working party on its own. This would enable the Secretariat of WIPO to go forward in the same relation to its member States as the Secretariat of GATT was to its own member States. With respect to the amendment proposed by the Delegation of the Netherlands, that amendment included the words "subject to arrangements to be agreed upon," which would require an agreement by WTO. The result of the amendment would be that one would have to say to a country that required assistance in revising its national laws that it could not ask for advice from WIPO unless the WTO agreed. This would take away one of the most important services, if not the most important, which WIPO rendered to developing countries and which every member of WIPO had found to be satisfactory.

37. The Delegation of Burkina Faso expressed its support for the statement made on behalf of the African Group and its support for the proposals of the Director General, including the establishment of a Consultation Group on future relations between WIPO and WTO.

38. The Delegation of Slovenia expressed its support for the proposals set forth in document WO/GA/XV/2 and for the proposal presented by the Director General concerning the establishment of a Consultation Group. The Delegation also announced that the Contracting Parties of GATT had decided on December 12, 1993, that Slovenia may accede to the GATT, that the official signing took place on September 27, 1994, and that after 30 days Slovenia would become a full member of the GATT.

39. The Delegation of Nigeria endorsed the statement made on behalf of the African Group. It encouraged WIPO to organize a conference to explain the implications of TRIPS for developing countries, and to advise them on how to modify their national laws to comply with the TRIPS Agreement. The Delegation also expressed its concern about duplication of efforts at WIPO and the GATT, and expressed its desire to take steps to avoid overlap and to promote cooperation. To that end, it endorsed the proposal of the establishment of a Consultation Group to manage cooperation between the two Organizations. The Delegation also stated that the advice given by WIPO to developing countries should not be subjected to any condition.

40. The Delegation of Brazil stated that TRIPS had become an obligatory common denominator and would be a future reference point for intellectual property protection. The Delegation stated that WIPO had a mandate to address all areas of intellectual property protection. The first point to consider in this discussion was the conceptual element of the relationship between WIPO and WTO, taking into account the fact that WTO was still under the process of formation and did not yet exist. The Delegation considered that future negotiations with respect to the development of legislation would not take place at WTO, whose task in connection with the TRIPS Agreement was only to administer it now that the negotiations were over, and that future changes in international standards for intellectual property protection should be approved at WIPO, which had a continuous negotiating role. Concerning cooperation between the two Organizations, the Delegation pointed out that countries which were members of both Organizations constituted a large majority in either Organization and that this would become even more true in the future. However, specific elements of cooperation would have to be dealt with in the near term. The Delegation favored the establishment of a Consultation Group before WTO was formed. The Delegation considered that technical cooperation should continue to be provided by WIPO but felt it necessary to establish a permanent body of cooperation so as to ensure that the advice given by WIPO remained in line with the views of the TRIPS Council (not the Secretariat of WTO). The Delegation agreed with all of the proposals of the Director General set forth in document WO/GA/XV/2 and was opposed to the proposal to alter paragraph 18 of that document. The Delegation noted that Article 3 of the WIPO Convention provided that one of the objectives of the Organization was "to promote the protection of intellectual property throughout the world through cooperation among States and, where appropriate, in collaboration with any other international organization." Article 4(v) of the same Convention provided that WIPO "shall offer its cooperation to States requesting legal-technical assistance in the field of intellectual property," and item (iii) of that Article stated that WIPO "may agree to assume, or participate in, the administration of any other international agreement designed to promote the protection of intellectual property." The Delegation opposed submitting the WIPO Convention to any conditionality. The Delegation supported the proposal of the Director General to establish a mechanism as soon as possible and recognized that such a proposal would need the approval of both Organizations. It did not believe that it would be necessary to wait for the formation of WTO in order to establish such a Group, because the Group could be established under the authority of GATT. The Delegation concluded by endorsing the proposals of the African Group and of the Delegation of Chile.

41. The Delegation of Uruguay stated that it was important to separate two distinct issues: first, cooperation between the Secretariat of WIPO and the member States of WIPO, which was addressed by paragraph 18 of document WO/GA/XV/2; and second, agreements between WIPO and WTO. The Delegation

opposed the amendment proposed by the Delegation of the Netherlands, which would undermine cooperation between the Secretariat of WIPO and the WIPO Member States which were developing countries. With respect to cooperation between WIPO and WTO, the Delegation perceived the need to set up reliable channels for cooperation, such as those based on paragraphs 9 and 15 of document WO/GA/XV/2, and stated that it would be appropriate for WIPO to work in that direction. The Delegation endorsed paragraph 19 of document WO/GA/XV/2 and supported the proposal of the Director General to establish a joint Consultation Group, which it considered should be established now. It also supported the proposal of the Delegation of Chile, which would enable WIPO to prepare internally for the work that it would need to do in the future with respect to the TRIPS Agreement.

42. The Delegation of India stated its support of paragraphs 9 and 18 of document WO/GA/XV/2. It expressed its conviction that, in the aftermath of the GATT negotiations, one of the extremely important areas in which developing countries would require expert advice was the area of intellectual property protection. The Delegation understood that many countries had since already approached the International Bureau to advise them on their national intellectual property laws in order to comply with their obligations under the TRIPS Agreement. The consensus decision of the Permanent Committee for Development Cooperation Related to Industrial Property taken in June 1994 clearly reflected the intention of the countries to approach WIPO to respond to such requests. This decision should be adopted in the General Assembly as the consensus of the member States of WIPO. The International Bureau of WIPO should be at the disposal of developing countries on matters related to intellectual property questions. The role of WIPO in rendering advice to countries and undertaking the studies referred to in paragraph 18 of document WO/GA/XV/2 should remain unqualified. That could not be a matter of consent of the WTO or any other body. It was not necessary to emphasize the importance that the Delegation attached to having the closest cooperation established between WIPO and the future WTO, in which member States could be involved. WIPO and WTO with other concerned organizations should establish a mutually supportive relationship. On reading the agenda papers relating to this item, one got the impression that WIPO intended to await the initiative of the WTO. The Delegation of India felt that this might not be wholly wise. Development of an acceptable and working relationship between WIPO and WTO would be vitally important for ensuring the continued preeminence of WIPO in intellectual property matters. Therefore, the Delegation advised that WIPO should take the initiative as soon as WTO came into existence, in order to work out an effective relationship, particularly in matters concerning intellectual property protection. Finally, the Delegation supported the proposal to establish an ad hoc working group open to all member States of WIPO, in order to advise the Director General in his contacts with the competent organs of GATT/WTO to discuss matters concerning possible future cooperation and to consider the setting up of an informal WIPO/GATT Consultation Group on all matters of possible future cooperation.

43. After consultations with a number of delegations, the Director General presented an informal written proposal in two parts. Part I, based on the Director General's oral proposal made earlier during the session and on the proposal of the Delegation of Chile, provided for the establishment of an ad hoc working party open to all members of WIPO (1) to consider a proposal for the possible establishment of an ad hoc, informal WIPO-GATT Consultation Group on all matters concerning which possible cooperation between WIPO and WTO was mentioned in the WTO or TRIPS Agreements or seemed to be otherwise

desirable, and (2) to assist the Director General of WIPO in his contacts with the competent organs of GATT/WTO. Part II of the Director General's informal written proposal provided an alternative to the proposal of the Delegation of the Netherlands and proposed the following addition to paragraph 18 of document WO/GA/XV/2: ", recognizing that the competence for the official interpretation of the TRIPS Agreement does not lie with WIPO." The Director General explained that Part II of the proposal would mean that, if a country found itself in a controversy about whether or not its laws were in conformance with the TRIPS Agreement, that country could not conclusively justify the non-conformance by saying that the law was based on the advice of WIPO. The Director General added that, in the practice of WIPO, the International Bureau had no competence to give an official interpretation of any treaties, including even the treaties administered by WIPO, in particular, the Paris Convention or the Berne Convention.

44. The Delegation of Finland supported the proposal of the Director General.

45. The Delegation of the United Kingdom stated that its Delegation and the other Delegations of Group B were desirous that a mutually supportive relationship as stated in paragraph 9 of document WO/GA/XV/2 be established as soon as possible. The Delegation declared that the Group B countries supported the ideas contained in the proposal of the Director General.

46. The Delegation of India requested clarification regarding item I(1) of the proposal, asking whether the "proposal for the possible establishment of an ad hoc, informal WIPO-GATT Consultation Group" referred to therein would be a proposal of the Director General or a proposal of GATT/WTO. The Director General responded that the proposal would be made by the Director General of WIPO and that the advice of GATT/WTO would be sought at a later stage, if desired.

47. The Delegation of Libya requested a clarification concerning item I of the proposal, asking whether the joint WIPO-GATT Consultation Group would include non-GATT members. The Director General responded that any future joint group, if formed, would include all members of WIPO whether or not they were also members of GATT.

48. After further consultations, the Delegation of Mexico presented an informal written proposal from the Latin American Group. The proposal was in two parts: Part I started by expressing the desire of the WIPO General Assembly to establish a mutually supportive relationship between WIPO and WTO and provided for a decision of that Assembly to establish an ad hoc working group open to all Member States of WIPO. The working group would have three tasks: (i) to advise and cooperate with the Director General of WIPO in his contacts with the competent organs of GATT/WTO; (ii) to discuss matters concerning possible cooperation between WIPO and WTO; and (iii) to consider the establishment of an ad hoc informal WIPO/GATT Consultation Group in all matters concerning possible cooperation between WIPO and WTO. Part II of the proposal was to delete Part II of the Director General's proposal. The Delegation explained that the substance contained in Part II of the Director General's proposal was repetitive and unnecessary in light of paragraph 14 of document WO/GA/XV/2.

49. The Director General proposed that the General Assembly discuss first Part I of the proposal of the Latin American Group and then Part II, and noted that Part I was essentially the same as the proposal earlier put forward by him and was, in his view, better in some respects.

50. The Chairman opened the discussion on Part I of the proposal of the Latin American Group.

51. The Delegation of Zimbabwe, speaking on behalf of the African Group, expressed the support of that Group for Part I of the proposal of the Latin American Group.

52. The Delegation of the United Kingdom indicated that Part I of the proposal of the Latin American Group met the needs and concerns of its own Delegation and believed that it met the needs and concerns of the other Group B countries as well.

53. The Delegation of Brunei Darussalam expressed the support of the delegations from the ASEAN countries for Part I of the proposal of the Latin American Group.

54. The Delegation of India expressed its support for Part I of the proposal of the Latin American Group.

55. The Delegation of China expressed its support for the Director General's proposal.

56. The Russian Federation expressed its support for Part I of the proposal of the Latin American Group.

57. The Chairman concluded that Part I of the proposal of the Latin American Group was adopted, and opened the discussion on Part II of that proposal.

58. The Delegation of Brunei Darussalam, speaking on behalf of the ASEAN Nations, supported Part II of the proposal of the Latin American Group. It maintained that there was no need for the statement in Part II of the Director General's proposal, because it was the prerogative of WIPO, under Article 4 of the WIPO Convention, to offer legal-technical assistance to its member countries.

59. The Delegation of Zimbabwe, speaking on behalf of the African Group, expressed the view that the statement in Part II of the Director General's proposal was redundant and stated the obvious, namely that the competence for offering an official interpretation of an agreement lay with the body establishing that agreement, unless otherwise stated in the agreement itself. Consequently, the African Group was in favor of the deletion of Part II of the Director General's proposal.

60. The Delegation of Germany expressed its desire to reach a compromise and suggested that the substance of the statement contained in Part II of the Director General's proposal be included in the report of the present session of the General Assembly as reflecting a consensus, but without being part of the formal decision of that Assembly.

61. The Director General suggested that the proposal of the Latin American Group be adopted and that a statement along the following lines appear in the report: "It was noted that, as was the practice in WIPO, any such advice or studies would not constitute an official interpretation of any international agreement."

62. The Delegation of the United Kingdom stated that it was important for the Group B countries to include an indication that advice, interpretations and studies of international treaties were not necessarily authoritative or definitive. It observed that it was useful to state the obvious at times, in order to avoid doubt. On its own behalf, the Delegation expressed support for the last suggestion of the Director General and added that the statement in the report should be closely associated with the conclusion of the Assembly.

63. The Director General clarified his suggestion by stating that the decision paragraph of the report of the present session of the General Assembly would contain three parts: (i) the contents of paragraph 9 of document WO/GA/XV/2; (ii) the decision contained in Part I of the proposal of the Latin American Group; and (iii) the decision proposed in paragraph 18 of document WO/GA/XV/2. Immediately following the decision paragraph, there would be a new paragraph of the report which would contain the sentence that the Director General had suggested, on the basis of the proposal of the Delegation of Germany, in his last intervention.

64. The Delegation of India expressed itself in favor of omitting the addition contained in Part II of the Director General's informal written proposal. It supported the latest suggestion of the Director General as just clarified, and indicated that inclusion of the words "official interpretation of any international agreement" without any specific reference to the TRIPS Agreement was particularly important.

65. The Delegation of Zimbabwe expressed the support of the African Group for the latest suggestion of the Director General.

66. The Delegation of Brazil expressed its support for the latest suggestion of the Director General, subject to any further consultations, if required, within the Latin American Group.

67. The Delegation of Brunei Darussalam expressed its support for the latest suggestion of the Director General.

68. The Delegation of Mexico expressed the support of the Latin American Group for the latest suggestion of the Director General.

69. The Delegation of the United States of America, after requesting and receiving clarification that the decision paragraph would be in three parts and would be followed immediately by the paragraph suggested by the Director General, said that it could accept the latest suggestion of the Director General.

70. The Delegation of the Netherlands expressed its support for the latest suggestion of the Director General.

71. The Delegation of Canada expressed its support for the latest suggestion of the Director General.

72. The Delegation of the Republic of Korea expressed its support for the latest suggestion of the Director General.

73. The Delegation of Japan expressed its support for the latest suggestion of the Director General.

74. In conclusion, the General Assembly adopted the following Resolution:

"1. Having noted that the preamble of the Agreement on Trade-Related Aspects of Intellectual Property Rights states that the Members of the World Trade Organization desire to establish a mutually supportive relationship between the World Trade Organization and the World Intellectual Property Organization, the WIPO General Assembly hereby also expresses the desire to establish a mutually supportive relationship between the World Intellectual Property Organization and the World Trade Organization.

"2. In accordance with its desire to establish a mutually supportive relationship between the World Intellectual Property Organization and the World Trade Organization, the WIPO General Assembly decides to establish an ad hoc working group open to all Member States of WIPO:

(i) to advise and cooperate with the Director General of WIPO in his contacts with the competent organs of GATT/WTO;

(ii) to discuss matters concerning possible cooperation between WIPO and WTO;

(iii) to consider the establishment of an ad hoc informal WIPO/GATT-WTO Consultation Group on all matters concerning possible cooperation between WIPO and WTO.

"3. The WIPO General Assembly decides that the International Bureau should be at the disposal of any State that expressly asks for advice on questions of compatibility of its existing or planned national intellectual property legislation not only with treaties administered by WIPO, but also with other international norms and trends, including the Agreement on Trade-Related Aspects of Intellectual Property Rights, and that the International Bureau should prepare studies on the implications of the said Agreement on the treaties administered by WIPO."

75. It was noted that, as was the practice in WIPO, any such advice or studies would not constitute an official interpretation of any international agreement.

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