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Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

Twentieth Session
Geneva, February 14 to 22, 2012

REPORT
Adopted by the Committee

1. Convened by the Director General of WIPO, the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore ("the Committee" or "IGC") held its Twentieth Session in Geneva, from February 14 to 22, 2012.

2. The following States were represented: Afghanistan, Algeria, Angola, Argentina, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Barbados, Belgium, Bolivia (Plurinational State of), Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Cameroon, Canada, Chile, China, Colombia, Congo, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Democratic People's Republic of Korea, Denmark, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Georgia, Germany, Greece, Haiti, Holy See, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Kuwait, Kyrgyzstan, Latvia, Lebanon, Libya, Lithuania, Malaysia, Morocco, Mexico, Monaco, Mozambique, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Senegal, Serbia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Trinidad and Tobago, Togo, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Venezuela (Bolivarian Republic of), Viet Nam, Zambia and Zimbabwe (111). The European Union was also represented as a member of the Committee.

3. The following intergovernmental organizations ("IGOs") took part as observers: African Regional IP Organization (ARIPO), African Union (AU), Eurasian Patent Organization (EAPO), European Patent Office (EPO), Food and Agriculture Organization of the United Nations (FAO), International Organization of La Francophonie (OIF), International Union for the Protection of New Varieties of Plants (UPOV), Patent Office of the Cooperation Council for the Arab States of the Gulf (GCC), Secretariat of the Convention on Biological Diversity (SCBD), South Centre, United Nations Conference on Trade and Development (UNCTAD), United Nations Environment Programme (UNEP), World Trade Organization (WTO) (13).

4. Representatives of the following non-governmental organizations ("NGOs") took part as observers: *Akuaipa Waimakat*; American IP Law Association (AIPLA); Assembly of Armenians of Western Armenia; Assembly of First Nations (AFN); B.I.S.O.N. International; Center for Studies and Research in Law of the Intangible (CERDI); *Central sanitaire suisse romande*; Centre for International Intellectual Property Studies (CEIPI); Civil Society Coalition (CSC); *Comisión Jurídica para el Autodesarollo de los Pueblos Originarios Andinos (CAPAJ)*; Coordination of African Human Rights NGOs (CONGAF); CropLife International; Culture of Afro-Indigenous Solidarity (*Afro-Indigène*); European Law Students' Association (ELSA International); Foundation for Aboriginal and Islander Research Action (FAIRA); Friends World Committee for Consultation (FWCC); Health and Environment Program; Ibero-Latin-American Federation of Performers (FILAIE); Indian Council of South America (CISA); Indian Movement "*Tupaj Amaru*"; Indigenous Peoples' Center for Documentation, Research and Information (doCip); Indigenous Peoples Council on Biocolonialism (IPCB); *Institut du développement durable et des relations internationales* (IDDRI); *Instituto Indígena Brasileiro para Propriedade Intelectual* (INBRAPI); Intellectual Property Owners Association (IPO); International Association for the Protection of Intellectual Property (AIPPI); International Association of Scientific, Technical and Medical Publishers (STM); International Center for Trade and Sustainable Development (ICTSD); International Chamber of Commerce (ICC); International Federation of Pharmaceutical Manufacturers Associations (IFPMA); International Indian Treaty Council (IITC); International Seed Federation (ISF); International Trademark Association (INTA); International Video Federation (IVF); Knowledge Ecology International, Inc. (KEI); Nepal Indigenous Nationalities Preservation Association (NINPA); Nigeria Natural Medicine Development Agency (NNMDA); Pacific Islands Museums Association (PIMA); Russian Association of Indigenous Peoples of the North (RAIPON); The International Committee for the

Indigenous Peoples of the Americas (INCOMINDIOS); The World Conservation Union (IUCN); Tin-Hinane; Traditions for Tomorrow; World Trade Institute (WTI) (44).

5. The list of participants is annexed to this report as Annex I.

6. Document WIPO/GRTKF/IC/20/INF/2 provided an overview of the documents distributed for the Twentieth Session.

7. The Secretariat noted the interventions made and the proceedings of the session were communicated and recorded on webcast. This report summarizes the discussions and provides the essence of interventions, without reflecting all the observations made in detail or necessarily following the chronological order of interventions. Certain delegations handed opening statements in to the Secretariat, which are included in this report.

8. Mr. Wend Wendland of WIPO was Secretary to the Twentieth Session of the IGC.

AGENDA ITEM 1: OPENING OF THE SESSION

The Director General, Mr. Francis Gurry, opened the session by welcoming participants to IGC 20, being the first session since the renewal of the mandate of the IGC by the WIPO General Assembly, at its meeting in September 2011, which foresaw that the present session would be devoted entirely to the issue of genetic resources (GRs) and intellectual property (IP). In view of the importance of the subject matter, it had been decided to devote eight days to the present meeting. He said that the WIPO General Assembly had set out a clearly defined work plan which foresaw three sessions of the IGC in 2012. There were two other sessions that would take place in 2012, namely a session in April devoted exclusively to traditional knowledge (TK) and a session in July devoted to traditional cultural expressions (TCEs). He further recalled the mandate set by the WIPO General Assembly, stating that it was for the Committee to present the text(s) of an international legal instrument(s) to the WIPO General Assembly when it meets in October 2012, and that "the General Assembly in 2012 will take stock of and consider the text or texts, the progress made and decide on convening a Diplomatic Conference and will consider the need for additional meetings taking into account the budgetary process." He said that the subject matter for this particular session concerned very complex and sensitive issues that had been discussed over many years and in many different fora and the Director General urged the participants to be as constructive and cordial as possible. He further extended a special welcome and thanks to the indigenous experts present at the meeting and, in this regard, thanked, in particular, the Governments of South Africa and Australia for their generous contributions to the WIPO Voluntary Fund for Accredited Indigenous and Local Communities which had facilitated the presence of six indigenous experts at the session and enabled the Committee to foresee the continued participation of indigenous experts in the sessions of the IGC in 2012.

AGENDA ITEM 2: ELECTION OF OFFICERS

Decision on Agenda Item 2:
9. *Upon the proposal of the Delegation of Paraguay, on behalf of the Group of Countries of Latin America and the Caribbean, seconded by the Delegation of the United States of America on behalf of Group B, and supported by the Delegation of Egypt on behalf of the African Group, the Delegation of*

Hungary on behalf of the Group of Central European and Baltic States and the Delegation of Algeria on behalf of the Development Agenda Group, the Committee elected as its Chair, His Excellency Ambassador Wayne McCook of Jamaica, unanimously and by acclamation, for the 2012-2013 biennium. Upon the proposal of the Delegation of the United States of America, on behalf of Group B, seconded by the Delegation of Egypt on behalf of the African Group and supported by Hungary on behalf of the Central European and Baltic States, the Committee elected as its Vice-Chair, for the same period, Ms. Alexandra Grazioli of Switzerland. The Committee decided to elect a second Vice-Chair at its next Session.

10. The Chair, His Excellency Ambassador Wayne McCook of Jamaica, upon his election, thanked the Director General for having commenced the work of the Committee in a direct and efficient manner. He also thanked the delegations that had proposed him and placed confidence in his Delegation to undertake this important responsibility and further expressed his commitment to all delegations that it would honor the commitment to serve the Committee as Chair. He also recognized the observers, in particular representatives of indigenous communities who had a particular interest in the subject matter before the Committee for deliberation. In his remarks, he noted that the IGC had consulted over many years and was presently at an important stage in its work. The Committee had a mandate, as had been alluded to by the Director General, which set out clearly the work before the Committee. In this regard, he recognized the tremendous contribution of his predecessor, His Excellency Ambassador Philip Owade of Kenya. On organizational matters, the Chair proposed to meet with regional coordinators plus one other person, to discuss the session's work program and methodology in advance of his further reporting on that aspect to the plenary to help advance the work in the most effective manner. He reminded the participants that the session was a working, negotiating session and he hoped for a constructive working atmosphere. To this end, no opening statements had been provided for in the Agenda. Regional groups or states wishing to make general opening statements were advised to hand them in to the Secretariat and they would be reflected in the report. To make the most effective use of time, he stressed the need for punctuality and delegations or groups wishing to meet during the official hours of the meeting might wish to do so. However, the sessions would start on time. In a similar vain, there would be no tea or coffee breaks or as such. It was his hope that the Committee would use all of the time allocated to it as fully as possible. As indicated in the mandate provided by the WIPO General Assembly, the Committee would also meet on Saturday, February 18, 2012. He once again acknowledged the importance and value of the representatives of indigenous communities present at the session. He, however, reminded participants that insofar as drafting proposals were concerned, observers' proposals could remain in the text only if supported by a Member State. On that understanding, he would enable observers to make statements and proposals at all times and they could do so interspersed with Member State proposals. Further, Member States and observers were strongly encouraged to interact with each other informally as that increased the chances that States would be aware of, understand and perhaps support observer proposals. He also intended to meet with the indigenous representatives during the course of the week. He advised that the IGC should reach an agreed decision on each agenda item as it went along. On the last day, Wednesday, February 22, 2012, the decisions, as already agreed, would be circulated for formal confirmation by the IGC. The report of the

session would be prepared after the session and circulated to all delegations for comment. As IGC documents, including the full reports, were made available in all six official languages of the United Nations, at the next session of the IGC, which was only seven weeks away, the report of the present session would be presented in all six languages for adoption at the Twenty-Second Session of the IGC, which was taking place from July 9 to 13, 2012.

AGENDA ITEM 3: ADOPTION OF THE AGENDA

11. The Chair reaffirmed that any delegations which wished to submit written opening statements may do so and indicated that these would be reflected in the session's report. A few delegations availed themselves of this opportunity and submitted the following written statements. Other general statements which related to specific agenda items were also handed in and these are reported on in this report under those agenda items.

12. The Delegation of Brazil congratulated the Chair on his election, and expressed its pleasure in seeing a representative of the GRULAC presiding over the work of the IGC. It was confident that under the Chair's stewardship the present session could achieve substantive results. It also congratulated the outgoing Chair, Ambassador Owade, for all the work accomplished during the last biennium, noting that it had taken careful note of the report prepared by Ambassador Owade. The Delegation said that the Committee had been discussing Objectives and Principles related to the treatment of issues regarding the protection of GRs in the IP system. These discussions had allowed for a better comprehension of Member States' positions and possible points of convergence. However, as pointed out by the Development Agenda Group (DAG), and in order to fulfill the recently renewed mandate, an additional step and move to text-based negotiations was required. It said that concrete, operational proposals for a future international instrument on that subject should be discussed. The Like-Minded Countries, of which Brazil was part, provided a significant contribution to the Committee on the subject. It urged the Committee to strive for a consolidated, single working text, which would serve as a basis for future negotiations of the IGC on GRs and said that its Delegation recognized that there were still divergences regarding how to make the IP system supportive of the international commitments in the field of access and benefit sharing (ABS) relative to GRs and associated TK. However, these divergences could not prevent the IGC from effectively fulfilling the mandate. Negotiations being carried out in the IGC were instrumental in the efforts to fight against misappropriation of GRs and associated TK, which directly affected traditional communities and developing countries. It considered that it was high time to effectively make progress in the negotiations, and that depended on a coordinated political effort among Member States. The subject had been discussed for more than a decade, not only at WIPO, but also in other fora. Experts had already provided technical information and it was clear that only effective mechanisms, such as mandatory disclosure requirements of the origin of the GRs, its derivatives and/or associated TK, and evidence of PIC, could prevent relevant authorities from granting patents that violated international norms on ABS. It stressed that appropriate sanctions had to be part of these mechanisms, in order to promote enforcement of the rules. When ABS was disrespected, it was at the expense of the rights of traditional communities and States that held GRs. In its view, an international instrument on GRs should cover two objectives: (i) to make the IP system supportive of the international provisions on ABS, consolidating it as a checkpoint of compliance with ABS requirements; and (ii) to ensure that patent examination takes due account of prior art and the requirements of novelty and inventiveness, in order to prevent erroneous patents from being granted. It considered that, by covering those objectives, WIPO could contribute to an effective implementation, in the IP system, of the provisions of the Nagoya Protocol. Text-based work should be undertaken so that those two objectives would be clearly distinguished, especially in operational articles. In conclusion, the Delegation affirmed its commitment to participate constructively in the Committee's discussions, so as to contribute towards a productive and successful outcome.

13. The Delegation of Ethiopia congratulated the Chair and the Officers elected at the session and affirmed its full support and cooperation. It also expressed its gratitude to the Director General, Mr. Francis Gurry, and the Secretariat for their support in this norm-setting process and its support for the proposals submitted by the African Group. The Delegation said that it attached great importance to the new mandate of the IGC and stressed the need for tangible progress in a timely manner. The protection of GRs, TK and TCEs, as assets with direct impact on economic, cultural and social development of all countries, particularly developing countries, was of paramount importance. It stated that WIPO had taken a significant step forward in recognizing the importance and relevance of protecting GRs, TK, and TCEs through the establishment of the IGC. Since its establishment, the Committee had undertaken substantive discussions and produced valuable working documents, which had led to the development of single draft text. The Delegation said that Ethiopia was a culturally, ethnically and linguistically diverse nation with long-standing traditions and rich biodiversity and it, therefore, firmly believed that it was imperative for that process to lead to the adoption of globally binding agreement on the protection and utilization of GRs and associated TK. It also observed that the draft proposals tabled by different regional groups were geared to facilitate and expedite the effective system of protection of GRs associated with TK from misappropriation. The conclusion of the negotiations on the text of the international legal instruments would end the current imbalance in the global IP protection system. It was of the view that the protection of GRs should comprise the various elements of protection: principles of mandatory disclosure, PIC, the utilization of GRs, derivatives and the TK associated with GRS and fair and equitable benefit-sharing. These elements should be considered as pillars of discussions in developing binding international regimes for protection and utilization of GRs and associated knowledge. In this respect, the relevant international instruments such as the CBD, the Nagoya Protocol on Access to GRs and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (Nagoya Protocol), the International Treaty on Plant GRs for Food and Agriculture (ITPGRFA), should be given due regard in the development of norms. The Delegation further welcomed the new mandate for the IGC which gave new momentum to the Committee and stood ready to constructively engage in the work of the Committee to ensure that the texts were ready by 2012 for consideration by the WIPO General Assembly, for the purpose of adopting binding norms.

14. The representative of Tupaj Amaru said that that Committee should examine GRs in light of the environmental crisis, climate change, and the food and financial crisis threatening the survival of humanity. The capitalist system was the great predator of genetic and biological resources which constituted the material basis of humanity. GRs needed to be protected because the diversity of GRs constituted the material and spiritual source for the survival of humanity. However, the western world and its powerful multinational companies continued to plunder and destroy biological resources, which were the foundation of life forms on Mother Earth. The CBD recognized the close and traditional dependence of many indigenous and local communities on biological resources, and the desirability of sharing equitably benefits arising from the use of TK relevant to the conservation of biological diversity and the sustainable use of its components. GRs and TK constituted the intrinsic heritage of indigenous nations and local communities, and formed part of the common heritage of humanity. Consequently, he said that the Committee should examine genetic material not only in terms of the market gains and profitability, and investments between suppliers and receivers, but in the spirit of their conservation, protection and sustainable development for the survival of humanity. Towards infinite economic growth, genetic and natural resources were destroyed with complete impunity. By contrast, the owners of such resources had been stripped, without their prior consent, of their lands, resources, knowledge and living traditions, and were deprived of the right to fair distribution of the benefits deriving from the use and misuse of their age-old wisdom.

Decision on Agenda Item 3:
15. *The Chair submitted the draft agenda circulated as WIPO/GRTKF/IC/20/1 Prov. 2 for adoption and it was adopted.*

AGENDA ITEM 4: ADOPTION OF THE REPORT OF THE NINETEENTH SESSION

Decision on Agenda Item 4:
16. *The Chair submitted the revised draft report of the Nineteenth Session of the Committee (WIPO/GRTKF/IC/19/12 Prov. 2) for adoption and, subject to certain amendments, it was adopted.*

AGENDA ITEM 5: ACCREDITATION OF CERTAIN ORGANIZATIONS

Decision on Agenda Item 5:
17. *The Committee unanimously approved accreditation of all the organizations listed in the Annex to document WIPO/GRTKF/IC/20/2 as ad hoc observers, namely: ADJMOR; Association for Integration and Sustainable Development in Burundi (Association pour l'Intégration et le développement durable au Burundi) (AIDB); Association of Kabyle Women (Association de femmes de Kabylie); Association of Kunas United for Mother Earth (Asociación Kunas unidos por Napguana) (KUNA); Civil Society Organizations' Network for Sustainable Agriculture and Environment in East Africa (CISONET); Christ is calling you (Cristo te llama); Committee for the Promotion and Protection of Human Rights (Comitato per la promozione e protezione dei diritti umani); Copyright Agency Limited; Institute for European Studies at the Vrije Universiteit Brussel; Kabylia for the Environment (Kabylia pour l'environnement) (AKE); Massai Experience; Ontario Federation on Indian Friendship Centres (OFIFC); and Punto Verde Association (Asociación Punto Verde).*

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

18. The Chair introduced documents WIPO/GRTKF/IC/20/3 and WIPO/GRTKF/IC/20/INF/5. He recalled the decision by the WIPO General Assembly to create a Voluntary Fund for Accredited Indigenous and Local Communities (the Fund) to support the participation of indigenous and local representatives of accredited NGOs and noted that the Fund had operated successfully and was widely regarded as transparent and efficient. He acknowledged the significant contribution made by the Delegation of Australia which had enabled the Fund to operate in respect of IGC 20, IGC 21 and IGC 22. Further, he noted that the second contribution last year by the Delegation of South Africa was also critical. He thanked those Delegations. The Chair advised that the Fund would, however, run short of funds after IGC 22 and there would be no funds to cover IGC 23 and beyond, which would be a great shame and could have the effect of harming the credibility and quality of the process. He reminded the Committee that the Secretariat had initiated a fundraising drive and a "Case for Support" was attached to document WIPO/GRTKF/IC/20/3. States were asked to make pledges to contribute to the Fund and the Chair requested them to seek authority to do so from capital, if needed. He said that he would revert to this question during the week.

19. In accordance with the decision of the IGC at its seventh session (WIPO/GRTKF/IC/7/15, paragraph 63) IGC 20 was preceded by a half-day panel of presentations, chaired by Mr. Stuart Wuttke, General Counsel, Assembly of First Nations, Ottawa, Canada. The presentations were made according to the program (WIPO/GRTKF/IC/20/INF/6). The Chair of the Panel submitted a written report on the Panel to the WIPO Secretariat which is contained below in the form received:

> "The following indigenous panelists discussed the theme "IP, GRs and Associated TK: Community Perspectives on Access and Benefit-Sharing": Mr. Maui Solomon, General Manager, *Hokotehi Moriori* Trust, Porirua, New Zealand; Dr. Sreedharan Nair Rajasekharan, Scientist G (Director Grade), Head, Division of Ethnomedicine and Ethnopharmacology, Tropical Botanic Garden and Research Institute, Kerala, India; and Mr. Alejandro Argumedo, Associate Director, *Asociatión ANDES*, Cusco, Peru.
>
> Mr. Maui Solomon, the keynote speaker, discussed non-commercial and commercial ventures with the *Moriori* people. The non-commercial case-study involved the *kopi* tree that had been used by the ancestors of the *Moriori* for a number of purposes, including nutrition, shelter and the carving images on living trees, which were of considerable spiritual significance to the people. As there were only about 150 of the carved *kopi* trees left, their preservation was of high priority to *Moriori* people. As a result, a non-commercial revival research partnership was established with the University of Otago. The relationship was based on respect for the *Moriori* culture and ethical standards created by the *Moriori*. The revival project consisted of digital photography of the *kopi* tree images, removal of dead trees, preservation of the carvings and the creation of a database, as well as the revival of the art of tree carving and the branding of the *Rakau Momori* images as a distinctive form of IP. He stated that the relationship with the University of Otago was a positive one with both parties benefiting from the relationship. Mr. Solomon mentioned the blue cod as an example of a commercial venture based on a benefit sharing agreement. The *Moriori* people had used the blue cod for sustenance, nutrition and medicinal purposes, and the TK utilized in the development of *Moriori* medicines could be exploited commercially. In developing a relationship with a commercial partner, the *Moriori* had agreed to provide their TK to industrial researchers with the hope of finding innovative ways to extract medicinal properties of the blue cod oil. If a new extraction process were to be developed under the project, the partnership required parties to be assigned various IP rights, as well as ownership of bioactive compounds. In addition, he noted that the *Moriori* fishers supplied the project with blue

cod, providing the *Moriori* community with spin-off benefits. In highlighting the benefits of the projects to the *Moriori* people, he referred to the database which provided a thorough recording of TK, elder interviews, recording of ancestral grave sites, and models for land use and resource management which would be accessible to future generations. In conclusion, Mr. Solomon encouraged WIPO to take note of the lessons learnt from the *Moriori*, such as the crucial role of early engagement, building trust between parties as an essential element for long-term relations, the short and long-term benefits of establishing a relationship, and finally benefits in byproducts as an ethical function of benefit-sharing.

Dr. Sreedharan Nair Rajasekharan presented a critical appraisal of the Kani model of ABS. At the outset, Dr. Rajasekharan stated the Kani model had been developed before the CBD and the Nagoya Protocol and, as a result, was somewhat limited in comparison. Nevertheless, the Kani model addressed the value of benefit-sharing in bio-prospecting GRs and TK of indigenous peoples. Drawing on a unique ABS agreement, the monetary value of plant genetic information from the TK holders could be assessed and compensated. He stated that the Kani tribe possessed unknown information on the medicinal and nutritional value of a large number of wild plants in India. He briefly provided details on the ABS agreement, as well as key milestones of the project. He said that added value measures, such as the employment of tribal members, capacity-building and technology-transfer had been carried throughout the project. The model demonstrated that indigenous communities could be empowered to preserve and protect their TK and at the same time market their innovations in the global economy. Describing the shortcomings of the Kani model, he referred to the lack of awareness among tribal members of ABS terms, difficulties associated with not obtaining the free prior and informed consent of tribal members and inadequate compensation. In addition, he discussed the lack of protection in terms of bio-piracy and trademark law and the need for patent officers to check international patent registries. Dr. Rajasekharan concluded that the project had not included tribal knowledge holders as co-inventors which should have been the case.

Mr. Alejandro Argumedo provided a bio-cultural heritage case study on the potato park, which had involved the repatriation of native potatoes traditionally used by the indigenous peoples of Peru. The case study served as a good example of a non-monetary benefit-sharing agreement. Referring to the agreement between the International Potato Centre and the indigenous peoples of Peru, he stated that the indigenous peoples had obtained over 100 varieties of potato seeds. In return, they conserved the repatriated potatoes in a 15,000 hectare park, collectively owned by six indigenous communities, as a living library of potato diversity. He stated that the benefit-sharing agreement, which was the first of its kind, aimed to ensure that the control of GRs was kept and managed by indigenous people who were aware of the value of the plants. He noted that the agreement would not hamper collaborative research of scientists elsewhere. The economic benefits included sharing research results, participation in product development, access to *ex situ* databases, resource management, the registration of a trademark, tourism programs, as well as pharmaceutical and cosmetic production. Mr. Argumedo concluded that payments made to a trust fund were shared equitably between the parties."

20. The Advisory Board of the Fund met on February 16 and 17, 2012 to select a number of participants representing indigenous communities to receive funding for their participation at IGC 21.

21. Following the Advisory Board's deliberations, it proposed to the Director General of WIPO to reiterate the invitation to all funded participants to submit a structured and brief report about their own participation in the meeting for which they had been funded. Such report would be annexed to their application for due consideration by the Advisory Board, should those funded participants decide to reapply for funding.

Decision on Agenda Item 6:

22. *The Committee took note of documents WIPO/GRTKF/IC/20/3, WIPO/GRTKF/IC/20/INF/5 and WIPO/GRTKF/IC/20/INF/7.*

23. *The Committee strongly encouraged and called upon members of the Committee and all interested public or private entities to contribute to the WIPO Voluntary Fund for Accredited Indigenous and Local Communities.*

24. *The Chair proposed, and the Committee elected by acclamation, the following eight members of the Advisory Board to serve in an individual capacity: Mr. Clinton DENGATE, Executive Officer, International IP Section, Department of Foreign Affairs and Trade, Canberra, Australia; Mr. Mandixole MATROOS, Second Secretary, Permanent Mission of the Republic of South Africa, Geneva; Ms. Zoraida RODRIGUEZ MONTENEGRO, Legal Counselor, Permanent Mission of Panama, Geneva; Mrs. Maria ROJNEVSCHI, Director, IP Promotion and Publishing Department, State Agency on IP (AGEPI), Chisinau, Republic of Moldova; Mrs. Larisa SIMONOVA, Deputy Director, International Cooperation Department, Federal Service for IP (ROSPATENT), Moscow, Russian Federation; Mr. Estebancio CASTRO DIAZ, Consultant, International Indian Treaty Council (IITC), Panama City, Panama; Mr. Rodion SULYANDZIGA, First Vice-President, Russian Association of Indigenous Peoples of the North (RAIPON), Moscow, Russian Federation; Ms. Saoudata WALET ABOUBACRINE, President, Tin-Hinan, Ouagadougou, Burkina Faso. The Chair of the Committee nominated Ms. Alexandra GRAZIOLI, Vice-Chair of the Committee, to serve as Chair of the Advisory Board.*

AGENDA ITEM 7: GENETIC RESOURCES

25. The Chair stated that he had consulted with the representatives of groups on a working methodology and work program, and that he wished to set out the proposed working methodology and work program. He stated that the IGC should, under its mandate, undertake "text-based negotiations". The IGC had before it a number of documents, which included specific textual and other proposals, draft objectives and principles, and options for future work. Iin order to undertake "text-based negotiations", the IGC should move as quickly as possible to having a single document before it. Only then could the work of the IGC be focused and structured. Such a single document would initially include all proposals, draft objectives and principles, and options for future work. It should not leave any proposal, objective and principle or option out. In other words, such a single document should simply be a compilation of all existing proposals. He had been informed that previously the IGC had successfully used "facilitators" to compile and prepare documents for the IGC plenary and he would propose following a similar route. He could imagine two or three individuals - with expertise in that complex and technical subject matter and who had perhaps been facilitators before - to be facilitators. Their instructions would be clear and straightforward: they should compile, in a single document, the various ideas, proposals, and options set out in the documents already before the IGC, namely, WIPO/GRTKF/IC/20/4, WIPO/GRTKF/IC/20/5, WIPO/GRTKF/IC/20/6, WIPO/GRTKF/IC/20/INF/8, WIPO/GRTKF/IC/20/INF/9, WIPO/GRTKF/IC/20/INF/10; WIPO/GRTKF/IC/20/INF/11, WIPO/GRTKF/IC/20/INF/12. He would leave it to the facilitators to organize and structure the document as they thought best, but it should be what one regional representative had referred to as an "intelligent compilation". It should clearly set out and be so structured so as to facilitate the work of the plenary. He imagined that it could begin with objectives and principles from WIPO/GRTKF/IC/20/4 and other documents, and then address the various issues raised in WIPO/GRTKF/IC/20/5 and WIPO/GRTKF/IC/20/6. The other proposals from the European Union, Japan, Switzerland and the African Group would be fitted into the structure where they belonged. The facilitators would then bring the document back to the plenary, where it would be reviewed, discussed and amended or negotiated. At that stage, new text could be added if delegations so wished. Preferably, however, the IGC would move towards reducing rather than expanding the number of options and alternatives. It was important to stress the point that the facilitators had neither the mandate to remove any element in the documents he had mentioned, nor to add new text that was not already in the documents before the IGC. Their job was not to negotiate among themselves nor to seek to consolidate or converge existing proposals. Their role was simply to copy all proposals, objectives and principles, and options into a single document to provide a basis for the IGC's textual discussion. The policy discussion would take place in the plenary. There would be enough time for the IGC to discuss the entire single document from beginning to end. The text could be put up on the screen and amendments (deletions, additions, amendments to language) proposed by participants could be entered directly into the text. The drafting would, therefore, take place in full transparency and inclusively. He believed that the IGC had also in the past conducted such "live drafting", and the same procedure as before could be followed. The text, as it was by the end of the session, would be "work in progress" but would reflect the state of play at the end of the session. It would be noted by the IGC and transmitted to the WIPO General Assembly for its consideration. The text would not need to be adopted as such by IGC 20. The earlier documents would also remain on the table. In the interim, as the first step, he proposed an initial plenary discussion. That should be a structured and focused engagement addressing, in turn, the "objectives and principles" and then each of the sets of issues so usefully set out by the past Chair of the IGC, Ambassador Owade (in WIPO/GRTKF/IC/20/INF/4). He would propose discussing each option in turn; for example, A.1, A.2, etc. The opening plenary would allow earlier proposals to be introduced (or reintroduced as the case might be) and to be elaborated upon should their proponents so wish. He would welcome this as it would also assist the facilitators in their work. The opening plenary would guide and give shape to the work of the facilitators. No new textual proposals should be added at that initial stage - that could come

later once the IGC had the facilitators' single document. If so agreed, the facilitators would listen to that initial plenary discussion and, in the margins, work on the single document. Regarding the timing, he thought that there would be perhaps a session and a half or two sessions (i.e., four to six hours for those initial discussions), depending on how many delegations wished to take the floor. In summary, the initial plenary would commence right after the consultations among the groups and discussions would be continued for one or two sessions. He would expect the introduction of the single document into the plenary by the facilitators by Thursday morning (or sooner if possible). The rest of the session would discuss the single document. The Chair sought the delegations' indulgence on one matter. He fully understood and recognized the need for delegations to work in their respective UN languages. However, he would be grateful if delegations would proceed immediately to work on the single document when it became available in English. There would be interpretation and he would read out each paragraph so that it could be translated via the interpreters. The Chair then adjourned plenary to allow the groups to meet and agree on the proposed methodology and program.

26. The Delegation of Iran (Islamic Republic of), speaking on behalf of the Asian Group, hoped that under the Chair's able leadership, the IGC would be able to move forward in carrying out its mandate. The Delegation recalled the terms of the IGC's mandate as provided by the 2011 WIPO General Assembly. The Group was committed to contributing substantially to the fulfillment of that mandate. However, the IGC had unfortunately not been able to embark on text-based negotiations on GRs as mandated by the 2009 mandate. It welcomed the work program as approved by the WIPO General Assembly for IGC 20 which was to undertake text-based negotiations on GRs with a focus on considering options for a draft legal text, as detailed in WIPO/GRTKF/IF/19/7. In developing that text, the IGC should also carefully consider texts already submitted by Member States. The Group thought that the work program would expedite the work of the IGC on GRs. Since IGC 20 was the only dedicated session on GRs before the WIPO General Assembly in 2012, the method of work should be chosen in such a way to fulfill the mandate and ensure preparation of a text on GRs to the upcoming WIPO General Assembly so it could decide on convening a Diplomatic Conference. To achieve those objectives, the IGC should work on the basis of a single text and the Group supported the idea of having facilitators to prepare the text. That text should be compiled from the existing working documents. The key points from each document could be extracted and accommodated in the single text in the format of text of an international legal instrument. It would be helpful if the essential clusters for that instrument could be identified to guide the work of the IGC. Those clusters could include: preamble, beneficiaries, scope of protection, prior informed consent, remedies and sanctions, limitations and exceptions, and the relationship with other treaties. In addition, concepts contained in all draft objectives and principles documents should be taken into account in the consolidated text without emphasis on any particular working document. As for the negotiations on the Draft Objectives and Principles Relating to IP and GRs, the IGC could continue its work in parallel. That document contained important elements which could be incorporated in the preamble of the instrument and could provide the context for its interpretation. However, it was time to start the substantive negotiation on GRs and go beyond objectives and principles. This proposed method of work was in line with the suggestion of Ambassador Owade, the Chair of the IGC in 2010/2011. In his report, he had also outlined the importance of consolidating the various proposals on GRs into a single text to form the basis of text-based negotiations to be able to advance negotiations.

27. The Delegation of Paraguay, speaking on behalf of the Group of States of Latin America and the Caribbean (GRULAC), supported the Chair's proposal on compiling the various ideas and proposals in a single document. However, GRULAC was concerned that the structure might be ineffective and would lead to endless discussion which would be far from the substance. It supported the appointment of facilitators, particularly bearing in mind that they would not take decisions that could compromise the different positions of Member States. GRULAC thanked the Secretariat for the preparation of the documents and Mr. Francis Gurry for his continuing support. It made special mention of the outgoing Chair, Ambassador Owade

from Kenya, who had led the negotiations through a participatory process taking into account the interests and priorities of all Member States and other parties. It appreciated Ambassador Owade's report. It further noted that the work of the IGC was particularly important for the developing countries, particularly for Latin America and the Caribbean, especially considering the recommendations of the Development Agenda. GRULAC referred to the mandate of the IGC for the 2012-2013 biennium. It urged the Committee to make progress and to reach a greater consensus. It also recognized that, since the IGC was negotiating an international legal instrument on GRs, the process had to be inclusive and oriented toward members, taking into account different levels of development. Therefore, the IGC needed to consider all the working documents and come up with a text which addressed the concerns of the developing countries. The Group reiterated that the text had to recognize the sovereign rights of States over their biological resources, and had to ensure a clear and unequivocal respect and obligatory character of the special arrangements for ABS. It was essential that access was legal, and that the country of origin of GRs and the communities providing associated TK were involved in a fair and equitable way in benefit-sharing arising from the use of those resources. GRULAC believed that it was important to have further discussion on the concept of disclosure of origin. The final results should also reflect mutually agreed terms (MATs) on the basis of the PIC of the holders of biological resources and associated TK. Additional proposals, such as the establishment of databases on GRs and TK, could be studied in the future. The Group reiterated its full readiness to advance those discussions to reach concrete results that would help all countries.

28. The Delegation of the United States of America, speaking on behalf of Group B, agreed with the Chair's proposal, although Group B still had reservations as far as the structure was concerned. The Group believed that WIPO/GRTKF/IC/20/4 should serve as a basis for moving forward and the work should be done without prejudice to the outcome, leaving open the possibility of any new document that might come up during that session. Group B rejected the idea of working in treaty format or on any type of articles. It said that the IGC should focus more on options rather than articles.

29. The Delegation of Egypt, speaking on behalf of the African Group, supported the Chair's proposal in accordance with the following understanding: (1) the work of the facilitators should be in line with the mandate of the WIPO General Assembly and it should expedite the work on text-based negotiations and fulfill the IGC's responsibility to prepare a single legal text that could be presented to the WIPO General Assembly; (2) the plenary discussion should be based on three documents, namely WIPO/GRTKF/IC/20/4, WIPO/GRTKF/IC/20/5 and WIPO/GRTKF/IC/20/6; and (3) the Group had previously expressed detailed comments and views on the document on objectives and principles. Hopefully, that document would contribute to the preamble of the draft legal text.

30. The Delegation of China supported the Chair's proposal, which it believed was a practical way forward. It suggested that Member States should have enough time to study the text prepared by the facilitators before discussing that text in the plenary, taking into account that the text would be only in English. Only after a full study of the text could the IGC carry out a comprehensive discussion.

31. The Delegation of Hungary, speaking on behalf of the Group of Central Europe and Baltic States (CEBS), supported the Chair's proposal, bearing in mind the transparency requirement. It stressed that the IGC should not at that stage prejudge the format or the structure of the facilitators' work. It supported the reservation expressed by the United States of America, on behalf of Group B.

32. The Delegation of Algeria, speaking on behalf the Development Agenda Group (DAG), stressed the importance of the process for its Member States. The DAG supported the Chair's proposal. It expected that the facilitators would work towards achieving a legal text. As to the issue of timing, it insisted that the discussion had to be constructive and limited in time so as to

give more time for discussing the consolidated text which the facilitators were going to prepare. It recalled that the mandate IGC stated clearly that the IGC would have to work on a single legal text. The text at the end of IGC 20 should allow the WIPO General Assembly in 2012 to make a decision on how and when to convene a Diplomatic Conference.

33. The Chair thanked the Delegations for their constructive interventions. He proposed that Ian Goss from Australia, Tom Suchanandan from South Africa and Ms. Chandni Raina from India be the facilitators. He believed that there was broad agreement that the discussion could be guided by Ambassador Owade's generous contribution of a roadmap. In that regard, general discussion in initial plenary could be comprised of three elements: (1) objectives and principles; (2) defensive protection of GRs; and (3) the consistency and synergy between the IP system and the CBD. The GRs item was complex and sensitive. After ten years of the IGC, and with eight days within which to work, the Chair thought that the IGC should be ambitious in what it hoped to achieve. As Mr. Francis Gurry had pointed out in his remarks, that was the last session of the IGC before the WIPO General Assembly in 2012, when the Member States of WIPO would take very important decisions on the future of the work, including the possible convening of a Diplomatic Conference. The Chair was grateful to Ambassador Owade for having prepared a short Note on what he saw were the key outstanding issues remaining at the end of that mandate. That note was reflected in WIPO/GRTKF/IC/20/INF/4. The Chair had found the Note very useful in preparing himself for the session, and in now sketching for the delegations the main issues and options as he saw them. As the Note indicated, GRs were subject to ABS regulations, in particular within the CBD and the Nagoya Protocol, as well as by the ITPGRFA. Furthermore, GRs as encountered in nature were not IP. They were not creations of the human mind and thus could not be directly protected as IP. Therefore, WIPO was not the relevant forum for regulating access to GRs or their direct protection as such. However, as the IGC had identified, there were certain IP issues associated with GRs. The Chair tried to map the main issues and identify which documents applied to which issue. He said that the IP issues associated with GRs could be considered in the following context: (1) the defensive protection of GRs, which referred to preventing patents being granted over inventions based on or developed using GRs which did not fulfill the existing requirements of novelty and inventiveness. In that context, to help patent examiners find relevant prior art and avoid the granting of erroneous patents, certain options had been discussed by the IGC. Those were the options A.1, A.2, and A.3 in the so-called Cluster A in WIPO/GRTKF/IC/20/5. As could be seen, implementation of those options might not necessarily require new international norms, as they could be implemented, if agreed upon, through practical projects on databases and guidelines. He believed that some of them had already been implemented in practice. With regard to the defensive protection of GRs, there were also some Member State proposals before the IGC, notably the Japanese proposals relating to databases contained in WIPO/GRTKF/IC/20/INF/9 and WIPO/GRTKF/IC/20/INF/11. Also relevant there were the cross-cutting proposals from the African Group in WIPO/GRTKF/IC/20/INF/12 and the Like-Minded Countries' Contribution in WIPO/GRTKF/IC/20/6; (2) consistency and synergy between the IP system and the CBD. A number of countries had enacted domestic legislation putting into effect the CBD obligations that access to a country's GRs should depend on securing that country's prior informed consent and agreeing to fair and equitable benefit-sharing. The IP issue seemed to be whether, and to what extent, the IP system should be used to support and implement those obligations. One of the options in that regard was to develop mandatory disclosure requirements, in other words, to make it mandatory for patent applications to show the source or origin of GRs, as well as evidence of PIC and a benefit-sharing agreement. Other related options were B.2 and B.3. Member States had tabled several proposals and other information on that issue, namely the European Union (WIPO/GRTKF/IC/20/INF/8), Japan (WIPO/GRTKF/IC/20/INF/9), Switzerland (WIPO/GRTKF/IC/20/INF/10), the African Group (WIPO/GRTKF/IC/20/INF/12) and the LMCs (WIPO/GRTKF/IC/20/6). Regarding the proposed disclosure requirement, the following could be considered as the key issues that needed to be discussed: subject matter; nature of disclosure (mandatory or voluntary); information to be disclosed; trigger for disclosure; and consequence of non-compliance. Member States had also sought to identify certain more general objectives and principles related to the relationship between IP and GRs, the latest draft

of those could be found in WIPO/GRTKF/IC/20/4. Finally, the IGC had discussed the role of IP in MATs for fair and equitable benefit-sharing. WIPO had been engaged in the development of model IP clauses, which might be considered for inclusion in contractual agreements and a database of existing ABS agreements had been created under the IGC's oversight as a capacity-building tool. As the IGC had itself recognized, those were non-normative, practical tools which had been developed some time ago and were already being updated and improved upon. At IGC 19, the IGC had requested that the Secretariat finalize and update those activities and provide information thereon to the IGC. The Secretariat had done that in WIPO/GRTKF/IC/20/INF/14. The Chair also mentioned briefly the glossary, presented as an information document in WIPO/GRTKF/IC/20/INF/13. That document was simply a resource and was not intended to be adopted in any form. The Chair opened the floor for a plenary discussion on objectives and principles.

34. The representative of *Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos* (CAPAJ) stated that indigenous peoples had held meetings among themselves and had ratified a statement submitted during IGC 18. In Points 3 and 4, they had requested that there be no reduction of the existing rights in the international standards that had been achieved by indigenous groups. They also noted the need to respect the legitimate status of their peoples, particularly those in the so-called developing countries. He welcomed the note prepared by Ambassador Owade, in terms of developing an international norm. However, the current language in WIPO/GRTKF/IC/20/4 seemed restricted to national legislation and domestic laws. He hoped that the facilitators could harmonize it. The new text should be consistent with the indigenous peoples' statement, which called for the need to respect the international standards that indigenous peoples had already achieved in other fora. The instrument(s) adopted by WIPO should not be a step backward, nor should it undermine the recognized indigenous peoples' rights. Regarding the statement made by the Delegation of Paraguay, on behalf of GRULAC, which emphasized a strong position on defending the sovereign rights of States over GRs and TK, he called for further consideration.

35. The representative of Tupaj Amaru supported the comments made by the Delegation of Iran (Islamic Republic of), on behalf of the Asian Group, on having a consolidated, single text. He endorsed the comments made by the Delegation of Paraguay, on behalf of GRULAC, on transparency. Indigenous peoples would not accept the text if the text was drafted without the participation of indigenous peoples. His proposals had always been supported by a Member State or several Member States, but they were not considered in the documents. He considered that to be discriminatory. He believed that Principle 1 of Objective 1 was contradictory. GRs did not belong to States. They belonged to indigenous peoples. States had to administer those GRs on the basis of the interests of indigenous peoples. That matter had been discussed for a long time. There were many resolutions about it, such as the General Assembly resolution 1803 (XVII) of 14 December 1962. Regarding the term "private property rights", he stated that indigenous peoples always lived on the basis of collective property.

36. The representative of Indian Council of South America (CISA) reiterated that some of the objectives did not correlate with the principles. He proposed to add "and international legal obligations" after "comply with national law" in Objective 1. That would correlate with Principle 2.

37. The Delegation of the United States of America appreciated the significant work on the objectives and principals made during IGC 19. It looked forward to working with Member States to achieve further convergence on objectives and principles. Based on the IGC's work to date, the following convergences appeared to exist: It might be agreed that Member States might make available clear procedures for obtaining authorized access to GRs and that equitable monetary or non-monetary benefits might be negotiated in exchange for authorized access. Such ABS procedures would be entirely independent of the filing of a patent application. Patent offices should have the necessary information to enable examiners to make proper decisions on patentability, i.e. adequate information on prior art and pre-existing knowledge of GRs. Clearly,

patents should only be granted for inventions that were new, involved an inventive step, and met standards of utility. Patents should only be granted to the actual inventors and no company or individual should be able to obtain a patent on information obtained from others in the public domain or technological developments rightly attributed to another individual or group. A final, but critical objective was to preserve the incentive for innovation that was provided through the patent system. It hoped that further agreement could be reached on the textual language of the objectives and principles. Regarding Objective 1, the Delegation suggested deletion of "and disclosure of origin". That was a mechanism that belonged in the context concerning options for future work. It registered its opposition to the inclusion of "derivatives". The reach there was potentially broad and would include products remotely associated with GRs. The inclusion of "applicants to IP rights" would be at odds with its view that ABS systems and patent systems were independent. With respect to Principle 1, it suggested deletion of the term "derivatives" for the same reason noted earlier. On Principle 2, it sought clarification as to the meaning of "ensure respect for the principle of self determination". Without a more complete understanding of that article, it could not support that option. It could not support Option 1 of Objective 2, because the position of the Delegation was that the patent system should not be used to enforce other laws. It proposed an alternative language: "To avoid patents from being granted in error for inventions that are not novel or inventive in light of GRs and associated TK in the prior art." The Delegation could not support Option 2, because the reference to life and life forms implied that such inventions were not novel or lacked inventive step, which might not be true. That also raised serious questions with respect to U.S. law and the TRIPS Agreement.

38. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, thanked the facilitators [at IGC 19] for having diligently prepared the text in WIPO/GRTKF/IC/20/4, which represented a valuable step forward. That was an extremely useful effort to finding convergence. It hoped that, with some further changes and in the spirit of compromise among all Delegations, the IGC could refine the text further and reach mutual agreement. It reserved its comments on the text for future interventions.

39. The Delegation of Brazil confirmed the points it had made in the opening statement handed into the Secretariat [and contained above under Agenda Item 3]. Further, the Delegation proposed Objective 1 as follows: "Ensure that applicants for IP rights involved in the utilization of GRs, their derivatives and associated TK comply with national law and requirements of the country providing (…)." The IGC dealt with IP rights involved in the utilization of GRs, the term "those accessing or using GRs" seemed too open and might give rise to different interpretations. The objective should be to make IP supportive to the other international instruments. Regarding footnote 2, it suggested replacing "/with" with "and/or that has accessed".

40. The Delegation of Venezuela (Bolivarian Republic of) believed that it was very important to include reference to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in Objective 1. Therefore, it supported the proposal of the representative of CISA to include "international laws" in Objective 1, because that was the only way that Objective 1 would be consistent with Principle 2. It also stated that it was important to maintain the term "derivatives". It supported Option 2 of Objective 2 because it was part of its constitutional obligation. That option was introduced by the Delegation of Bolivia (Plurinational State of) and supported by its Delegation at the last session of the IGC. With respect to the TRIPS Agreement, the Delegation of Bolivia (Plurinational State of), with its support, had asked for the review of Article 27(3)(B).

41. The Delegation of South Africa recalled that the IGC had worked very hard to get the mandate that was adopted by the WIPO General Assembly. It reminded that the IGC was not starting afresh. There had been very exhaustive discussions. It had some comments on the text which had been made before and did not want to repeat itself. It thought that it would be important for all Delegations to be mindful of the contributions they had made in the past so that they did not reiterate their old positions. The way forward was the mandate. It was clear that

the IGC had to undertake text-based negotiations with a focus on considering options for a draft legal text. It would be important for the IGC to start by discussing issues in the various articles. The Delegation highlighted that the work of the IGC should not be prejudicial to the work being pursued in other fora.

42. The Delegation of Egypt, on behalf of the African Group, hoped that the objectives and principles would be part of the preamble to the legal text. It also recalled that the proposal of the African Group on objectives and principles contained in WIPO/GRTKF/IC/20/INF/12. It hoped that the facilitators would reflect that proposal as part of their text.

43. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, pointed out that the work of the IGC was intended to focus on IP and GRs, TK and TCEs. When drafting or combining anything, it was important to consider that the scope of any text, legal or otherwise, should be concerned primarily with the issue of IP and GRs, and should not attempt to address that issue in a broader scope which might be beyond the mandate of the IGC.

44. The Delegation of Iran (Islamic Republic of) expected that the facilitators would convert those objectives and principles into the preamble of a legal instrument which the IGC would forward to the WIPO General Assembly in 2012.

45. The Delegation of Mexico stated that the wording "*conexos*" in the Spanish version of WIPO/GRTKF/IC/20/4 in connection with TK was inaccurate and should be changed to "*asociados*".

46. The Delegation of Australia sought some clarification of terms. It would find it useful if proponents of the term "derivatives" could clarify whether the term was intended to operate in the same manner as in the Nagoya Protocol. The Delegation also questioned the term "IP rights" which was a broad term. It wondered whether the intention was that IP rights should have such a broad meaning, or that it would be restricted to IP rights that related to technological advances.

47. The Delegation of Japan emphasized that it was vital to reach a common understanding on the fundamental issues, which were the objectives and principles, or the part of the compiled text, which reflected the objectives and principles. Regarding Objective 1, it believed that it was not appropriate to reopen the issue on how to deal with "derivatives" under the CBD, which had already been resolved to a certain extent by the adoption of the Nagoya Protocol. Mandatory disclosure of information of origin of GRs in a patent application, which some Member States had been insisting was necessary, should not be targeted as such. Since the objective was the basis for the consideration of the principle or the means for its achievement, it had to be clear and concise. In that sense, with respect to Objective 1, the Delegation considered that all the bracketed elements in the drafted objective should be deleted. Regarding the principle of Objective 1, the facilitators' explanation stated that "option 3 is reflected in recognition of state and indigenous rights reflected in options 1 and 2". However, the Delegation recognized that some Member States had insisted on that the original Option 3 remain untouched. It believed that it should not have been merged with the original Options 1 and 2 and the original Option 3 should therefore be brought back as an option.

48. The Delegation of Chile stated that some of the objectives and principles were under development in its country, so the results of the discussions in the IGC were of tremendous importance to it and would help to enhance its vision and coherence. The Delegation would closely follow the evolution of the discussions in the IGC. Regarding Objectives 2 and 3, it was important that patent examiners in different offices had all the necessary information to conduct the examination of novelty and inventive step to prevent erroneously granted patents related to GRs and/or TK. The Delegation supported the initiatives to collect information, either by the establishment of databases or other forms of compiling the information. In relation to that, it

fully agreed with Principle 1 of Objective 2. The Delegation supported and valued any initiative that would enable Member States to share experiences regarding disclosure of origin of GRs and TK. It emphasized that Chile was currently exploring initiatives with the aim to have databases on GRs and TK in the future. As part of those initiatives, it referred to a registry of intangible cultural heritage of Chile and a database of GRs. It further expressed its support for the statement made by the Delegation of Paraguay, on behalf of GRULAC, with respect to the importance of focusing on substance and not making the mistake which had been made in other Committees. The IGC should not spend hours or even days analyzing the structure of the document, but should focus on the substance.

49. The Delegation of the United States of America suggested two systemic changes: (i) remove any reference to "disclosure of origin" from the objectives and principles, as that issue could be addressed more appropriately in the mechanism. (ii) remove any reference to "derivatives" because of concerns over the breadth of that term. The Delegation believed that the objectives and principles could form the basis for a legal instrument. It did not want to see them shaped into a preamble.

50. The Delegation of Bangladesh aligned itself with the statement made by the Delegation of Iran (Islamic Republic of), on behalf of the Asian Group. It recalled the renewed the mandate of the IGC which called for the expedition its work on text-based negotiations with the objective of reaching agreement on a text(s) of an international legal instrument(s) which would ensure the effective protection of GRs, TK and TCEs. It believed that, based on the proposals submitted by Member States, the IGC could have a single text for negotiation. The Delegation expected that the IGC would be able to do justice to the true holders of GRs by establishing an international regime for the protection of GRs, based on the principles of disclosure of origin, PIC, ABS and MATs. It hoped that the facilitators' text would contain all those elements. The Delegation emphasized that uniformity would bring benefit to all Member States in protecting GRs and TK.

51. The Delegation of Brazil, in response to the question raised by the Delegation of Australia, said that it believed that the definitions had to be coherent with the definitions of the CBD and the Nagoya Protocol.

52. The representative of CISA, regarding the right to self-determination proposed by the United States of America, said that it included culture, political rights of indigenous peoples, economic, and social development. The phrase "sovereign rights of States" was used to deny indigenous peoples' rights to self-determination. There were loopholes and gaps being created because of lack of participation and the imposition of the sovereign rights of States. The two statements made at IGC 18 and IGC 19 made it clear that the right to self-determination was vitally important to indigenous peoples. He believed that they had not exhausted that discussion. Member States did not understand them and wanted to take from them what was actually theirs. He wondered to what degree the sovereign rights of States would be imposed. He stated that the CBD and the Nagoya Protocol were created without the equal participation of indigenous peoples. Indigenous peoples had the absolute right to be treated equally with some States who were colonizing them. He reminded Member States that indigenous peoples were not being given the right to participate equally.

53. The Delegation of Indonesia supported the Chair's work plan. The mandate of the WIPO General Assembly had clearly stated that the IGC was obliged to discuss the themes of GRs, TK and TCEs along with their key elements and submit draft text(s) to the next WIPO General Assembly. In reaching that goal, the IGC would need to pave and shape the way, and to make proper preparations to build such path within that critical time frame. The Delegation noted that it was timely sensitive for the negotiation to be concluded in due time through work on the basis of a single text. The IGC had managed to narrow the differences by simplifying the list of objectives and principles. Furthermore, the LMCs had successfully come up with a draft text on the protection of GRs. Taking that into account, it urged the IGC to expedite the negotiation and

form a proper mechanism within IGC 20, so that the negotiation would run as effectively and efficiently as possible. In the past negotiations, the Delegation had realized that the process and results were still far from being concluded. The lack of clear directions and less efficient negotiation process had resulted in no concrete conclusions. For that reason, future efforts of consolidated approach should be put forward in order to facilitate effective and efficient negotiations. It reminded the Committee that it was only for TCEs and TK where negotiations were based on text while for GRs, it was merely Objectives and Principles. These had to be considered as a tool, and not as the main object that would lead to the conclusion of the negotiation. The Delegation underlined key elements of WIPO/GRTKF/IC/20/6 regarding the Preliminary Draft Articles on the Protection of GRs which was the product of the Second LMCs Meeting held in Bali, Indonesia, in June 2011. That draft had been introduced during IGC 19 and had also been accepted during the WIPO General Assembly in 2011 as one of the working documents. The Delegation said that the preliminary document was drafted in treaty language and was consistent with international practices. It consisted of nine articles which the Delegation identified. The IGC should start using a single draft text on GRs for the negotiation.

54. The Delegation of South Africa stated that the suggestion to remove all references to “disclosure of source” and “derivatives” in the document would undermine the whole process. The documents from Switzerland, the European Union and the African Group focused on the issue of disclosure. It wondered what mandate the IGC would have if the issue of disclosure was removed from all documents. The Delegation supported the suggestion made by the Delegation of Iran (Islamic Republic of), on behalf of the Asian Group, in terms of the way forward. Regarding the question raised by the Delegation of Australia, it stated that the Secretariat had prepared a glossary of terms (WIPO/GRTKF/IC/20/INF/13), in which there was useful discussion of the term “derivatives” at page 11.

55. The Delegation of the United States of America responded to the Delegation of South Africa with respect to its reference to disclosure of source in WIPO/GRTKF/IC/20/4. The Delegation stated that its comments had been with respect to that particular document, as it was about objectives and principles. It suggested that any reference to disclosure of source be maintained in other documents related to the mechanism. Regarding the omission of Cluster C in the List of Options, the Delegation hoped that the IGC would have the opportunity to discuss that cluster as well.

56. The Delegation of Iran (Islamic Republic of) believed that disclosure requirements were very important as to be the heart of the text-based negotiations. It supported the proposal of the LMCs. It was the only document which was in treaty format and could be easily fitted in.

57. The representative of Foundation for Aboriginal and Islander Research Action (FAIRA) expected that the facilitators’ text could meet the high standards already set in the UNDRIP.

58. The Delegation of Sri Lanka endorsed the statements made by the Delegations of Iran (Islamic Republic of), on behalf of the Asian Group and Indonesia, on behalf of the LMCs. It also supported the statements made by the Delegations of China and India. They had the same methodology and shared the same views. It reserved its rights to make comments at an appropriate time.

59. The Delegation of China believed that the inclusion of disclosure of origin of GRs in the patent applications would further improve the existing IP system. The development of such a mechanism would contribute to interfacing the IP system with the CBD and would facilitate the realization of PIC and benefit-sharing arising from the use of GRs. Therefore, it supported the wording of Objective 1.

60. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, was grateful to the facilitators for having agreed to undertake the most difficult task of drafting a single text to reflect the different positions in the IGC on GRs and IP, even

though the Delegation had a strong preference for working on the basis of WIPO/GRTKF/IC/20/4. In the IGC's mandate, there was no mention of a single text as such. The Delegation strongly supported the guidance given by the United States of America, on behalf of Group B, to avoid drafting that facilitators' document in the form of treaty language. Indeed, in line with the renewed mandate, the text should encompass various options for a draft legal text, and by legal text (or international legal instrument), what was meant might be a treaty but might also be a joint recommendation or any other form. In its view, the facilitators' text should focus on the substance regardless of the form that the instrument would take, so as not to prejudge the decision of the next WIPO General Assembly on whether or not to convene a Diplomatic Conference. It saw the objectives and principles in WIPO/GRTKF/IC/20/4 as a central element of the facilitators' text and could not agree to assimilate them to a preamble as suggested by some Delegations. The Delegation agreed with the Chair's suggestion that the facilitators' texts should not necessarily be adopted at the end of that session and that earlier documents should remain on the table.

61. The Delegation of France informed that Article 1 of the Constitution of France adopted in 1958 provided that "France shall be an indivisible, secular, democratic and social Republic". Therefore, it could not accept the existence of collective rights as included in Objective 1, Principles 1 and 2, and Objectives 4 and 5. It could not accept the inclusion of the term "self-determination".

62. The Delegation of Bolivia (Plurinational State of) stated that, in various international fora, such as the WTO, the UN General Assembly, the WHO and the negotiations on the Nagoya Protocol, it had expressed its commitment to prevent the expansion of capitalism to essential spheres of life and nature. Its vision was that nature was its home and it had infinite value but was priceless and not for sale. Therefore, it expressed its opposition to privatization and commercialization of nature which would create imbalance in the climate and would be to the detriment to the indigenous peoples. One mechanism of privatization and commercialization of life and nature was the patent system. The IP system had promoted privatization of GRs and promoted biopiracy. It was a danger to indigenous peoples, their cultures and beliefs and a harmonious, balanced and equitable relationship between human and nature. The Constitution of Bolivia (Plurinational State of) prohibited the commodification of life and parts of it, such as GRs. It also provided that the negotiation, signing and ratification of international treaties should be governed by the principles of harmony with nature, protection of biodiversity, and prohibition of private ownership for the exclusive use and exploitation of plants, animals, microorganisms and any live materials. The patentability of life had allowed the private sector and transnational corporations to control innovation. Since it was possible to patent life, important sectors such as food, agriculture and health were under private control. Bolivia (Plurinational State of) was deeply concerned about that, and about monopoly control of the technology, which blocked research and innovation. The Delegation had proposed two articles with regard to the prohibition of patents on life forms such as GRs to prevent patent systems from negatively affecting the beliefs, cultures and rights of indigenous peoples. Since the IGC had discussed the objectives and principles in the past three sessions of the IGC, the Delegation believed that it would be important to discuss other options of Clusters A and B.

63. The representative of CAPAJ stated that indigenous peoples had worked for more than 20 years in the UN Commission on Human Rights (UNCHR) and the Human Rights Council. It had been established that the principle of self-determination did not run counter to the unity of States, nor jeopardize States' responsibilities. He thought that the collective self-determination of indigenous peoples improved the social fabric and the internal relations of States. Indigenous peoples had always lived close to nature. As long as they had the right to self-determination, they would continue their past pattern of conserving and preserving natural resources.

64. The Delegation of Kenya supported the process, in particular to propagate the inclusion of mandatory disclosure within the process. With regard to the objectives and principles, it supported the statements made by the Delegation of Egypt, on behalf of the African Group, and

the Delegation of South Africa. Their position was viable in achieving the common goal as set out in the IGC's mandate.

65. The representative of Tupaj Amaru supported the statement made by the Delegation of Bolivia (Plurinational State of) with regard to safeguarding the GRs of indigenous peoples. He thought that the history of indigenous peoples was the story of huge theft of their lands, GRs and TK. He believed that States should recognize the position of indigenous peoples.

66. The Delegation of the Republic of Korea welcomed the Chair's proposal to let facilitators make a single text by compiling all the working documents on the table. Taking into account the facilitators' efforts, it hoped that the IGC could wrap up the carrying out of the new mandate set forth by the last WIPO General Assembly. It thanked the Secretariat for preparing quality documents. With a positive spirit in mind, for the sake of clarifying its position at that stage, the Delegation highlighted a few key issues and concerns. With regard to disclosure requirements, it aligned itself with the statement made by the Delegations of the United States of America and Japan. It believed that there was no relevance between the origin or source of GRs and the patentability or revocability. Disclosure would not be able to cover commercialized GRs that had not been patented. It emphasized that under no circumstances should the principles of the global patent system, which had been established and developed over a long period of time, be undermined. To impose disclosure requirements on patent applications would only complicate and make patent applications more complicated and compound demands on an already overburdened patent administration in Member States. Moreover, it mentioned that Article 16 of the CBD, which was related to patents or IP rights, did not require disclosing the source/country of origin of GRs and associated TK. Therefore, the CBD did not oblige Contracting Parties to disclose the country of origin. With regard to the scope of protection of GRs, the Delegation believed that the discussion should focus on the utilization of GRs and not include "derivatives", for the purpose of avoiding potential chaos in the process of identifying the chain of users and beneficiaries through the possible legal instrument to protect GRs. Regarding defensive protection mechanisms, it stressed that an effective and direct solution for the protection of GRs was to establish a database system for them and their associated TK. It believed that that was a very practical and feasible way to prevent so-called erroneously granted patents in each Member State. Along those lines, it supported the proposal made by the Delegation of Japan and outlined in WIPO/GRTKF/IC/20/INF/11 which elaborated rationales, concrete methodology and solutions to address concerns some Member States might have. The Delegation remained committed to constructively and actively participating in the upcoming discussions with a flexible and forward looking manner.

67. The Delegation of Australia was unable to accept Option 2 of Objective 2. The Australian Parliament had recently considered a Bill which had gone to the question contained in that option. A Senate Inquiry had been established to consider the issue and the Bill and to report to the Parliament. The Senate Inquiry had also considered relevant reports from the Australia Law Report Commission and the Advisory Council on IP. In September 2011, the Senate Committee had completed its inquiry and reported to the Parliament and recommended that the Senate not pass the Bill. Due to that recommendation, the Delegation was unable to accept that option. However, it noted that the TRIPs Agreement provided Member States with sufficient flexibilities, should they wish to prohibit the granting of patents over life forms. It supported the intervention made by the Delegation of the European Union that the IGC was tasked with the consideration of the intersection of the IP system and GRs. It might not be appropriate for the IGC to consider other aspects beyond the scope of its mandate.

68. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, shared the concerns of the Delegations of the United States of America and Australia regarding the definition and scope of the term "derivatives". As a result, it agreed that that term should be removed from all objectives and principles. Since the IGC was working on instruments which would apply to IP rights, and more specifically patents, Objective 1 should focus on that in order to ensure clarity. The Delegation preferred that Objective 1 was limited to

"those using GRs and associated TK in patent applications". Patent applications should comply with all relevant aspects of national law; it was therefore unnecessary to emphasize or prioritize certain aspects over others. Thus, the Delegation thought that the terms "prior informed consent, mutually agreed terms and fair and equitable benefit sharing" should be removed. The entire last section of the objective could be better represented by the phrase "all relevant aspects of national law". It was important that the work of the IGC focused on the issue of IP and GRs, TK and TCEs. It should not therefore adopt principles which related to broader issues, which might infringe upon the competence of other UN organizations. The second half of Principle 1 of Objective 1 should therefore be deleted, and the principle should be limited to IP arising from GRs and associated TK. Principle 2 of Objective 1 should also be deleted, as it related to issues beyond the consideration of IP and GRs and associated TK. An important principle of Objective 1 was the recognition of the role of national legislation in determining access to GRs falling in the jurisdiction of national legal systems. A principle should therefore be included to reflect that, in line with Option 3 of WIPO/GRTKF/IC/19/6. Regarding Objective 2, the Delegation believed that patent offices were employed to make expert decisions on issues of substantive patent law. That role should not be expanded to the consideration of issues not relating to patentability. It was important to ensure that information on disclosure of origin was collected where available so that those with an interest could monitor it, but also that that task did not interfere with the core work of patent offices in delivering high quality patent rights. Objective 2 should only therefore refer to preventing patents from being granted where they did not meet the necessary requirements of established substantive patent law. Option 2 of Objective 2 related to issues of much broader scope than the work of the IGC and should be deleted. Principle 1 of Objective 2 was a critical principle of the IP right system and should be maintained. Option 1 of Principle 2 of Objective 2 was important and should be maintained. Option 2 of Principle 2 of Objective 2 was too detailed. In addition to containing several substantive commitments which went beyond the present position of the Delegation on the role of patent offices in the disclosure of origin, it placed unnecessary restraints on any discussions at a later stage. It also appeared to grant a quasi-legal status to the objectives and principles, by suggesting that they would have to be complied with directly by patent applicants. The Delegation could not therefore accept that option. Principle 3 of Objective 2 imposed excessive obligations on patent applicants, and did not take into account the role of national courts in deciding appropriate sanctions outside the field of patent law for ensuring compliance with any national legislation on ABS. That was not acceptable to the Delegation. Principle 4 of Objective 2 was acceptable to the Delegation, providing that it referred to "relevant known information", not "all background information". Regarding Objective 3, the Delegation agreed that patent offices should have access to all necessary information when considering patent applications. That extended to information concerning prior art on GRs and associated TK, but was not an area of information which should be singled out for special attention. The information would however only be used in the assessment of novelty and inventive step. In those circumstances, it was not necessary for the applicant to have known about the information. Any information which was in the public domain would be valid prior art. However, issues concerning PIC, MATs, etc. were not relevant to patent offices, since patent offices were not and should not be required to assess applications for matters other than the basic requirements of established substantive patent law. The second sentence of Objective 3 was not therefore acceptable to the Delegation. Principle 1 of Objective 3 could simply be amended to state that patent offices should consider all relevant prior art. That was an underlying principle of the entire patent system. Principle 2 of Objective 3 should be limited to disclosure of information of which the applicant was aware. Principle 3 of Objective 3 was not acceptable, since it suggested that certain elements of IP might benefit from protection without the *quid pro quo* of disclosure, which was one of the founding principles of the patent system. Regarding Objective 4, the Delegation stated that, if a reference was made tying the work of the IGC to discussions in other fora, the work of the IGC might be disrupted by developments in other discussions. The work of the IGC should stand alone as a discussion on the best way to deal with the issue of IP and GRs, taking into account the needs of all participants, without making the discussions dependent on other agreements. It should also be confined to work on IP, and not risk being

extended to broader issues which were the subject of detailed discussions elsewhere in the UN. The last clause of Objective 4 should therefore be removed. Principle 1 of Objective 4 should be restricted to relevant international agreements. It should be recalled that not all regional agreements apply to all WIPO Member States involved in those discussions. That discussion should not make strong commitments to the support and implementation of agreements made in other institutions, which could be subsequently altered in a manner which might not be compatible with any results achieved. Therefore, Principle 2 of Objective 4 should be amended to remove reference to the CBD. The Delegation believed that Objective 5 in its present form went far beyond the mandate and competence of the IGC in considering IP and GRs. It concerned broad issues of economic development and the rights of indigenous peoples. The text after "dissemination of technology" was not acceptable to the Delegation and should be removed. The same applied to Option 2 of Principle 1 of Objective 5, and the text contained within square brackets of Principle 2 of Objective 5.

69. The Delegation of India suggested replacing "in particular" with "including" in Objective 1. The wording of Principle 1 of Objective 1 would be as follows: "Recognize the sovereign rights of States over GRs, their derivatives and associated TK and the rights of indigenous peoples and local communities in accordance with domestic legislations." It suggested bracketing Principle 2 of Objective 1 because it was not necessary as part of the document which dealt with interaction between IP and GRs. Regarding Objective 2, in addition to options 1 and 2, it proposed to add: "Prevent IP rights from being granted in error and/or bad faith for IP applications relating to GRs, their derivatives and/or associated TK that do not satisfy the eligibility conditions". It suggested replacing "are not new or inventive" with "do not satisfy the eligibility conditions" in Principle 1 of Objective 2. It suggested rewording Principle 4 of Objective 2 as "Persons applying for IP rights involving the use of GRs and/or associated TK have a duty to make reasonable efforts in good faith to disclose in their applications all background information relating to the GRs, their derivatives and associated TK, including the country of source or origin". It suggested replacing "known to the applicant" in Principle 1 of Objective 3 with "asserted by the applicant after making reasonable inquiries". It proposed a new sentence "In such a case the applicant shall ensure disclosure of source or origin of the GRs and associated TK, and evidence of prior informed consent and fair and equitable benefit-sharing and that it was provided in oral form" at the end of Principle 3 of Objective 3. Regarding Objective 4, it suggested deleting "including ensure consistency with international legal standards in the promotion and protection of the collective rights of indigenous peoples". Regarding the principles of Objective 4, it proposed to include a new principle taken from the Like-Minded Countries' proposal: "The work of the Intergovernmental Committee on IP, GRs, TK and Folklore should not prejudice the work pursued in other fora". It suggested replacing "indigenous peoples" in Objective 5 with "indigenous peoples and local communities", which would be consistent with the CBD. Regarding Principle 3 of Objective 5, it proposed to add at the end "which has been developed in full compliance with national laws and requirements, including the principles of prior informed consent, fair and equitable benefit-sharing".

70. The Delegation of Venezuela (Bolivarian Republic of) supported the statement made by the Delegation of Bolivia (Plurinational State of). It was a constitutional principle in Venezuela (Bolivarian Republic of) to forbid patenting life forms and to protect the rights of indigenous peoples and local communities. The fact that communities had power over their own lands and their cultural heritage did not mean that that could threaten the unity of Venezuela (Bolivarian Republic of). It protected the rights of its indigenous peoples and local communities at both national and international level.

71. The representative of FAIRA stated that indigenous peoples at IGC 19 had presented a number of principles which were fundamental in terms of development of an international legal instrument [Note from Secretariat: the principles are set out in paragraph 557 of the report of IGC 19, WIPO/GRTKF/IC/19/12 PROV. 2]. Indigenous peoples' concern was that the right of indigenous peoples to permanent sovereignty over natural resources was not yet understood. While the sovereignty of states over natural resources rested upon the CBD, there had been

significant developments and changes in the understanding of the rights of indigenous peoples. Particularly, indigenous peoples had the right to self-determination. In 2004, an expert paper had been presented on indigenous peoples' permanent sovereignty over natural resources and he quoted from it. He stated that the definition of permanent sovereignty basically relied upon the fact that alienation of those resources was not permanent. The sovereign right could return back to indigenous peoples at a later stage. He pointed out that Objective 1 dealt with compliance with national law, but it did not refer to "international law". The IGC should understand that national law might not have taken into account what was known to be the lawful rights of indigenous peoples to their natural resources. He noted that any text should have enough flexibility to take into account the fact that indigenous peoples held the right to self-determination and accordingly held a right to sovereignty over the natural resources. That would not only be reflected in Objective 1 but also in Principle 1 which referred to the sovereign rights of States and the rights of indigenous peoples and local communities. He referred to the General Assembly Resolution 1803 (XVII) of 14 December 1962, and quoted from it. It also provided that violation of the rights of peoples and nations to sovereignty over their natural wealth and resources was contrary to the spirit and principles of the UN Charter. He believed that Principle 1 of Objective 1 needed to have a greater respect for the fact that the rights of indigenous peoples were not overtaken or subsumed by the sovereign rights of States. In fact, the sovereign rights of States had to take into account the rights of indigenous peoples. Principle 2 of Objective 4 should take into account the relevant international and regional norms, instruments and processes which had developed an understanding of what the rights of indigenous peoples to self-determination meant. He emphasized that that right was affirmed in 2007.

72. The Delegation of the Russian Federation stated that there had to be mechanisms for implementation of those objectives and principles. In WIPO/GRTKF/IC/20/4, there were arguable provisions. Regarding Objective 1 which included the wording "requirements of the country providing", the Delegation wondered whether it was realistic that a patent office receiving an application should study requirements of all countries providing GRs. It believed that greater precision needed to be provided. For example, it was not clear what "ownership arrangements" meant in Principle 1 of Objective 1. It stated that the objectives and principles, for example, Principle 2 of Objective 1, should not exceed the objectives and functions of WIPO, which were defined in Articles 3 and 4 of the WIPO Convention. It suggested that previously prepared documents should be used for developing objectives and principles. It found that not all items in WIPO/GRTKF/IC/19/6 were reflected in WIPO/GRTKF/IC/20/4. The Delegation thought that objectives and principles should be harmonized.

73. The Delegation of Ethiopia believed that mandatory disclosure should be considered as one of the pillars of discussions in developing an international regime on the protection of GRs and associated TK from misappropriation. Regarding the objectives and principles, it supported the statements made by the African Group.

74. The Delegation of Ecuador supported the statement made by the Delegations of Paraguay, on behalf of GRULAC, and Algeria, on behalf of DAG, on the methodology proposed by the Chair to move forward. It believed that all the options should be maintained in the facilitators' text. It particularly supported that mandatory disclosure and derivatives of GRs should be a part of that exercise because they were important for many countries. It recommended taking into consideration the LMCs' proposal presented by the Delegation of Indonesia. It was a clear and transparent contribution and should be given consideration. The Delegation reserved its right to make comments on the facilitators' text at a later stage.

75. The Delegation of Malaysia thanked the Secretariat for the excellent preparations which had provided a good overview of the main issues associated with the relationship between IP rights and GRs. The Delegation supported the statements made by the Delegations of Iran (Islamic Republic of), on behalf of the Asian Group, and Indonesia, whereby if the IGC was to achieve the objectives of that meeting, the IGC should work on the basis of a single text. It was

very much in support for the identification of clusters for that instrument which would include a preamble, scope, disclosure, remedies and sanctions, limitations and exceptions and the relationship with other treaties. It was important to facilitate and ensure the effective protection of GRs through legally binding instruments. The Delegation would reserve its further comments upon having sight of the single text.

76. The Delegation of Oman said that the stage that the Committee had reached so far was a good one. It believed that the Committee would be able to reach a consensus on a text. It stated that the text to be prepared by the facilitators should also include TCEs that were related to GRs in objectives 1 to 5.

77. The Delegation of Lebanon supported the statement made by the Delegation of Oman regarding the inclusion of TCEs.

78. The Delegation of Peru expressed support for the statement made by the Delegation of Paraguay on behalf of GRULAC. It endorsed the approach that the Chair had set up regarding the text on objectives and principles. It supported the idea of creating a single compilation text that would go beyond the objectives and principles and cover the substantive part.

79. The Delegation of the United States of America noted that the discussion on objectives and principles showed that there was a wide variety of views within the Committee on this topic.

80. The Chair opened the floor for comments on the defensive protection of GRs (Cluster A).

81. The Delegation of the United States of America stated that it was ready, jointly with several additional Delegations, to present a text at the appropriate time that would include what it believed were common elements that could gather support of all Delegations without prejudice to additional discussions or agreed outcomes. It added that this proposal might help to move the Committee's work forward and perhaps pave the way for an early harvest. It said that it was planning to present this text to the Secretariat for translation and to the facilitators. It reiterated its plea that mechanisms such as databases and disclosure options have no part in the objectives and principles but should rather be addressed in detail during the discussion on mechanisms in clusters A, B and C.

82. The Chair said that the procedural difference between this section of the discussion and the previous one on objectives and principles was that the Committee was informed by a variety of documents. He added that Delegations might wish to indicate if they are drawing on comments from one document or the other. He took note of the statement made by Delegation of the United States of America which wished to introduce a document in due course. At the same time, it urged Delegations to refrain from making new textual proposals at that stage and limit themselves to giving guidance and context to the facilitators.

83. The Delegation of Egypt, speaking on behalf of the African Group, believed that the defensive protection of GRs could be an easy item to discuss. It was of the view that it did not involve norm-setting that would be related to disclosure but could be dealt with under complementary measures. It recommended to the facilitators to base their work on the item on Option A.3. It believed that there was a need to have recommendations or guidelines for search and examination procedures for patent applications, so as to ensure that disclosure of origin of GRs would be better taken into account. It was of the view that the text should include legal provisions which facilitate access to information made available in databases relating to GRs, derivatives and associated TK by IP offices of Member States. It also recommended that the facilitators continue to be guided by the Committee's mandate and assist the Committee in reaching a draft legal text. It expressed the hope that the facilitators' text would adopt the format of a treaty, including specific provisions and perhaps complementary measures to deal with defensive protection of GRs.

84. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, stated that there was a need to ensure that options on defensive protection did not assume that patent offices and patent examination processes would have a substantive level of involvement that went beyond its position on disclosure of origin.

85. The Delegation of Japan said that misappropriation needed to be approached from two different sides. One aspect was the problem of erroneously granted patents, while the other was the problem of compliance with the CBD regarding ABS and PIC. On the prevention of erroneously granted patents, it reminded the Committee that it had been proposing the establishment of a one-click database. It took note of the support expressed from Member States in this regard and said that it would like to hold discussions towards the implementation of that system with a view of starting from agreeable grounds. It emphasized in that line that Cluster A, especially Option A.2, was both essential and sufficient to this end.

86. The Delegation of the United States of America supported the statement made by the Delegation of Japan and believed that Cluster A contained very important proposals. It proposed that WIPO begin to develop an inventory of databases and information resources on GRs using contributions from Member States. It also proposed that the Secretariat invite WIPO Member States to provide GRs information respective to their territories in order to ensure the completeness of the databases. It stated that the use of these types of TK and GRs databases was very helpful in patent examination. It recalled that the United States Patent and Trademark Office (USPTO) was one of the signatories to the Indian TKDL access agreement and that the USPTO had been using it for more than a year successfully. It added that the searchable one-click database should include the species name and secondary metabolites in addition to the gene sequence or protein sequence in the GRs as well as any known properties of that GRs in order to facilitate more efficient examination. Regarding Cluster A, it noted that some other proposals had been inserted in the mix of proposals related to databases. It preferred to keep those distinct and discuss them separately under their respective cluster, that is, under Cluster B rather than A, since they related to disclosure requirement proposals.

87. The Delegation of Canada stated that the central question regarding GRs at WIPO was first and foremost whether any invention that was submitted for patent was actually new or not. It reminded that this was the kind of determination that patent offices made on a daily basis. It said that patent offices needed quality information such as prior art in order to make these determination. It noted that that was what was contemplated in this cluster. It invited the Committee to focus on those elements in Cluster A that were compatible with the patent system. It added that these elements and the different measures inspired by them could serve as alternatives to mandatory disclosure and could constitute measures on their own.

88. The Delegation of China acknowledged that in the past 10 years, the Committee had done quite a bit of work and had established a good foundation for finding a solution to the problem of protecting GRs. It stated that the inclusion of a mandatory disclosure of origin of GRs in patent applications could ensure PIC and ABS and prevent patents from being granted in error. The IGC's work should focus on disclosure requirements. The Delegation supported sharing information regarding TK and GRs, and it believed that databases had positive value. However, it noted that if protective measures could not be implemented simultaneously, databases would lead to the abuse of information of GRs. The key to having protective databases was to establish a system which included disclosure of origin of GRs. Therefore, the IGC should discuss the disclosure requirements as a priority.

89. The Delegation of South Africa supported the statement made by the Delegation of Egypt on behalf of the African Group. Regarding defensive mechanisms, it emphasized again that the matter concerning mandatory disclosure was one major aspect that needed to be looked at. It felt that different messages were expressed by some Delegations to the Committee regarding mandatory disclosure. It referred, in particular, to the Delegation of the European Union, whose written contribution was different from what had been articulated at the present session. It

invited Delegations to take position in a clear and progressive. In addition, it noted that some Delegations wished to focus negotiations on the PCT and the PLT. It disagreed and stated that the present negotiations were broader than just patents. It reiterated its support for those proposals, and in particular for the LMCs' one, which represented an alternative on defensive protection and broadened the basket of measures beyond patents. It recognized the usefulness of databases as an instrument that could facilitate the examination processes by the patent offices and also promote invention or innovation beyond patent offices, provided that they would be considered as a means and not as an end in themselves. It asked for caution though, noting that databases would not be as useful as intended unless they complemented the mandatory disclosure of origin and include the disclosure of the country of origin as a basic piece of information. It added that the information in the database should be obtained with the permission of the communities and should include ABS arrangements. It stated that databases should meet basic principles of law, like property laws. It invited therefore the proponents of a database to expand their proposal accordingly. It added that databases should not be used as an instrument to put knowledge that was not yet in the public domain into the public domain, arguing that GRs and associated TK might be publicly available in the communities of practice, and not be in the public domain. It said that it was crucial that those relevant principles were looked at as well, in order to go beyond stumbling blocks and set up a database as a means to help in the processes of approving patents and beyond, as indicated in the LMCs document.

90. The representative of the African Regional Intellectual Property Office (ARIPO) stated that it was concerned that the one-click database as conceived by the Delegation of Japan would put into the public domain GRs and associated TK which might not necessarily be in the public domain. Echoing statement made by the Delegation of the United States of America, he pointed out that ARIPO had benefitted as well from the TKDL experience. He noted that some elements of the TKDL were not made available to the public. He was therefore hesitant to go along with the development of a database as an objective or as a means of addressing the issues that the Committee was discussing. He supported the statements made respectively by the Delegations of Egypt, on behalf of the African Group and South Africa on the issue of public domain. He noted that this question had not been resolved in the Committee nor in the Committee on Development and IP (CDIP). He held the view that that cluster or the aspect of the cluster relating to database might be very relevant but should not be considered as an end in itself as option A.1 and A.2 contemplated, but should rather be seen as complementary to a legal text for the protection of GRs. He reiterated that ARIPO was also developing a database in relation to publicly disclosed documented GRs and associated databases, based on improved guidelines that incorporate mandatory disclosure in the examination of patent applications, as option A.3 envisaged. He added that ARIPO was using the Chinese searching national guidelines which provided for mandatory requirements regarding disclosure of origin as a guiding reference.

91. The Delegation of Brazil said that it envisaged the options regarding defensive protection and databases as complementary measures to and not substitutes to an international binding instrument that would incorporate mandatory disclosure requirements and appropriate sanctions in order to promote the principles of ABS, PIC and MATs, which were embodied in the CBD and Nagoya Protocol. It also recalled that the Nagoya Protocol provided for the establishment of a Clearing House mechanism, where information of this nature will be compiled.

92. The Delegation of the Republic of Korea said that the most effective solution in order to avoid erroneously granting of patents on GRs and associated TK was to establish a database related to GRs and associated TK which would be accessible by patent examiners in all Patent Offices. It noted however that the amount of work, time and money that was necessary to establish a database was important and that some countries were therefore reluctant to agree to a database. It added that for the sake of security and confidentiality access to confidential information should be given to patent examiners only with the sole purpose of searching prior art. In line with this, it strongly believed that one should not impose an undue burden on patent

offices. It supported therefore the proposal made by the Delegation of Japan as outlined in document WIPO/GRTKF/IC/20/INF/11.

93. The Delegation of Zimbabwe supported the statement made by the Delegation of Egypt on behalf of the African Group. It said that databases could be very good instruments that could be used for IP defensive protection, as far as PIC is concerned in particular. It said however that databases could not in themselves guarantee that GRs and associated TK which were therein included were protected as such. It said that there was a risk that those GRs and associated TK would fall into public domain.

94. The Delegation of Iran (Islamic Republic of) welcomed the initiative of preparing an inventory of databases regarding Cluster A. It said that inventory could enhance the capacity of IP offices to perform more efficient prior art searches. It added however that there were several issues which needed careful consideration. The database should not be established and function in a way that made misappropriation or biopiracy easier. It was therefore of the view that preserving confidentiality was of the utmost importance. It added that it was essential to have a security database system with monitoring and tracking capabilities. It said that the instances of violation should be also sanctioned by the contracting parties. In its view, it was needless to say that that initiative could replace other measures, particularly the mandatory disclosure requirements. It stated that use of databases should be complementary. It noted that relying solely on a database system could not prevent cases where rules regarding access to GRs and PIC were infringed. It stated that mandatory disclosure was therefore still crucial. In this regard, it expressed support for subparagraphs 1 and 2 of Article 4 of the text of the LMCs which facilitated access to information and at the same time ensured confidentiality of information while imposing appropriate sanctions in the case of possible infringement.

95. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, responded to the question raised by the Delegation of South Africa concerning its previous intervention. It did not believe that its intervention had been contradictory to its position on a disclosure of origin requirement. With respect to the options that were presented in Cluster A on the defensive protection of GRs, it said that it had stated and continued to state that it could support option A.2. It added that its concerns were that some elements of the text in option A.1 or some elements of the suggestions in A.1 and A.3 as they were presently worded could contain recommendations on how disclosure of origin could be used. For this reason, it was of the view that those recommendations might prejudice the role that it considered as suitable for patent offices.

96. The Delegation of India reiterated at the outset that mandatory disclosure of source of origin and evidence of PIC and ABS needed to be an essential part of the legal instrument that the Committee was envisioning. It believed that a defensive protection through databases had its usefulness as an instrument or a tool that built the capacity of IP offices to examine patent applications that use GRs. It was, however, of the view that databases could not be a substitute for mandatory disclosure. It recalled that India realized the importance of a database and built the TKDL even before the discussions really began in the Committee. Although the content of the TKDL was already very rich, the TKDL still reflected a miniscule part of the codified and oral knowledge that had been developed in India. It added that databases could not serve as a substitute for mandatory disclosure because they did not document the entire universe and they did not help in ruling out misappropriation. It said as well that such a universal database would be very difficult to maintain since it would need to take into account how this knowledge was actually evolving. It noted therefore that it was essential that the present norm-setting exercise included a mandatory requirement of disclosure of origin, PIC and ABS. It stated that that requirement would actually make sure that misappropriation did not happen and that positive benefits accrued to communities from where GRs were being used.

97. The Delegation of Japan noted that the database it had proposed would drive down the numbers of erroneously granted patents and would therefore be beneficial to GRs holders.

It added that patents that would be granted through a one-stop database system would have a real patentability value, promote therefore innovation and the benefit-sharing based thereon. It was of the view that the Secretariat should consider conducting a study on the feasibility of its proposal and in doing so, using the findings which were obtained through various TKDL related events held by WIPO last year, such as the international conference held in India last March, and the workshop held in Oman last June.

98. The Delegation of Norway supported the work on all the options under Cluster A and B. It stated that there was a need to consider several measures with regard to GRs. It added that the different options under Cluster A and B did not exclude each other, noting that the different measures on defensive protection and disclosure requirement could and should in its view be complementary. It was of the view that a disclosure requirement could be partly seen as a mechanism on defensive protection, since such requirement would contribute to providing relevant information in terms of novelty and inventive step. It reiterated therefore that it supported the introduction of a mandatory disclosure requirement. It believed that mandatory disclosure would be the most important single measure that could be introduced to ensure that rights on GRs and TK associated with GRs were safeguarded within the patent system.

99. The representative of the Hokotehi Moriori Trust supported the comments made by the representative of ARIPO. He said that databases might have a limited utility to the extent that not all GRs and associated knowledge was in the public domain. He noted as well that a significant part of TK was held within communities and passed on by oral means. He said that the onus should be on the patent applicant to disclose whether he had access to TK associated with GRs or not and not on the TK holders to publish their TK on a database. He stated therefore that databases should not constitute a substitute for mandatory disclosure. To this extent, he supported the remarks made by the Delegation of India.

100. The Delegation of Ecuador said that a database could be complementary to an instrument on GR but could not serve as a substitute. It was ready to participate in a broad discussion on GRs but without limiting it to defensive protection. It said that the Committee needed to take into account various aspects like disclosure of origin and PIC of States or the indigenous communities and peoples, as well as confidentiality. It supported the statements made respectively by the Delegations of South Africa and Iran (Islamic Republic of) in that regard.

101. The Delegation of Colombia recognized the usefulness of databases in supporting the IP offices in prior art search. It added that it should however complement measures and legal procedures regarding the mandatory disclosure of origin with respect of GRs and associated TK. It said also that it was necessary to grant to Member States a margin of flexibility as far as national implementation was concerned. It stated that the proposal of the LMCs was a good starting point for the negotiations.

102. The Delegation of Kenya supported the statements made respectively by the Delegations of Egypt on behalf of the African Group, South Africa, Zimbabwe and the representative of ARIPO. It had no doubt that databases could be used to prevent the erroneously granting of patents. It said that Kenya was pursuing participation in the TKDL system. It added though, that database and defensive protection could only be used and seen as a complementary measure towards achieving the mandate of the Committee and not otherwise. It supported the statement made by the Delegation of Egypt on behalf of the African group in this regard.

103. The Delegation of Mexico stated that databases for GRs and associated TK were complementary to positive protection and needed to be set up correctly, ensure confidentiality, to be restricted to the patent offices and with the PIC of the indigenous and local communities.

104. The Delegation of Oman reported a mistake in document WIPO/GRTKF/IC/20/5 on the name of the expert who made the comment reported under paragraph 21. It expressed support for the position that was expressed previously by Delegations regarding the importance of a

mandatory disclosure requirement. On the other hand, it supported the establishment of a GRs database provided that the information therein contained would be accessible to patent offices only. It realized that it might prove to be difficult to set up a one-stop database and as an alternative, patent offices could tap into national databases to check whether the source or the country of origin was disclosed and whether the material was obtained illegally or not. It added that this would prevent the erroneous granting of patents.

105. The Delegation of Bangladesh was of the view that the database would be useful and complementary to other means and norms that would protect GRs and associated TK. It said that the system should enable the offices to verify whether the database is properly consulted. It noted that no database, however comprehensive it might be, would contain all the GRs and associated knowledge. It added that the legal text would need to include a provision of mandatory disclosure along with the database in order to ensure compliance with ABS norms. It noted that mandatory disclosure would put the burden on the applicant and alleviate the pressure on the patent offices.

106. The Delegation of Peru said with respect to defensive protection of GRs that databases were tools that helped to establish prior art. It noted, therefore, that the main objective of databases would be to improve the quality in the granting of patents and ensure legal certainty for patent owners and third parties. However, databases could not be responsible for the accomplishment of the objectives of the Committee. It stated that databases were complementary to the protection of GRs and did not ensure their protection as a whole. It was of the view therefore that databases were not an end in themselves but rather a tool that would contribute to the implementation of other elements like disclosure of origin.

107. The Delegation of Sri Lanka pointed out that a mandatory disclosure requirement of origin should be included under that cluster. It referred to the statements made respectively by the Delegations of Iran (Islamic Republic of), on behalf of the Asian Group and India. It recognized that the content of the databases should not be in the public domain and that databases should be governed by national laws as well. However complicated that might be for patent offices, it believed that those principles upheld. It was of the view that those Delegations' views might be helpful to the facilitators in view of the need to constitute a single text.

108. The Chair opened the floor on the issue of consistency and synergy between the IP system and the CBD.

109. The Delegation of Egypt, speaking on behalf of the African Group, supported Option B.1 that provided for a mandatory disclosure requirement. It stated that this option should constitute the basis of any proposed text. It did not believe that the other options could ensure the desired consistency and synergy between national, regional and international IP systems and the CBD and Nagoya Protocol. It said that cluster B should address the five key issues as identified by Ambassador Owade, namely, subject matter, nature of disclosure, information to be disclosed, trigger for disclosure and consequences of non compliance. It believed that the subject matter should include the GRs, the derivatives and associated TK. It stated that the disclosure should be mandatory so as to ensure consistency and synergy with the CBD. Regarding the information to be disclosed, it believed that the facilitators' text, with regard to disclosure of information as part of the IP application, should include the following: the country of origin, the source of GRs, derivatives and associated TK, PIC, either by certificate of origin or by any other document in accordance with the domestic laws of the country of origin, evidence of benefit-sharing and MATs as well as the beneficiaries. Written and oral information should also be required regarding TK associated with GR, including the details of the holder of the TK, in order to enable search and examination of the IP application. It stated that the trigger regarding disclosure should be the time of filing of the application at the IP office concerned. Regarding consequences of noncompliance or sanctions, it believed they should be effective, appropriate and proportionate and constitute a deterrent. It reminded the Committee that the African Group

had outlined specific examples of sanctions as part of its proposal. It wished to see them reflected in the forthcoming text of the facilitators.

110. The Delegation of the United States of America stated that it supported the objectives of the CBD and in particular its requirements for PIC and MATs to establish fair and equitable benefit-sharing. It believed that there were many ways that the IP system could promote benefit-sharing and support patent quality. It said that with increased international cooperation, owners of high quality patents would be able to reap more rewards from patents, thereby having greater benefits to share. It recalled however that it did not believe that mandatory disclosure requirements were a suitable mechanism to further these objectives. It said that such disclosure requirements would not apply in all cases, since not all commercial uses were patented and a very small percentage of patents were actually commercialized and profitable. It added that ambiguity of patent disclosure requirements would undermine the objectives of PIC and benefit-sharing by discouraging research involving GRs due to legal uncertainties. It said that the risks involved in identifying source of origin in patent applications were enormous and that issues of traceability could render the patent system into one that discouraged rather than promoted innovation in that area. It stated that a mandatory disclosure requirement could not be seen as an end in itself and could not ensure the protection of GRs. It argued that many innovations related to GRs were not patented. It was of the view that only laws on ABS systems outside the patent system could cover all GRs. It believed that detailed national laws outside the patent system to regulate conduct would be a most effective means of managing access to genetic materials and noted that such systems had international relevance as well. It expressed the wish to study how these systems of permission or permits and contracts of benefit-sharing worked and how international contracts had been successfully enforced and indeed what role the WIPO Arbitration and Mediation Center might play in the transnational enforcement of benefit-sharing contracts. It also wished to further study how national laws outside the patent system could be used to promote transparency and monitoring. It noted that the Committee should not prejudge the outcome with regard to how to promote the shared objectives. It said that the agreement to undertake text based negotiations in the Committee had not altered its strongly felt position that work should focus on reaching a consensus on objectives and principles before deciding on what particular mechanisms might be helpful to achieve the objectives and principles. It requested therefore that under Cluster B one option must be no mandatory patent disclosure. It added that it could not support Options B.1 through 3 in Cluster B, but agreed to further explore Option B.4. It opposed, however, language regarding disclosure of origin in that option. In considering the creation of an international information system on disclosed GRs, it supported the proposal made by the Delegation of Japan in document WIPO/GRTKF/IC/INF/9. It noted that paragraph 42 in that document made reference to mandatory requirement related to evidence of PIC and ABS, in order to improve patent examination. Though it failed to see the link between mandatory disclosure of source and improved patent examination, the Delegation of the United States of America remained open to facts-based discussion on disclosure. It proposed the development of a study or voluntary survey concerning disclosure of GRs-related provisions adopted by countries and the transparency effects resulting from the requirement. It believed in particular that the Committee would benefit from a detailed discussion concerning the impacts of a disclosure requirement, notably based on specific information on benefits received and transparency gained for each country with a GR disclosure requirement system. It said that the following questions, at the minimum, should be addressed to those national IP offices that required the disclosure of source or origin of a GR or TK: how many disclosures have patent applicants made under your law to date? What guidance by the IP office was given to applicant on whether a specific application should disclose the origin of GRs or TK? What was the additional cost of processing such an application? How often was such a requirement met? If so, how often have the GRs directly been accessed, that is, *in situ* or accessed from a seed bank or purchased as a commodity? Has the imposition of a disclosure requirement and the number of patent applications filed in this area of technology increased or decreased? If they had decreased, had

any research been done to determine whether applicants who might have previously filed patent applications had decided to maintain their inventions as a trade secret rather than filing a patent application? What quantity of benefits has been received since the imposition of a disclosure requirement? How many ABS agreements have been signed? Are criminal sanctions and fines imposed for failure to disclose a GR or associated TK in a patent application? If so, please describe the situations in which these sanctions were imposed and what sanctions, if there were. If there was a disclosure requirement, did the office also require the disclosure of prior art that is material to the patentability of the intention? And if not what was the basis for having a disclosure requirement of the source of the GR or TK, but not for prior art that is material to patentability? How did disclosure improve examination? How often was the source of origin material to patentability for countries with an IP law that require disclosure? Was there also a national law that more directly related to misappropriation or misuse of GRs?

111. The Delegation of Japan emphasized that the problem of misappropriation of GRs was composed of two sub-problems, one of which was erroneously granted patents and, the other of which was the CBD compliance regarding ABS and PIC. As regards the sub-problem of the CBD compliance, it said that the Nagoya Protocol was adopted at theCOP10, which was held in Nagoya, Japan, in October, 2010. It expressed the hope that the modality of the Protocol would successfully function just as provided in its relevant provisions, agreed on by the contracting parties. It strongly believed that the ABS issue should be continuously considered as an issue of implementation of the Nagoya Protocol in the context of the CBD. It was gravely concerned however that mandatory disclosure, should it be introduced, could have a chilling effect on the industry's motivation for applying for patents, due to the legal uncertainty on patentability of patent applications or validity of patents, as well as the prospect of patent prosecution procedure. It stated that that could harm industry's motivation for innovation, which was accomplished with their ceaseless research and development efforts driven by the incentive granted by the patent regime. It invited the Committee to note that benefit sharing would also become unsuccessful, should the industry's motivation for innovation utilizing GRs decline. It maintained therefore that Option B.1 would not be an appropriate measure to cope with the problem of misappropriation of GRs.

112. The Delegation of Namibia noted that part of the problem of the divergent opinions among Delegations on the issue of mandatory disclosure had been succinctly captured in the earlier question of the Delegation of the United States of America with respect to GRs purchased as commodities and subsequently used as subjects of patent applications. It considered that practice as unacceptable, especially in light of the clear standards set by the CBD and the Nagoya Protocol, because the PIC of the country of origin had not been obtained to utilize the commodity as a GR. It added though, that nobody believed that a mandatory disclosure provision in the patent system would sort out all problems of misappropriation. It agreed with the view of the Delegation of the United States of America in this regard. It recognized that other means were also necessary, like product registration, marketing regulation or ABS compliance checkpoints. It added though, that the patent system although it did not constitute a major part of GRs utilization, was nevertheless a very important part of the system. It believed therefore that the IP system and the CBD needed to be mutually supportive. It said that this was what the majority of the countries believed when they adopted the Nagoya Protocol. It said therefore that it was essential that there must be a mandatory disclosure provision within the patent system. It accordingly insisted that the system be changed to introduce such mandatory disclosure provision for all patent offices. It was aware of the burden that that would impose and of the reservations made by the Delegation of Japan. It said that it was in the interest of its country as well to encourage investment in GRs and create further benefits. It suggested that the Committee discuss those details when it reached that stage. It said that it was not acceptable that mandatory disclosure was kept out of the negotiations and noted that the proposal made by the Delegation of European Union was a way forward.

113. The representative of CAPAJ referred to article 8j of the CBD that concerned indigenous peoples. He believed that those Member States which were arguing that benefit-sharing

mechanisms were governed by national legislation could be a bit more flexible. He noted that national legislations up until now had been very restrictive with regard to ways of compensation either by payment or benefit-sharing whenever the TK of indigenous peoples was concerned. He was of the view that a supranational norm was necessary in order to allow other and better types of compensation. He said that indigenous peoples' claims which had diversified seeds for example should be recognized. He reminded the Committee that an indigenous community had developed more than 2,000 different types of potato seeds and kept it for itself. He stated that this indigenous community wanted some economic payment in return in order to promote well-being for its peoples. He added that there were other types of national legislation that disregarded the rights of the indigenous peoples. He referred in particular to the expropriation of lands where indigenous peoples produced these seeds. He said that supranational norms would prevent this from happening. He said that the ban of biopiracy requested international norms as well.

114. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, recalled that it had on previous occasions introduced its position on disclosure of origin contained in document WIPO/IC/GRTKF/20/INF/8 and reiterated some of the reasons for its position. It believed that a disclosure of origin could be included in patent applications which included technology directly based on GRs. It said that this would enable interested parties to monitor the use of GRs in order to assess compliance with relevant rules regarding ABS. It added though, that disclosure requirements should not present an unfair burden on the applicant, requiring them to disclose information which they themselves did not have, or punish them for not disclosing information which was not available to them. As stated in a previous intervention, it said that patent offices were employed to make expert decisions on issues of substantive patent law. It added that this role should not be expanded to the consideration of issues not related to patentability. It was of the view that while information on disclosure of origin might be collected by patent offices when that information was available, so that those with an interest could monitor it, this task should not interfere with the core work of patent offices in delivering high quality patent rights. Referring to its proposal of a binding disclosure requirement, it clarified that that simply meant a disclosure requirement which would be implemented in all Member States and nothing more than that. It pointed out that the European Union did not accept consideration of the disclosure as part of the substantive examination of the patent. It added that where the country of origin was not known to the applicant, the applicant should instead disclose information on the source of the specific resource available to him. It said that a consequence of its proposal was that incomplete or incorrect disclosure would not lead to sanctions being applied in the field of patent law. It stated that attacking the validity of a patent, as had been suggested previously by other delegations, would in many cases be excessive in terms of the punishment imposed, and would limit the ability of national legal systems to exercise discretion with respect to individual circumstances. It added that that would also limit the ability of anyone to commercially exploit or otherwise profit from the IP concerned. The Delegation considered its outlined proposal to be a balanced and proportionate method of collecting information on the use of GRs in patent applications, which could form part of a balanced overall agreement on how to address the issue of IP and GRs. It reiterated that it was important to move forward equally on all issues before the Committee.

115. The Delegation of Iran (Islamic Republic of) strongly believed that a mandatory disclosure of origin should be considered and placed at the center of any system on GRs that the Committee would finally come up to. It said that this would make it possible for contracting parties to enforce their rights to GRs when they were subject to patent applications. It said that effective realization of CBD provisions on PIC and equitable benefit-sharing required such a disclosure. It stated that to have mandatory disclosure in place would be a significant step towards giving effect to the CBD and the Nagoya Protocol provisions and would enhance transparency. It was of the view that the Committee should start negotiation on how to capture the concept in an international legal instrument. It looked forward to seeing mandatory disclosure in the consolidated text of the facilitators, to start text based negotiations.

116. The Delegation of Bolivia (Plurinational State of) stated that the option on mandatory disclosure of origin was very important, since GRs and associated TK were not important just for development but for the very survival of the indigenous peoples that had this knowledge. It added that a mandatory disclosure was fundamental because this could lead to curbing biopiracy and would contribute to the survival of the indigenous peoples who held this knowledge.

117. The Delegation of South Africa noted that the statement of the Delegation of the European Union was consistent with its submission as contained in document WIPO/GRTKF/IC/20/INF/8 and the European Patent Convention. With regard to the consistency and continuity between the IP system and the CBD, it said that the Committee should not look at the CBD separately but together with its subsequent Nagoya Protocol, with a view to linking those to the IP system. It was clear in its view that the Nagoya Protocol left the issues around the IP discussions to WIPO, since the CBD was not a competent body to deal with IP issues. It stated that the present session of the Committee bore the burden of pursuing the alignment of the IP system with the provisions of the CBD. Observing that the expression "mutually agreed terms" seemed to be an acceptable phrase for Delegations, it noted that MATs in themselves promoted disclosure and as such, its use presented a form of alignment with the Nagoya Protocol. The relationship between the IP system and the CBD provisions needed to be further examined. It stated that the absence of an international mandatory disclosure requirement constituted a deterrent against promotion and research, contrary to what other Delegations said, because of the legal uncertainty that this absence created. It said that times for studies had elapsed and noted that a considerable amount of information was easily accessible regarding mandatory disclosure. It stated that South Africa adopted a legal system in 2005 that included such requirement and was able to answer most of the questions that were asked by the Delegation of the United States of America after having gained experience from the system. It recognized though, that the patent system did not capture all the users of GRs and that different instruments might be added. It mentioned the Bayh-Dole legal provision of the United States of America which looked at publicly funded research and noted that a mandatory requirement for researchers to declare the sources of origin of the GRs was included therein. It invited the Delegation of the United States of America to inform the Committee about its own experience with regard to the mandatory disclosure requirement that it had adopted, adding that it was a good case for the Committee to learn from. It added that the mandate of the Committee was not to define national policies and regimes but to set up an international binding regime which would bring together national experiences.

118. The Delegation of Switzerland said that its country had already introduced a mandatory disclosure requirement for GRs and TK in its national law. Against the background of this experience in Switzerland, it was convinced that with a moderate and pragmatic approach, disclosure requirements could be implemented in a way that would not be burdensome for patent applicants or patent offices. It reminded the Committee that it had submitted a proposal regarding the declaration of the source of GRs and TK in document WIPO/GRTKF/IC/20/INF/10. It noted that the proposal aimed at amending the PCT Regulations in order to explicitly enable countries to introduce mandatory disclosure requirements and to allow such disclosure in international patent applications. It said that the proposed disclosure requirement was intended to increase transparency in ABS with regard to GRs and associated TK, as well as to allow the providers of GRs and TK to keep track of the use of their resources or knowledge in research and development resulting in patentable inventions. It added that the requirement would assist patent examiners and judges in the verification of technical prior art with regard to inventions that related to GRs or TK. It supported therefore the approach that disclosure requirements and databases were complementary. It identified a number of features of its proposal: first, the use of the terms "GRs" and "TK associated with GRs" ensured consistency with the terminology used in the three principal international instruments on ABS, that is, the CBD, the Nagoya Protocol and the FAO International Treaty; second, the concept of "source" employed in the proposal ensured consistency with these three international instruments on ABS, which foresaw a number of different entities to be involved in ABS,

including, for example, the Contracting Party providing GRs, indigenous and local communities, and the Multilateral System of the FAO's International Treaty. It noted that other approaches focused exclusively on the country of origin. It did not see however how a disclosure of the country of origin could possibly be made if the GR or TK had been accessed from the Multilateral System of FAO, from an indigenous or local community, from the virus sharing mechanism of WHO, or from an area outside national boundaries. It was the reason why it applied the broad concept of source. As a third element of its proposal, it said that the invention must be directly based on the GRs or the related TK in order for the disclosure requirement to apply; fourth, it proposed to apply the disclosure requirement to international patent applications; fifth, it proposed to apply sanctions for failure to disclose or wrongful disclosure of the source, including post-grant sanctions outside the patent system such as criminal sanctions and the publication of the judicial ruling; sixth, in order to further strengthen the effectiveness of the requirement to disclose the source, it proposed to establish an internet-based list of government agencies competent to receive information about the declaration of the source. It explained that patent offices which received patent applications containing a declaration of the source would inform the competent government agency about this declaration. The seventh feature of the proposal was that the proposed amendment to the PCT would also apply to the PLT and thus to national and regional patent applications, based on the reference to the PCT contained in Article 6.1 of the PLT. Accordingly, it said that the Contracting Parties of the PLT would also explicitly be enabled to require in their national patent laws that patent applicants declare the source of GRs and/or TK in national patent applications. It noted that numerous countries had put in place national disclosure requirements, which differed considerably with regard to points such as the object of disclosure and the sanctions applied. It was of the view that this variety of regimes around the world undermined certainty for users of the patent system and providers of GRs. It stated that its proposal constituted a way out of the multitude of approaches, noting that an international harmonization would enhance legal certainty for all stakeholders involved. It saw the disclosure requirement as one measure in the context of IPRs and GRs, and the Committee should carry out work on the other options mentioned in document WIPO/IC/GRTKF/20/5, namely options A.1 to A.3. In that context, it noted with interest the proposal submitted by the Delegation of Japan on a one-click database, which appeared to be similar to the proposals that the Delegation of Switzerland had made on an international gateway for TK.

119. The Delegation of Brazil shared some principles and experiences regarding mandatory disclosure requirements from its own perspective. It said that that requirement should be mandatory in order to avoid distortion from a competition perspective, noting that companies wishing to pursue some ethical goals would make efforts that others would not be required to make. It said that sanctions would be necessary as an incentive for applicants. It reminded that the law in Brazil also required evidence of ABS and disclosure of the origin of GRs and TK that has been used in developing the invention. Regarding the additional burden that it presented to the Brazilian IP office, it said that the IP office checked first whether an applicant had met those legal requirements or not. It added that it was a distinct entity, namely the "substantive authority" which proceeded in a second phase with the substantive examination of the patent application. It was therefore very conscious that any new instrument to be established, in order to ensure consistency with the CBD and the Nagoya Protocol, should be designed in such a way that it did not constitute an unbearable additional burden for the IP offices.

120. The Delegation of Bangladesh referred to the questions asked by the Delegation of the United States of America and some other Delegations regarding the disclosure of origin of GRs and TK. It recognized that these questions were helpful for furthering the discussion regarding mandatory disclosure. Member States needed to have an international legal remedy that would ensure that GRs and associated TK were accessed lawfully and that GRs and associated TK could be exchanged for the benefit of mankind in accordance with international law. It realized that each Member State, just like Bangladesh, had its own approach in accordance with its culture and customs. But it urged the Committee to find a common ground that would be neutral and beneficial to all the citizens of the world.

121. The Delegation of Thailand said that mandatory disclosure was really crucial to the negotiations and requested that that requirement be included as an essential feature in the text that was being prepared by the facilitators. It also requested that consistency between the IP system and the CBD, and in particular the Nagoya Protocol, be ensured.

122. The Delegation of China supported the statements made respectively by the Delegations of Egypt on behalf of the African Group and the Iran (Islamic Republic of) on behalf of the Asian Group. It thanked the Delegation of Brazil for having shared its experience. It stated that establishment of a database of GRs and associated TK was an additional measure to protect GRs. However, it would not solve all the problems that arose regarding patent applications. It was of the view therefore that a mandatory disclosure element that would ensure PIC and ABS and contribute to prevent erroneous granting to patents was necessary.

123. The Delegation of Indonesia emphasized the need to expedite the discussion and made the following proposals in order to assist the facilitators in their work. It noted that the LMCs proposal, built on a single text, included Cluster B and took into consideration the proposal made by the African Group. It recalled that the African Group proposal was built upon the proposals submitted respectively by the European Union and by Switzerland. It also emphasized that the TK and TCEs texts were created from proposals made by the LMCs, reflecting the majority of Member States' concerns and expectations, although it recognized that the Bali text was not a complete text. It said that the Bali text was consistent with the objectives and principles and could serve to set up a text or text(s) for eventual endorsement. It emphasized as well that it was written in a treaty language form. It stated that three issues had been discussed within the LMCs draft which consisted of objectives and principles, defensive protection and consistency. It noted that mandatory disclosure requirements had been included and added that synergy between the IP system and the CBD was reflected under a chapter concerning complementary measures and relationship with other agreements. It stated that the facilitators could lessen their burden by expediting their work through the LMCs draft text. It recalled that article one of the LMCs draft text dealt with subject matter of protection and tried to reflect a general view regarding the definition of GRs; article two dealt with the individuals or groups which had the rights over GRs and tried to regulate to whom GRs should be associated with; article three regulated the scope of protection for GRs based on key provisions which would guide Member States in the setting up of mechanisms regulating the use of GRs by individuals or groups; article four regulated complementary measures for Member States which were part of this treaty, giving the opportunity to other Member States to check and share information regarding GRs; article five emphasized the relationship of supportiveness and consistency of those draft articles with other international agreements; article six came up in support of the disclosure requirement and requested Members States to create and develop some kind of guidelines in order to make sure that relevant patent requirements would be supportive of such disclosure; article seven mainly dealt with the steps which needed to be taken by contracting parties that shared the same TK; article eight dealt with sanctions, remedies and exercise of rights in accordance with Member States national law; article 9 dealt with technical assistance in support of the implementation of the forthcoming treaty. The Delegation of Indonesia invited all the remaining Delegations which did not wish to expedite the work of the Committee on that basis to understand at least the intention of majority of the Member States and join them for the benefit of human kind. It urged the Committee to use the Bali Text as a basis in order to expedite its discussion.

124. The Delegation of Cameroon reiterated its option for mandatory disclosure and welcomed the fact that this position was shared beyond African Delegations, including the Delegation of Switzerland and the Delegation of the European Union. It stated that mandatory disclosure provided great advantages, referring to the statements made by the Delegation of China and the Delegation of Indonesia. It added that such requirement would represent an improvement in documentation, enhance transparency and ensure consistency with the objectives of the Nagoya Protocol. It recognized that implementing the disclosure requirement would require the establishment of a database, as other Delegations had stated.

It stated though, that the database was not a panacea, since all GRs and associated TK were not put in writing, referring to the oral transmission of TK that prevailed in Africa.

125. The Delegation of the United States of America referred to the question asked by the Delegation of South Africa regarding the Bayh-Dole reporting requirement. It said that the Bayh-Dole was a contract-based system that applied to government funded research. It explained that under a contract with the funding agency, the recipient agreed to report to the agency information on inventions created with government funding, adding that reporting was made to the funding agency, not to the patent office. It emphasized therefore that it was not a disclosure requirement that was placed on all private parties or patent applicants. It said that the requirements under the Bayh-Dole Act merely recognized that inventions made with United States government financial support gave the United States government certain rights. It said that the required disclosure did not applied to source of origin, PIC, or benefit-sharing for GRs, but only required reporting of inventions made with government funding. It added that failure to make the disclosure under Bayh-Dole Act did not affect patentability, because it was not material to patentability. It explained that disclosure was an element of the funding requirement, not a patentability criteria that would serve as grounds for denying or delaying the grant of a patent or for revoking a patent. It stated that the Bayh-Dole Act in its country had vastly increased collaboration between the government, research institutions and the private sector leading to the commercialization of government funded inventions, the creation of entire new industries and economic benefits for government funded institutions, the private sector and society at large. It said that this transparent contract-based model was one that could be very instructive as a case study into how the contract-based approach as opposed to a mandatory patent disclosure requirement actually worked to share benefits broadly. It thanked therefore the Delegation of South Africa for raising the Bayh-Dole model. It noted that any reporting under ABS systems should likewise be made to ABS authorities and not to patent offices.

126. The Chair closed the discussion on the three sections, namely objectives and principles, cluster A and cluster B. He invited the facilitators to start preparing a consolidated text for further discussion. The Chair opened the discussion on document WIPO/GRTKF/IC/20/INF/14 prepared by the Secretariat that reported on the implementation of Cluster C activities (“options on mutually agreed terms for fair and equitable benefit-sharing”).

127. The Delegation of the United States of America supported option C.1, noting that this database would facilitate ABS by disseminating useful examples of IP clauses in ABS agreements. It added that another aspect that should be considered was linking the WIPO Arbitration and Mediation Center to this option, thereby addressing previous comments concerning trans-boundary dispute questions. It said that WIPO’s alternative dispute resolution options for the resolution of international commercial disputes between private parties could be of particular relevance. It recalled that the subject matter of these proceedings included contract and noncontract disputes, involving parties based in different jurisdictions.
It believed that this addition would help to improve the usefulness of the model of contractual approach. It reminded the Committee that it had provided a number of sample clauses for material transfer agreements used by the United States Department of Agriculture, the National Institute of Standards and Technology and the Centers for Disease Control and Prevention.
It encouraged other delegations to make similar contributions. It supported option C.2 as well. Regarding option C.3, namely the study on licensing practices on GRs, it supported further consideration of that option. It did not support limitations on this option for “distributive innovation and open source”. It said that it would be helpful instead to develop case studies on licensing practices in the field of GRs that had developed over the years, for example, through the use of material transfer agreements. It proposed therefore that the Secretariat undertake a study on ABS systems and their effects at the national level, looking at the following issues: the impacts of ABS systems on licensing agreements, research collaborations, investment in natural products research, and innovation in the field of natural products.

128. The Delegation of Namibia thanked the Delegation of the United States of America for reminding the Committee that there was a lot that could be done with contracts. It stated that its main concern focused on the users of GRs who assumed they could use GRs without a contract. It reiterated that for users of this type a mandatory disclosure requirement would be the only effective dissuasive measure to take.

129. The Chair closed the discussion on document WIPO/GRTKF/IC/20/INF/14.

130. [Note from then Secretariat: This part took place after completion of the first consolidated draft by the facilitators] The Chair invited Mr. Ian Goss to take the floor as a facilitator.

131. Mr. Ian Goss, on behalf of the three facilitators, expressed the hope that the consolidated text that they had submitted would meet the expectations of at least the majority of participants. He noted that the facilitators had had to take into account divergent proposals and views at different levels of maturity and purpose. He certainly saw this as an initial first draft of a compilation of the documents the facilitators had been asked to review. He recalled that the focus of the facilitators had been to attempt to capture all the key elements, proposals, and concepts within the documents without prejudice to any position. He said that the facilitators had not, to their knowledge, removed any key proposal, concept, or text, noting that they had had very limited time to complete the work. He invited the Committee to note that the facilitators had put comments, for the sake of transparency, regarding where the text was taken from. He acknowledged that the facilitators might not have comprehensively identified everything in the limited time available to them, adding that the facilitators obviously were looking to the Committee over the next few days to address these gaps. He said that in addressing their task, the facilitators had identified that the key outcome was to present a single document with all elements, proposals and concepts without prejudice and in a coherent way. In that way, the Committee could identify commonalities in texts, concepts, and proposals, so the IGC could more readily see areas of convergence or divergence. He said that the purpose was in essence to set a textual base for the development of a more mature text in order to support the text-based negotiations as reflected in the Committee's mandate. He stated that the facilitators would not see the document that they submitted at this stage as a negotiating text, as it required further work and needed to be informed by the Committee's discussions during the present session. He said, however, that, as a first step, the facilitators had faithfully completed their task within the limited time available. In summarizing the document, he said that the first part of the document addressed objectives and principles, noting that in that section, the facilitators had essentially retained document WIPO/GRTKF/IC/20/4. He recalled that that document had been refined during IGC 19. He said that there was still work to be done to further reduce this section, noting that there were still areas of duplication as well as areas of text which might be considered as implementation mechanisms rather than objectives or principles and were repeated in other documents. The facilitators understood the reason behind those elements being repeated in that section. He mentioned objective 2, principle 2, last two sentences, as an example of what could be considered as mechanisms for implementation rather than principles. He said that the second section focused on options for implementation of the objectives and principles and was structured in relation to options for future work with cluster A regarding defensive mechanisms and cluster B regarding offensive mechanisms. That section obviously included the different proposals presented by Member States. He referred to the table which tried to identify similar ideas and concepts. He highlighted though, that while these proposals were currently in table form, the facilitators were currently working to provide them as options in a similar form as the principles and objectives section and trying to complete that work before the end of the day. He recalled that this was essentially how the Committee progressed with the texts in relation to TK and TCEs, noting that tables and matrixes were initially used to identify common areas and break them down into options and text, which could then be bracketed, as a step-by-step process. Considering the different maturity of the concepts and proposals, he said that the facilitators tended to follow that approach. It was their intention to check with those countries which put forward proposals to ensure that they had captured them appropriately, but they understood that there was some sensitivity with this approach. He

acknowledged therefore that some countries would need to review whether their particular proposals had been captured accurately, noting that some of them were conceptual in nature, or presented in plenary in a way that might have looked different in the eyes of some Delegations, referring in particular to the proposals made respectively by the Delegation of Switzerland and by the Delegation of the European Union. He also noted that the African Group had given support in the past to the proposal made by the LMCs and might wish to revisit its own proposal in light of this, based on some divergence that the facilitators did see. He added that another section might be needed to captures issues that Member States might raise and would require further examination and analysis, referring to the comments made in plenary the day before. He acknowledged that the facilitators did not have to address that. He said that the facilitators noted that the proposals addressed the following broad categories of relevant issues: the relation of the IP and ABS systems; the extent of misappropriation of GR and TK; and the economic value of innovation of GR, including the value of resulting patent rights. Referring to option B.1, he said that the facilitators had made a one-line sentence to note that in relation to those mechanisms, some countries had not, at the present time, supported a disclosure regime, as they had the feeling that it was worth, without prejudice, to reflect that view.

132. The Delegation of the United States of America requested that the “no-mandatory disclosure” option should be a full-fledged option in the forthcoming revised text of the facilitators.

133. The Delegation of Venezuela (Bolivarian Republic of) noted the continued use of “national laws”, and requested the recognition and insertion of “international laws” in the first part, as this was really important for indigenous peoples.

134. [Note from the Secretariat: After several interventions, the facilitators were requested to transform the draft from tabular format into narrative/textual format, and delegations were invited by the Chair to begin to consult on the reformatted draft. The plenary adjourned to enable such informal consultations].

135. [Note from the Secretariat: This part took place after informal consultations among participants]. The Chair opened the floor for editorial comments by proponents on the reformatted text, laid out in narrative/textual form, as prepared by the facilitators. He requested, as a preliminary step to the substantive discussions on the text, that proponents of elements contained within the text make their interventions with respect to the adequate capture within the text, of their proposed elements. The Chair said that the Committee would proceed by way of live drafting in reviewing the text submitted by the facilitators. He said that the proposed insertions and additions would be underlined and that proposed deletions or questioned passages would be square bracketed. He announced that there would be slashes for separate drafting options. He said that there were options for stand-alone paragraphs or articles. He added that those might be numbered where appropriate.

136. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, in proposing its amendments, reserved its right to propose further changes following subsequent consultations with its capitals regarding the substantive content of the document. Such further amendments, the Delegation explained, would not relate to changes to its already submitted proposal, but rather would be geared at ensuring that its proposal was reflected accurately in the present document, in the eyes of its capitals. Regarding the section titled “Subject Matter of Protection”, the Delegation noted that its proposal was contained in option 2 and requested paragraph (b) of option 2 to be deleted and replaced with “‘in situ conditions’ means conditions where genetic resources exist within ecosystems and natural habitats, and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties (Article 2, CBD)”. On the section dealing with “Scope of Protection”, it asked for the deletion of the phrase “Contracting parties” at the beginning of option 2, and its replacement with the phrase “The disclosure requirement”. It proposed the insertion of “be mandatory”. This implied that it should be” after the word “should”, and the

replacement of “implement” with the word “implemented”. It suggested the insertion of a full stop after the word “manner”, and a replacement of the phrase “the following in the event that a patent applicant used” with the phrase “The invention must be directly based on the specific”. It proposed the insertion of a full stop after “genetic resources” in the introductory paragraph, the insertion of “In such circumstances” immediately after the full stop, and the deletion of the rest of the sentence. The Delegation proposed the deletion of “or” at the end of paragraph (ii), the deletion of the entire paragraph (iii) and also the deletion of the introductory section of sub-paragraph (a). It requested the insertion of the phrase “The applicant should declare “ at the beginning of the remaining text of sub-paragraph (a) and that this text should constitute a standalone unnumbered paragraph beneath paragraphs (i) and (ii). It proposed a new paragraph under this standalone paragraph: “In the exceptional case that both the country of origin and the source are unknown to the applicant, this should be declared accordingly”. On the section dealing with “Relationships with International Agreements”, it requested the deletion of the word “such” in the first paragraph of option two, and the insertion of the word “of” before “regional”. At the end of the first paragraph, the Delegation suggested that the full stop be replaced by a comma and that the phrase “will be necessary” be added thereafter. The Delegation finally proposed, with regard to option two of the section dealing with “Sanctions, Remedies and Exercise of Rights”, that the words “Contracting State” in the second paragraph be replaced with the word “Country”.

137. The Delegation of the United States of America proposed the inclusion of an option for no mandatory disclosure under Cluster B. It stressed that under this option, laws outside the patent system could be used to ensure PIC and benefit sharing under MATs. It explained that although a variety of civil and criminal laws may be used, including legal requirements for permits, contracts could also provide a flexible means of capturing MATs and transferring benefits. Under their no-disclosure proposal, national laws outside the patent system, including contract based approaches would be used. The Delegation cited the example of the Bayh-Dole style system of the United States of America and indicated that its proposal for the inclusion of a specific no-disclosure requirement option under Cluster B was supported, not just by the United States of America, but also by several Member States.

138. The Delegation of Egypt, speaking on behalf of the African Group, thanked the facilitators for their work. It suggested the insertion of numbers into the paragraphs of the text so as to facilitate the understanding of the text. The Group also suggested that the facilitators’ personal comments, which were not included as part of the Member States’ proposals, be grouped and presented as part of the end notes, and not as part of the text. It requested the deletion of the sub-items or sections within the text that did not contain proposals, as they seemed to be redundant. The Group proposed a reorganization of the text, by moving the definitions, as contained under the section dealing with “Subject Matter of Protection”, to the top of the document, before “Objectives and Principles”. This, the Group explained was necessary as it contained important terms and options which would guide the Plenary in an informed discussion. Also, the Group requested that Cluster A.2, “Information systems on GR for defensive protection” be moved and placed under the section dealing with the “Proposal on Complementary Measures” as it would facilitate a focused discussion on databases and how they can be used to provide protection for genetic resources. It finally requested for its proposal to be reflected in the text so as to facilitate future discussions on it.

139. The Delegation of Switzerland thanked and commended the facilitators for their efforts in assembling all the proposals into one text. It proposed that option two of Cluster A.2 (Information Systems on GR for Defensive Protection), under the “Options for Implementation of Objectives and Principles”, be amended by inserting a reference to the “establishment of an international gateway on traditional knowledge”, as contained in paragraph 10 of its proposal in WIPO/GRTKF/IC/20/INF/10. The Delegation proposed the insertion of text from paragraph 14 of WIPO/GRTKF/IC/20/INF/10 at the end of option four of the section relating to “Scope of Protection”: “Based on the reference to the PCT contained in Article 6.1 the PLT, the proposed amendment to the PCT would also apply to the PLT. Accordingly, the contracting parties of the

PLT would also explicitly be enabled to require in their national patent laws that the patent applicants declare the source of genetic resources and/or traditional knowledge in national patent applications". This was necessary so as to indicate that its proposals also applied to the PLT. The Delegation clarified that under option four of the section relating to "Sanctions, Remedies and Exercise of Rights", the patent office had to invite the patent applicants to comply with the disclosure requirements and set an adequate time limit for this. It proposed in that regard, the following text as contained in paragraph 26 of WIPO/GRTKF/IC/20/INF/10 to be added to option four – "If the national law applicable by the designated office requires the declaration of the source of genetic resources or traditional knowledge, the proposed amended Rule 51*bis*.3(a) of the PCT regulations requires the designated office to invite the applicant, at the beginning of the national phase, to comply with this requirement within a time limit which shall not be less than two months from the date of the invitation." The Delegation finally observed that Appendix I of WIPO/GRTKF/IC/20/INF/10 contained proposals by the Delegation of Switzerland on specific wordings for the amendment of the PCT regulations which were not contained in the draft facilitators' compilation, and requested their inclusion in the compilation document.

140. The Delegation of Japan expressed its support for the intervention made by the United States regarding Cluster B on no-mandatory disclosure, and argued that the no-mandatory disclosure was implied in paragraph 42 of its proposal on databases, as contained in WIPO/GRTKF/IC/20/INF/9.

141. The Delegation of Venezuela (Bolivarian Republic of) observed that the interventions made by the Delegations of the European Union, speaking on behalf of the European Union and its Member States, the United States of America and Switzerland were substantive in nature, and not mere editorial drafting interventions. With regard to Switzerland's intervention, it expressed its concerns on two issues. First, it sought to clarify the implication of replacing databases with the international gateway on TK. Second, it expressed concern over the proposal regarding the PCT norms and explained that five members in Latin America, were not members of the PCT, and it would therefore make sense to have a norm for all members, which would also apply to delegations which were non-members.

142. The Delegation of the Republic of Korea expressed its support for the interventions made by the Delegations of Japan and the United States of America. It also proposed that the draft text include no-mandatory disclosure requirement in Cluster B.

143. The Delegation of Algeria, speaking on behalf of DAG, expressed satisfaction with the draft text prepared by the facilitators, as it reflected the substance of the three IGC working documents which formed the basis of the facilitators' work.

144. The Delegation of Egypt, speaking on behalf of the African Group noted that it had gone through WIPO/GRTKF/IC/20/INF/9 and was unable to locate wording in support of the no-mandatory disclosure requirement as argued by the Delegation of Japan, in support of the proposal of the Delegation of the United States of America. It indicated that it had consulted WIPO/GRTKF/IC/20/5 which contained options on disclosure requirements and submitted that only four options existed; B1 - mandatory disclosure, B2 - further examination of issues relating to disclosure requirements, B3 – guidelines/recommendations on disclosure requirements, and B4 – alternative mechanisms. It pointed out that all these options were already contained in the facilitators' text. The Group therefore opposed the proposal, as an attempt to introduce a new proposal that was not contained in any of the documents under consideration.

145. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, observed that some of the changes proposed by the Delegation of Egypt on behalf of the African Group, in its first intervention were not merely editorial, but rather implied substantive consequences. It opposed the deletion of titles and sections which contained no proposals, as well as the repositioning of the definition section, as proposed by the Group.

146. The Delegation of Japan expressed its appreciation for the intervention made by the Delegation of Egypt on behalf of the African Group, and suggested that paragraph 42 of WIPO/GRTKF/IC/20/INF/9 be included in the text.

147. The Delegation of India, in response to the proposal by the Delegation of Japan to include the entire paragraph 42 in the text, suggested that the first part of the insertion “no disclosure requirement” be removed.

148. The Chair closed the segment on editorial interventions by proponents, and opened the floor to delegates for substantive interventions on paragraph one of the draft text.

149. The Delegation of Canada thanked the facilitators for their excellent work. It offered structural comments, and noted the usefulness of the draft text in identifying the points of convergence on general points. It thanked specially the Delegations of the United States of America, Japan, Norway and the Republic of Korea for their editorial comments. It observed that the negotiations would be facilitated if the structure of the document on GRs corresponded to the current documents on TCEs and TK as contained in Annex A and B of WO/GA/40/7. It noted that the draft text prepared by the facilitators could guide in preparing a format, which would include a preamble, consisting of the objectives and principles discussed to date, followed by definitions. Third, the provisions on the implementation mechanism as contained under Clusters A and B of WIPO/GRTKF/IC/20/5 as well as in the multiple proposals of Member States and Groups would follow. This would enable the Member States to reflect the diversity of proposals as well as identify the points of convergence to date, and thereby advance in the work as mandated by the General Assembly.

150. The Delegation of Iran (Islamic Republic of), speaking on behalf of the Asian Group, thanked the facilitators for their considerable efforts in preparing the compilation text. The Group noted that the draft document contained necessary elements for an international legal text. It however observed that the text could be restructured to facilitate its understanding, by according equal treatment to TCEs, TK and GRs within the IGC. It suggested aligning the structure and format of the three texts to the optimum extent through the insertion of identical titles. This would however take into account the different nature of the subject matter. It suggested that the objectives and principles be placed in the preamble, while the operative paragraphs in the objectives and principles be removed and transferred to the operative parts of the text. The Group also proposed that the sequence of titles in the draft text on GRs, be adjusted to conform to the two other texts. It noted that some titles like: the duration of protection, limitation and exception, formalities, transitional measures and national treatment, were missing and should therefore be added to the draft text on GRs. As in the case of TCEs and TK, the Group was in favor of starting negotiations from subject matter of protection which was Article 1 in the TCE and TK text. It supported the suggestion by the Delegation of Egypt, on behalf of the African Group, to number the articles.

151. The Delegation of Paraguay, speaking on behalf of GRULAC, considered the document as being a basis for negotiation of an international instrument, as it properly took account of the proposals presented previously by countries. It urged the IGC to further evolve the document into a consolidated single text which would enable members to save time and begin the discussions based on Articles. Other subsequent documents, the Group suggested, were to be included in a joint consolidated proposal.

152. The Delegation of Indonesia, speaking on behalf of the LMCs, expressed appreciation to the facilitators for their efforts in preparing the single draft document. It supported previous speakers from the regional group with regard to the principles of the session to negotiate an international legal instrument, which would ensure the effective protection of GRs. It recommended that the instrument should be drafted as a single text. It identified the three main issues to be discussed in the context of the draft as being the objectives, Cluster A and Cluster B, and pointed out that the discussion on Cluster B would be the most important in arriving at a

draft document. The LMCs proposed four options with a view to narrowing down the existing differences in the draft. It suggested the deletion of options which were similar in terms of paragraphs or wordings, and recommended that complementary options be merged or rephrased into single options. It called on the plenary to reflect on the possibility of producing a text in the context of its proposed adjustments. Finally, it noted that this would enable the Member States analyze which options would be bracketed, and those which would eventually constitute the decisions of the plenary.

153. The Chair thanked Delegations for their interventions and proposed a relay-type approach in achieving the goals of the session. He urged Delegations to proceed on to the "second leg", by examining the text substantively in a "paragraph by paragraph" fashion, in the light of the structural comments which had been received. He opened the floor for interventions on paragraph one.

154. The Delegation of Algeria, speaking on behalf of DAG, noted with respect to objective one, that it included elements which were preambular as well as those which were operative. It therefore proposed taking out all operative elements in the various objectives, and placing them in Cluster B. This would prevent repetition of elements in the text. It urged delegates to concentrate on standard setting through the preamble in line with their agreement that the first part of the document would include the preambular part.

155. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, thanked the facilitators for the work done, and supported the approach proposed by the Chair, as it pointed out that all the elements of the document were important. It opposed the suggestion of some delegations to progress in terms of articles. The Delegation relied on its earlier statement made with respect to WIPO/GRTKF/IC/20/4 for its reasoning with respect to its present intervention. It proposed that the bracketed text in objective one, "and/or using", "their derivatives" and "in particular applicants for intellectual property rights" should remain in brackets. Further, it proposed the deletion of the text, "national law and requirements of the country providing for prior informed consent, mutually agreed terms, fair and equitable benefit-sharing and disclosure of origin", and its replacement with "relevant conditions for access, use and benefit-sharing under national law".

156. The Delegation of Venezuela (Bolivarian Republic of) proposed the insertion of "international rights and national legislation" after the word "with" to ensure that obligations were carried out in accordance with international laws and national legislation. It supported the intervention of the Delegation of Algeria on behalf of DAG with regard to placing all elements that related to standard setting in Cluster B.

157. The Delegation of Brazil proposed the insertion of the text "applicants for intellectual property rights involving the utilization of" after the word "Ensure that" at the beginning of objective one. It requested the phrase "those assessing and/or using" to be deleted. It also proposed the deletion of "in particular applicants for intellectual property rights". The Delegation based its proposal on the need to express in clear terms that the instrument referred to applicants for IP rights. It proposed, with regard to the definition of the country providing in footnote two, a deletion of "/with", and its replacement with "and/or that has accessed".

158. The Delegation of Indonesia proposed the removal of all the brackets in objective one, on "derivatives", "prior informed consent" and "disclosure of origin". It reasoned that this was important as patent applications were practically based on the use of derivatives from GRs. It also reasoned that all the requirements of country providing, with respect to PIC, MATs, or fair and equitable benefit-sharing were relevant to the Nagoya Protocol and were also important considerations within the context of the present negotiations. It expressed its support for the inclusion of the phrase "applicants for intellectual property rights involving the utilization of", as proposed by the Delegation of Brazil, as it maintained that the discussions were extremely

relevant within the field of IP and GRs. It however expressed its willingness to be flexible on the inclusion of the phrase.

159. The Delegation of India expressed its support for the statement made by the Delegation of Indonesia, on the removal of the brackets, as the bracketed terms constituted essential elements in the context of the negotiations. However it requested an editorial amendment by replacing “in particular”, with “including”. It submitted that WIPO was a multilateral body discussing norm-setting on the intersection of IP and GRs, and should therefore reflect the application of IP rights for it to achieve its purpose.

160. The representative of the FAIRA expressed its support for the amendments proposed by the Delegation of Venezuela (Bolivarian Republic of), pointing out that the amendments proposed ensured that objective one overlapped with the objectives of the CBD and Nagoya Protocol.

161. The Delegation of the United States of America proposed the insertion of brackets around “applicants for intellectual property rights involving the utilization of” and also “relevant conditions for access, use and benefit-sharing under national law”. It suggested the insertion of alternative language, “are not burdened with unreasonable procedures when seeking patent protection” at the end of the paragraph.

162. The Delegation of Ecuador aligned itself with the proposals made by the Delegations of Indonesia and India in removing the original brackets in objective one.

163. The Delegation of Japan observed that the mandatory disclosure of information on origins of GRs with the patent applications was not to be targeted as such. It also noted that the objective was the basis for consideration of the principles, or the means for its achievements and was therefore required to be clear and concise. In conclusion, it submitted that all the bracketed elements in the draft objective should be deleted.

164. The Delegation of Canada supported the comments by the Delegation of the United States of America with respect to the bracketing of “relevant conditions for access, use and benefit-sharing under national law” and its suggested text at the end of the paragraph. The Delegation further proposed bracketing the text starting after “comply with” and ending just before “are not burdened with unreasonable procedures when seeking patent protection”. It noted that it would like that the original square brackets as present in the facilitators’ text be maintained. Finally, it proposed the replacement of the iterations of the word “intellectual property rights” with “patents”.

165. The Delegation of Egypt proposed the removal of the brackets on “that” in the opening line of the paragraph.

166. The Delegation of the Russian Federation, on Objective 1 regarding compliance with conditions of access to GRs, recalled the discussions in WIPO/GRTKF/IC/20/4, and pointed out that where an objective had been formulated, there was a need to indicate the mechanism which would enable the implementation of the objective. That was lacking in the text. In the present text there were arguable provisions such as compliance with the requirements of the country providing. It noted the importance of indicating that Member States were to comply with the domestic provisions and legislations of providing countries, and pointed out that for that objective to be attained, patent offices receiving applications had to take into account the applications, as well as the requirements of all States which were providers of GRs. That, the Delegation observed, was barely neither possible nor implementable. It therefore proposed the insertion of a full stop after “national law”.

167. The Delegation from Iran (Islamic Republic of) supported the removal of brackets from “their derivatives” and also “and/or using”. It further proposed the placing of brackets around

“are not burdened with unreasonable procedures when seeking patent protection”, proposed by the Delegation of the United States of America.

168. The Delegation of South Africa rendered its support for the insertion of “applicants for intellectual property rights involving the utilization of” as proposed by the Delegation of Brazil. It also supported the interventions of the Delegations of Indonesia and India. It expressed support for the proposal of the Delegation of Iran (Islamic Republic of) to remove the brackets around “their derivatives” and place brackets on “patents”, as proposed by the Delegation of Canada, as a replacement for “intellectual property rights”. It requested the insertion of brackets on the proposed text by the Delegation of the European Union, “relevant conditions for access, use and benefit-sharing under national law”.

169. The Delegation of the Plurinational State of Bolivia (Plurinational State of) opposed, and sought clarification on the proposal the Delegation of Canada to replace “intellectual property rights” with “patents”, pointing out that the patents were subsumed within the definition of IP. It further supported the suggestion by the Delegation of Venezuela (Bolivarian Republic of) to include “international rights”.

170. The Delegation of Canada clarified its position regarding the replacement of “intellectual property rights” with “patents”. It explained that the issue at hand was more relevant to patents than IP rights and should therefore refer only to patents.

171. The Delegation of the United States of America expressed its support for the intervention by the Delegation of Canada in this regard. It reasoned that copyrights and trademarks bore no relevance to GRs, and therefore preferred the text to focus on patents. It viewed the use of the term “Intellectual Property” as being too broad, and in the absence of other alternative proposals, it preferred to use the term “patents”.

172. The Delegation of the Republic of Korea offered support to the proposal made by the Delegation of Japan to delete all brackets of clear and concise text in objective one. The Delegation aligned itself with the interventions of the Delegations of Canada and the United States of America, and proposed the deletion of “intellectual property rights”, and its replacement with “patents”. It argued that IP rights covered copyrights, trademarks, designs amongst others, and that its introduction in the context of the text could be contradictory, as the current emphasis was on inventions related to GRs within the patent system. It cited the example of the discussions on disclosure requirements which were aimed directly at the patent system, and excluded other areas like copyrights and geographical indications. The definitions and subject matters of trademarks, designs and other IP rights were different from patents according to Article 15 through Article 25 of the TRIPS Agreement. It concluded that “patents” was to be used instead of “intellectual property rights” in objective one, objective two and further discussions as well.

173. The Delegation of Cameroon proposed the deletion of “that”. It expressed support for maintaining “derivatives” in the text. It sought clarification on the proposal by the Delegation of Venezuela (Bolivarian Republic of) for the inclusion of “international rights and national legislation” as it reasoned that where a country had ratified an international agreement, such an agreement fell directly within the public order of that country. With respect to the proposal to substitute “intellectual property rights” with “patents”, it submitted that adopting the more restrictive interpretation of “patents” could result in the risk of delegations returning to make amendments. The Delegation opposed for being superfluous, the latter part of the text proposal made by the United States: “are not burdened with unreasonable procedures when seeking patent protection”. It explained that the term “unreasonable” could be subjected to several interpretations.

174. The Delegation of China proposed a deletion of the brackets around “comply with national law”.

175. The Delegation of Venezuela (Bolivarian Republic of) proposed the deletion of the brackets around “their derivatives”.

176. The Chair closed the discussions on Objective 1 and opened the floor for interventions on Objective 2.

177. The Delegation of Egypt, speaking on behalf of the Africa Group, proposed the deletion of brackets around “their derivatives” in principle one. It suggested embarking on amendments to the text which would facilitate a cleanup of the text. It suggested placing the interventions by Delegations below the original text, with a view to keeping the text clean, while yet ensuring that members’ positions are clearly registered.

178. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, proposed the deletion of the second half of principle one from “including the sovereign rights” till the end of the principle. It also proposed the insertion of the phrase “in patent applications” at the end of the paragraph.

179. The Delegation of Algeria proposed the removal of the square brackets from “their derivatives” and opposed the deletion of the second half of Principle 1 as proposed by the Delegation of the European Union.

180. The representative of the OEAB proposed the deletion of the term “their derivatives” in Principle 1.

181. The Delegation of Venezuela (Bolivarian Republic of) requested the deletion of brackets around “their derivatives”. It opposed the proposal of the Delegation of the European Union to delete the second half of the Principle 1. It proposed the deletion of “states” and the insertion of “nations and peoples” in accordance with Declaration 1803 of the UN General Assembly 1992.

182. The Delegation of South Africa expressed its support for the proposal by the representative of the OEAB, to remove the brackets from “derivatives”. It also opposed the proposal by the Delegation of the European Union for the deletion of the second part of Principle 1, commencing with “including the sovereign rights”, and requested it to be retained.

183. The Delegation of Canada proposed to insert a square bracket around the term “ownership” in Principle 1, and expressed its support for the two earlier proposals by the Delegation of the European Union, namely the square bracketing of the second part and the addition of “in patent applications” at the end.

184. The Delegation of the Russian Federation sought to clarify the ownership arrangements envisaged in Principle 1, and proposed the insertion of the words “kinds of” before “ownership”. It explained that where such ownership related to ownership over natural objects, including GRs, which could be owned either by the State or the individual, the text should refer not to “ownership arrangements”, but rather to the diversity of ownership arrangement forms.

185. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, expressed its support for maintaining the brackets around “their derivatives” in Principle 1.

186. The Delegation of Indonesia aligned itself with the earlier proposals to remove the brackets from “their derivatives”, and proposed to put in brackets the phrase “in patent applications”. It expressed its support for the proposals of the Delegation of Algeria, the Delegation of Venezuela (Bolivarian Republic of) and the Delegation of South Africa with respect to maintaining the text of the second part of Principle 1, commencing with “including the sovereign rights”.

187. The Delegation of the United States of America requested to maintain the existing brackets throughout the text, but with a particular emphasis on the brackets around the phrase "their derivatives" in Principle 1.

188. The Delegation of Ecuador offered its support to the deletion of brackets around "their derivatives".

189. The Delegation of India proposed to replace the text "the wide variety of ownership arrangements pertaining to" with the text "sovereign rights of States over". It read out the amended text with an incorporation of its proposals on Principle 1 as follows: "Recognize sovereign rights of States over genetic resources, their derivatives and associated traditional knowledge and the rights of indigenous peoples and local communities in accordance with domestic legislation". It requested the deletion of the brackets around "their derivatives" and the placing of brackets around "in patent applications".

190. The Delegation of Brazil expressed its support for maintaining "their derivatives" in the text.

191. The Delegation of Ethiopia supported the removal of the brackets around "their derivatives". It also requested that "in patent applications", as proposed by the Delegation of the European Union, be kept within brackets. It supported the retention of the second part of Principle 1, starting at "including the sovereign rights of State".

192. The Delegation of Iran (Islamic Republic of) expressed its support for the inclusion of "their derivatives" in the text, and sought a removal of the brackets around it. It aligned itself with the proposal of the Delegation of India, with respect to the insertion of "sovereign rights of States over". It finally offered its support to the proposal by the Delegations of Venezuela (Bolivarian Republic of), South Africa, Indonesia and India with respect to bracketing the proposed text by the Delegation of the European Union, at the end of the paragraph.

193. The Chair closed the floor for interventions on Principle 1 and opened the floor for interventions on Principle 2.

194. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, proposed that the entire text of Principle 2 be deleted, and proposed the following text as a replacement: "Sovereign States have the authority to determine access to genetic resources in their jurisdiction. Subject to national legislation, persons accessing traditional knowledge associated with genetic resources from the knowledge holder(s) and applying that knowledge in the development of an invention should obtain approval from the knowledge holder(s) and seek their involvement." It clarified that the "s" in knowledge holders be placed in brackets.

195. The Delegation of Venezuela (Bolivarian Republic of) sought to maintain Principle 2, and proposed to place brackets around the text proposed by the Delegation of the European Union.

196. The Delegation of the Syrian Arab Republic noted, with respect to Principle 2, that the rights of peoples under partial or total colonization over TK and GRs must not be merged with the rights of indigenous peoples. It therefore proposed the following separate paragraph with a view to clarifying the need to respect the rights of peoples partially or totally colonized over their TK and GRs, including PIC, MATs and total and complete participation: "To ensure respect for the rights of people partially or entirely under occupation over their genetic resources and associated traditional knowledge, including the principle of prior informed consent and mutually agreed terms and total and effective participation".

197. The Delegation of India proposed the deletion of the entire Principle 2.

198. The Delegation of the Russian Federation expressed its reservations on the competence of WIPO to handle issues relating to the rights of indigenous peoples to self-determination, and rather noted the importance of concentrating on the protection of intellectual property. On this basis, the Delegation proposed the deletion of Principle 2, and offered support to the text proposed by the European Union.

199. The Delegation of Egypt proposed the deletion of “including”, and its replacement with “as well as”. The Delegation, on behalf of African Group, urged Delegations to exercise restraint in bracketing principles which had already been agreed upon at the international level.

200. The Delegation of Japan expressed its support for the proposal of the Delegation of the European Union. It noted that despite the fact that some Delegations had insisted that the original option three as stated in WIPO/GRTKF/IC/19/6, which seemed to be the same as the proposed text of the Delegation of the European Union, remain untouched, it had been merged with options one and two. It objected to this, and proposed that option three be restored as a separate option in the present text.

201. The Delegation of Mexico offered support to the proposal of the Delegation of the European Union, however, it requested to replace the term “holders” with “owners”.

202. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, proposed the deletion of the additional text proposed by the Delegation of the Syrian Arab Republic.

203. The representative of the Assembly of Armenians of Western Armenian identified itself as a representative of an autonomous nation and affirmed the ongoing natural sovereignty of GRs by the autonomous peoples, particularly according to the rights of indigenous peoples as contained in the UN General Assembly Resolution 1514. He submitted that this Resolution was enshrined in Principle 2, and it therefore expressed its support for Principle 2.

204. The representative of FAIRA expressed support for Principle 2 in its original format, with the incorporation of the suggested proposals by the Delegation of Venezuela (Bolivarian Republic of). He proposed brackets around the alternative text proposal made by the Delegation of the European Union.

205. The Delegation of Iran (Islamic Republic of) proposed the insertion of brackets around Principle 2, and offered support to the proposal made by the Delegation of the Arab Republic of Syria.

206. The representative of CAPAJ noted that Principle 2 was of immense concern to indigenous peoples as indigenous peoples based their lives, creations and innovations on the principle of living in freedom. He pointed out that the principle of freedom was the framework that enabled indigenous peoples to make contributions to new creations. He therefore proposed that Principle 2 be retained. The representative further argued that the principle did not in any way contradict the mandate which had been given to the IGC, as this mandate specifically promoted creations, and innovations, and indigenous peoples could make innovations only in an environment of freedom with full enjoyment of the rights to self-determination.

207. The Chair then closed the floor to interventions on Principle 2 of Objective 1 and opened the floor to interventions on Objective 2.

208. With respect to Objective 2, the Delegation of the Republic of Korea proposed the deletion of “intellectual property rights”, and the removal of the brackets around “patents” in option one. It also proposed, in option one, the insertion of brackets around the text beginning at “where there is no prior informed consent” and ending at “inherent rights of the original owners”. The Delegation requested a deletion of the entire option two, as it noted it contradicted the WTO

TRIPS Agreement. It explained that Article 27.3 of the TRIPS Agreement, which dealt with patentable subject matter, clearly indicated that microorganisms, non-biological and microbiological processes all constituted patentable subject matter.

209. The Delegation of Brazil observed that objective two made reference to two important issues: disclosure requirements, and bad or wrong patents. It therefore suggested a division of objective two into two objectives, with one focused on disclosure requirements, and the other focused on bad/wrong patents. It proposed, with respect to option one, the deletions of "in bad faith", as well as "in error for inventions that are not novel or inventive". It also requested the deletion of the last sentence, "or that was granted in violation of the inherent rights of the original owners." The Delegation proposed the creation of a separate objective addressing specifically the question of bad or wrong patents. It proposed the following text: "Prevent intellectual property rights from being granted in error and/or bad faith for intellectual property applications relating to genetic resources, their derivatives and/or associated traditional knowledge that do not satisfy the patentability criteria". It suggested the inclusion of a new principle to this objective: "Intellectual property rights should not be granted to inventions that are not new nor inventive". It therefore proposed a separation of the treatment of bad/wrong patents from the treatment of disclosure.

210. The Delegation of Egypt, on behalf of the African Group, proposed a removal of the brackets around "intellectual property rights" and a deletion of the term "patents". It argued that the choice of "intellectual property rights" was based on the fact that the protection of GRs was not an issue exclusive to patents. It pointed out that Article 27.3 of the TRIPS Agreement mandated Member States to provide protection for plant varieties, an issue central to the discussion on protection of GRs, either by patents or an effective system, or any combination thereof. It further requested the removal of brackets from "their derivatives" and "in bad faith". It proposed the deletion of the text, "in error for inventions that were not novel or inventive", and the removal of the brackets around "where there is no prior informed consent, mutually agreed terms and/or fair and equitable benefit-sharing, and disclosure of origin". The Group finally expressed its support for the proposal made by the Delegation of Brazil.

211. The representative of the OEAB proposed the deletion of "intellectual property rights", "derivatives" and " in bad faith" in Objective 2. She proposed the removal of brackets around the text with respect to patents granted in error and the insertion of a full stop immediately thereafter. The representative proposed that the rest of the text be removed as it failed to comply with existing agreements on IP protection, notably the PCT, and the TRIPs Agreement and exceeded the competence of the IGC.

212. The Delegation of Japan expressed its support for option one of objective two, but requested the deletion of the second and third bullets, as well as the phrase "in bad faith". It argued that the introduction by some Member States of the mandatory disclosure requirement of origin of GRs had been a mere means for achieving short term goals, pointing out that the origin of GRs was not directly connected to the IP system from the outset. It noted that in such situations, it was not reasonable to link patent protection with the mandatory disclosure requirement by targeting the requirement as an objective. It submitted that the second bullet point in option one, which began with "where" was not appropriate. Secondly, the Delegation offered support for the first bullet and noted that the chapeau of option one still maintained the ambiguous expression "in bad faith", which could be interpreted differently, according to the context of use. The third bullet contained an ambiguous phrase, "inherent rights of the original owners". It requested the deletion of these two ambiguous phrases. Third, it noted that the broadness of the meaning of the term "intellectual property rights", made it preferable to adopt the term "patents", as proposed by the Delegations of Canada, the United States of America and the Republic of Korea. Fourthly, it proposed the deletion of "derivatives", as it considered it inappropriate to reopen the issue on how to deal with derivatives under the CBD which had already been resolved to a large extent through the adoption of the Nagoya Protocol. Finally it argued that there was no international consensus regarding the issue of patents on life or life

forms being granted for GRs or associated TK. It considered such patents crucial to advancing, in particular, medical technology. It requested the deletion of option two.

213. The Delegation of Ecuador wished to delete the square brackets around “their derivatives” and insert “/or” before “associated traditional knowledge.”

214. The Delegation of Bolivia (Plurinational State of) did not agree with putting brackets around Option 2 of Objective 2. It explained that Option 2 of Objective 2 would ensure that IP Offices did not grant patents on biological and GRs and their derivatives as found in nature. This idea had its foundation on two realms, the moral and ethical and the technical. In the moral and ethical realm, patents could not be granted on life forms when they were merely isolated from their natural state, as this would go against the principles and beliefs of the indigenous original peoples of Bolivia (Plurinational State of). In the technical realm, merely isolating life and life forms from the natural state would not satisfy the patentability requirement of “inventive step”. It reiterated its position that Objective 2 in Option 2 should be maintained in the text. It reminded all the countries and participants that the Delegation of Bolivia (Plurinational State of) had looked at the revision of Article 27.3(b) as regards patentability criteria.

215. The Delegation of China stated that prevention of IP rights involving the illegal access and utilization of GRs from being granted would be essential for the protection of GRs and benefit-sharing. It supported Option 1 and suggested an addition to the second bullet point. It wished to add “or related national law and requirements are not satisfied” at the end of the second bullet point.

216. The Delegation of Brazil wished to put square brackets around “and/or” before “fair and equitable benefit-sharing” in the second bullet point of Option 1, and added that fair and equitable benefit-sharing and disclosure of origin were not optional but necessary requirements.

217. The Delegation of Algeria proposed the deletion of “patents” and the retention of “intellectual property rights” in Option 1 for the same reasons expressed by the Delegation of Egypt. It further proposed the deletion of the brackets around “their derivatives”. It agreed with the proposal to delete the first bullet point, and supported the proposal of the Delegation of Brazil to put brackets around “and/or” in the second bullet point. It supported the retention of Option 2 with the drafting proposal by the Delegation of Brazil and emphasized that that was important to ensure that no patents on life and life forms were granted for GRs and associated TK.

218. The Delegation of Trinidad and Tobago supported the proposal of the African Group and the Delegation of Algeria to remove the brackets around “intellectual property rights” in Option 1 as it felt that that would cover new plant varieties within its jurisdiction.

219. The Delegation of Iran (Islamic Republic of) wished to remove the brackets in Option 1 around “their derivatives” and to delete “patents” in the first line, along with the whole fourth line from “in error for inventions … “ and the last line from “or that was granted …“.

220. The Delegation of Colombia wished to endorse Option 1 of Objective 2 and supported the proposal of the African Group to remove the brackets around “intellectual property rights” and delete “patents”. It proposed to delete the brackets around “their derivatives” and endorsed the drafting proposal by the Delegation of Brazil that IP rights should not be granted for inventions that were not new nor inventive.

221. The Delegation of Indonesia associated itself with those who wished to keep “intellectual property rights”, delete “patents”, keep “their derivatives”, and delete “in bad faith”. It also wished to remove the brackets in Option 1 bullet point 2.

222. The Delegation of Switzerland supported the deletion of "their derivatives" in Option 1 and aligned itself with several other delegations that supported the deletion of Option 2. On the text proposal of the Delegation of Brazil, it proposed to put "their derivatives" in square brackets.

223. The Delegation of Egypt, on behalf of the African Group, requested to delete the brackets around "in bad faith". Speaking on behalf of both the African Group and the Delegation of Egypt, it wished to remove brackets around Option 2.

224. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, in Option 1, supported the position of the Delegations of the Republic of Korea and Japan in maintaining brackets around "intellectual property rights" and in maintaining the word "patents". It supported the Delegations of Japan and Switzerland in maintaining brackets around "their derivatives". It also supported the Delegations of Brazil, Japan, Indonesia and the African Group in maintaining brackets around the phrase "in bad faith". It wished to maintain the phrase "in error for inventions that are not novel or inventive" and supported the deletion of the two subsequent bullet points in their entirety, as well as the deletion of Option 2. With respect to Objective 2*bis*, proposed by the Delegation of Brazil, it supported the Delegation of Switzerland's proposal that "their derivatives" be deleted. It wished to delete "bad faith". It proposed to replace the phrase "intellectual property rights" with "patents" and "intellectual property applications" with "patent applications" and to apply this principle in the rest of the text.

225. The Delegation of the Sultanate of Oman supported the comments made by the Delegation of Egypt. It supported the removal of brackets around "intellectual property rights" and proposed the deletion of "patents." It wished to delete the brackets around "their derivatives" as in its view, derivatives were more likely the subjects of IP rather than GRs *per se*. It also supported the deletion of "in bad faith", and the deletion of the brackets around the second bullet point, from "where there is no prior informed consent".

226. The Delegation of the Russian Federation preferred Option 1 of Objective 2 in relation to preventing erroneous grant of patents that were not novel or inventive. It wished to maintain the brackets around "in bad faith". It proposed, in conformity with several other Delegations, to delete Option 2 because it ran counter to Article 27 of the TRIPS Agreement.

227. The Delegation of the Republic of Korea reiterated its earlier suggestion to delete "where there is no prior informed consent, mutually agreed terms and/or fair and equitable benefit-sharing, and disclosure of origin" and "or that was granted in violation of the inherent rights of the original owners".

228. The Delegation of Thailand supported the statement made by the Delegation of Egypt and several other speakers. It wished to delete the term "patents" and maintain the phrase "intellectual property rights".

229. The Delegation of the Holy See supported the position of the Delegation of Bolivia (Plurinational State of) on Option 2 of Objective 2. It explained that in relation to human life, Article 4 of the Universal Declaration of the Human Genome and Human Rights stated that the human genome in its natural state should not give rise to financial gains. In a similar vein, he referred also to the Council of Europe Convention for the Protection of Human Rights and Dignity of the Human Being, and the UN Declaration on Human Cloning. Thus the TRIPS Agreement, other WTO rules and all other international regional and bilateral trade and IP rights' agreements should not reduce the ability of states to govern the aspects of IPR related to human life and dignity. Mere commercial control of production and distribution of new life forms could affect both food security and development prospects of poor countries. Private, monopolistic rights should not be imposed over those biological resources from which the basic food and medicine requirements of human life were derived. An inclusive approach to IP rights should not ignore the major economic, environmental and ethical concerns about the patenting of life since such action would exert a negative impact on consumer rights, biodiversity

conservation, environmental protection, indigenous rights, scientific and academic freedom and, ultimately, the economic development of many developing countries, insofar as it depended on new technologies. For those reasons, the Delegation of the Holy See supported Objective 2.

230. The representative of CAPAJ supported the retention of the words “in bad faith”, because in order to protect GRs and associated TK, it was necessary that IP rights granted in bad faith should be sanctioned.

231. The Delegation of India supported the removal of brackets around “intellectual property rights” and “their derivatives” in Option 1. It wished to keep “patents” in brackets or to delete it, and to retain the brackets around “in bad faith”. It proposed that the brackets be removed from the phrase “where there is no prior informed consent, mutually agreed terms and/or fair and equitable benefit-sharing, and disclosure of origin” and that the word “or” should be deleted. It supported the text proposal of the Delegation of Brazil on the subject of bad faith and proposed that the text of Option 2 should not be in brackets.

232. The Chair made it clear that no decision taken on procedure could have the effect of diminishing the ability of any Member State to reflect precisely its wish for inclusion or deletion in the text. The Chair further proposed that for tidiness, the names of proponents and opponents would not be included in the text. He further proposed that where new proposals were made, the Chair would ask whether the proposal was acceptable. If a delegation stated that it was not, the proposal would be put in square brackets, and the discussion would move on unless a Delegation insisted on providing a rationale for the position that had not been articulated by the delegation proposing or opposing the item.

233. The Delegation of Australia was unable to support the use of the term “intellectual property rights”. Though it had heard other Delegations express the need to include a broader term of the concept rather than patents, with the example of plant breeders’ rights, it recalled that the discussions were taking place within a WIPO Committee that the competency on plant breeders’ rights was probably better addressed in another forum, particularly the UPOV. Thus, it supported the deletion of the text “intellectual property rights” in Objective 2 Option 1, as well as in Option 2*bis*. It joined other Delegations that wished to put square brackets around Option 2 of Objective 2, reflecting interventions made earlier regarding the WTO and law surrounding that, as well as the intervention it made two days before regarding the Australian Parliamentary Committee that recommended Australia not change its domestic law and that there were sufficient flexibilities in TRIPS that allowed States to act in accordance with their own ideas.

234. The Delegation of the United States of America proposed a new Option 2 that would read as follows: “Enhance the availability of patent protection for life forms and new uses for known substances in order to create benefits and support benefit-sharing from the use of genetic resources and associated traditional knowledge”. It explained that the intention of the amendment was not to promote the protection of substances that exist in nature, but rather, to promote the protection of new, useful and unobvious inventions. Further, with the understanding that brackets could not be removed without consensus, it explained that it had not been intervening to add its voice to the list of those requesting that original brackets or new brackets remain. But, in general, it supported retaining the brackets, as proposed by the Delegations of Japan, Republic of Korea, the European Union and its Member States, Canada, and Switzerland.

235. The Delegation of Brazil expressed the need for time to analyze the proposed text and the implications on the whole context. Thus it was not in a position to accept the suggestion right away, and it proposed the inclusion of square brackets around the new text.

236. The Delegation of Sri Lanka wished, on Option 1 of Objective 2, to retain “patents”, remove the brackets around “their derivatives” and delete both “intellectual property rights” and “in bad faith”. It wished to delete the second bullet point of Option 1 and the entire Option 2. It

supported the position of the Asian Group and the LMCs with few reservations until the text was finalized. It thanked the facilitators for their hard work.

237. The Delegation of Bolivia (Plurinational State of) supported the retention of the term "intellectual property rights," because it included patents and other patent terminology, and as it pointed out earlier, the whole range of intellectual property rights should be covered by this Committee. It also supported the inclusion of the term "derivatives" because "derivatives" were part and parcel of genetic resources, as it had previously expressed its interventions. It explained that "derivatives" were included in access to GRs, and that molecules or mixtures of molecules were naturally derivatives, and should be included under the concept of GRs.

238. The Chair opened the floor for discussions on Principle 1 of Objective 2. There were no comments on Principle 1 of Objective 2. The Chair opened the floor for discussions on Option 1 of Principle 2.

239. The Delegation of Brazil wished to put Principle 2 Option 1 in square brackets.

240. The Chair opened the floor for discussions on Option 2 of Principle 2.

241. The Delegation of Australia wished to put square brackets around the last two paragraphs of Option 2, because they could be considered mechanisms and were replicated in Cluster B.1.

242. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, wished to delete the whole of Option 2 and supported Option 1.

243. The Delegation of Brazil wished to delete the first paragraph of Option 2, consistent with its position that there was a need to establish checkpoints in the IP system. It also wished to delete "and monitoring utilization" in the second paragraph.

244. The Delegation of the United States of America wished to bracket the words "intellectual property" in the first line of the first paragraph of Option 2 and replace it with "patent". It wished to place brackets around the word "their derivatives" and supported the proposal of the Delegation of Australia to put brackets around last two paragraphs of Option 2.

245. The Delegation of South Africa wished to bracket Option 1 and remove the brackets around Option 2. It wished to retain "intellectual property" and put brackets around "patent". It preferred to retain paragraphs 2 and 3 of Option 2.

246. The Delegation of the Russian Federation expressed preference for Option 1 and wished to put square brackets around Option 2.

247. The Delegation of the Republic of Korea wished to delete Option 2 in its entirety.

248. The Delegation of Ethiopia wished to retain Option 2, and proposed that the newly-inserted word "patent" be placed in brackets. It also wished to retain "intellectual property".

249. The Chair reiterated his request that if the point of support or opposition had already been articulated, then perhaps other Delegations could restraint from repeating those points.

250. The Delegation of Venezuela (Bolivarian Republic of) wished to delete Option 1 and keep Option 2, minus the first paragraph. It wondered whether the Committee was part of WIPO or the World Patent Organization, because it could not understand the new trend of having to substitute "patent" for "intellectual property" each time.

251. The Delegation of India wished to delete Option 1 and accept Option 2.

252. The representative of OEAB wished to delete Option 2 of Principle 2 and accept Option 1, and proposed the deletion of "derivatives".

253. The Delegation of Japan aligned itself with the intervention of the Delegation of the Republic of Korea, which proposed the bracketing of Option 2 in its entirety.

254. The Delegation of Zimbabwe supported Option 2, and proposed the addition of a sub-item "(d)" in the third paragraph, which would read "assign intellectual property rights to another person or body".

255. The Delegation of Egypt, on behalf of the African Group, wished to remove the brackets around Option 2.

256. The Delegation of Canada asked for more time to review the proposal, and wished to extend the square brackets to include the new text.

257. The Delegation of Venezuela (Bolivarian Republic of) supported the proposal of the Delegation of Zimbabwe because, in its opinion, the proposed text brought in something that had been left out.

258. The Chair opened the floor for discussion on Principle 3.

259. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, wished to delete Principle 3.

260. The Delegation of Iran (Islamic Republic of) wished to put Principle 3 in brackets.

261. The Chair opened the floor for discussion on Principle 4.

262. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, wished to delete "intellectual property rights" and replace it with "patents". It also wished to delete the phrase "all background information" and replace it with "relevant known information".

263. The Delegation of Brazil preferred to use "intellectual property rights" instead of "patents" throughout the text.

264. The Chair asked whether Delegations could accept to have the alternative of patents inserted wherever IP rights appeared and for both to be square bracketed since it was clearly a recurring item, based on the positions articulated so far by Delegations. The Committee agreed to that proposal and the facilitators were requested to take note of the agreement.

265. The Delegation of Venezuela (Bolivarian Republic of) requested that the same be done for "their derivatives" because it was clear that wherever "their derivatives" occurred it had been put in square brackets. There were many Delegations who would be opposed to bracketing "derivatives", so it requested similar treatment as outlined by the Chair.

266. The Chair explained that the only consideration was that there was no alternative text to "their derivatives" being offered. So if the text was automatically in brackets, with no alternative text offered, then the situation might not be similar. The Chair had however taken note of the intervention.

267. The Delegation of India wished to delete "of good faith and candor" in Principle 4.

268. The Delegation of Canada wished to place square brackets around Principle 4 in its entirety. On the treatment of "their derivatives," as raised by the Delegation of Venezuela (Bolivarian Republic of), it suggested that an alternative option to "derivatives" would be the nil option. It wondered if a way could be found to reflect that throughout the text.

269. The Chair explained that by definition, the alternative option to bracketed text was no text at all, or the nil option, and asked whether the Delegation of Canada would be able to accept just putting brackets around “their derivatives”, to which the Delegation agreed.

270. The Delegation of Iran (Islamic Republic of) wished to insert “their derivatives” in the fourth line after “genetic resources,” and wished to bracket “source or” in the last part of the paragraph.

271. The Delegation of South Africa preferred to keep Principle 4 without brackets and supported the proposal of the Delegation of Iran (the Islamic Republic of), such that wherever “genetic resources” appeared, it would be followed by a comma and “their derivatives.” It wished to have the addition reflected throughout the text.

272. The Chair asked if it would be acceptable if the proposed addition were put in square brackets throughout the text, similar to the treatment of “intellectual property rights” and “patents”, to which the Committee agreed.

273. The Delegation of Venezuela (Bolivarian Republic of) wished to remove the square brackets around Principle 4. It observed that there was a difference between the English version and the Spanish version because in the English version it said “and/or”, whereas it just said “or” in the Spanish version.

274. The Delegation of Egypt, on behalf of the African Group, wished to append “and associated traditional knowledge” to “genetic resources” and “their derivatives”, wherever such phrases were found, all throughout the document. It wished to put brackets around “patents” in the first line. In the fourth line, it proposed to add the word “all” before “relevant known information” so that it would be “all relevant”, and then to put square brackets around “known” so that the phrase would be “all relevant information”.

275. The Chair opened the floor for discussions on Objective 3.

276. The representative of OEAB wished to maintain the reference to patents in Objective 3, and to delete the phrase “the intellectual property offices”, as well as the last section that was in square brackets, beginning with “Such information” and so forth.

277. The Chair explained that in some territories, patents might not be handled by a designated patent office, and wondered whether Delegations would reflect on whether, without prejudice to the distinction in the coverage of IP more broadly as opposed to patents, there was a form of words that would include jurisdictions where patent processes were handled by offices not designated as patent offices. For instance, some handled patents through their Ministries of Industry and other structures. Perhaps there could be a formulation to prevent unintended consequences. The Committee was invited to reflect on how to address what was clearly a policy difference between Delegations.

278. The Delegation of Japan was of the opinion that the bracketed last sentence of Objective 3 was not appropriate and, therefore, should be kept in square brackets. It would not be proper to relate the notion of PIC and benefit-sharing to IP rights or patents.

279. The Delegation of Jamaica suggested, in relation to the Chair’s invitation for reflection, that perhaps the phrase “the office that has responsibility for processing and/or management of patent applications” be used in place of “intellectual property offices”.

280. The Chair thanked the Delegation of Jamaica for its contribution of language and invited other Delegations to consider the suggested text in respect of the points made earlier.

281. The Delegation of Ecuador recalled the agreement that “intellectual property” and “patents” would be in square brackets throughout the text, and reiterated its preference for

“intellectual property”. It wished to put “/or” before “associated traditional knowledge” and replace “have appropriate information” with “ have access to appropriate information”.

282. The Delegation of the Republic of Korea associated itself with the statement made by the Delegation of Japan.

283. The Delegation of Brazil observed that in order to maintain a logical flow of text, the last sentence of Objective 3 should remain in brackets. The last sentence reflected objectives of the ABS, while the first sentence related to patentability criteria, and they did not belong together. As an informative note, in the case of between Africa and Brazil, all the required information had been provided before ABS agreements could be concluded. But once patent examination took place, the burden was on Africa to provide information. It was not a burden of the patent office to audit information that had already been accredited by another body within the Brazilian government.

284. The Delegation of the Russian Federation aligned itself with the position of the Delegation of Japan on Objective 3.

285. The Delegation of the United States of America proposed to replace, in Objective 3, “processing and/or management of” with “examining”.

286. The Delegation of Algeria wished to remove the brackets from the second sentence and also from “their derivatives”. On the first sentence, it wished to add “intellectual property and” before “patent applications” in the new text proposed by the Delegation of Jamaica.

287. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, wished to bracket “access to”, as it needed more time to reflect on the implication of the change in language.

288. The Delegation of United States of America wished to place brackets around “intellectual property rights”.

289. The Delegation of Nicaragua wished to add “should” before “have” and add “all the” before “appropriate information”, and requested that this be reflected in the entire document.

290. The Chair opened the floor for discussion on the Principles of Objective 3, beginning with Principle 1.

291. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, wished to delete “as far as known to the applicant relating to genetic resources, their derivatives and associated traditional knowledge”, and then the sentence would continue with “when assessing”.

292. The Delegation of Algeria wished to clarify whether the earlier agreement on the treatment of “intellectual property rights” and “patents” would be reflected in Objective 3 or not, because the brackets seemed not to be reflected on the screen.

293. The Chair recalled the earlier agreement on text that would reflect the fact that in some jurisdictions it was not the patent office but some other designated office that was responsible for patents and other IP rights, without prejudice to the discussion on whether the more appropriate expression was “intellectual property rights” or “patents”. Upon reflection, the Chair realized that the issue could be addressed at a later stage, perhaps in the preamble or the definitions, and invited the facilitators to reflect in the later version of the text the principle that the definition should encompass whatever manifestation the patent or IP responsibility took in a jurisdiction. The Committee agreed on the Chair’s proposal.

294. The Delegation of Japan wished to replace “the eligibility for grant of intellectual property rights” with the text “the patentability of an invention” covered in square brackets.

295. The Delegation of the Republic of Korea supported the proposal of the Delegation of the European Union. In addition to that, it wished to delete “intellectual property rights” in the end of the sentence.

296. The Chair opened the floor for discussions on Principle 2 of Objective 3.

297. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, supported the deletion of Principle 2.

298. The Delegation of Algeria wished to retain Principle 2 in the text.

299. The Chair opened the floor for discussions on Principle 3 of Objective 3.

300. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, supported the deletion of Principle 3.

301. The Delegation of South Africa wished to retain Principle 3. It recalled that the matters being discussed had already been taken up and concluded at IGC 19 and that, in fact, the document had already gone to the General Assembly. It seemed the process had become repetitive, and the Delegation wondered why the matter had been opened again.

302. The Delegation of Brazil sought confirmation on the rule that when a given Delegation stated that it wanted an entire principle or objective to be bracketed, the remaining text within the brackets would still remain in the working document for future consideration.

303. The Chair recalled the agreement that discussions would proceed in rounds or stages, and if brackets were placed, the expectation was that, in keeping with multilateral practice, Delegations with interest in the bracketed elements would conduct informal consultations with a view to moving other Delegations to their position. If Delegations remained unmoved at the end of the consultation process, there was no supervening authority to change that position. Therefore, it was clear that the process was such that each Delegation, as instructed by its authorities, had the right to put and maintain the positions it had been instructed to, and that the Chair could do nothing to divest any Delegation of the right to do so, including to update the positions that it would have taken, as, indeed, all representatives of their countries realized they were obliged to do.

304. The representative of *Instituto Indígena Brasileiro para Propriedade Intelectual* (INBRAPI) clarified that indigenous peoples possessed some knowledge, and GRs that contained such knowledge, which were considered sacred and to have spiritual and cultural values. Therefore, it was very important for States, mainly the States that had indigenous peoples, to respect the desire of indigenous peoples not to catalog sacred knowledge, because there was no legal certainty or security that would prevent catalogued resources and associated indigenous traditional knowledge from being put in the public domain. Thus, she wished to maintain Principle 3 and to remove the square brackets around it. She invited States to understand that the principle was more than economic interest and went into the importance of culture for indigenous peoples.

305. The Delegation of Iran (the Islamic Republic of) understood the concerns over the Principle but, nonetheless, wished to put Principle 3 in brackets.

306. The Delegation of Sri Lanka, with due respect to the indigenous people, was of the opinion that Principle 2 of Objective 3 should remain, but that some words could be changed. It suggested rewording it as “an applicant must disclose to the intellectual property office all background information”. The rest of the text could remain the same.

307. The Delegation of Venezuela (Bolivarian Republic of) proposed to maintain Principle 3 without square brackets, and supported the fact that there existed TK that went beyond the economic aspect. Such knowledge would deal with the cultural and religious aspect of indigenous peoples and cultures, and they were quite entitled not to have this documented in any database. Thus, it wished to maintain Principle 3 as it was in the text, without square brackets.

308. The Chair opened the floor for discussions on Objective 4.

309. The Delegation of the United States of America wished to bracket “Establish a” in the first line, and insert in its place “Recognize the.” In the fifth line, it wished to bracket “and regional.”

310. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, supported the retention of existing brackets in the text, particularly the brackets around “system,” around “derivatives,” and at the end of the sentence. It agreed with the proposal of the Delegation of the United States of America to put brackets around “and regional.” It wished to insert “relevant” before the word “international”.

311. The Delegation of Venezuela (Bolivarian Republic of) wished to remove the square brackets around the word “derivatives” and around the last part of the sentence, beginning with “including,” until the end.

312. The Delegation of France wished to put square brackets around “collective” at the end of the sentence, because the term was not consistent with its Constitution.

313. The Delegation of Mexico wished to replace “agreements and treaties” by “instruments”.

314. The Delegation of Iran (Islamic Republic of) wished to put the word “existing” between brackets.

315. The Delegation of Brazil was of the view that it was important to keep the first part of the sentence “Establish a coherent and mutually supportive system,” because such a system did not yet exist.

316. The Delegation of Japan supported the insertion of brackets as suggested by the Delegations of the European Union and the United States of America, and also suggested inserting, as an alternative, the original text of Objective 4, Option 1, in document WIPO/GRTKF/IC/19/6: “Promote a mutually supportive relationship with relevant international agreements and processes”.

317. The Delegation of Egypt wished to maintain word “Establish” and put brackets around the word “Recognize,” as such mutually supportive system was not yet established.

318. The Chair opened the floor for discussions on Principle 1 of Objective 4.

319. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, wished to bracket, in Principle 1, the phrase “and regional.”

320. The Delegation of Brazil wished to place brackets around “and processes.”

321. The Delegation of the United States of America wished to bracket “and seek consistency with.” It wished to insert “relevant” before “international,” and supported the proposal of the Delegation of the European Union to place “and regional” in brackets.

322. The Delegation of the Republic of Korea associated itself with the position of the Delegation of the United States of America.

323. The Chair opened the floor for discussions on Principle 2 of Objective 4.

324. The Delegation of Brazil wished to bracket “and processes” in Principle 2, and proposed text for a final sentence that would read: “The work of the International Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore should not prejudice the work pursued in other fora.”

325. The Delegation of Australia wished to consider further detail in the text proposed by the Delegation of Brazil, and requested that the text be put in square brackets.

326. The Delegation of Cameroon sought clarity on a recurring question, similar to the debate on “patent” and “intellectual property”, concerning the use of “international instruments” and “regional instruments.” It wondered whether it would be a good idea to retain both expressions, given the tenor of the interventions so far, considering that what was international was necessarily regional, though the inverse was not true. As an example, Cameroon was located in Central Africa and had regional agreements within the CEMAC. But a country outside of the CEMAC area could not really say that it was part of the agreement. International instruments like UN agreements would apply internationally. The Delegation expressed confusion on the nature of the problem, whether it was just semantics, wording, or a tactic to avoid certain things. It felt that there was a need to reach an agreement on the matter.

327. The Delegation of the United States of America supported the statement of the Delegation of Cameroon, and wished to place brackets around “cooperation” in line 1 of Principle 2, and around “and regional” in line 2, consistent with the position of the Delegation of Cameroon.

328. The Delegation of Algeria wished to put “and processes” within brackets, and remove the brackets around the last part of the sentence beginning with “and support” until the end.

329. The Chair opened the floor for discussions on Objective 5.

330. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, wished to delete the text beginning with “to the mutual advantage of holders” in line 2 until the end.

331. The Delegation of Peru presented some suggestions for wording on Objective 5. It wished to replace the word “maintain” in the first line with “strengthen”. In the first bullet point, it wished to replace the word “contributing” with “ensuring.”

332. The Delegation of Bolivia (Plurinational State of) wished to remove the square brackets around “derivatives” in the first paragraph and in the first bullet point. It wished to maintain the second bullet point in the text and to remove the square brackets around it. It explained that prevention of the adverse effects of the IP system on the rights of indigenous people had the effect of recognizing and protecting the rights of indigenous peoples to use, develop, create, and protect their knowledge and innovation in relation to genetic resources.

333. The Delegation of the United States of America wished to insert square brackets starting in line 5 before “in a manner conducive to” until “genetic resources” at the end of the second bullet point.

334. The Delegation of the Russian Federation supported the proposal made by the Delegation of the European Union.

335. The Delegation of Ecuador wished to insert “/or” before “associated traditional knowledge” in the first paragraph and in the first bullet point. It also supported the removal of the square brackets in the first bullet point.

336. The representative of FAIRA wished to insert the word “cultural” in line 4 after the words “conducive to social.” He wished to delete “welfare” after “economic” and replace it with “well-

being and development." In the second bullet point, he wished to replace "customs, beliefs, and rights," with "laws, practices, knowledge systems and rights."

337. The Chair asked if there was a delegation that would, in keeping with the procedure, support FAIRA's intervention.

338. The Delegation of South Africa endorsed proposals that FAIRA had made. It also wished to place brackets around "/or", for the reason that GRs and associated TK were linked and it did not make sense to dismember that state of ideas. It appealed to Delegations not to complicate the work and to be reasonable in their contributions.

339. The Delegation of Algeria wished to keep "strengthen" in brackets. It was of the opinion that it was important to keep the two bullet points in the document, and proposed the removal of brackets around the text of both bullet points.

340. The Delegation of Australia supported the previous intervention to remove "strengthen" and, for consistency of language, to remove "and" so it would read "Recognize the role of the patent system."

341. The Delegation of Japan supported the proposal of the Delegation of the United States of America.

342. The Delegation of Egypt wished to insert "providers," in Line 3, after "to the mutual advantage of."

343. The Delegation of Indonesia wished to put in brackets the term "indigenous peoples" that appeared twice in the second bullet point, and replace it with "indigenous and local communities," in line with the CBD.

344. The Delegation of Sri Lanka wished to delete "maintain" in the first line and replace it with "strengthen", and replace "holders" after "mutual advantage of" with "stakeholders". On the second bullet point, it wished to add "and traditional knowledge" after "customs, beliefs and rights" and insert "local communities" before "to use, develop, create and protect" towards the end of the sentence.

345. The Chair opened the floor for discussions on Option 1, Principle 1 of Objective 5.

346. The Delegation of Iran (Islamic Republic of) wished to put the whole of Option 1 in brackets.

347. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, wished to support Option 1 and delete Option 2.

348. The Delegation of the Russian Federation wished to maintain Option 1.

349. The Delegation of Japan aligned itself with the position of the Delegation of the European Union.

350. The Delegation of Algeria wished to keep Option 1 in square brackets and maintain Option 2.

351. The Delegation of Venezuela (Bolivarian Republic of) wished to delete Option 1 and maintain Option 2.

352. The Delegation of the United States of America wished to insert brackets from "and in the protection of" in line 4 of Option 2 until the end of the sentence.

353. The Delegation of the Republic of Korea supported Option 1, and endorsed the proposal of the Delegation of the European Union, speaking on behalf of the European Union and its Member States, to delete Option 2 entirely.

354. The Delegation of Ethiopia wished to maintain Option 2.

355. The representative of CAPAJ wished to know if any Delegation of those supporting Option 2 could support the text insertion “of indigenous peoples” after “associated traditional knowledge” in the third line, because it was not clear in the existing text who was the subject of traditional knowledge.

356. The Chair asked if any Delegation could support the proposal by CAPAJ. There was none.

357. The Delegation of Oman wished to keep Option 2 of Principle 1 of Objective 5 and delete Option 1.

358. The Chair opened the floor for discussions on Principle 2 of Objective 5.

359. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, supported the deletion of the text contained in the brackets from “noting the relationship” until the end of the Principle.

360. The Delegation of Sri Lanka wished to replace “maintain” in the first line of Option 2, Principle 1 with “strengthen” similar to its earlier position on Objective 5.

361. The Chair noted that discussions on Principle 1, Option 2 had been completed and the discussion had moved Principle 2. He asked if the Delegation of Sri Lanka could withdraw its proposal and revisit it, if necessary, at the next round. The Delegation of Sri Lanka agreed.

362. The Delegation of Algeria wished to retain the paragraph in square brackets, beginning with “noting the relationship” up to the end.

363. The Delegation of Bolivia (Plurinational State of), upon analysis, wished to support the proposal of the representative of CAPAJ, because not including indigenous peoples would go against its Constitutional framework. However, as discussions had proceeded to Principle 2, it requested the inclusion of its comments in the record.

364. The Chair recommended that the matter be revisited in the next phase of the work. The proposed text would be removed for the moment, with the understanding that further intervention would be anticipated from the Delegation of Bolivia (Plurinational State of) during discussions on Option 2, Principle 1 of Objective 5 in the next phase.

365. The representative of CAPAJ wished to add, in the fourth line of Principle 2, the words “of indigenous peoples” after “associated traditional knowledge,” in order to clarify who was being referred to in the sentence. And then in the following paragraph, he also wished to add “and indigenous peoples” after “benefit-sharing with the knowledge holders.” He wondered if any Delegation could support the addition he had proposed.

366. The Chair asked if any delegation could support the proposal of the representative of CAPAJ.

367. The Delegation of Venezuela (Bolivarian Republic of) wished to take out the square brackets in the first line up to the end, and supported the proposal of the representative of CAPAJ to add “of the indigenous peoples” after “associated traditional knowledge.” But at the end where it said “knowledge holders”, it wished to insert “traditional” so that the text would read “traditional knowledge holders.”

368. The Delegation of Japan supported the proposal of the Delegation of the European Union.

369. The representative of INBRAPI wished to support the statements of the Delegations of Bolivia (Plurinational State of) and Venezuela (Bolivarian Republic of) and thanked them for supporting the inclusion of indigenous peoples. She wished to propose a slight modification in the text of Principle 2, where "indigenous peoples" would not be at the end of the sentence, but before the word "traditional knowledge holders." This would clarify that the text covered both indigenous peoples and local communities, who were also TK holders. She hoped that other Delegations would support the proposal.

370. The Chair asked if any delegation could support the further amendment proposed by the representative of INBRAPI.

371. The Delegation of Venezuela (Bolivarian Republic of) supported the proposal of INBRAPI because it was consistent with the CBD, therefore, "local communities" should be included.

372. The Delegation of Bolivia (Plurinational State of) supported the proposals of the representatives of CAPAJ and INBRAPI, and the Delegation of Venezuela (Bolivarian Republic of), for the inclusion of indigenous peoples and local communities, because they were entitled to the necessary respect, as provided in the CBD.

373. The Delegation of South Africa wished to delete the brackets from "noting" until the end of the Principle. It recalled that the purpose of the document was to clarify the relationship between IP rights and GRs and, without the section in brackets from "noting" until the end, the logic was broken. It was not possible to break up the two concepts, they had to be both maintained. It also wished to support including "local communities" wherever "indigenous peoples" was found in the text, though it would be redundant to also include "traditional knowledge holders" because that was precisely who indigenous peoples and local communities were. Finally, it recalled that discussions had been going on since IGC 17, and wondered what was the purpose of going through the same process continuously and not really relating to the purpose of the document. It wished to put on record that, from the point of view of the Delegation of South Africa, the afternoon's activities had been wasted, because the achievements of IGC 19 had been reversed.

374. The representative of Tupaj Amaru wished to replace "promote" with "to strengthen legal". Since the language used in the text was legal language, he requested that Secretary clarify the meaning of "legal certainty" and the difference between "legal certainty" and "legal protection," which had been used extensively in the negotiations on TK and folklore. He also requested a definition of "clarity" and wondered if "scope" could be used instead of "clarity". He recalled that for the last 10 years, indigenous peoples had wanted to protect their TK from biopiracy or piracy at an international level. Thus, the text must be absolutely clear and precise and consistent with other international instruments. He wished to add "from national and international biopiracy" after "Protect" in the second paragraph. He agreed with the proposal by the Delegation of Venezuela (Bolivarian Republic of) to add "traditional" and say "traditional knowledge holders."

375. The Chair asked if any delegation could support the proposed amendments made by the representative of Tupaj Amaru.

376. The Delegation of Bolivia (Plurinational State of) clarified that while State representatives were the ones negotiating text in the Committee, it did not mean they should set aside indigenous peoples. There must be a position that was clear and in favor of indigenous peoples, and this was recognized in the Constitution of Bolivia which spoke of a Plurinational State. Thus it supported the inclusion of indigenous peoples and local communities in the text.

377. The Chair recalled that the specific recommendation was with respect to strengthened legal certainty. Specific references to indigenous peoples and local communities had already

been supported by other Delegations earlier. He asked if the Delegation of Bolivia (Plurinational State of) endorsed the textual recommendations in respect of "to strengthen legal certainty".

378. The Delegation of Bolivia (Plurinational State of) supported the comments made by Tupaj Amaru and the other representatives of the indigenous peoples.

379. The Delegation of Cameroon recalled the addition of "indigenous peoples" to Principle 2 and sought clarification on the implication of the text. Did it mean that indigenous peoples would be the sole beneficiaries? It was clear in the statement made by the Delegation of South Africa, and from the fact that there was a need to add "local communities" in the text, that there were many other beneficiaries. It recalled a section in the document on "Beneficiaries," and wondered, if Delegations started adding new beneficiaries, did it mean that those not mentioned were excluded? It was surprising to hear the proposal to replace "States" with "Nations." In itself, there was nothing objectionable in the proposal, but it was of the opinion that in defending one's own interest, the interest of others should not be forgotten. There were countries which were States but not yet Nations, and the reverse. Thus, there was a need to accommodate everyone and to mention each in the appropriate places.

380. The Delegation of Sri Lanka supported the position of Delegations of Venezuela (Bolivarian Republic of) and Bolivia (Plurinational State of) and the representatives of indigenous communities to support inclusion of "indigenous peoples and local communities". It recalled that in the Oxford dictionary, indigenous meant native and explained that Sri Lanka also had indigenous people, who might be original people, natives, or migrants. "Indigenous" in the context of Sri Lanka was not necessarily the same as in South America. Nonetheless, it supported the inclusion of "indigenous communities" as well as indigenous peoples' TK.

381. The Delegation of Mexico wished to replace "holders" in the end of the second paragraph with "owners".

382. The representative of INBRAPI was of the opinion that there were no new categories of beneficiaries being created by adding "indigenous peoples" and "local communities." Article 8(j) of the CBD and Article 7 of the Nagoya Protocol clearly identified indigenous peoples and local communities, and not any other category, as the holders of TK. Therefore, what had been done was simply to bring the text in line with existing international instruments dealing with similar a subject matter. As for the addition in the end of the second paragraph, the idea was not to say indigenous peoples and local communities and TK holders or owners, but to identify indigenous peoples and local communities as the TK holders, thus it should not be "and" between "local communities" and "traditional knowledge holders" but a comma. This would make the text clear and consistent with the CBD and the Nagoya Protocol as to who are the knowledge holders or owners of TK.

383. The representative of Tin Hinane expressed appreciation to the States who understood and supported the indigenous peoples and local communities. She invited all the other Delegations, particularly those of the African Group, to have some discussions on the issue with Delegations of African States taking part in the CBD meetings, because they had good understanding of the relationship of indigenous peoples to their knowledge. She drew the Committee's attention to Article 8(j) of the CBD and the UNDRIP.

384. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, wished for clarification on the proposal of the representative of Tupaj Amaru in the beginning of Principle 2. It wished to put in brackets the proposed additions "Strengthen legal" and "scope."

385. The Delegation of Canada wished to place the paragraph in square brackets. It also wished to place in brackets the word "derivatives", and "owners" at the very end.

386. The Delegation of Iran (Islamic Republic of) agreed with the intervention by the Delegation of Cameroon, specifically that there were different categories of TK holders. It was of the opinion that TK holders were not limited to indigenous people or local communities. Therefore, it proposed to utilize the Committee's experience in the TK and TCE negotiations and avoid the enumeration of each category of TK holders and instead use the general term "beneficiaries."

387. The Delegation of Mexico supported the proposal made by the representative of INBRAPI, referring to "indigenous and local communities," as it was in accordance with established language in Article 8(j) of the CBD and the Nagoya Protocol. It proposed to use the language in a uniform and consistent manner throughout the text.

388. The Delegation of Venezuela (Bolivarian Republic of) supported the proposal of the representative of Tupaj Amaru, explaining that the reason for its participation in the discussion was to obtain legal certainty in the whole process. It also wished to support the intervention of the representative of INBRAPI and to put in square brackets the whole topic of beneficiaries, because in its opinion it was not necessarily indigenous peoples who were the beneficiaries. Indigenous peoples might be the holders and owners but they were not necessarily the recipients of benefits.

389. The Delegation of Brazil supported the reference to indigenous peoples and local communities.

390. The Chair opened the floor for discussions on Principle 3 of Objective 5.

391. The Delegation of Egypt wished to add "and ensure prior informed consent and fair and equitable benefit-sharing" after the word "investment," and to delete the rest of the paragraph.

392. The Delegation of India wished to add after "new invention" the following sentence: "which has been developed in full compliance with national laws and requirements, including the principles of prior informed consent, fair and equitable benefit-sharing."

393. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, wished to delete the amendment proposed by the Delegation of India.

394. The representative of CAPAJ wished to add "public, private and community" before "investments". He explained that including public investments would be encouraged, and specifying private investments would promote investment by companies. Community investment must also be included because it was recognized by many Constitutions in Latin America. He wondered whether Delegations would support his proposal.

395. The Delegation of South Africa supported the inclusion of "public, private and community". It also supported the addition proposed by the Delegation of India, and wished to add after "equitable benefit-sharing," the words "mutually agreed terms."

396. The Delegation of Venezuela (Bolivarian Republic of) supported the wording proposed by the Delegation of India.

397. The Delegation of Japan wished to revert to the original text of Principle 3, without any of the proposed amendments and without any deletion.

398. The representative of Tupaj Amaru supported investments from the public and from local communities, but did not agree with private investments coming into communities to explore the use of indigenous peoples' strategic basic resources, such as GRs. He recalled that even during the negotiations on the UNDRIP, indigenous peoples had always been opposed to such measures. He supported "Protect creativity", but wished to specify only public investment coming from the State, and set aside any foreign investment, whether from the World Bank, International Monetary Fund, and multinational corporations, as this would not result in

protection and development of GRs. He recalled that he had said quite clearly that there should be no reference to foreign investment, thus he wished to add after “investments” the words “should come from the States or public investments,” and as to participation “just as the participation of indigenous peoples in the development of new inventions.”

399. The Chair asked if any Delegation could support the proposal of the representative of Tupaj Amaru that all investments should come from the States or public investments. There was none.

400. The Delegation of the United States of America supported the proposal of the Delegation of Japan on Principle 3. It was of the opinion that the language that had so far been inserted into the original Principle 3 made it redundant with Objective 1.

401. The Delegation of Bangladesh supported the proposal of the Delegation of India.

402. The Delegation of Australia was of the opinion that the changes proposed to Principle 3, which was a relatively simple one-line sentence, had made it redundant with the second paragraph of Principle 2, which dealt with protection and creativity of rewarding investment. Thus, it supported the proposal of the Delegations of Japan and the United States of America to go back to the original text. With respect to the insertion of the terms “public, private, and community” while it could support the notion, it was of the opinion that there was no need to be so specific as to the source of investment.

403. The Chair opened the floor for discussions on Principle 4 of Objective 5

404. The Delegation of China supported the measures to promote transparency and dissemination of information in Objective 5. It wished to delete the brackets around “where not in contrast with public morality and/or ordre public,” and to add after that “and providing sufficient protection.” The proposal would ensure that the providing countries and holders of GRs and TK could get relevant moral rights and benefit-sharing. Disclosure should be based on protection.

405. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, supported the deletion of text contained in the brackets of the chapeau, which said “where not in contrast with public morality and/or ordre public.” It also wished to delete the second and third bullet points, but wished to maintain the first bullet point.

406. The Delegation of Algeria wished to delete the brackets around “where not in contrast with public morality and/or ordre public.” It also wished to remove the brackets around all three bullet points.

407. The Delegation of India wished to put brackets around “where appropriate and where publicly available” in the second bullet point. It also wished to remove the brackets around the text of the bullet points.

408. The Delegation of the Holy See wished to remove the square brackets around “where not in contrast with public morality and/or ordre public,” and also to remove the square brackets around the second bullet point.

409. The Delegation of the Republic of Korea wished to maintain the first bullet point and delete the second and third bullet points.

410. The Delegation of Egypt wished to insert “by disclosing country of origin of genetic resource” after “Promote transparency and dissemination of information.”

411. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, wished to bracket in the chapeau the amendments introduced by the Delegations of Egypt and China.

412. The Chair opened the floor for discussions on Cluster A “Options on defensive protection of genetic resources”, beginning with A.1.

413. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, wished to keep Section A.1, pending elaboration of options for consideration.

414. The Delegation of the United States of America proposed an option under A.1 “That WIPO begin developing an inventory of databases and information resources on genetic resources.”

415. The Delegation of Canada supported the proposal by the Delegation of the United States of America.

416. The Delegation of Egypt observed, on proposal the by the Delegation of the United States of America, that WIPO could not begin developing an inventory of databases without a request from Member States. Therefore, it proposed to add “with requesting of Member States” in the text proposed by the Delegation of the United States of America.

417. The Delegation of South Africa wished to follow up on a proposition that had been made by the Delegation of Egypt, that elements of A.1 and A.2 could be seen as complementary measures. That being the case, the proposal from the Delegation of the United States of America was part of those complementary measures. It observed that the approaches were not norm-setting, but were projects that the WIPO Secretariat could undertake as part of its mandate.

418. The Delegation of Japan supported the proposal of the Delegation of the United States of America.

419. The Delegation of the Republic of Korea supported the proposal made by the Delegation of the United States of America.

420. The Delegation of Sri Lanka observed that A.1 was something that could be done in the future by WIPO.

421. The Delegation of Iran (Islamic Republic of) supported the proposal of the African Group to transfer A.1 under complementary measures, since it was not a norm-setting activity.

422. The representative of FAIRA wished to add, after the insertion by the Delegation of the United States of America, a comma, then “but at the same time, maintaining protection of indigenous sources where such cultural protocols exist.” He explained that the idea behind the proposal was that those were existing databases and there might not be protection over the indigenous information, which could bring into play some cultural protocols. Therefore, he wished to make sure that those sensitivities were maintained during the inventory.

423. The Delegation of Australia supported the proposal made by the representative of FAIRA.

424. The Delegation of China supported the proposal by the Delegation of Iran (Islamic Republic of) and the African Group.

425. The Delegation of Algeria, on behalf of DAG, wished to transfer the text to the section on complementary measures, since it was not a norm-setting activity.

426. The representative of INBRAPI wished, in order to be consistent with other parts of the text, to add at the end of A.1 “to ensure the prior informed consent of the indigenous peoples and local communities.”

427. The Delegation of Venezuela (Bolivarian Republic of) supported the text proposed by INBRAPI.

428. The Delegation of Brazil supported the statements made by DAG.

429. The Delegation of the United States of America wished to bracket the word “requesting,” and replace it with “the assistance of”. In response to those delegations that believed that section A.1 should be moved to complementary measures, it did not agree with that idea, since A.1 had been discussed as a separate cluster as part of norm-setting for some time.

430. The Delegation of Iran (Islamic Republic of) wished to put Option 1 in brackets, in order to study carefully that new proposal.

431. The Delegation of Bolivia (Plurinational State of) supported the inclusion of the text proposed by INBRAPI.

432. The Delegation of India wished to add “and associated traditional knowledge” after “genetic resources”. It also wished to shift section A.1 to Complementary measures.

433. The Chair opened the floor on A.2. Information systems on GRs for defensive protection.

434. The Delegation of Japan supported Option 1 of A.2 and thanked to all Member States who had supported that proposal. It recognized the excellent work made by the facilitators in summarizing document WIPO/GRTKF/IC/20/INF/9 and document WIPO/GRTKF/IC/20/INF/11 into Option 1. It reiterated that, to prevent erroneously granted patents and to secure defensive protection of GRs, it was significant and useful to develop a database accessible by examiners.

435. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, wished to bracket Option 1, in order to conduct more internal consultations on that option. It also wished to amend Option 2. It wished to add, in the first sentence, after the word “collect”: “genetic resources and associated”. It requested the same adjunction to be made in the third sentence, after “local, regional and national databases of”.

436. The Delegation of Switzerland supported the additions suggested by the Delegation of the European Union.

437. The Delegation of Egypt, on behalf of the African Group, recalled the proposal of the African Group to deal with section A.2 under Complementary measures. It also proposed to marry options 2 and 3, using the following language: “Develop databases related to genetic resources, derivatives and associated traditional knowledge accessible to relevant competent authorities, indigenous peoples and local communities in order to avoid the erroneous granting of patents for genetic resources and related traditional knowledge and ensure transparency, traceability and mutual trust taking into account access and benefit sharing arrangements as provided for under the CBD and the Nagoya Protocol.” The second paragraph would read as follows: “Efforts should be made to codify the oral information related to genetic resources, their derivatives and associated traditional knowledge for the purpose of enhancing the development of databases.”

438. The representative of INBRAPI supported the proposal made by the Delegation of Egypt, on behalf of the African Group. It wished to complement that proposal by adding “ensure the free prior informed consent”.

439. The Delegation of Egypt wished to bracket the addition suggested by INBRAPI.

440. The Delegation of Sri Lanka endorsed the statement made by the Delegation of Egypt.

441. The Delegation of Iran (Islamic Republic of) wished to bracket options 2 and 3. It favored the African Group proposal but wished to amend it. It wished to bracket “indigenous peoples and local communities”. It explained that, since the purpose of the proposal was to avoid erroneous patents, databases should be accessible only by relevant authorities. Access by other parties may endanger the confidentiality.

442. The Delegation of the United States of America wished to bracket “intellectual property” and replace it with “patent”, throughout Option 3. It wished to replace the word “shall”, in the first line of the third paragraph, with the word “should.” In the second line of the third paragraph, it wished to bracket “information” and replace it with “prior art.” After “their derivatives and associated traditional knowledge” in the third paragraph of Option 3, it wished to insert “which is available to them.”

443. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, wished to delete Option 3. It also wished to bracket the proposal made by the Delegation of Egypt of two new paragraphs under a new option merging Options 2 and 3.

444. The Chair opened the floor on A.3. Guidelines or recommendations on defensive protection.

445. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, wished to delete Option 1.

446. The Delegation of Egypt, on behalf of the African Group, proposed the replacement of Option 1 with the following language: “Contracting Parties of the PCT shall take steps to amend the guidelines for search and examination procedures for patent applications to ensure that they take into account the disclosure of the origin of genetic resources, their derivatives, and associated traditional knowledge. The provision is applicable to regional patent authorities as well as the international search and examination authorities under the PCT.”

447. The Delegation of the United States of America wished to bracket “intellectual property” and insert “patent” in the first and third lines of Option 1, and to bracket “shall” and insert “should” in the first line of Option 1. It also wished to bracket the alternative text, to have time to consider it. The Delegation also noted that the co-sponsors to the joint recommendation wished to introduce, at the appropriate time, their work. It wished to work with the Chairman to find the appropriate place in the text or otherwise fit it into the work of the Committee.

448. The Delegation of the Republic of Korea wished to delete the entire Option 1 and its alternative.

449. The Delegation of Japan supported the intervention made by the Delegation of the United States of America.

450. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, wished to delete Option 2. Nevertheless, it wished to retain section A.3, pending further options to be presented.

451. The Chair opened the floor on Cluster B, B.1. Mandatory disclosure, and on Subject matter of protection.

452. The Delegation of Indonesia, on behalf of the LMCs, extended its highest appreciation for the facilitators who had done well in preparing the draft. It noted that Cluster B would be the most important part in the international legal instrument for the protection of GRs. It wished that the clusters would be the context of the text-based negotiation with the objective of reaching an agreement to set an international legal instrument. With regard to the structure, it stressed that

a single text was needed. It wished to see the draft produced with the format of the TK and TCEs texts.

453. The Chair reminded that the format had already been discussed and that it had been agreed that the recommendations made would be taken into account when the facilitators return to their work.

454. The Delegation of Indonesia, on behalf of the LMCs, suggested that all the sections starting from "Subject matter of protection" be put as articles. With regard to the four options mentioned earlier, it suggested looking at what they had in common and, when there were similar terms or wordings, to try to see which one was more suitable and the rest would be deleted. Regarding the issues within the options that were different in nature, it suggested not having long debates and to try to compromise or put in brackets the divergences. Regarding the substance, on Subject matter of protection, the Delegation requested the deletion of options 2, 3 and 4.

455. The Delegation of the United States of America offered an alternative option to be introduced in B.1: "Patent disclosure requirements shall not include a mandatory disclosure relating to genetic resources unless such disclosure is material to the patentability criteria of novelty, inventive step or enablement." The alternative option would replace the language that was placed there by the Delegation of Japan. The Delegation explained the reasoning behind the alternative option. It pointed out that its stakeholders were currently experiencing serious problems in countries that imposed onerous disclosure requirements. They experienced patent processing delays and uncertainty in obtaining and exercising patent rights. In some cases, such requirements could not be complied with, where ABS systems were not established or were not functioning properly. It stressed that there was a dearth of evidence that mandatory disclosure requirements provided any benefit and that there was growing evidence that they were in fact harmful to innovation. While WIPO had collected some information on the legal nature of existing patent disclosure requirements, there was no fact-based evidence to examine how they were actually working in practice. The impact of mandatory disclosure requirements had not been analyzed yet. Prior to norm-setting in WIPO in the past, evidence had been gathered to support new norms. No such evidence existed to support GR related disclosure requirements. It stated that, prior to adopting a one-size-fits-all approach to address disclosure requirements, the consequences on national laws, innovation, the marketplace, research, innovation and the actual sharing of benefits had to be considered.

456. The Delegation of Japan supported the intervention made by the Delegation of the United States of America. It pointed out that each option in each item described in section B.1 rested on the premise of the introduction of a mandatory disclosure requirement. However, as the Delegation and other Member States had stated, the position against the mandatory disclosure requirement existed and it should be written as an alternative. It suggested to add after B.1, after Paragraph 42, which had been inserted previously, and before Subject matter of protection: "Alternative 1: no mandatory disclosure requirement" and "Alternative 2: mandatory disclosure requirement". It also wished to bracket the whole text from Subject matter of protection to the end of B.1.

457. The Delegation of Italy, on behalf of Group B, indicated, in response to the comments made by the Delegation of Indonesia on behalf of the LMCs, that it was reluctant to dramatic changes in the structure of the documents, namely to start work on articles or rename clusters in articles. It considered that discussions on the structure were premature and should be left for a later stage.

458. The Delegation of Brazil wished to replace the title and proposed that, instead of "Subject matter of protection", it read "Objective". On Option 1, in the first line, it wished to replace "Protection" with "This instrument", and "extend" with "apply". It also wished to replace "utilization of" with "intellectual property right derived from". It also proposed to separate the first

part which referred to the object, by inserting a new title before “For the purposes of this instrument”, which would read “Use of terms”. Regarding the terms already provided, it considered that “Associated Traditional Knowledge” should not be defined in the document, and wished to have it deleted from the text, since it was being discussed in the TK forum and would be defined on the discussions on TK. It did not wish to preclude the discussions on the other forum with the work being done at that moment. On b) “Derivative”, it wished to insert, in the first line, after “means”: “naturally occurring”. On e) Utilization of Genetic Resources, it wished to delete “their derivatives and associated traditional knowledge”, since the objective of the IGC was related to Intellectual Property Rights associated with GRs. The Delegation wished to insert a new sub item: “In accordance with Article 5 of the Nagoya Protocol, a providing country is the country of origin or that has acquired the genetic resources/accessed the traditional knowledge in accordance with the Convention on Biological Diversity.”

459. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, supported the statement made by Group B on the structure of the text. On Option 1, it did not support at that stage the restructuring proposed by the Delegation of Brazil. It wished to delete the first sentence of Option 1, and paragraphs a), b) and e), as well as the new paragraph f) proposed by the Delegation of Brazil. Concerning the first sentence, it considered that disclosure of origin related to identifying GRs used in patent applications but was not an issue of protection of any use of GRs. It retained paragraphs c) and d), which were identical to those contained in Option 2, which was the option presented by the European Union and its Member States. It supported Option 2 and wished the deletion of options 3 and 4. Regarding Option 4, it was not in disagreement with the substance of what was proposed specifically in paragraphs a) and c), but preferred stand-alone definitions. It had a problem with the substance of paragraph b).

460. The Delegation of Egypt, on behalf of the African Group, considered that the facilitators’ comments should be removed or be placed under end notes and should not be made an integral part of the text. It saw overlap between the proposal made by the Delegation of Japan and the proposal made by the Delegation of the United States of America, which was supported by the Delegation of Japan. It proposed to remove the original proposal made by the Delegation of Japan, since that Delegation supported both proposals. It proposed to delete in the first line of Alt. 1 the word “not”. It wished to remove the phrase “unless such disclosure is material to the patentability criteria of novelty, inventive step or enablement”. It wished to add after “genetic resources”: “their derivatives and associated traditional knowledge”. It stressed that that kind of disclosure did not affect innovation. There were several cases of developed countries applying the disclosure requirement and it actually enhanced innovation, and did not affect innovation. It also increased confidence in the patent system and provided predictability for the stakeholders. The disclosure requirement was not a one size fits all. Each Member State would apply or implement that requirement as part of its national law, and could adjust this requirement according to its own national context. It wished to put brackets around Alt. 1 and keep Alt. 2. Regarding the definitions, the Delegation wished to ask the facilitators to compile the definitions and remove any overlapping or redundant items, because it saw some overlap. It wished to remove Option 3, because it did not include any definition of terms.

461. The Chair asked the Delegation of Japan whether it wished to respond to the request for the deletion of its earlier proposal bearing in mind the intervention of the Delegation of the United States of America, which introduced an alternative proposition.

462. The Delegation of Japan pointed out that it would not mind the deletion of Paragraph 42 itself as long as a no mandatory disclosure alternative was retained.

463. The Delegation of the Republic of Korea agreed with the Delegations of the United States of America and Japan on that disclosure requirement was not relevant to patentability and on that it would only complicate and make worse an already overburdened patent system. It was concerned that the disclosure requirement might undermine the principles of the global patent

system which had been established and developed over a long period of time. It pointed out that Article 16 of the CBD, which was related to patents and IP rights, did not require disclosing the source of origin of GRs. It supported Alt. 1 No mandatory disclosure requirement.

464. The Delegation of Iran (Islamic Republic of) wished to insert “Article 1” on the title “Subject matter of protection”. It also supported Option 1 with the additional suggestions made by the delegations of Brazil and Egypt.

465. The Delegation of Mexico requested that the options on “Use of terms” be brought together in a single option. It also asked the facilitators to add a definition of “inventions directly based on genetic resources”, because that term was used in the European Union proposal and in the Swiss proposal and it did not understand the scope of that term. That definition could facilitate the understanding of the various proposals.

466. The Delegation of Australia pointed out that the amended definition of “Derivative” was in agreement with the definition in the Nagoya Protocol. However, there was some difference between the definition of “Utilization of genetic resources” of the draft document under discussion and the one included in the Nagoya Protocol, in that the reference for including the application of biotechnology was not cross referenced to Article 2 of the CBD. It also noted that the Protocol provided a definition of biotechnology, which picked up a cross reference to derivatives. He wished to know the views of the proponents of that definition and, in particular, whether they sought to have that sort of level of consistency with the Nagoya Protocol in the draft document under discussion.

467. The Delegation of Canada noted that many square brackets had been added which very much changed the meaning of a paragraph or a section. It considered that it might be more useful if the addition of square brackets were limited to nuances in the text, and to create alternative paragraphs, if the objective were to indicate a different political approach. That suggested procedure would help to clarify matters. It mentioned the example of the proposal of the Delegation of Egypt in Alt. 1, which represented a policy approach that was antipodal to the original submission. It considered that it would be more efficient and clearer if Delegations that had suggestions that were new or different from the original submissions put those in stand-alone options, and if square bracketing only be used to insert nuances into text but not different policy approaches. It also suggested inserting, after the proposal of the Delegation of the United States of America in Alt. 1: “Patent disclosure requirement should only pertain to those elements that are material to the patentability criteria of novelty and inventive step”.

468. The Chair pointed out that throughout the document amendments had been taken within options as they existed. He considered that it would be difficult to change the process and disaggregate the alternatives as suggested by the Delegation of Canada.

469. The Delegation of Canada agreed to withdraw its suggestion on procedure.

470. The Delegation of Sri Lanka supported the insertion of “Article 1” proposed by the Delegation of Iran (Islamic Republic of). It fully endorsed the intervention of the Delegation of Indonesia. It wished to add in paragraph a) of Option 1: “Traditional Knowledge means the content or substance of knowledge that is the result of intellectual activity and inside a traditional context and includes the know-how, skills, innovations, practices and learning that form part of Traditional Knowledge systems.” It supported the position of the LMCs.

471. The Delegation of India wished to put in brackets the suggestion made by the Delegation of Canada. In paragraph e) of Option 1, it wished to add after “to conduct research and development”: “including commercialization”.

472. The Delegation of the United States of America supported the statement of Group B. It suggested, following the suggestion of the Delegation of Japan, putting under Alt. 1 the clear no disclosure options. In Alt. 1, in the first paragraph, it wished to bracket the language “, their

derivatives and associated traditional knowledge", that had been added to the text. It wished to add two new subparagraphs to Option 1: "h) A patent disclosure requirement related to genetic resources and associated traditional knowledge shall not apply to the following: 1. all human genetic resources including human pathogens. 2. derivatives. 3. commodities. 4. traditional knowledge in the public domain. 5. genetic resources found outside of national jurisdictions. 6. All genetic resources acquired before the national implementations of the Convention on Biological Diversity and the Nagoya Protocol." and "i) Provide that countries which revoke patents for failure to disclose the source of origin of a genetic resources or failure to comply with ABS laws shall pay adequate remuneration to both the country of origin and the patent holder."

473. The Delegation of Namibia wished to insert, after Alt. 2, two stand-alone paragraphs: "Mandatory disclosure requirements shall be met by providing an internationally recognized certificate of compliance as described in Article 17.2 of the Nagoya Protocol." "Patents granted without disclosing country of origin or source shall be subject to issuing of mandatory licenses, as foreseen in Article 31 of the TRIPS Agreement." On Option 1 under Use of terms, it wished to insert at the end a definition: "Internationally recognized certificate of compliance shall mean the instrument foreseen in Article 17.2 of the Nagoya Protocol." Under e), at the end, after "biotechnology", it wished to insert "as defined in Article 2 of the CBD". It also wished to insert, after e), some text from article 2 d) of the Nagoya Protocol: "Biotechnology as defined in Article 2 of the CBD means any technological application that uses biological systems, living organisms or derivatives thereof, to make or modify products or processes for specific use."

474. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, wished to delete the insertion of "Article 1", made by the Delegation of Iran (Islamic Republic of). It wished to bracket that kind of insertion throughout the text, if it were to be made. It wished to delete the new paragraphs h) and i). It needed further time to consider all those new proposals. It wished to bracket all the changes just made by the Delegation of Namibia.

475. The Delegation of South Africa noted that it had become very clear over the last 48 hours that there were probably two broad trends. There was a good collection of people that were not for mandatory disclosure and those that were for mandatory disclosure. It was also obvious that the text under discussion was organized in such similar ways. Certain options went for mandatory disclosure and others did not. It considered that it might be a useful idea, to follow up on the suggestion of the Delegation of Canada on the methodology, to group the options around those areas. It considered that the way the meeting was going what was suggested by a Delegation was neutralized by another. Regarding the comments made that there was increasing information to show that mandatory disclosure did not work, it wondered how would such information be available when mandatory disclosure had not been put in place in the countries. Such information needed to be verified. Contrarily, it pointed out that evidence of biopiracy and misappropriation was overwhelming. It supported the position of the African Group in terms of the structure of the document, and the statement made by the African Group on why the mandatory disclosure would serve both the supplier, the user and the knowledge holder. It supported the inputs that the Delegation of Namibia had put on the table. It wished to bracket the new paragraph h), proposed by the Delegation of the United States of America. It supported Alt. 2 in terms of its content.

476. The Delegation of Brazil, with relation to a comment raised earlier by the Delegation of Australia relating to the definition of "Utilization of genetic resources", supported the insertion made by the Delegation of Namibia at the end of the definition in e). It pointed out that in terms of definitions the IGC should rely on existing texts. It also supported the insertions made on Alt. 2 by the Delegation of Namibia. It further supported the earlier intervention made by the Delegation of South Africa on bracketing the items of the proposal of the United States of America, which needed to be analyzed.

477. The Delegation of Cameroon suggested to capitalize the definitions included in document WIPO/GRTKF/IC/20/INF/13 (Glossary of key terms related to IP and GRs, TK and TCEs), since it was detailed enough. Additions could be made but work should not start from scratch. It stressed that it was essential to exclude human GRs, as the Delegation of the United States of America had indicated. It was also opposed to retroactivity, otherwise, one would move into an arbitrary realm. It expressed its satisfaction with the wealth of detail and the warmth exuded by the colors of the national dresses of the different Delegations. It hoped that in the next meetings everyone could wear its national costume.

478. The Delegation of Japan supported the deletion of the word “Article”. It wished to bracket Alt. 2, in order to make a better balance responding to the suggestion made by the Delegation of Egypt which put brackets around Alt. 1.

479. The Delegation of Egypt, on behalf of the African Group, supported the statement made by the Delegation of Indonesia on behalf of the LMCs on the importance of structuring the document in the form of an instrument. The IGC should be guided by its mandate, which was to seek to draft a legal text. It requested to insert the article number at the beginning of each title.

480. The Delegation of Algeria, on behalf of DAG, considered that it would be preferable to put the definitions outside the text which dealt with disclosure requirements, since they concerned different parts of the instrument. It stated that the Group was in favor of the mandatory disclosure of GRs. It said that it supported the proposals of the African Group and could go along with Option 1 and Option 3. Definitions for Option 3 could be borrowed from Option 1. Different international instruments, mainly the CBD and the Nagoya Protocol, could provide all the needed definitions. It pointed out that Option 1 and Option 3 could be mixed.

481. The representative of INBRAPI stated that more time was needed to look at the proposal by the Delegation of the United States of America, as indicated by the Delegation of Brazil. In accordance with the CBD, including article 8 j), it was not possible to accept that TK be considered as public domain without the full approval and participation of the indigenous peoples. With regard to h) 4, she pointed out that it was not possible to refer to TK in the public domain without considering two principles: Whether or not one had complied with the PIC of the indigenous peoples and local communities; and whether they had participated in the benefits. The Nagoya Protocol made a reference in its Preamble to the UNDRIP. Article 31 of the Declaration had good examples of what was considered as TK and it included GRs. She urged Member States to consider carefully the issue of TK in the public domain and to always respect the principles of PIC and fair and equitable benefit-sharing.

482. The Delegation of the Republic of Korea wished to bracket the alternative definition of TK. It supported the insertions proposed by the Delegation of the United States of America in Option 1.

483. The Chair opened the floor on Benefits/Beneficiaries of the Proposals.

484. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, supported Option 2 and wished to delete Option 1 and Option 3. It wished to delete sub-paragraph c) in Option 4, since disclosure of origin was not relevant to patent examination.

485. The Delegation of Iran (Islamic Republic of) wished to insert “Article 2”·before the title. It wished to bracket the term “Benefits” in the title. It supported Option 1 and wished to insert “/national” at the end of its third paragraph after “domestic”.

486. The Delegation of Brazil wished to insert in the first paragraph of Option 1, after “Measures”: “related to the compliance with existing rules of access and benefit-sharing derived from the utilization”. It wished to delete “for the protection” in that same paragraph, and to replace “of origin of genetic resources” with “providing such resources and knowledge”. On the

second paragraph of Option 1, after “domestic legislation”, it wished to insert: “and existing international agreements and treaties, in particular the CBD and the Nagoya Protocol”.

487. The Delegation of Switzerland considered that the title of that part of the document did not fully cover the content of the options below, in particular Option 4. It wished to place in the title the word “Objectives”, instead of the current title.

488. The Delegation of Egypt wished to retain Option 1, considering that the section dealt with beneficiaries. Option 2 did not refer to beneficiaries and it should therefore be removed. Option 3 and Option 4 tended to address objectives and principles related to the instrument and not in particular the issue of beneficiaries. It wished to remove Option 4 and place it under the section on Objectives and principles. It requested the facilitators to take note of that and to try to delete or remove any redundancy or overlap with options 3 and 4 and other objectives and principles already contained in that section.

489. The representative of FAIRA supported the comments made by the Delegation of Iran (Islamic Republic of) on Option 1.

490. The Delegation of Algeria supported Option 1 and could accept the amendment proposed by the Delegation of Iran (Islamic Republic of) concerning the reference to national legislation. It also agreed with the insertion of a reference to international agreements and treaties proposed by the Delegation of Brazil. It supported the proposal of the Delegation of Egypt regarding Option 4.

491. The Delegation of India indicated that, since the term “country providing” had been inserted, it wished to insert the definition of “country providing” as it existed in the Nagoya Protocol: “Country providing is the country of origin or that has acquired the genetic resources with traditional knowledge in accordance with the Convention on Biological Diversity”. The insertion could be placed in the footnotes or in the definitions.

492. The Delegation of Sri Lanka supported Option 1. However, it wished to replace “domestic”, in the last line of the last paragraph, with “national”. It supported the proposal made by the Delegation of Iran (Islamic Republic of) to insert “Article 2”.

493. The Delegation of the United States of America supported the suggestion of the Delegation of the European Union that the term “article” be bracketed throughout the text. It thanked the Delegation of Brazil and other delegations who had suggested that additional study of very technical topics was needed. It also thanked the Delegation of Cameroon for its intervention regarding the retroactive application of disclosure requirements. It supported an in-depth study of the actual impact of existing mandatory disclosure requirements. It understood that impacts were being felt and that some of the proposals on the table might create additional impacts.

494. The Delegation of Kenya supported Option 1 and the amendments suggested by the Delegation of Brazil with regard to paragraph 2 under Option 1.

495. The Delegation of the Republic of Korea wished to delete Option 4, since it was not related to beneficiaries. It stated that Option 4 should go to a different section such as definitions, after fully discussing each terminology in that option.

496. The Delegation of South Africa wished to support the African Group position. In looking at rearranging some of the articles, it was clear that there were only two options, Option 1 and Option 2. Option 3 was largely administrative and Option 4 could go to Use of terms. With regard to the call for studies and the argument that studies had been done that conclusively indicated that the mandatory disclosure did not contribute any added value, it stressed that one should put an end to studies and focus on the norms and standards.

497. The Delegation of Zimbabwe wished to amend the title by deleting the words after "Beneficiaries".

498. The Chair opened the floor on Scope of Protection.

499. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, supported Option 2 and requested the deletion of options 1, 3 and 4. It explained that it wished to delete Option 4, because it had a strong preference for mandatory disclosure, but not because it opposed voluntary disclosure.

500. The Delegation of Iran (Islamic Republic of) supported Option 1. It wished to delete Option 2. It wished to insert "Article 3" before "Scope of Protection" in the title.

501. The Delegation of Egypt, on behalf of the African Group, requested to insert the article number throughout the text. It wished to retain Option 1 in its entirety. Regarding Option 2, it supported reaching a legally binding instrument as proposed by the Delegation of the European Union, but the rest needed to be discussed. It wished to leave "legally binding" not bracketed but the rest at that stage could be bracketed. It proposed an alternative for Option 3: "Amend relevant provisions of the PCT and PLT, in particular Rules 4.17, 26ter and 51bis, to include a mandatory disclosure requirement of the origin and source of the genetic resources, their derivatives and associated TK. The amendments shall also include requiring confirmation of prior informed consent, evidence of benefit-sharing under mutually agreed terms with the country of origin". It announced that the African Group was currently working on the list of the proposed textual amendments to the identified articles in the PCT and PLT and would be making them available to the plenary in due time.

502. The Delegation of the United States of America wished to bracket Option 2 and Option 3 Alt which was just added. It wished to bracket paragraph d) of Option 1. In the first line of paragraph e) of Option 1, it wished to bracket "intellectual property" and to insert "patent"; and to bracket "shall" and to insert "should". In the first line of (i) under paragraph e) of Option 1, it wished to delete "information" and replace it with "prior art". In the second line of (i) under paragraph e) of Option 1, it wished to insert "that is available to the examiner" after "associated traditional knowledge". In the last line of (i) under paragraph e) of Option 1, it wished to bracket "intellectual property" and to insert "patent". In the second line of (ii) under paragraph e) of Option 1, it wished to bracket "intellectual property" and to insert "patent". In the final portion of paragraph e) of Option 1, it wished to bracket the language starting with "Contracting Parties" through "monitoring".

503. The Delegation of Brazil wished to change the title to "Mandatory disclosure requirements", instead of "Scope of protection". It wished to insert additional language taken from the proposal W/59 of the WTO, which was a proposal made by a number of countries including Brazil to amend the TRIPS Agreement in order to insert provisions regarding mandatory disclosure requirements. The language it wished to insert in Option 1 read as follows: "Where the subject matter of a patent application involves utilization of genetic resources and/or associated traditional knowledge, parties shall require applicants to disclose: 1. the country providing such resources, that is, the country of origin of such resources or a country that has acquired the genetic resources and/or associated traditional knowledge in accordance with the Convention on Biological Diversity, and, 2. the source in the country providing the genetic resources and/or associated traditional knowledge. Parties shall also require that applicants provide a copy of an internationally recognized certificate of compliance (IRCC). If an IRCC is not applicable in the providing country, the applicant should provide relevant information regarding compliance with prior informed consent and access and fair equitable benefit-sharing as required by the national legislation of the country providing the genetic resources and/or associated traditional knowledge, that is, the country of origin of such resources or a country that has acquired the genetic resources and/or associated traditional knowledge in accordance with the Convention on Biological Diversity. Parties shall publish

information disclosed in accordance with the previous paragraph, jointly with the publication of the application or the grant of patent, whichever is made first".

504. The Delegation of Japan reiterated the necessity of deletion of all of the options under Scope of Protection. The introduction of a mandatory disclosure requirement would cause legal uncertainty of IP rights, which would lead to chilling effects on R & D activities of the industries in cooperation with in particular GRs providing countries. Therefore, such requirement would end up with failure in sharing the benefits based upon the relevant GRs, which otherwise would have been produced through such R & D activities. Hence, it considered that none of the options was appropriate or acceptable, especially from the viewpoint of successful benefit-sharing with GRs producing countries.

505. The Delegation of Bolivia (Plurinational State of) supported Option 1, and particularly sub-paragraph d). It wished to have the square brackets around that sub-paragraph removed. It wished to add language under sub-paragraph e) in Option 1: "(iii): not grant patents on life forms, or parts thereof, in the form of biological or genetic resources as they are found in nature, that are only isolated or characterized as such, as well as their derivatives and associated traditional knowledge".

506. The Delegation of Switzerland wished to change the title of that part of the document, since it did not fully reflect the contents of the text that followed. It wished to limit the title to "Scope" instead of "Scope of Protection". It wished to bracket (iii) in sub-paragraph e) of Option 1.

507. The Delegation of Australia noted that there seemed to be an inaccuracy in a number in Option 3, which probably arose from the date of the proposal preceding the CBD Secretariat's finalization of the numbering of the Nagoya Protocol. Article 13 of the Nagoya Protocol referred to national focal points. The correct number of the article referred to in Option 3 seemed to be Article 17 of the official version of the Nagoya Protocol. It pointed out that, according to its reading of that article, associated TK was not a subject of that article.

508. The Delegation of Algeria, on behalf of DAG, wished to retain Option 1 as it was proposed in the text, and Option 3. It considered that the two options could be complementary. It wished to delete Option 2.

509. The Delegation of South Africa, on behalf of the African Group, agreed with the input of the Delegation of Brazil, in particular, with the renaming of the article under discussion. It wished to maintain "Scope of Protection". Considering that the mandate of the IGC was broader than the amendment of the patents and the PCT, it wished to add three elements regarding the scope of protection in Option 1: "1. The contracting parties shall provide legal protection to genetic resources and associated traditional knowledge as a unique knowledge system that has the following characteristics:

- Traditional knowledge, genetic resources, landscapes, cultural and spiritual values and customary laws, are inextricably linked and together maintain the integrity of knowledge systems;

- genetic resources and biodiversity cannot be separated from traditional knowledge as intangible and tangible components cannot be separated;

- genetic resources and associated traditional knowledge is part of the collective, ancestral, territorial, spiritual, cultural and intellectual heritage;

- genetic resources and associated traditional knowledge is transmitted from generation to generation in diverse forms and is inalienable, indivisible and imprescriptible.

The beneficiaries of genetic resources and associated traditional knowledge under this instrument shall have the following exclusive rights that:

- arise out of the existence of knowledge (de facto rights);
- are inalienable and in perpetuity as long as knowledge exist;
- are intergenerational, i.e., passed on to future generations;
- to authorize or deny access to the use of genetic resources and associated knowledge.

No registration of knowledge is required for rights to be legally recognized."

510. The Delegation of the United States of America wished to bracket the language suggested by the Delegation of South Africa at the end of Option 1 and the preceding proposal at the end of the same option by the Delegation of Brazil. It needed more time to consider those proposals. It wished to bracket the beginning of Option 1 through the end of paragraph c) It wished to propose a new option: "Option 5. Patent applicants shall be under no requirement to disclose the source, origin or other information relating to genetic resources unless such information is material to the patentability requirements of novelty, inventive step or enablement. The patent system should provide certainty of rights for users of genetic resources and traditional knowledge and shall not impose requirements that detract from legal certainty such as mandatory disclosure requirements relating to genetic resources and traditional knowledge." It proposed an alternative to d) under Option 1: "d) alt. Enhance the availability of patent protection for life forms and new uses for known substances in order to create benefits and support benefit-sharing from the use of genetic resources and associated traditional knowledge."

511. The Delegation of Sri Lanka supported Option 1 and the proposal of the Delegation of Bolivia (Plurinational State of). Sri Lanka had a national legal system and also domestic laws. It had a unique legal system, which included Roman law, Dutch law and British law. It had its own domestic law, Kandyan law, Muslim law and the law for the Tamils. It might face problems in the future, if the word "domestic" was inserted. It wished to delete the reference to "domestic law" and refer to national law always. It believed that reference to national law would not create problems to other delegations. It fully supported Option 1. It wished to delete the word "checkpoint" in the last paragraph of the original text of Option 1 and replace it with the term "focal point".

512. The Delegation of Venezuela (Bolivarian Republic of) supported Option 1 with the addition proposed by the Delegation of Bolivia (Plurinational State of).

513. The representative of FAIRA supported the amendments proposed by the Delegation of South Africa.

514. The Delegation of the Republic of Korea wished to delete options 2, 3 and 4. With regard to Option 1, it wished to delete the entire option, including the added paragraphs, with the exception of paragraph e), which should be maintained with a few changes of wording. In paragraph e) of Option 1, it preferred "should" instead of "shall". In (i) under paragraph e), it preferred the reference to prior art in its first line and the reference to patent rights in its final line. In (ii) under paragraph e), in the end, it wished to delete what came after "considering existing" and put instead "prior art accessible to the examiners, as appropriate".

515. The Delegation of Japan supported the insertion of Option 5 as suggested by the Delegation of the United States of America, since it reflected its position.

516. The Delegation of Egypt, on behalf of the African Group, noted that Option 5 seemed to be a repetition of the position of the United States of America under Alt. 1. It wondered whether that position could be kept in one place and not be repeated. In the alternative that the Delegation of the United States of America preferred to keep it, it wished to put brackets, in the

first paragraph, around the word “no” and around the phrase starting from the word “unless” until the end of the paragraph. Regarding the second paragraph of Option 5, it was not related to the issue of scope of protection and seemed more related to an objective about the best patent system and what it should provide or not provide. It considered that the second paragraph of Option 5 could be placed under the Objectives and principles part and be removed from Scope of protection, and, therefore, requested its deletion. The Delegation supported the proposal made by the Delegation of Bolivia (Plurinational State of) and the proposals pronounced by the Delegation of South Africa as part of the African Group’s proposal.

517. The Delegation of Brazil supported the statement of the Delegation of Egypt relating to Option 5. Regarding the replacement of the word “checkpoint” with the term “focal point”, it pointed out that Article 17 of the Nagoya Protocol used the term “checkpoints”. It considered that the more one remained coherent with existing legal texts the best the final result one could achieve in gathering consensus from the plenary on existing language.

518. The Delegation of Indonesia sought for clarification from the Chair with regard to the additional options which were being included. It was its understanding that the document prepared by the facilitators had been tabled and should be the only issue to be discussed. Opening up again the Pandora box of other options would lead nowhere. It wished to have Option 5 deleted.

519. The Delegation of Bolivia (Plurinational State of) wished to have Option 5 in square brackets, to allow its experts to analyze it. Regarding d) alt, suggested by the Delegation of the United States of America, it wished to bracket it.

520. The Chair explained, in response to the Delegation of Indonesia, that it had been outlined at the outset that new submissions could be taken as the meeting progressed. It had been indicated that the facilitators could neither add nor subtract what was given to them, but delegations remained empowered to represent their national positions and intervene and contribute in accordance with their instructions at all stages of the process.

521. The Delegation of Indonesia asked the Chair whether it was possible to introduce other options other than those that had been proposed previously. It considered that it would be more relevant to enrich the options that had already been stated by the facilitators.

522. The Chair was not certain about the fact that closing the possibility of proposing new sentences, new paragraphs, or new options would be within the Chair’s gift. That had to be in the hands of Member States. He had taken note of the recommendations that had been made for changes in approach and would consider them for the next phase of the work. For the time being, he could not prevent the submission of new alternatives and options should a delegation so wish.

523. The Delegation of Australia reiterated the question it posed regarding Option 3 and the cross reference to an article number in the Nagoya Protocol, and its comment on the content of the articles and whether or not those articles referred to associated TK.

524. The representative of INBRAPI congratulated the Delegations of Brazil, Bolivia (Plurinational State of) and South Africa for their sound proposals, which had captured the spirit of her concerns, in particular the South African proposal. She did not agree with Option 5, because an international instrument had to provide legal security not only to users but also to the providing countries and the holders of TK and GRs. Therefore, Option 5 was not complete and was not acceptable legally.

525. The Delegation of Cameroon noted that, regardless of whether reference was made to IPRs or to patents, the tendency to date was the sharing and acknowledgement of the rights of everyone. In that context, it stressed the need to formalize disclosure requirements, to take into

account everyone's interests. It wished to bracket the proposals made by the Delegation of the United States of America.

526. The Delegation of Namibia confirmed, in response to the question of the Delegation of Australia, that the correct article number, to be used in Option 3, should be 17. It pointed out that Article 17 of the Nagoya Protocol might not be explicit about associated TK. Nevertheless, when reading that article together with the user obligations in Article 16 of the Nagoya Protocol, and considering the indivisible nature of GRs and associated TK, it was clearly its understanding that Article 17 would also require checkpoints to check the use of Associated TK where in fact it had occurred.

527. The Delegation of Australia thanked the Delegation of Namibia for its explanation.

528. The Delegation of Sri Lanka agreed with the Delegation of Brazil on that it would be preferable to use the word "checkpoint" in the last paragraph of the original text of Option 1, instead of the term "focal point".

529. The Chair opened the floor on Complementary Measures.

530. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, supported Option 2 and requested the deletion of options 1, 3 and 4.

531. The Delegation of the United States of America wished to bracket options 2, 3 and 4. In paragraph a) of Option 1, it wished to insert some language at the end: ", except where the information is cited as prior art during the examination of a patent application". In the first and second paragraphs of Option 1, it wished to strike "Contracting Parties" and replace that with "Countries". It wished to add a new option: "Option 5. Any patent relating to genetic resources or traditional knowledge, the commercialization of which is subject to regulatory review, shall be entitled to extension of the term of the patent to compensate for delays caused by such regulatory review. Such patent term restoration shall be made available for a period that corresponds to the period of delay in commercialization caused by the regulatory review." The second paragraph of Option 5 would read: "Any patent relating to genetic resources or traditional knowledge whose grant is unduly delayed by the imposition of a mandatory disclosure requirement relating to the same shall be entitled to an extension of the patent term. Such patent term extension, corresponds to any period of delay in patent grant caused by the imposition of such mandatory disclosure requirements."

532. The Delegation of the Republic of Korea proposed to replace "Proposal on complementary" with "Protection", in the title, because complementary measures implied databases, which were a sufficient way to protect GRs.

533. The Delegation of Canada wished to bracket Option 5, since it needed more time to study that proposal.

534. The Delegation of Algeria, on behalf of DAG, wished to retain Option 1.

535. The Delegation of Egypt, on behalf of the African Group, pointed out that options 1, 2, 3 and 4 did not *prima facie* seem to be mutually exclusive; therefore, they could be numbered and be considered as sub-provisions. With regard to Option 5, it recalled the mandate of the IGC, which was to look at a legal instrument that would provide effective protection to GRs. Option 5 related to an extension of the patent term, which did not affect at all protection of GRs. It expected Member States to have the mandate of the IGC in mind when making proposals. Option 5 should be deleted entirely.

536. The Delegation of Sri Lanka supported Option 1. It wished to replace "domestic" with "national" in paragraph a) of Option 1.

537. The Delegation of Indonesia wished to maintain Option 1. It pointed out that "Complementary measures" would be the most correct title, considering that databases were not sufficient and that a legal instrument was needed for protection. It wished to bracket Option 5.

538. The Delegation of Colombia supported the statement of the Delegation of Indonesia. Regarding Option 5, which should be bracketed, it pointed out that it was unable to support options that would extend the period of validity of a patent.

539. The Delegation of Brazil supported Option 1 but had reservations about the second part which started with "Contracting Parties" and ended with "provided in this instrument". It wished to bracket that part of Option 1.

540. The representative of FAIRA proposed the insertion of "international rights and law" in paragraph a) of Option 1.

541. The Delegation of Namibia supported the proposal made by the representative of FAIRA.

542. The Delegation of South Africa supported the proposal of FAIRA. It supported Option 1 without the inclusions made by the Delegation of the United States of America. It wished to bracket those inclusions. In the second line of paragraph a) of Option 1, it wished to bracket the clause 1.1. In agreement with the African Group position, it considered that Option 5 was predetermining the outcome of the negotiation and tracking it in only one direction, the patent system. It could be that the IGC was not the right forum for that discussion. It supported the Delegation of Indonesia on bracketing the term "Protection" in the title. It wished to keep "Complementary measures" as the title.

543. The Delegation of the United States of America wished to insert, under Option 1, two new paragraphs: "(c) they share information on best practices in tech transfer and contracts related to genetic resources through WIPO databases for such information and further develop guidelines for model contractual provisions; (d) they share information on intellectual property guidelines for access and equitable benefit-sharing and request WIPO to conduct a study on licensing practices on genetic resources."

544. The Delegation of Namibia wished to bracket "except where the information is cited as prior art during the examination of a patent application" that had been inserted by the Delegation of the United States of America. It explained that there was a concern that TK would be placed in the public domain by being cited as prior art and, therefore, would lose protection. It could see the concern from the prior art point of view, but there were a lot of subtle implications that would need to be fleshed out before it could go along with that particular provision. Thus in the meantime it had to be bracketed.

545. The Delegation of Brazil supported the intervention made by the Delegation of Namibia.

546. The Chair opened the floor on "Relationship with International Agreements".

547. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, supported Option 2 and wished to delete Options 1, 3 and 4.

548. The Delegation of Brazil supported Option 1.

549. The Delegation of South Africa supported Option 1 and wished to have the rest deleted.

550. The Delegation of Egypt, on behalf of the African Group, supported Option 1. It encouraged the parties to the CBD and Nagoya Protocol to reach a mutual commitment to those instruments and not to undermine them by requesting the deletion of Option 1. As to Option 2, it noted that the first paragraph was covered under Option 3 of Article 3 "Scope of

Protection." So there was no need to repeat it under Option 2. Further, the second paragraph was also a repetition of the paragraph in Option 2 in "Proposal on Complementary Measures," so it could also be deleted. Finally, it requested the deletion of Options 3 and 4.

551. The Delegation of Algeria, on behalf of the DAG, supported Option 1. Generally, it wished to place the article number before each subject.

552. The Delegation of Iran (Islamic Republic of), on behalf of the Asian Group, supported Option 1 and supported the deletion of Options 2, 3 and 4.

553. The Delegation of Thailand supported Option 1.

554. The Delegation of Indonesia supported Option 1.

555. The Chair opened the floor on the topic of International Cooperation.

556. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, wished to delete the entire paragraph. It believed it was not relevant to search and examination processes.

557. The Delegation of the United States of America supported the statement made by the Delegation of the European Union.

558. The Delegation of Algeria, on behalf of the DAG, wished to maintain that paragraph.

559. The Delegation of Egypt, on behalf of the African Group, stated that the PCT could help achieve the objective of mandatory disclosure and therefore it wished to keep that provision in.

560. The Delegation of Namibia indicated that mandatory disclosure could in fact be an administrative requirement; it did not go to "search and examination." It wished to bracket "search and examination" and to insert "administrative disclosure of origin or source."

561. The Delegation of Sri Lanka supported the views expressed by the Delegation of the European Union. It added that the international cooperation clause was not necessary as the discussions were in relationship with an international agreement. Therefore, there was no need for such a clause at that stage.

562. The Chair opened the floor on Transboundary Cooperation.

563. The Delegation of South Africa recalled the principle that the documents on TCEs and TK should read in a similar way because they were covering the same area. It also recalled that these clauses, which were about the same trans-boundary cooperation, had to be in line with the TCE and TK documents.

564. The Delegation of Sudan wished to replace the word "shall" with the word "should" because cooperation was a sovereign right of States.

565. The representative of CAPAJ noted that the TK rights holders were absent from the text. TK was not found by itself; rather, it was something which came from indigenous peoples or local communities. So in order for the paragraph to be effective, if there was a State that could support him, he proposed to add, after the words in the first line "in instances where traditional knowledge": "of indigenous peoples and local communities." The addition was made to be consistent with the provisions of the CBD.

566. The Delegation of Bolivia (Plurinational State of) supported the proposal made by the representative of CAPAJ.

567. The Delegation of Venezuela (Bolivarian Republic of) supported the inclusion of “of indigenous peoples and local communities.”

568. The Delegation of the Republic of Korea wished to add “genetic resources and associated” before “traditional knowledge.”

569. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, stated that it was not opposed to having a paragraph on trans-boundary cooperation. But it could not agree to the present wording of the paragraph. It did not have any language to suggest at that stage. It wished to have it in brackets and to further consult internally to propose language.

570. The Delegation of Algeria, on behalf of DAG, supported the retention of the paragraph as stated.

571. The Delegation of Bangladesh wished to insert, in the first line, after “traditional knowledge” “associated with genetic resources.” Otherwise it would not be transparent. It also wished to bracket the proposal made by the representative from CAPAJ, because there were countries where there were no indigenous peoples.

572. The Delegation of Kenya said that it had dealt with issues of TK located within different territories, i.e., neighboring countries. Therefore, it supported the retention of that clause.

573. The Delegation of the United States of America wished to replace the term “contracting parties” as used twice in the paragraph with the term “countries”.

574. The Vice-Chair opened the floor on “Sanctions, Remedies and Exercise of Rights.”

575. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, wished to delete Options 1, 3 and 4, although it had some considerations concerning Option 4, but still needed to consider them internally. It supported Option 2.

576. The Delegation of the Russian Federation supported Option 2.

577. The Delegation of South Africa, on behalf of the African Group, supported Option 3, but could give consideration to Option 4.

578. The Delegation of the United States of America, in Option 1, proposed bracketing “contracting parties” and inserting “countries.” It also wished to bracket the second paragraph beginning at “contracting parties” and ending at the end of subparagraph (d). In the last paragraph, before the period, it proposed inserting “such as the WIPO Arbitration and Mediation Center.” It also supported the Delegation of the European Union in bracketing Options 3 and 4. It wished to insert a new Option 5: “There shall be no sanction within the patent system for failure to meet any mandatory disclosure requirement relating to genetic resources or traditional knowledge nor shall failure to meet such requirements cause delay in processing or grant of the patent.”

579. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, wished to bracket Option 5, just proposed by the Delegation of the United States of America, until it had had further considerations among its members.

580. The Delegation of Brazil preferred Option 1. It added two new paragraphs. First: “Parties shall put in place appropriate, effective and proportionate measures so as to permit effective action against the noncompliance with the mandatory disclosure requirements. Patent applications shall not be processed without completion of such requirements.” Second: “If it is discovered after the grant of a patent that the applicant failed to disclose the information required or submitted false and fraudulent information, or it is demonstrated by the evidence

that the access and utilization of genetic resources and/or associated traditional knowledge violated the relevant national legislation of the country providing genetic resources and/or associated traditional knowledge, that is, the country of origin of such resources or a country that has acquired the genetic resources and/or associated traditional knowledge in accordance with the CBD, parties shall impose sanctions, which shall include administrative sanctions, criminal sanctions, fines and adequate compensation for damages. Parties may take other measures and sanctions, including revocation, against the violation of the mandatory disclosure requirements." The Delegation explained that the proposal was taken from a proposal at the WTO with some adjustments. It was necessary to establish effective and strong sanctions against noncompliance with the mandatory disclosure requirements. Otherwise there would be no incentive for any applicant to comply with such requirements. It reiterated its position that there should be a possibility of sanctions within the world of patents; it was not only sanctions outside the IP world, but within the IP realm.

581. The Delegation of Japan strongly supported Option 5, as proposed by the Delegation of the United States of America. Although the original or some other newly introduced options on sanctions, remedies and exercise of rights were provided on the premise of introduction of mandatory disclosure requirement, the Delegation strongly believed that such a requirement had better not be introduced.

582. The Delegation of South Africa, on behalf of the African Group, made an addition to Option 3: "Contracting parties shall, in accordance with their national legal systems, provide for adequate measures for the refusal of patent applications on the grounds of noncompliance and willful infringement of the protection of genetic resources, their derivatives and associated traditional knowledge in pursuance of the applicable provisions of these regulations." It also wished to bracket Option 5 and supported the inclusions made by the Delegation of Brazil.

583. The Delegation of the Republic of Korea proposed deleting Options 1, 2, 3, and 4 (even the newly added text) and supported Option 5.

584. The Delegation of Canada wished to put in brackets the text proposed by the Delegation of South Africa, on behalf of the African Group.

585. The Delegation of Cameroon said that there were a lot of discussions about the PCT, the PLT and the CBD, while other international conventions like CEDAW were forgotten, which reminded that it was a bipolar world. In the optic of giving and receiving, where sharing was important, it stated that the approach of IP was inclusive, it included patents. It shared the position of the African Group, because it was an IP approach. It excluded though that of the Delegations of the United States of America, Japan and the Republic of Korea, notably regarding Option 5.

586. The Delegation of Algeria, on behalf of DAG, supported Options 1 and 3. It also supported the proposal made by the African Group.

587. The Delegation of the United States of America stated that, in Option 2, it wished to change "contracting state" to "country." Similarly, concerning the proposal made by the Delegation of Brazil, it suggested changing "parties" to "countries" in all places. But it supported the Delegation of the Republic of Korea in bracketing the Delegation of Brazil's entire text.

588. The Delegation of Kenya supported the proposal made by the African Group. It saw it as a viable means of providing appropriate measures for future noncompliance by patent applicants.

589. The representative of the Assembly of First Nations wished to insert, in Option 1, after "willful": "or willfully blind." He explained that there could be a defense for someone not knowing, but there could be cases where someone should have known or ought to have known that it was misappropriating, and he did not want to give them defense in that respect.

590. The Vice-Chair asked if there was any Member State that could support the proposal. As there was no endorsement, the proposal was not be kept. She opened the floor on “Technical Assistance, Cooperation and Capacity Building.”

591. The Delegation of the United States of America stated that in general it was a strong supporter of technical assistance, cooperation and capacity building. But it believed that at that time, it was not possible to know what sort of technical assistance would be necessary and it was premature to include it in the text. It proposed that it be bracketed.

592. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, supported the statement made by the Delegation of the United States of America and also thought it was premature to insert that section. It suggested waiting until a text had been finalized, in order to consider what kind of technical assistance would be relevant.

593. The Delegation of Algeria, on behalf of DAG, thought that that part of the document was important and wanted to keep it. It was open to discuss the substance at any time.

594. The Delegation of South Africa, on behalf of the African Group, recognized the significance of technical assistance, cooperation and capacity-building, as those were generic issues. The article was merely making a provision for that. It supported the retention of the text.

595. The Delegation of Brazil supported the interventions made by DAG and the African Group.

596. The Delegation of Namibia made a general remark on disclosure requirement in B.2. It was glaringly obvious that there was a very significant divide between countries that absolutely insisted on there being a disclosure provision, and countries who absolutely refused to even consider the option. It was necessary to acknowledge that it would prevent the IGC from coming to conclusion on its work, unless it held further discussions about it. It recommended that the leadership of the meeting find an innovative way to further examine the issues relating to disclosure requirements, and see if there was anything that could be done in the remaining time during the session to move forward on that point of division.

597. The Delegation of Japan stated that the mandatory disclosure requirement could not be an end in itself. Rather it had to be a means or mechanism to achieve shared objectives without causing unintended undue burdens. It neither contributed to the prevention of erroneous grants of patents, nor was necessary to CBD compliance, despite its undue burdens on industries and IP offices. Therefore, its introduction was not appropriate. In that regard, the Delegation shared the view presented by the Delegation of the United States of America, that one of the big problems was the lack of fact-based analysis. Before putting mandatory disclosure requirement into the text, at least the effectiveness and burden on the system had to be thoroughly analyzed and illustrated based on evidence. Otherwise, one could not be certain that it would contribute to the achievement of the benefit-sharing objectives. Since mandatory disclosure requirement was a relatively new concept, it was not introduced in many countries, and therefore there was little knowledge grounded on real cases. From a logical standpoint, such a factual analysis had to be planned and conducted by the Secretariat.

598. The representative of FAIRA stated that the concept of mandatory disclosure protected those who lacked the power of legislation and to implement laws. Mandatory disclosure meant that the colonizing States and governments would at least give some recognition, and affirm rights, as the General Assembly had done, over natural resources, GRs and TK. To rely solely on voluntary disclosure put them at the willingness of those in power to only instigate their lack of ability to protect themselves, to enable them to have sustainable livelihoods later on, and also to protect indigenous peoples’ cultural knowledge and spirituality and other assets.

599. The Delegation of Namibia, in response to the intervention made by the Delegation of Japan, said that the disclosure requirement was necessary to make sure that patents were not

issued over knowledge or resources acquired illegally. In other words, the disclosure requirement was there to check that patents were not issued as a reward for biopiracy. It had heard the Delegations of the United States of America and Japan repeatedly stress that the important things to protect were the patentability criteria of novelty and inventive step, but there was more to patentability than that. There was also patentable subject matter. At least in the United States of America, there was legislation preventing people from profiting from the proceeds of organized crime or racketeering. It could not see why in principle one would want to protect under the IP system patents issued on subject matter that the patent applicant was not authorized to investigate in the first place. What was happening was that companies came, took resources, either buy them as commodities or take them from *ex situ* collections or come in as tourists and simply take them out in their backpacks, and they did research and development on them. They applied for patent protection over those innovations. The current patent system granted patents because it did not look to see whether they had PIC to do the research which had led to the innovation in the first place. From the point of view of both CBD compliance and Nagoya Protocol compliance, also simply from the point of view of justice and equity within the patent system, there was more to it than simply protecting innovation. That needed to be acknowledged by those bodies that were adamantly not supporting disclosure requirements. If disclosure requirements were absolutely unacceptable, then it was up to them to make an alternative proposal about how to stop biopiracy, stop misappropriation of resources and stop rewarding those companies that stole GRs and associated TK, and unfairly protected them and their patent system which no longer served to protect the interests of all WIPO members, but only those that were already powerful within the system.

600. The Delegation of Canada supported the intervention made by the Delegation of Japan. It also said that several of the options that appeared on the screen and that were in many of the documents were based on the existence of a natural link between the patent system and the benefit-sharing system; the patent system was not the most appropriate foundation to work on benefit-sharing. The patent system served to check the novelty and inventiveness of inventions. The use of those criteria could actually prevent erroneous grants of patents. That was worth thinking about.

601. The Delegation of the United States of America thanked those delegations, including the Delegation of Japan that had called for further fact-based impact analyses and studies, and reminded the IGC that it had made a very detailed proposal for such a study during preliminary discussions. It was pleased to make that available to the Secretariat or to read through those questions again. They went to actual facts about existing patent disclosure requirements: how they were operating, what impacts they were having, whether they were actually transferring benefits, functioning to help meet the objectives, and what negative impacts were being felt from disclosure requirements. It also proposed a methodology to help move forward. As stated, it was imperative to have the evidence before committing to a course of action that could be potentially quite harmful. It briefly responded to the Delegation of Namibia, stating that the patent system was never intended to be a system to enforce other laws or even to discourage inappropriate behavior. Other laws outside the patent system had to exist to address theft and other inappropriate behavior. The patent system's purpose was to promote innovation and dissemination of information.

602. The Delegation of India responded to the points made by the Delegation of Japan on the fact that corporate profits would get affected if disclosure norms were introduced. It stated that most of the countries supporting disclosure requirements were concerned about livelihoods, a vast majority of which depended on those various resources which were under threat as the Delegation of Namibia had mentioned. All that evidence of biopiracy was very much there, and a massive amount of free-riding was taking place based on TK. The Delegation said that it had provided a lot of evidence to that effect, not just at WIPO. The Delegation of the United States of America could look at that evidence. It also mentioned that the IGC was set up based on fact-finding mission that had taken place in 1998, which had collected a huge amount of evidence, as mentioned by the Delegation of South Africa. So there had been 14 years of very

hard evidence collected. The reason for the concern was an instance of misappropriation of TK which had been found in India: the much talked-about case of the turmeric patent for wound healing. The cost of fighting that patent had run into billions of dollars. There was no point wasting precious taxpayers' money on such litigations. The problem had to be nipped in the bud. In light of all that evidence, it asked for disclosure requirements which would prevent misappropriations of TK and biopiracy.

603. The Delegation of Kenya recalled that the work of the IGC begun almost 10 years ago. The statements made by the Delegation of Japan and others, calling for further studies with special regard to mandatory disclosure, led to a clear concern, which was informed by the concern that in Kenya, for example, there were erroneously granted patents, and there had been practical economic losses to the country. Therefore, it reiterated that the mandatory disclosure requirements provisions, as articulated by the African Group, would act as a precautionary measure against future biopiracy activities.

604. The Delegation of Brazil reiterated that disclosure requirements should be mandatory. It did not view it as a heavy burden on IP offices, as their role in that process was that of check points that merely made sure that the ABS, MAT and PIC requirements of the international provisions were met. It was an effective measure to fight the misappropriation of GRs and TK. The IP system, including the patent system, was very effective to protect IP. The Delegation was worried that if adequate measures were not taken, it could open the door for biopiracy and theft of GRs and TK. Basically, it supported the delegations that had stated that a mandatory disclosure requirement was compatible with an operational and effective IP system. There were many ways to implement it in a smooth way that would not cause any additional problem to IP offices. Brazil also had an interest in not creating anything that would make the life of IP offices worse, so that figure of checkpoint, which was also a provision in the Nagoya Protocol, had to be implemented. It would not require any major change in the current system. But it would prevent the theft of IP, GRs and TK.

605. The representative of Tin Hinane, on Article 9, shared the view of the representative of FAIRA as to the addition of "indigenous peoples" after "developing countries", because indigenous peoples needed consistent support even just to become aware of the existence of those legal tools. Furthermore, many types of knowledge about plants and other GRs were disappearing, because elderly people were passing away, and had not managed to pass on their knowledge to the younger generations.

606. The Delegation of South Africa, following up on the general discussion on disclosure, reminded the IGC of the mandate: "the Committee will, during the next budgetary biennium and without prejudice to the work pursued in other fora, expedite its work on text-based negotiations with the objective of reaching agreement on a text of an international legal instrument which will ensure the effective protection of GRs, TK and TCEs." The mandate was very clear: "expedite the work on text-based negotiations." The calling for further studies would not expedite discussions. It was meant to delay the processes. The IGC had been given eight days in which to come up with a text. Such studies and research took a long time. Research in sophisticated areas such as that one (if it had not been done in the last 14 years) could not be done in the next two years. It was in that light that the IGC had to keep to the mandate. It did not think that the IGC wished to hear more about further call for studies, because it had had adequate time. The Delegation added that it appeared that the discussions were deliberately focusing only on GRs. But the theme was: GRs and associated TK. If the theme was GRs only, it would not be discussed in the IGC. The reason it was being discussed in the IGC was the associated TK. That was the right place to be discussed. In much of the discussions, there was a deliberate focus only on GRs, and one had to be cautious not to move in that direction. To that end, apart from studies, there were countries where mandatory disclosure had been introduced. The Delegation joined the Delegations of India and Brazil and stated that since 2005 South Africa had a mandatory disclosure. It had not increased the workload and cost, nor had it brought complications. It consisted of a single line that had to be filled in a form that could be tracked

and traced. Even in the IGC there was no calling for a substantive change of the patent system. It was not asking to change the novelty, the inventiveness or the industrial application criterion. It was calling for a simple administrative inclusion of a field which would cost very little, but could be tracked, monitored and evaluated. It was a preventive measure. And before the patent could even be revoked, at the application stage, one could make sure that that field was filled. It sought the indulgence of other delegations to seek a common goal to work towards a common purpose of doing that which was right.

607. The Delegation of Algeria, on behalf of the DAG Group, supported the intervention made by the Delegation of South Africa on behalf of the African Group. When looking at the item on the document provided by the facilitators, it had expected the document to be drafted as a document that would be sent to the General Assembly. At the moment, the IGC was not focused, and was looking at activities that had been requested seven or eight years ago. The Delegation was not convinced that it was going to assist the process. Experts had made interventions on disclosure, explaining their expectations in terms of introduction into national legislation. It had expected to hear about various experiences in terms of laws dealing with disclosure: what actually happened, what elements were involved, what were the related costs, etc. It therefore wished to focus on the mandate and that the IGC continue to focus on the document. It hoped the interventions on the next two items would go in that direction, and that the IGC would not have a similar experience as the one just had.

608. The representative of the Hokotehi Moriori Trust said that he had been coming to the IGC or been involved in the process for about 14 years, including the fact-finding missions. During that time, he had heard and read the plethora of examples of biopiracy and misappropriation of TK that had led to the inappropriate granting of patents. It was beyond dispute that there was a large body of evidence that indicated that there had been and would continue to be the granting of inappropriate patents on the basis of the wrongful obtaining of GRs and associated TK; that was without question. He had heard the request by some States to have studies undertaken into the “potential” adverse effects on the innovation system and granting of patents or indeed application for patents should the mandatory disclosure requirement be added. He said that there was already a significant and unquestionable body of evidence that showed the damage already done and that continued to be done by there not being mandatory disclosure. It was a matter that the States who were resisting mandatory disclosure needed to think very carefully about. It was also beyond dispute that the peoples most vulnerable to misappropriation and biopiracy were indigenous peoples and local communities. Therefore, the onus had to be on patent applicants to disclose that there had been prior informed consent, as well as the origins of the GRs and TK. That should be a minimum requirement. Finally, although he had been involved in the process for 14 years, he had also been involved with the International Society of Ethnobiology for over 20 years. That society was established in 1988 by Dr. Darrell Posey, a professor from the United States who had worked with the Kayapó people in the Amazon basin for many years. He had established that international society out of concern over the very issues being discussed: misappropriation of TK and biopiracy, particularly in the Amazon. Dr. Posey was an advocate for looking beyond IP rights as a way and means of protecting indigenous knowledge and GRs. The IGC had come down to a very narrow point of arguing about whether or not mandatory disclosure should be a requirement. It had to be a minimum requirement. It was no coincidence that those States that were most vociferous in resisting mandatory disclosure were also those that held the most patents in the world.

609. The Delegation of Ethiopia said that when talking about the mandatory disclosure from the very beginning, the focus was on the issue of piracy, especially in developing countries and LDCs. It was well-known that nowadays in the world there were two or three types of patent applicants. The Delegation was not challenging the existing patent system. It was simply demanding one intervention, that is, the issue of misappropriation of GRs. It requested colleagues from different corners of the world to feel the pain, to share the problem. It could quote a number of cases from Ethiopia. The country had lost ownership of its grain product to a patent in Europe. That was a practical case. The IGC was not a forum to mention details.

It said it was facing the problem and felt pain. It requested brothers from different parts of the world to share the problem. These were procedural requirement to protect the livelihood of populations, especially in developing countries and LDCs. For that reason it request mandatory disclosure, which was a procedural, administrative issue. If one could feel such pain, ideas could be shared. There could be a compromise on existing issues. It was facing the problems of piracy and misappropriation of GRs. Therefore it requested friendly cooperation and introducing that very sensitive issue which was associated with the livelihood of its population.

610. The representative of INBRAPI supported strongly the statement made by the Delegation of South Africa, and recalled that it had called for a larger discussion on what was going to happen with the disclosure requirements. In B.5 on "Future Work," paragraphs 16 and 18 dealt with the Brazilian experience on the disclosure requirement, which had been implemented in Resolution 34. It was an important instrument to push forward the IP system, especially the patent system. She also supported the statement made by the representative of the Hokotehi Moriori Trust.

611. The Vice-Chair opened the floor on item B.3: "Guidelines or Recommendations on Disclosure."

612. The Delegation of the United States of America wished to put that item in brackets, until the outcome of deliberations would be decided. It added that the Delegation and its like-minded delegations had made clear that it supported the shared objectives of promoting prior informed consent and access and benefit-sharing. To the extent that there was biopiracy or potential biopiracy because of a lack of disclosure requirements, it had yet to see evidence that mandatory disclosure requirements had been effective in reaching those shared objectives. Many of the requirements put in place were relatively new. No data had been presented to show whether those current requirements were having positive or adverse impacts. Its stakeholders had reported that they were experiencing serious adverse impacts. As far as the IGC mandate was concerned, data and analysis could only help accelerate the work, by helping to build consensus on how to move forward on those difficult issues.

613. The Delegation of the Russian Federation joined those speakers proposing concise factual studies. There was a series of real situations that existed in countries where mandatory disclosure was included in national legislation. In the context of that request for studies, it recalled that it had already made a proposal along those lines, at the 10th session of the IGC, but it had not managed to have it done. It might have been premature, because it was only beginning to change legislation. But since then, a lot of time had elapsed. No more time should be wasted before compiling what already existed.

614. The Vice-Chair opened the floor on item B.4 "Alternative Mechanisms."

615. The Delegation of Namibia believed that the issue was a credibility test for all of WIPO. One of the alternative mechanisms that sprung to mind was a treaty among developing countries to institute mandatory disclosure requirement, to issue compulsory licenses on IP, and not just IP to do with GRs and associated TK. That would fundamentally undermine some of the cornerstones not only of the international IP system, but of the international trade system. It did not believe that it was an issue that could be swept under the carpet for any longer. It was becoming urgent to apply their minds to it, because some of the alternative mechanisms were too frightful to contemplate.

616. The representative of FAIRA supported the comments made by the Delegation of Namibia, especially if indigenous peoples could be included among the developing countries.

617. The Delegation of the United States of America said that throughout the "no disclosure" discussion, it had proposed a number of alternative mechanisms. It did not have text prepared,

but those included laws outside the patent system to enforce ABS obligations. It could present more detailed text in due course.

618. The Chair noted that discussion of the consolidated text had been completed for the time being and that he wanted to propose the way forward. [Note from the Secretariat: The Chair then made certain proposals, which were discussed at some length by the plenary. In sum, the IGC agreed that the facilitators would prepare, based on the plenary discussion thus far, a further version of the consolidated text ("Rev. 1") and that it would be presented to the plenary for further discussion.]

619. [Note from the Secretariat: Upon resumption of the plenary]. The Chair stated that the plenary would commence discussion of Rev. 1 with the following objectives: (1) establish with the proponents of proposals, not the textual proponents, whether the material options proposed by them had been adequately captured in the Rev. 1 text; (2) establish whether in the view of delegations there had been any additions to or deletions of any material option that had been proposed from the Rev. 1 text; (3) establish whether the text adequately captured the essence of the material proposals that had been made. Once that was completed, the discussion would be open once again to see if there could be further convergence on any element of the text. Afterwards, should there be any new proposals to be made— that is, any proposal or material option that had not been captured in the current text—delegations should be prepared to propose them as distinct options. Of course, proposals for the deletion of options and further consolidation of the text would be welcome. The Chair then invited facilitator Ian Goss to explain the work of the facilitators in preparing Rev 1.

620. Mr. Ian Goss said that their tardiness in submitting the text reflected the difficult nature of their task and the immaturity of the document they had started with. What they had attempted to do— without changing the text provided, except where there was duplication or where minor edits were needed—was firstly to bring all the terms and their variations together. There was a list of terms with different variations and options that had been expressed in different documents. The second step was to give clarity to the objectives and principles which had been somewhat lost through the process. One of the things that the facilitators had added was the boxed text and bolded headings, which attempted to focus and give clarity to the document, to the subsequent text in that area. They were purely the facilitators' language and there was opportunity to change those or remove them if they did not appear to add value. The area below was substantive original text. They had used some of the language used in the TK and TCE texts' guiding principles. They had also given those principles some headings as reflected in the TK and TCEs texts. Essentially they had kept the text the same in relation to the objectives and principles, except in one area, where there was duplication between principles and objectives and mechanisms or operational parts of the document. There were still five objectives. The next area which was perhaps the more challenging task, was to, in relation to the operational mechanisms required to deliver those objectives, clearly identify convergences and divergences in relation to those key areas. The facilitators had generally kept the same headings as in the last document: "subject matter of protection", "benefits/beneficiary", "scope", "sanctions, remedies," etc. They had tried, in each of those areas, to identify the different options in the different proposals, to clearly identify where the divergences and convergences were. They were expressed as options. In a sense the brackets were not as relevant anymore, except where there was clearly one option. However, there were still some brackets in those options. For example, "their derivatives" was still an issue to be resolved, so there was no convergence on whether that term should be included. Additionally, under "scope" and "remedies and sanctions", which were key areas, the facilitators had created "sub-options". For example, under "disclosure", there was a lot more detail around the types of patent rights or triggers which would relate to a disclosure requirement, and the different proposals were presented as "sub options." The same in "content of disclosure"; there were different variations or options with what would be in the content of that disclosure. The facilitators had broken up the proposals, and split them up into key issues or subject areas. That was an important step, because they needed to move past simply reflecting proposals to identifying where there was

convergence and divergence. That was the best way to achieve this. In essence, it followed the same process used when developing the TCEs and TK texts. Now, in developing those different convergences and divergences, it was relatively clear that under “mechanisms,” there really were three broad options. The first was utilizing defensive protection only, with some improvements in relation to provision of information to IP or patent offices to ensure they did not grant patents in error. In other words, that was the “non-mandatory disclosure” approach. Then there was the mandatory disclosure which basically had two themes to it, which essentially went— without going into all the other technical divergences—into the character of sanctions. The two streams were sanctions which affected the status of a granted patent, and other sanctions which were administrative in character or outside the patent system. That said, the paper also picked up a number of technical and policy issues, and those related to things like definitions, e.g., derivatives, patent rights versus IP rights, the role of the PCT and PLT, the actions of IP offices in relation to disclosure, including triggers, the content of that disclosure, such as source or origin, and the rights and roles of States, indigenous peoples and local communities, including recognizing respect for the rights of indigenous peoples. Another key issue raised in the proposals was patents on life forms and naturally occurring GRs, to mention a few. In summary, within the time given, the facilitators had probably done an 80/20 job, and they may have missed some issues. Thus a key exercise would be to identify the gaps and issues. Hopefully, they had not inadvertently deleted anything. In relation to brackets, if there was an option, they had removed the brackets, because if there was more than one option, it should not have brackets, except for example “their derivatives,” because it was clearly still not agreed. Hopefully the removal of brackets helped to give clarity. Lastly, he reminded that it was important to reflect and focus attention on the objectives, because sometimes they got lost in the discussions. There were five clear objectives to achieve: preventing IP rights or patents relating to GRs and associated TK from being granted in error; clearly ensuring that IP or patent offices had the information required to make informed and proper decisions in granting patents or IP; addressing the relationship between related international regional agreements and instruments—the CBD was a key instrument—and; maintaining the role of the IP system in promoting innovation, knowledge and technology transfer. The text in bold reflected the essence. Mr. Goss thanked his fellow facilitators for their cooperative and balanced approach. He said that they had not always agreed, but had come up with a solution that they could agree on. Their role, as facilitators, was to be bipartisan. They had no position other than to present the information in a balanced way.

621. The Chair reminded delegations that the second Vice-Chair had to be elected preferably before the end of the session. He called on regional group coordinators to discuss and advise the Secretariat on that matter.

622. The Chair said that the meeting would review Rev 1 provided by the facilitators. The text of Rev 1 had been made available the previous afternoon and all delegations had had the time to consider it and get instructions as needed. He recalled the objectives of the discussion as he had set them out earlier. He added that he did not intend to allow existing language to be modified, except for the discussion on the three elements mentioned earlier. The text, however, remained open, in the sense that any proposals that were not in any way covered by the existing language could be added as distinct options. As mentioned, proposals for the reduction in the number of options through convergence or deletion would be welcome. Those drafting changes (adding distinct options and/or removing options where possible) would be entered into the text on the screen directly but would not be highlighted in any way as had been done during drafting, or else the text would not have a uniform style. Any drafting proposal by an observer needed Member State support to remain in the text. He also recalled that comments and observations made during that part of the plenary would be recorded in the session’s report. Actual drafting proposals made in the text were simply recorded in that form in the text. On bracketing, Rev. 1 bracketed specific terms, phrases and other language which at least one delegation had placed in question. However, entire options did not need to be bracketed because options were by definition options and, therefore, understood to be notionally in brackets. He recalled that the aim was not for the text to be agreed upon or adopted at that

stage. In line with the IGC's work on TK and TCEs, Rev. 1 was work in progress. He envisaged completing a review of the text on the basis outlined above. The IGC could then take note of the progress made on the text and transmit the draft, as it was, to the WIPO General Assembly in September 2012 as required by the mandate. He opened the floor to establish whether material options presented by other proponents had been adequately captured in Rev. 1. In other words, were there any material options missing from Rev. 1?

623. The Delegation of Bolivia (Plurinational State of) appreciated the work done by the facilitators with respect to the compilation of various text proposals from delegations at the meeting. The proposed text was a good basis for the IGC's future work and obviously could be improved throughout the course of the work. However, the Delegation requested a change in terms of the spacing and placement of some of the proposals. And therefore, it wished that the text it had proposed (in Article 3 on "Protected Subject Matter", particularly in "3.15", Option 3, but not patenting life forms) be put under "Actions of the IP offices" within the same Article 3 after 3.22. That proposal was to better reflect the actions that could be taken by national IP offices in not granting patents on life forms or their parts, on genetic or biological forms of TK as found in nature.

624. The representative of Tupaj Amaru wished to speak about procedure first. He pointed that the text that had been received had been drafted behind closed doors without any transparency. He indicated that there were procedural errors in the text itself and that the proposals of the indigenous peoples didn't appear in the text or had been eliminated.

625. The Chair asked the representative of Tupaj Amaru to cite the omitted proposal and invited him to submit a copy thereof.

626. The Delegation of Cuba expressed its appreciation for the work that had been done on the text. The text was still unfinished but it was nonetheless a good basis for the work that was being undertaken. The Delegation wished to support the proposed amendment that had been made by the Delegation of Bolivia (Plurinational State of) and move the paragraph to the section on actions of intellectual property offices. It reserved the right to speak on other points at a later stage.

627. The Delegation of the Syrian Arab Republic noted that its proposal had been placed under "Respect for Rights of Indigenous Peoples and Local Communities" in section 1.1.2. However, it stressed that its proposal had nothing to do with that section. It was speaking of the rights of peoples who were under occupation, and that was something very different from indigenous peoples or local communities. For that reason, it had asked to introduce this change and to have its proposal in a separate paragraph. The Delegation requested that the paragraph be placed under rights and duties of indigenous peoples and local communities. It had to be taken from the place where it was now and be put in the previous section. This would require some minor amendments. With respect to the word "people" as used in English, the Delegation wanted that to be put in the plural and read "peoples" rather than "people". In addition, it wished to add sovereign rights. On Paragraph 1.2.1, it wished to take out the sentence that said "peoples partially or entirely under occupation". This concerned the second and the third lines so that the two concepts would be separate and clear.

628. The Chair pointed that work was moving on three aspects of the review and that the first was whether the option had been captured.

629. The Delegation of the Syrian Arab Republic confirmed that the option had been taken into account.

630. The Delegation of Venezuela (Bolivarian Republic of) wished to support the proposal made by the Delegation of Bolivia (Plurinational State of) to change the location of a particular paragraph.

631. The representative of Tupaj Amaru referred to Option 1, Paragraph 1.1.1, where it said "recognize the sovereign rights of States over genetic resources, their derivatives". This had been taken directly from Article 3 of the CBD. He stressed, however, that the indigenous peoples had advocated that genetic resources and natural resources belong to the indigenous peoples. The second part of that paragraph should read "including the sovereignty of the indigenous peoples over their genetic and natural resources". In the last paragraph on intellectual property rights, indigenous people had repeatedly said that in the CBD there was no private property so he did not understand why this superfluous concept had to be used.

632. The Chair asked the representative of Tupaj Amaru to cite the paragraph that had not been reflected in accordance with the submission that was originally made.

633. The representative of Tupaj Amaru had just read out the text which was under "Guiding Principles". In his view, Option 1, Paragraph 1.1.1, did not reflect the views and the proposals and contributions of the indigenous peoples to recognize their permanent sovereignty.

634. The Chair noted the comments of the representative of Tupaj Amaru.

635. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, thanked the Chair for the opportunity to comment again. Starting on page 2, it wished to put the definition of derivatives in square brackets. On Paragraph 1 of the objectives, after the phrase "national law and", it wished to add "relevant conditions for". It also wished to add the words "access and" before the word "benefit-sharing". In Paragraph 1.1.1 it wished to put the words "sovereign rights of States" in square brackets. Respecting the need to move forward, the Delegation proposed to make its other comments at a later stage when the Chair would ask for further proposals to be made.

636. The Delegation of Switzerland indicated that it wished to make four comments. The first comment concerned Paragraph 1.4. It wished to introduce a new heading since the guiding principle for Paragraph 1.4 did not deal with procedural issues. It suggested the sub-heading to be "transparency in ABS". Second, the Delegation wished to include a reference to Appendix 1 of document WIPO/GRTKF/IC/20/INF/10 in paragraph 3.25. It proposed to add a sentence, in brackets, at the end of the first sentence of that paragraph that would read "proposals for specific wording are contained in Document WIPO/GRTKF/IC/20/INF/10 Appendix 1". The third comment concerned paragraph 3.26. The Delegation proposed that Sub-Paragraphs (a) and (b) be deleted since these duplicated the text of Paragraph 3.9. Fourth, the Delegation considered that paragraph 4.5 should be moved to become paragraph 5.3 as it related to the heading of "Relationship with International Agreements". It wished to add the text "the disclosure of source requirement enables" at the very beginning of that paragraph, to clarify that it was the disclosure of the source requirement which did the enabling.

637. The Chair found that no delegation was opposed to the deletion of Paragraphs (a) and (b) as proposed by Switzerland and noted that the paragraphs were deleted.

638. The Delegation of Egypt, on behalf of the African Group, stated that in relation to Objective 3, Paragraph 3, there had been a slight omission from the Friday text as to the types of information that would need to be available to the patent offices. As mentioned in Objective 3, on Page 5 of the Saturday text, the Delegation wished to add, in the fourth line after "knowledge", the words "including evidence of prior informed consent, mutually agreed terms, access and benefit-sharing". The Delegation explained that there was a long paragraph which stated that "such information shall include confirmation through the mandatory disclosure requirements that prior informed consent has been obtained and access has been granted on mutually agreed terms which can be made through an internationally recognized certificate of compliance". It proposed that, alternatively, this language could be captured and transported to this text, if the Chair so wished, and the omission could then be ignored. The Delegation also noted that in Paragraph 1.1.1, on page 2 of the Saturday text, the words "the sovereign rights of

States over" were not bracketed, and it wished that they remained so at that stage. It pointed that this principle, as well as the definition of genetic resources, were both taken from the Nagoya Protocol, which had been accepted by 90 Member States including the European Union. The Delegation also wished to unbracket the definition of "derivatives".

639. The Chair asked the facilitators to take note of the suggestion to restore the omission to Objective 3, Paragraph 3 of the Saturday text. The IGC could come back to it provided there was no substantive addition. The request of Egypt to unbracket the words "the sovereign rights of States over" in Paragraph 1.1.1 was accepted as there was no opposition by other delegations.

640. The Delegation of Indonesia, on behalf of the LMCs, welcomed the approach that was being followed under the newest document. It noted that in relation to Article 8 "Sanctions, Remedies, and Exercise of Rights", a proposal by one of the Like-Minded Countries was missing. This proposal was reflected on the Friday text under "Alternative Dispute Resolution", Option 1, page 15. It read "where a dispute arises in relation to mutually agreed terms between users, beneficiaries and providers of genetic resources, their derivatives and associated traditional knowledge, each Party may be entitled to refer the issue to an alternative dispute resolution mechanism recognized by domestic legislation". The Delegation wished that this proposal be inserted in the new document under Article 8, Sub-Option 5, Paragraph 8.8.

641. The Delegation of the United States of America recalled, with respect to the change suggested by the Delegation of Egypt for Objective 3, that the exercise undertaken with the facilitators was to try to remove mechanisms from the principles and objectives, and that the facilitators, in consultation with the Chair, had done a very good job of this. The Delegation of Egypt's suggestion brought back a mechanism into Objective 3 by requiring intellectual property or patent offices to deal with issues of prior informed consent, mutually agreed terms and access and benefit-sharing. It could not support that addition to the text. The Delegation could make that suggestion in the third round if that was preferable.

642. The Chair noted the observation of the Delegation of the United States of America and its willingness to defer. He wished to accept that approach so that consultations could take place on this issue.

643. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, wished to come back to the Delegation of Egypt's intervention on Paragraph 1.1.1. As it had indicated previously, it wished to see the words "sovereign rights of States over" bracketed. In addition, in relation to the definition of "derivative", it also asked that this definition be bracketed in consistency with what had been done by the facilitators to bracket "derivative" throughout the whole text. Finally, concerning the adjunction of text that had been proposed by the Like-Minded Countries under Paragraph 8.8, it also wished to bracket that new paragraph.

644. The Chair reminded the Delegation of the European Union that it had been agreed that derivatives would not be unbracketed. On the matter of the bracketing of the words "sovereign rights of States over", he reminded that at the time of the intervention he had asked delegations to indicate whether there were objections to the removal of the brackets and there had been none.

645. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, pointed that it had raised its flag at the time, but maybe hadn't been seen.

646. The Chair noted that his decision on this issue had to be reversed and that the brackets had to be restored.

647. The Delegation of Egypt, on behalf of the African Group, recalled that the current exercise was to compare the texts and to indicate omissions. The Saturday text did not include brackets

around that phrase and by introducing brackets now the IGC was going beyond the process that it had embarked upon.

648. The Chair stated that the brackets would be removed and that he expected delegations to reserve their rights to come back to this when new proposals would be put forward.

649. The Delegation of Cuba wished to refer to Paragraph 1.1.1 in relation to the mention of "private property". It recalled that the IGC had considerable responsibility in developing legal texts that had an international impact, and that existing international agreements couldn't be ignored. It recalled that the CBD didn't recognize private property rights over traditional knowledge and genetic resources. Consequently, it considered that the words "private property rights" should not appear in the text, nor was it necessary for them to be in the text.

650. The Chair reminded the Delegation of Cuba that the current phase of work was only looking at omissions from the Saturday text and that it should come back and make that suggestion at a later stage.

651. The representative of Tupaj Amaru expressed his opinion that the text should not be regarded as untouchable, in which case there would be no meaning in having a plenary meeting. He wished to support the proposal that had been made by the Delegation of Cuba in relation to Paragraph 1.1.1 to take out the words "private property". He also supported the bracketing of the words "sovereign rights of States over".

652. The Delegation of the Republic of Korea wished to point out that its suggestion that had been made on Saturday in page 16 under "guidelines or recommendations on defensive protection" in Paragraph 3.44 of Option 1 had not been reflected. It had proposed that the words "and additional information provided by the applicant, as well as accessible to the examiners" be replaced by the words "prior art accessible to the examiners, as appropriate". It wished that that proposal be reflected.

653. The Delegation of Angola found the proposal of the African Group to be an excellent one. The IGC was dealing with new concepts and however it decided on these matters would have a great impact on the future and be very important for indigenous peoples and local communities. The Delegation hoped that all delegations would look carefully at the various options. It pointed that things seemed to be moving backwards and forwards and that was a difficult way to work. The IGC needed to always think in terms of the future.

654. The Chair opened the floor for proposals for new options.

655. The Delegation of Cuba wished to repeat its statement on Objective 1, Paragraph 1.1.1. It proposed the deletion of the phrase that referred to "private property" in relation to genetic resources. It recalled that when drafting this convention, international agreements on the matter had to be bourn in mind. The Delegation stressed that the CBD did not recognize private property under the heading of genetic resources, so it believed that this phrase should not appear in Paragraph 1.1.1.

656. The representative of INBRAPI, on behalf of the Indigenous Forum, stated that the indigenous peoples and nations present at the International Indigenous Forum at IGC 20 had assessed their participation in all the processes of the Committee and noted, with concern, the continuing reduction in the quantity and level of their participation. The indigenous peoples present at the IGC had thought seriously about their role in this process and had decided to withdraw their active participation in the work done by the Committee until the States changed the Rules of Procedure so as to allow their full and fair participation in the elaboration of the IGC's work. The statement would be handed in writing.

657. The Delegation of Norway proposed a new Sub-Option 4 under "trigger points" for disclosure, which would read "The disclosure requirement shall apply to inventions that

concerns or uses genetic resources and/or associated traditional knowledge. For genetic resources, the disclosure requirement shall apply even where the inventor has altered the structure of the received material". It also proposed a new Sub-Option 6 under "content of the disclosure". The first paragraph would be: "The patent application shall include information on the country from which the inventor collected or received the genetic resources and/or associated traditional knowledge (the providing country). If it follows from the national law in the providing country that access to genetic resources or traditional knowledge shall be subject to prior consent, the application shall state whether such consent has been obtained". The second paragraph would be: "If the providing country is not the same as the country of origin of the genetic resources and/or the associated traditional knowledge, the application shall also state the country of origin. For genetic resources, the country of origin means the country from which the material was collected from its natural environment and, for associated traditional knowledge, the country in which the knowledge was developed. If the national law in the country of origin requires that access to genetic resources and/or associated traditional knowledge shall be subject to prior consent, the application shall state whether such consent has been obtained". The third paragraph would be: "If the information set out in paragraph one and two is not known to the applicant, the applicant shall state the immediate source from which the inventor collected or received the genetic resources and/or associated traditional knowledge". The last paragraph would be: "If access to genetic resources has been provided in pursuance of Article 12.2 and Article 12.3 of the International Treaty on Plant Genetic Resources for Food and Agriculture, a copy of the standard material transfer agreement stipulated in Article 12.4 of the Treaty shall be enclosed with the patent application instead of the information stipulated in the first and second paragraphs. If the applicant has obtained an internationally recognized certificate of compliance as mentioned in Article 17.3 and Article 17.4 of the Nagoya Protocol that covers the genetic resources the invention concerns or uses, a copy of the certificate shall be enclosed with the patent application instead of information stipulated in the first and second paragraphs". The Delegation explained that this last proposal was based on the disclosure requirement in the Norwegian Patent Act. It believed that it was important that not only the internationally recognized certificate of compliance mentioned in the Nagoya Protocol, but also the material transfer agreement set out in the FAO's International Treaty, was reflected in a disclosure requirement. It believed that it would be relevant to also include references to the material transfer agreement and the International Treaty in other parts of the text in the facilitators' document. However, it had not had the opportunity to examine this in detail. It noted that if the applicant was in possession of a material transfer agreement or an internationally recognized certificate of compliance, an easy way to comply with the disclosure requirement would be for the applicant to submit a copy of the agreement or the certificate to the patent authority.

658. The Delegation of Canada wished to make three cross-cutting points regarding the text. First, it believed that the term "traditional knowledge associated with genetic resources" needed to be understood as a subset of traditional knowledge as a whole. The Delegation wished that the term used to refer to "traditional knowledge" in the context of the discussions taking place within the IGC on GRs and, indeed, in any WIPO instrument on genetic resources, be "traditional knowledge associated with genetic resources" and not "associated traditional knowledge". This point was also made in the interest of promoting consistency with other international discussions and instruments in which "traditional knowledge associated with genetic resources" was used. The Delegation was open for discussing how to integrate the term "traditional knowledge associated with genetic resources" in any text under consideration such as the facilitators' compilation. Second, the Delegation believed that there should be separate provisions to have any text for GRs, on the one hand, and TK associated with GRs, on the other hand. On this point too, it was open to discussing how to achieve this. Third, the text made extensive use of binding language such as "shall" or "must" which prejudged the outcome of the discussion. In addition, with respect to the sections' relationship with international agreements and sanctions, remedies and exercise of rights, it considered that these sections as a whole prejudged the outcome of the IGC's discussions. Therefore, the Delegation wished to see these sections square bracketed and sought confirmation from the Chair that its presence in

the text was not definitive and that no such article option was either implied or could be inserted. It reserved the right to make further suggestions on all of the aforementioned matters at a later stage.

659. The representative of the FAO, following on from the textual suggestions that had been made by the Delegation of Norway, offered three simple horizontal textual amendments. These were based on the draft Article 5 of the text and would, at this early stage, ensure a general technical consistency and symmetry in the interfaces with the various elements of the international regime on access and benefit-sharing. The broader context was the following: the decision of the CBD which had adopted the Nagoya Protocol recognized as the elements of the international regime on access and benefit-sharing the Convention itself, the Protocol, the Bonn Guidelines and the FAO's International Treaty. That Treaty covered all plant genetic resources for food and agriculture to ensure food security and access and benefit-sharing. In fact, the core of the treaty was its multilateral system of access and benefit-sharing to which countries exercised their sovereign rights over their plant genetic resources for food and agriculture.
The system substantiated a multilateral approach to access and benefit-sharing which was a unique creation of the Treaty, such that certain genetic resources should only be dealt with under the rules and terms and conditions of the multilateral system for uses therein comprised. The multilateral system was fully operational at that point and supported by a global information system on plant genetic resources for food and agriculture and a database on all transfers of genetic material that occurred within the system. Consequently, the following three possible horizontal additions could be inserted in the text. First, to add "the International Treaty on Plant Genetic Resources for Food and Agriculture" wherever there was reference to the CBD and the Nagoya Protocol. Second, to add "the multilateral system of access and benefit-sharing" wherever there was mention of country of origin. And third, to add "the global information system of the International Treaty on Plant Genetic Resources for Food and Agriculture" where there was a reference to databases for the clearing house mechanism.

660. The Delegation of Switzerland wished to support the intervention made by the representative of the FAO as it considered the International Treaty to be of major importance for the IGC as well. The multilateral system of the FAO was one of the main reasons why Switzerland had adopted the broad concept of source to cover all possible sources and origins of genetic resources. It wished to add a new sentence at the end of Paragraph 3.15: "In case the source is unknown, this must be confirmed by the patent applicant." That sentence was actually part of the Swiss proposal contained in document WIPO/GRTKF/IC/20/INF/10.

661. The Delegation of Morocco supported the proposals by the Delegation of Egypt, on behalf of the African Group, and wished to make an observation on the list of terms. It noted that the list of terms began with "Associated Traditional Knowledge" and suggested that it should begin with the definition of "Genetic Resources" which was at the beginning of page 3, to be followed by the definitions of "Derivative" and "Associated Traditional Knowledge".

662. The Chair expressed his regret at the withdrawal of certain indigenous people's representatives. The rationale offered for the withdrawal was that further participation would be contingent on a status that would allow for direct participation in a manner that was not currently afforded. He recalled that a discussion had taken place the previous week on the proposed amendments to the Rules of Procedure. There had been no decisions taken on a change to the Rules of Procedure. Therefore, that consideration could not have been taken by the IGC in this session and it was with regret that he noted that they had withdrawn. The Chair remained open to the continued participation of indigenous communities in line with the Rules of Procedures that guided the IGC and he welcomed any further submissions that might be made in respect to the improvement of those rules. He took note that, as he understood it, the representative of INBRAPI had spoken for the Indigenous Forum but that there were other representatives of indigenous communities that were still present.

663. The Chair then opened the floor for comments on deletions and consolidations in the text. Where such deletions were agreed, they would be shown in the text. The discussion should proceed paragraph by paragraph. He also opened the floor for broader comments on the document, which would be noted in the record.

664. The Delegation of Canada wished to come back to the intervention it had made earlier about the terms “traditional knowledge associated with genetic resources”. It proposed to start adding, at every iteration of the term “associated traditional knowledge” throughout the text, a bracket around “associated traditional knowledge”, followed by a slash and then again the bracketed expression “traditional knowledge associated with genetic resources”. This was because when the terms “associated traditional knowledge” were being used, this could imply that there would always be traditional knowledge associated with any given genetic resource; whereas with the formulation “traditional knowledge associated with genetic resources”, this was not necessarily the case. In addition, the Delegation wished to ensure that the text only captured traditional knowledge associated with GRs, and did not start to go over the other traditional knowledge that were being treated in other texts and in other fora.

665. The Delegation of Cameroon observed that what was the most obvious was always the most difficult to demonstrate. It stated that since discussions had focused, from the beginning, on traditional knowledge associated with genetic resources, it would have been redundant to repeat this indefinitely, all the more so since the fears of the Delegation of Canada may have been justified. It pointed that there was already an Option 3, which was quite explicit and might smooth out this fear.

666. The Delegation of Morocco recalled the proposal it had made earlier to start that section by defining genetic resources.

667. The Delegation of Canada thanked the Delegation of Cameroon and pointed that Option 3 actually linked the definition to the CBD, and also encompassed other issues. It would defer to the Chair on the final decision.

668. The Chair proposed to have Canada’s and Morocco’s recommendations on the record.

669. Mr. Ian Goss noted that in relation to the “country of origin”, Option 4, in the original text, the previous text had actually been merged into two from the proponents.

670. The Delegation of the United States of America wished to make a comment on the definition of “utilization of genetic resources”. It appeared that the term was used in different contexts inside the document, and for that reason, it preferred to put brackets around the entire definition, until that issue could be revisited in the text later on.

671. The Chair said this would be noted in the record.

672. Mr. Ian Goss noted, in relation to the title for Objective 1, that the ordering of the text of the different key issues had been changed to reflect the substantive text in Paragraph 1. In addition, he indicated that highlighted areas in the text reflected where proponents had said that brackets were needed to be placed as per their original proposals.

673. The Delegation of Egypt asked why there were brackets around “sovereign States” in Paragraph 1.1.2 as it believed all States were sovereign.

674. Mr. Ian Goss indicated that “sovereign States” had been bracketed at the request of the Delegation of the European Union, which was actually the proponent of that particular text.

675. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, stated that it was currently comfortable with the way this term was used in Paragraph 1.1.2 and it agreed that the brackets could be removed.

676. The Chair decided that the brackets were therefore removed.

677. The Delegation of the Syrian Arab Republic thanked the facilitators for having taken into consideration its proposal to change the location of Paragraph to 1.1.3. It requested that two further amendments be taken into consideration. These were to place the term “people” in the plural form “peoples” and to add the term “sovereign” to ensure respect for the sovereign rights of the peoples.

678. The Delegation of the United States of America wished to bracket “the sovereign rights of peoples partially or entirely under occupation” in Paragraph 1.1.3.

679. The Delegation of India wished to bracket Paragraph 1.2.

680. The Delegation of the United States of America wished to clarify a typographical error in section 1.3, by inserting in the first line the words “To ensure that” before “patent” in order to more accurately reflect that objective.

681. The Chair said that he saw no objection to that.

682. The representative of FAIRA wished Paragraph 1.2, second line, second sentence, to read “ensure respect for the principles of self determination of indigenous peoples and the rights of local communities”, because local communities did not necessarily have the right of self-determination. He also wished to take the opportunity to let the Chair and the delegates know, that not all indigenous peoples’ delegations had withdrawn from the discussions, and that FAIRA was not so fixated on the procedures so as to ignore the development of the text on genetic resources. However, he pointed that if the text no longer adequately acknowledged and supported the rights of indigenous peoples, FAIRA would seriously consider also withdrawing from the IGC. He repeated FAIRA’s submission to the IGC, that indigenous peoples’ delegations that represented self-determining populations should have elevated status in these proceedings and be respected for the capacity to directly negotiate with the states on the purpose of particular text. It was FAIRA’s purpose, in this IGC meeting on genetic resources, to ensure that indigenous peoples’ right to permanent sovereignty over natural resources, and hence, the resulting genetic resources, was legally respected in the proposed international instrument of WIPO.

683. The Delegation of Australia supported the intervention of the representative of FAIRA.

684. The Chair asked that this be noted so as to be taken into account at a next stage.

685. Mr. Ian Goss indicated that in the next area, under “Certainty of Rights”, in Paragraph 2.2.1, there was a footnote added to the words “legitimate users”, noting that this actually needed to have a definition as there wasn’t one at the moment. The next change was under “Patents on Life Forms”. Two aspects of it had changed: first, a footnote had been added saying that there could also be a no option to these options, and second, in relation to Option 3, this had been included from page 19 of the previous text. This was just included as a repetition from the mechanism.

686. The Delegation of Brazil wished to comment on Paragraph 2.7, “Patents on Life Forms”. It though that a third option had been added, that was taken from page 19, and wished to point out that there was also a possibility of utilizing what, on the morning text, was under Paragraph 3.48, which stated that “no intellectual property rights shall be granted to genetic resources that naturally occur in situ and ex situ”. Its suggestion was to also make it one of the options available for “Patents on Life Forms” without prejudice to it being there, but this was because it was related to an executive provision.

687. The Chair indicated that the intervention of the Delegation of Brazil would be noted in the record.

688. The Delegation of Bolivia (Plurinational State of) indicated it had asked that Paragraph 3.5 of the morning's version, be moved up to 3.3. In addition, it considered that the Paragraph which was currently 2.7.3 was not a repetition of Paragraph 2.7.1, because Paragraph 2.7.1 was trying to define a principle and Paragraph 2.7.3 was an operative paragraph with operative wording. It wished the text to reflect a principle and an assertion, both of which were operative, and should be properly reflected in the work to be developed by patent and intellectual property offices. It recognized that within the context of this discussion, many elements could be placed in different situations, but here it wished to reflect it in this way because they were two different things. The one above was a positive assertion, a principle while below it wished to see something which was operative. Paragraph 2.7.3 had to be moved to Article 3, after Paragraph 3.22.

689. Mr. Ian Goss said that the change would be made.

690. The Chair indicated that the proposal of the Delegation of Bolivia (Plurinational State of) would be noted in the record and taken into account by the facilitators.

691. The Delegation of Egypt stressed that there was a repetition of Paragraph 4.3.2 in the last sentence of Paragraph 4.4. In addition, the sentence was bracketed in Paragraph 4.4, but not in Paragraph 4.3.2.

692. The Chair noted that there was general agreement on the deletion of the highlighted section and decided it was deleted.

693. The Delegation of the Republic of Korea wished to comment on the title of Paragraph 2.4, in Objective 2, which was "compliance with disclosure, prior informed consent and fair and equitable benefit sharing requirements". It suggested "disclosure" in the title should be removed, because Paragraph 2.5 already dealt with disclosure requirement, while Paragraph 2.4 focused on meeting the requirements of prior informed consent and fair and equitable benefit sharing. With regards to Paragraph 3.2.1, it wished to bracket the word "must". Finally, in the title of Paragraph 3.4, it wished to replace "traditional knowledge" with "traditional knowledge associated with genetic resources".

694. The Chair pointed that the recommendation of the Delegation of the Republic of Korea to bracket the word "must" in Paragraph 3.2.1 was not in the previous text so it would be noted in the record.

695. The Delegation of Bolivia (Plurinational State of) asked what would be the result of the suggestions that were being made in the room. It wished to know if the facilitators would prepare a new text for the next day, on the basis of suggestions that were being made.

696. The Chair explained that for some of the input text, as for example completing a sentence, that would be put in the record. For cases where there was text that had not been correctly reflected, that text would be corrected in the text. For new recommendations, such as for shifting of bracketing, that was not present before, these were going in the record. The Chair asked the Delegation of Bolivia (Plurinational State of) if it wished to revisit its observation from the morning on the matter of the positioning of the life form issue.

697. The Delegation of Bolivia (Plurinational State of) stated that in the morning, it had identified, together with other countries, that there might be a better placement for its proposal. Its current position lead to confusion as the Delegation wished its proposal to have an operative paragraph with principles. It was ready to speak with the facilitators to look again at the placement of the text in a place that would be more appropriate.

698. The Chair asked the Delegation of Bolivia (Plurinational State of), on the basis of its recommendation, to consult with the facilitators to see if this adjustment could be done in time to have it in text before the conclusion of the afternoon session.

699. Mr. Ian Goss identified some of the next changes. In Paragraph 3.1, the word “legal” was inserted, but it was bracketed. In Paragraph 3.10, the terms “their derivatives” were bracketed in consistency with previous practice. In relation to the role of PCT and PLT, there was a Sub-Option 1 and a Sub-Option 2, which had been put together, but the proponents had wanted them to be split out, so they better reflected their position. There was no textual change to them other than the split.

700. The Delegation of Canada pointed out that, Paragraphs 2.4 and 2.5 did not have options and were just clear text. If there were options, it understood that it did not need the brackets because there were distinct options, but when there were no options and there was only one text for a principle, it wished to bracket Paragraphs 2.4 and 2.5 in their entirety, because at that stage it was not in a position to accept that concept.

701. In response, the Chair advised that the request by the Delegation of Canada would be noted in the record. He then requested the facilitators to introduce the text in the chapeau and invited comments from delegations.

702. Mr. Ian Goss indicated that in relation to the first paragraph, the agreement was to make reference to the Committee’s mandate. Secondly, the headings had been inserted by the facilitators and were indicative of the content only and did not form a framework for the document. He further said that the articles in brackets remained unchanged as they had not been inserted by the facilitators. Any headings put in by the facilitators were in a block, so that it would be easy to see what the facilitators had included and it would not affect the actual headings as contained in the original draft articles.

703. The Delegation of the Philippines wondered if the chapeau would be better included in the report of IGC 20, rather than being reproduced in the negotiating text.

704. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, noted that the amended draft of the chapeau was acceptable. It felt that it clearly captured the idea that it was a working document, and that there was still a degree of flexibility for Member States to support multiple options or zero options, as they wished. It also indicated the idea that this was not a framework as such in the eyes of some Member States. With regard to the location, the Delegation felt it was essential that it remained as part of the text that was being considered, because the chapeau served to explain how the text should be read. It said that in future negotiations, it may be essential for it to be included in a separate part of any documents produced as a result of this meeting, and this could mean that it could become separated from the text. As a consequence, the added value of it had the potential to be lost.

705. The Delegation of the Philippines noted that if it was the understanding of the Committee that the chapeau reflected the Committee’s basic agreement, there was value in indicating that in the report. This could even be included in the Chair’s summary, and the Chair’s summary could be used by the next IGC or even the WIPO General Assembly in assessing the merits of the text that would be submitted to it.

706. The Delegation of Egypt indicated that the Committee should have a clear focus on what it wished to achieve at IGC 20. It emphasized that IGC 20 should conduct text-based negotiations in order to reach a draft legal text to be submitted to the WIPO General Assembly. It noted that there was a contradiction between the first and second paragraphs, as the first paragraph referred to the mandate, but the second paragraph said that the work had neither been agreed upon nor adopted. It proposed that this issue be dealt with as part of the future steps which would be discussed later on, or as part of the Chair’s summary, and if some delegations wished to include caveats, these could be included as footnotes.

707. The Delegation of Iran (Islamic Republic of) supported the suggestion made by the Delegations of Egypt and the Philippines, that the paragraph in question could be included in

the Chair's summary. In relation to the mandate, it preferred to have a complete reference to the whole mandate of the IGC, which was to create an international legal instrument to ensure the effective protection of GRs, TK and TCEs.

708. The Delegation of Algeria supported the comments made by the Delegation of the Philippines noting that it was not the tradition in any of the texts that had been discussed at WIPO to have the chapeau appear where it was. It suggested that the content of the chapeau could be reflected in the Chair's summary or as a footnote. The Delegation agreed with the content of the first paragraph.

709. The Chair noted that no progress had been made on this item and therefore gave a brief moment for consultations.

710. The Chair stated that, following consultation with a number of delegations that had particular positions on this matter, the recommendation was that the position expressed would now be reflected in a Chairman's note, which would be a part of the document, but would precede the text. He felt that that would satisfy the concern that the provisions there would always be seen together with the text, but that, bearing in mind the observation of the Delegation of the Philippines and others, it would not be inserted into the text itself, which would have been unusual in terms of drafting practice.

711. The Delegation of Australia said that it had understood from the consultations that the proposal was to merge paragraphs 1 and 2. It would therefore read: "this text represents the results, at the conclusion of the IGC's 20th session, in accordance with the mandate of the WIPO General Assemblies [contained in WO/GA/40/7]. It represents a work in progress, and is without prejudice to the positions of the participants". That would be a merging of the first and second paragraphs. Paragraphs 3 and 4 would also be included in the Chair's note.

712. The Chair asked that paragraphs 3 and 4 be transferred to the Chairman's note, and that the rest be deleted from the current chapeau, indicating that discussions on the text had been completed. It was, as the note said, work in progress and the text was the result of text-based negotiations on GRs during the session. He said that, as required by the IGC's mandate, this text would be transmitted to the WIPO General Assembly in September 2012, as a basis for the IGC's further work on IP and GRs. A suitable decision paragraph reflecting this proposal would be tabled, when all decisions were presented for adoption.

713. The Delegation of Paraguay, speaking on behalf of GRULAC, welcomed the work carried out by the facilitators and appreciated the revised Consolidated Document relating to IP and GRs. GRULAC believed that that updated document was fundamental because it fulfilled the very important objective of having a single document on which the IGC could work. It could not, however, make comments on the substance at that stage. It said finally that the IGC had to study the objectives and principles and focus especially on legal terms.

Decision on Agenda Item 7:
714. *The Committee discussed all the working and information documents prepared for this session under this Agenda Item, in particular documents WIPO/GRTKF/IC/20/4, WIPO/GRTKF/IC/20/5, WIPO/GRTKF/IC/20/6, WIPO/GRTKF/IC/20/INF/4, WIPO/GRTKF/IC/20/INF/8, WIPO/GRTKF/IC/20/INF/9, WIPO/GRTKF/IC/20/INF/10,*

WIPO/GRTKF/IC/20/INF/11, WIPO/GRTKF/IC/20/INF/12, WIPO/GRTKF/IC/20/INF/13 and WIPO/GRTKF/IC/20/INF/14. The Committee developed, on the basis of these documents and comments made in plenary, the "Consolidated Document Relating to IP and GRs" in accordance with the General Assembly mandate contained in document WO/GA/40/7. The Committee decided that this text, as at the close of the session on February 22, 2012 (copy attached), be transmitted to the WIPO General Assembly for consideration by the General Assembly in accordance with the Committee's mandate contained in document WO/GA/40/7.

AGENDA ITEM 8: DRAFT STUDY ON THE PARTICIPATION OF OBSERVERS IN THE WORK OF THE INTERGOVERNMENTAL COMMITTEE ON IP AND GRS, TK AND FOLKLORE

715. The Chair recalled that the WIPO General Assembly, in September 2011, had invited the IGC to review its procedures with a view to enhancing the positive contribution of observers to the IGC process. In order to facilitate that review, the Secretariat of WIPO was requested to prepare a study on the participation of observers in the work of the IGC. According to the decision of the WIPO General Assembly, the study outlined current practices and potential options in this regard. In order to assist the Secretariat in preparing the study IGC participants were invited, in October 2011, to submit comments to the Secretariat. In this regard a "Note on Existing Mechanisms for Participation of Observers in the Work of the WIPO Intergovernmental Committee on IP and GRs, TK and Folklore" was made available by the Secretariat. IGC participants were invited to submit comments before November 30, 2011. Several States and observers responded to that invitation and made comments. All comments were available on WIPO web site. The draft study, as prepared by the Secretariat, was contained in document WIPO/GRTKF/IC/20/7. It was executive summary of a slightly longer paper which was also available online. Many of the comments from States and observers underscored the vital importance of guaranteeing the participation of observers in the IGC's negotiations, particularly the participation of indigenous peoples and local communities as holders of TK and TCEs.

716. The representative of FAIRA reiterated the importance of more effective participation of indigenous peoples in the meetings. He stated that the right of self-determination had been established, including the right to sovereignty over natural resources including GRs. He expressed hope that the need for textual proposals submitted by indigenous peoples representing self-determining communities and nations to be considered and remain under consideration whether or not it were supported by States in their process would be seriously considered during the discussion.

717. The representative of Tupaj Amaru noted that, under Article 24 of the WIPO General Rules of Procedure, observers could take part in the discussions at the invitation of the Chair, but they were not authorized to submit proposals, motions or amendments to drafts that were being reviewed. In his view, there was a need to clarify that the fundamental difference between indigenous peoples and observers consisted in the fact that the former were owners of TK and TCEs and the latter, for the most part, represented multi-nationals in the

pharmaceutical, agriculture and biotechnology fields or anthropologists, patent attorneys and powerful lobbies with interests different from those of indigenous peoples. Although indigenous peoples were the guardians of such knowledge and GRs they had been marginalized and reduced to silence. On the other hand, States from the North and their large NGOs, or observers, continued their impeccable campaign to put the TK and GRs and TCEs of indigenous peoples at the service of the voracious multi-nationals. He noted that indigenous peoples did not come to WIPO to thank the Voluntary Fund for the contributions and not just to warm their seats but to negotiate with States the protection of their cultural and spiritual heritage, to prevent piracy and to demand fair access to the benefits derived from their TK and GRs. He referred again to Article 24 of the WIPO General Rules of Procedure under which the IGC, composed of Member States of WIPO, decided to reserve to indigenous peoples and local communities selective and discriminatory treatment based on double standards. In applying this provision, the States denied recognition to indigenous peoples as rights-holders, historical players and depositories of permanent sovereignty over their TK and cultural expressions and GRs, and as a part of a negotiating process on international instruments. In his view, the Western States considered Indians as mere subjects of anthropological study, and those who favored culture alienation endeavored to reduce indigenous wisdom to mere folklore and considered their languages as mere dialects. Given such cultural alienation States failed to recognize indigenous peoples as equal partners and rights-holders and users of TK and did not accept that their contributions, comments and amendments be regarded as constructive contributions to the negotiating process for international instruments. He noted that after years of sterile debate on the participation of indigenous peoples and local communities one could regrettably see that rich countries were continuing with their incoherent policies to deny the effective participation of the indigenous peoples and local communities. Nonetheless, many indigenous representatives complied with the participation rules, i.e., the principles of representativeness, independence, moral integrity and recognized knowledge in the area of IP. In terms of participation of observers, the IGC should have adhered to the same rules and procedures that had been established by the UN system and its specialized agencies, and applied the principles of equity adopted by the international conferences and recognized by human rights instruments. He referred to Vienna Declaration and Program of Action adopted in 1993 by the World Conference on Human Rights that urged States to “ensure the full and free participation of indigenous people in all aspects of society, in particular in matters of concern to them”. In the dialectic sense, one could understand the right to participate in the societal matter as full, free and effective participation of indigenous peoples, both individually and collectively, being historical players, rights-holders and depositories of permanent sovereignty over genetic and natural resources. Article 71 the UN Charter provided that Economic and Social Council that could make appropriate arrangements for consultations with NGOs who dealt with matters related to its mandate. In that spirit, Resolution 1996/31 of the Economic and Social Council established participation modalities for NGOs and civil society both in the Human Rights Council and its subsidiary bodies, as well as in the United Nations international conferences and regional fora. Moreover, WIPO should have taken its inspiration from the work of the Open-Ended Working Group established under Resolution 1995/32 of the Commission on Human Rights with the exclusive purpose of developing a draft declaration on the rights of indigenous peoples. Active and free participation of indigenous representatives on the basis of equality with States in the process of negotiating the draft declaration over a period of 11 years had set a positive precedent. Their proposals, comments and amendments had been widely distributed and debated and had become an integral part of the Declaration. The activities of the indigenous peoples’ organizations that had been authorized to take part in the Working Group in accordance with the established procedures were governed by the provisions of Rules 75 and 76 of the Rules of Procedure of the Functional Commissions of the Economic and Social council. In conclusion, he stated that as States had failed to recognize participation of indigenous peoples and accept their contributions and proposals, indigenous peoples were willing to withdraw their participation from that session which was of great importance to their survival.

718. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, thanked the Secretariat for its draft study on the participation of observers in the work of IGC. It note that the nine proposals presented by the Secretariat dealt with different aspects of the participation of observers. Therefore, the Delegation was of the view that those proposals should not necessarily have been seen as a package and could be discussed independently. The Delegation was particularly supportive of those proposals which sought to fortify and rationalize the selection of observers and their financing mechanism. It was interested in the idea of establishing a standing advisory mechanism and in electing the board of the Voluntary Fund for two years with the understanding that both entities would work intersessionally and by electronic means. It also saw particular interest in further developing communication tools and outreach activities. The Delegation stood ready to further discuss the proposals.

719. The representative of Indigenous Peoples' Council on Biocolonialism (IPCB), speaking on behalf of the Indigenous Caucus, stated that indigenous peoples saw this process as fundamentally about States and industry wanting to access indigenous peoples' resources and knowledge. In this context, they asserted their rights to be treated as equals in this forum, and not as marginalized participants as they were. The Caucus referred to the positions that it had already presented at IGC 18 and 19. Indigenous peoples, in numerous meetings, had stated clearly their position regarding their territories and resources, i.e., that they were the owners of their territories and resources that they held collectively. Their rights were not those of stakeholders, NGOs, observers, special interest groups, a group, a population or a community. Indigenous peoples protected their resources through their own sovereignty and own legal systems. The Caucus emphasized that indigenous peoples were nations and affirmed their right to self-determination. Their rights were inherent and not based on goodwill of a particular State. As right-holders, indigenous peoples did not accept that one could categorize indigenous peoples. In view of the Caucus, there was no recommendation in the draft study on changes to the rules of procedures for the General Assembly of WIPO or for the diplomatic conference if one were to take place. The whole work was based on the notion of gaining access to their TK and their GRs and IP. The Caucus also referred to the right of free, prior and informed consent that was their right as peoples, in accordance with the international law. Indigenous Peoples required that States accepted them as having the right to participate in the IGC and other WIPO processes as equals, with the possibility to make interventions that would stand on their own merit, as well as to make suggested changes to the text of the documents within the IGC without a State agreeing.

720. The representative of the Assembly of First Nations stated that indigenous peoples were different from other groups or classes of stakeholders. Classes of stakeholders included NGOs, industry, artists, and representatives of indigenous peoples and others. Indigenous peoples were different from other groups, and, as nations, they had their own territories, languages, history, and the right of self-determination. Many of indigenous communities were self-governing or governed their populations, and they had rights that other groups in the IGC did not have. Based on those facts, indigenous people should have had equal or an elevated status compared to other stakeholders in the IGC forum. Contributions of indigenous peoples should have stood on their own merit. He further requested the Member States to consider those factors in looking at the classifications of the observers.

721. The Delegation of Egypt, speaking on behalf of the African Group, thanked the Secretariat for having prepared the draft study on the participation of observers in the work of the IGC. The Group took note of the nine proposals presented and indicated that several of those proposals needed to be carefully and cautiously studied, understood and digested. The Group also felt the need to seek further clarification on several proposals, in particular Proposal 2, and to understand how it would impact the nature of the IGC as a Member States-driven process. The Group also requested clarification on whether and to what extent those proposals could be considered as alternatives or presented in a form of a package. In the meantime, the Group expressed its support for the normal practice which was captured and contained in paragraph

24 which explained that the Chair generally allowed observers to intervene during IGC sessions on any issue on the agenda and to make drafting proposals when negotiating text and other working documents for consideration by Member States. It had been the practice for some time that such drafting proposals were incorporated in the text of the discussion if supported by at least one Member State. They were nonetheless reflected in the reports of the sessions in cases where reports of sessions did record drafting proposals. At that stage the Group wished to continue to reflect on the proposals.

722. The Delegation of Peru thanked the Secretariat for the preparation of the draft study on the participation of observers in the work of the IGC and for the interesting alternatives and options regarding the participation of the observers in the IGC. The Delegation also thanked all the participants who presented comments for a high level of commitment in furthering the fruitful participation of observers. The Delegation felt that with such an approach the benefits of the work of the IGC could continue to be extended to all. The Delegation favored all proposals that would further the participation of observers and in particular representatives of indigenous communities. It welcomed the ideas contained in the draft study which it was willing to continue considering collectively. It further wished to share some additional ideas that could be part of the proposal to promote the widest possible participation of observers in substantive matters of negotiation. To that end, the Delegation suggested that prior to the sessions of the IGC and when the negotiating texts were circulated the observers and in particular those who were unable to attend for lack of financing or other reasons could send their comments to the Secretariat. The Secretariat could systematically compile that into a single document that would be supplied before the session to the Member States. Any comments from the observers could then be structured on the basis of an established format including general statements, positions on the proposed text, documentation of related cases for matters of discussion, etc. Joint submissions would also be allowed. Therefore, in addition to providing an opportunity to the observers to express their views and comments, it would give Member States an opportunity to have sufficient time to absorb those contributions and to incorporate them into the discussions of the IGC. As an additional proposal, the Delegation suggested that the Secretariat pull together all the various opinions expressed by the observers in the course of a week of sessions and put them in to a document to be drafted and circulated for next sessions. This would also allow Member States to have these inputs ahead of time in order to have national authorities take them into account in developing negotiating text.

723. The Delegation of Namibia was of the opinion that there was a very important role for indigenous peoples to play in the process because, to a very large extent, the subject matter under discussion was about their cultural property. However, it also felt that there was a real issue of representation and legitimacy that needed to be addressed. To be an accredited observer to the IGC it was necessary to demonstrate the substantial constituency that one represented and that constituency must have a legitimate interest in the subject matter. It felt that it was not equitable and just that NGOs representing or claiming to represent indigenous peoples were allowed to participate in the proceedings on equal footing with recognized indigenous nations and national organizations of indigenous peoples. It was necessary to distinguish between those types of observers and allow those who were legitimate indigenous peoples to contribute fully to the proceedings while weeding out those who represented nobody but themselves and came simply for the pleasure of hearing their own voices.

724. The representative of Tin Hinan noted that she represented an organization of indigenous women from West Africa. She emphasized that effective participation of indigenous peoples in the work of the IGC would have financial impact, if real consideration were given to indigenous peoples' financial situations. She noted that she was the only indigenous participant in the meeting from Africa. This fact highlighted the scarcity of resources, as well as the need for indigenous peoples to consult each other at the regional level. In Africa, the means of communication was almost non-existent in the areas where indigenous communities lived, and there were a limited number of people who could attend the sessions.

725. The representative of CISA referred to documents that indigenous peoples had presented in the previous two sessions. He saw it as a crass act of deliberate omission that in the draft study there was no recognition of the rights of indigenous peoples in their capacity to represent themselves as nations and peoples with the right to self-determination. He believed it was either a communication problem or a crass act of deliberate omission. He proposed to add an additional proposal - rights of indigenous peoples and nations as full subjects of international law - to the list of proposed options because he saw it as something different from what States and the Secretariat perceived given that self-determination had not been included in the draft study. Having presented those documents to previous sessions, indigenous peoples still did not understand why that issue was not brought up. He pointed out that the Constitution and the Rules of Procedure were created in the wake of colonization and dispossession of indigenous peoples' territories and resources including the denial of their right to self-determination.

726. The Chair suggested that the proposals presented in the draft study be introduced one by one, and agreement be reached on each proposal as discussion proceeded. He introduced and opened discussion on Proposal 1.

727. The representative of FAIRA noted that among the categories of observers recognized in the IGC there should have been a category which related to self-determining communities.

728. The representative of INBRAPI supported the views expressed by the representative of FAIRA and underlined that indigenous peoples were not stakeholders. Indigenous peoples were internationally recognized rights-holders. They could not be included in the same category as NGOs, for example, because they had a different status. She reminded the delegations in the IGC that indigenous peoples needed to participate more effectively because the discussions in the IGC concerned their future, their rights to territories and to GRs that they had preserved, and TK which identified them as peoples. For them, it was a question of survival and not just a legal issue. She underlined that the delegations should have considered more effective participation of indigenous peoples as a different category.

729. The representative of Tupaj Amaru thanked delegations for having placed this issue on the agenda. However, he was surprised the draft study did not reflect its terms of reference, but included just elements for discussion and some of them were contradictory. The draft study distinguished between indigenous peoples and NGOs. In his view, the mandate of the General Assembly was rather to recognize that indigenous peoples had the right to negotiate as States. The definition of the different observers was a problem created by the Secretariat. Each year NGOs or representatives of representatives of indigenous peoples were accredited by WIPO, and neither the Secretariat nor the Chair ever identified who these organizations were, what their objectives were, what their possibilities were to contributing to the discussion in terms of IP. In other words, the Secretariat must explain which categories of observers were present in WIPO. In his opinion, for indigenous peoples it was the same whether an observer was an NGO or an indigenous representative. The diversity of observers, including NGOs, indigenous representatives, lobby groups from multinational companies, pharmaceutical companies and anthropologists who came to study psychology and behavior of indigenous people, should be of concern to WIPO and not to indigenous peoples. He emphasized that indigenous peoples wanted to be recognized not as just sort of folklore representatives but rather as right-holders because they were owners, guardians and right-holders of TK and GRs.

730. The representative of Hokotehi Moriori Trust stated that indigenous peoples had not been involved in the drafting of the study. While there were some useful observations in the draft study, it did not reflect what indigenous peoples had requested from the IGC. He reiterated that indigenous peoples, their resources and TK were at stake in the process of the IGC. In order for the outcomes of the process to be robust and durable, indigenous peoples should have been accorded quality treatment. He concluded by fully endorsing, on behalf of *Hokotehi Moriori* Trust and the three tribes that he had represented in the Wai 262 claim, namely Ngati Kuri, Ngati Wai and Ngati Kahungunu, the statement made by the Chair of Indigenous Caucus, and

reiterated that indigenous peoples required States to accept them as having a right to participate in the IGC and other WIPO processes as equals. Indigenous peoples were empowered to make interventions that could stand on their own merit, as well as to make changes to draft texts without agreement of at least of State. That would be an appropriate way to clarify the relationship between States and indigenous peoples in the process.

731. The representative of the Assembly of Armenians of Western Armenia stated that indigenous peoples had a particular status which was recognized by the UN. He urged States to take that into account and to differentiate indigenous peoples from local community or others which did not correspond to their true status.

732. The representative of Culture of Afro-Indigenous Solidarity noted that she represented indigenous peoples of Honduras who could not attend the meeting in Geneva due to the lack of resources and other circumstances. Her organization was an NGO that also represented and worked with an African organization, the African Commission of Health and Human Rights, and had previously represented the coordination of African NGOs. She had over 30 years experience particularly in human rights and had participated in establishing the Secretariat of Indigenous Peoples and Afro-descendants who were the rights-holders of TK. She had difficulty in understanding the proposed distinction between civil society and indigenous peoples, because one could work ethically or help other people without having any particular label of any category. She also supported the statement made by the Indigenous Caucus.

733. The Delegation of the United States of America thanked the Secretariat for the draft study on the participation of observers in the work of the IGC. The participation of observers was important to the decision-making of the IGC and important input into all of the work at WIPO. Observers, particularly those representing indigenous peoples and local communities, had made important contributions to the work of the IGC and were able to fully contribute. The Delegation was interested in the proposals that would enhance the dialogue towards the decision-making in the IGC, such as Proposals 7 and 8. The Delegation was concerned that expanding the fora for dialogue and changing the dynamics of the dialogue could dilute the focus of the IGC. Finally, the Delegation thanked those who had made comments on the study and looked forward to continue to support and facilitate the participation of observers.

734. The representative of CAPAJ recognized that the draft study generated an atmosphere of frankness regarding the relationship with different actors who contributed to the discussion in the process. He recalled that representatives of indigenous peoples who were active in the international arena had participated in the Open-ended Intersessional Working Group on the Draft Declaration on the Rights of Indigenous Peoples, and when WIPO established the mandate of the IGC, the Secretariat invited them to apply to participate as observers. They had been participating in a human rights process on equal footing with States, while throughout their participation in the IGC they were treated as regular observers. However, their experience in the IGC showed that indigenous peoples and nations were moving outside the category of regular observers since circumstances and timelines required that they be considered as full-fledged participants. Although such category did not exist, he suggested that the Secretariat take that into account in order to enrich the negotiations. That would allow the participants in the IGC to see that the continuation of the dialogue would require indigenous peoples to be treated as creators of TK and TCEs. He noted that State Governments with constitutional recognition did not have the capacity of indigenous peoples to create TCEs, songs, dances and folklore.

735. The Delegation of Pakistan stated that valuable participation of various categories of observers had been recognized in the draft study. The distinction between participating observers had been necessitated. The IGC was urged to consider establishing a standing advisory mechanism. The Delegation supported establishment of a working group consisting of volunteering States to work on developing the advisory mechanism.

736. The Delegation of the Russian Federation aligned itself with other delegations in its high appreciation of the useful contribution of observers, particularly indigenous peoples, and thanked the Secretariat for the preparation of the draft study which also incorporated the proposals that had earlier been submitted by the Delegation. In accordance with paragraph 3 of the document, the Delegation requested the Secretariat to translate the draft study into Russian which would enable representatives of indigenous peoples in the Russian Federation to familiarize themselves with the document. With regard to Proposal 1, the Delegation noted that two mechanisms had been proposed. The Delegation supported the first proposed mechanism, namely amendments to the applications for accreditation to obtain more information from applicants, provided that additional questions would be appropriate and effective. In relation to the second proposed mechanism, namely establishment of a standing advisory board, the Delegation noted that references had been made to the operation of the Advisory Board of the Voluntary Fund which in practice had included participants present at a given session of the IGC and operated in several languages, as not all members of the Advisory Board could work in one language. While noting the proposed composition of the advisory board, the Delegation asked how such members would be elected and what the working language would be, if the advisory board were to operate on a standing basis. In addition, not all elected members of the advisory board would be able to participate in all sessions of the IGC.

737. The representative of CISA stated that in the UN decolonization process peoples were discriminated and struggled as peoples who were denied their proper capacity of representation. They were denied their right to present themselves as proper agents and authorities of peoples vested with the right to self-determination. He noted that there was a process where the free political institutions of the colonized peoples were taken into account by the General Assembly to determine whether those were puppet governments of States or whether or not those were actual peoples representing their peoples and not only communities, because indigenous peoples were peoples and not just communities as they were often referred to. Indigenous peoples had the right to determine or to challenge some of those States who recognized only peoples who came from either non-profit organizations or nations and peoples, and their level or the capacity of representation in association with their right to self-determination. In his view, that was important because the status of a category of observer would give the authority to be regarded as equal with States' right in self-determination of peoples, as recognized and operated in the decolonization process. If the IGC were to make the distinction among those separate categories, one needed to go back and look at the various categories of observers to determine whether they were peoples under foreign colonization, recognized under Article 73 of the Charter of the UN, or had the right to preserve and protect their property as indigenous peoples would with the absolute title of the right to that property. He concluded that colonized indigenous peoples were called troublemakers, terrorists or even those representing themselves who liked to listen to their own voices. He reminded the Delegation of Namibia that its country had gone through the same process.

738. The representative of Tupaj Amaru noted that in the course of 10 years of the UN deliberations, time had been spent to define indigenous communities before giving them their rights. He believed the IGC was going back to the strategy of calling to account the credibility of each indigenous representative. Representatives of indigenous communities had been working for 30 years and they were only answerable to the communities they represented.

739. The Chair introduced and opened discussion on Proposal 2.

740. The representative of Hokotehi Moriori Trust referred to the Treaty of Waitangi and the considerable development of law that contained the duties of a partnership between a State Government and indigenous tribes in New Zealand. Many of those principles had been drawn from international law and from case law from the Commonwealth law countries, and provided that any partnership should be founded on good faith, mutual trust and mutual benefit. He welcomed the opportunity for indigenous peoples to work in a true spirit of partnership with State parties within the IGC process.

741. The representative of FAIRA stated that indigenous peoples should be able to nominate representatives to the “friends of the Chair” group in line with their enhanced status.

742. The representative of CAPAJ expressed his appreciation of the good will in opening up such possibility to participate in the “friends of the Chair” group and also to co-facilitate the work. That would suggest active participation in such groups on equal footing without the statements of indigenous communities having to be approved by any particular State.

743. The Delegation of Sri Lanka stated that it supported the rights of indigenous communities. Being a country in Asia-Pacific, Sri Lanka has no conflict with indigenous peoples. The Delegation believed that knowledge of indigenous peoples in various fields, especially in the field of traditional medicine, should be appreciated. The Delegation fully endorsed Proposal 2 in relation to cooperating in the spirit of partnership.

744. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, aligned itself with the previous statement by the African Group in requesting further clarification as to what precisely Proposal 2 would entail. It was the prerogative of the Chair at any time to include observers or representatives of observers in a specific process. The Delegation was not completely clear as to what was contained in that proposal.

745. The Chair introduced and opened discussion on Proposal 3.

746. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, required further clarification on the inclusion of the indigenous panel into the formal session of IGC. Would that be considered an informative panel or an advisory panel?

747. The Delegation of FAIRA supported Proposal 3 insofar as having interactive dialogues rather than panels in their current formats. Such interactive dialogues should have been included as formal parts of the meetings rather than informal, as well as centered on relevant topics of the agenda of the IGC. By virtue of the fact that speakers would be discussing relevant issues both to themselves and to the States, the representative suggested that panelists participate in the interactive dialogues and the full duration of sessions.

748. The representative of Hokotehi Moriori Trust stated that indigenous peoples should have enhanced engagement within the process in accordance with the policies set out in the statement of Indigenous Caucus. He recommended that a joint working party between Indigenous Caucus and the Secretariat be developed towards more effective and enhanced engagement between indigenous peoples and the IGC.

749. The representative of CISA believed that enhancing engagement of indigenous peoples should be directly with States and not with the Secretariat. It could include establishment of a committee or some other form of engagement so that when indigenous peoples consulted with States their proposals could be sent directly to capitals. Indigenous peoples wished to have direct engagement between themselves and States throughout the process leading up to the General Assembly level and through the process of ratifying or finalizing the document.

750. The Delegation of South Africa associated itself with the statement made earlier by the Delegation of Egypt on behalf of the African Group. The Delegation supported the participation of indigenous peoples in the work of the IGC in its national capacity, as it was demonstrated by its contribution to the Voluntary Fund. While noting that paragraphs 37 through 39 of the non-paper provided some additional information, the Delegation sought further clarity on Proposal 3 in terms of its implementation. In its understanding, participation of indigenous peoples as a part of formal sessions had been proposed in 2004, however, the final decision was for it to be outside formal sessions of IGC. It wished to know what had led to that decision in the first place. The Delegation also inquired how that would be implemented in practice, mindful of the current practice captured in paragraph 24 regarding the flexibility of Rule 24 WIPO General Rules of Procedure.

751. The representative of Tupaj Amaru, referring to what was contained in Proposals 2 and 3, noted that for the most part it already existed in treaties, conventions and dialogues where there had always been “friends of the Chair” groups. In relation to further strengthening a mutual dialogue, he believed that was no dialogue between States and indigenous peoples. Indigenous peoples’ proposals were not taken up and they were kept aside from the dialogue, therefore it was not a Secretariat mechanism but rather the willingness of States to see indigenous peoples as genuine partners in dialogue that was lacking. He wondered in what resolution, international provision, procedure, instrument, or section of jurisprudence it was foreseen that a proposal from an indigenous group needed to be supported by a government? He disagreed with the Delegation of Pakistan regarding setting up a working group to study the issue as that would delay it for another 10 years. He suggested that a decision be taken on that matter of procedure and then submitted to the General Assembly which could pass a resolution on the subject.

752. The Chair introduced and opened discussion on Proposal 4.

753. The representative of FAIRA expressed his support for the proposal and noted that if any real dialogue was meant to be achieved within a two-day meeting it would be important to have some reach on national meetings which would be further addressed later.

754. The representative of Hokotehi Moriori Trust agreed with the concept of a two-day meeting of indigenous experts to be convened by the Secretariat prior to each session of the IGC. Such mechanism was to be agreed between Indigenous Caucus and the Secretariat. However, he did not support the suggestion for States to be observers at such meetings as it was important for indigenous peoples to have time and space to freely discuss and debate the nature and content of their interventions prior to IGC, similar to States organizing themselves into clusters or groups that did not permit indigenous peoples or organizations to participate as observers.

755. The representative of IPCB associated herself with the representative of Hokotehi Moriori Trust and noted that there were two different needs that had to be addressed, namely the opportunity for indigenous peoples to consult, strategize and analyze text internally, and the opportunity to interact with States. She believed that the idea of holding an expert meeting prior to the IGC was a good one. However, she also recommended that the meeting be considered an open meeting, because if it were only for invited representatives from the regions of the world, it would have the result of diminishing rather than increasing the participation of indigenous peoples.

756. The Chair introduced and opened discussion on Proposal 5.

757. The Delegation of Mexico reported that Mexico had organized a consultation with its indigenous groups to cover the items for discussion. The designated representatives of 16 indigenous groups representing their own special knowledge in TK, GRs and TCEs with more than 600 representatives having been informed of the consequences and the potential results of the IGC process for their communities helped to shape the positions that Mexico had put forward. The Advisory Committee of the National Commission for the Development of Indigenous Peoples helped to select the representatives. They represented 68 indigenous communities and had been members of the Delegation. Through such actions, Mexico had fulfilled the provisions of the ILO Convention No. 169 in relation to the right of indigenous peoples to be consulted. In such way Mexico ensured direct consultation and reflection of indigenous voice in the IGC through incorporation of indigenous peoples’ views in its proposals. The Delegation supported Proposal 5.

758. The Delegation of Colombia considered that the participation of indigenous peoples and local communities was essential to the work of the IGC. It was important to ensure their representation and to benefit from their TK. Therefore mechanisms that States had internally to

allow them to express their views were essential. In Colombia there was a permanent forum for indigenous consultation, a high-level group for bringing together the views on matters affecting indigenous communities to ensure their effective involvement in developing and presenting proposals. In that sense, the Delegation believed that statements by observers in the plenary should be independent of the approval by a State where such internal mechanisms were lacking. The Delegation recognized the importance of the positions of indigenous communities and their integration in the deliberations of the IGC. Therefore, it was important to have an independent consultation prior to the meeting with the assistance of foreign ministries so that the conclusions of such a meeting could be published in advance and then become a part of States' considerations and discussions with indigenous peoples. That would enable effective involvement of indigenous peoples in the negotiations.

759. The representative of Tin Hinan emphasized the need for developing and strengthening dialogue and awareness-raising at national and local levels. Although in some regions work had been done in that area with indigenous and local communities, nothing had been done in case of Africa, with exception of one or two countries. She recalled that there were a very limited number of indigenous participants from Africa, as compared to progress that had been made in this area in other regions. As there were countries that did have the will but did not have the means to participate, she suggested that development partners, such as the European Union and others, be invited to help Africa out on this issue. She reiterated that African countries should open up partnerships with indigenous communities in their region because sometimes, even though there were meetings and consultations at national and regional levels, indigenous peoples were excluded from such events. She wished to see more consultation or involvement on the part of OAPI on the issue and referred to her recent participation a workshop in New Guinea on the issue of geographical indications where indigenous peoples were not well represented, as it often happened in processes which usually took place at governmental and institutional levels.

760. The representative of CAPAJ noted that there was no question that national and regional consultations were needed to enrich the proposals that accredited observers would bring to the IGC. As it was the case in other agencies, he suggested that besides the Voluntary Fund assisting observers with travel, a separate fund be established to finance regional and national consultations and meetings with direct participation of a host country. Such initiatives might come from the indigenous peoples themselves in each of their regions and did not necessarily have to be within the sphere of one specific country, as many indigenous peoples were divided by borders.

761. The representative of FAIRA supported Proposal 5 and suggested that instead of the words "the IGC may wish to invite Member States to organize national and/or regional consultations" that proposal should say "the IGC should ask Member States to organize national and/or regional consultations".

762. The representative of Tupaj Amaru stated that he was not opposed to dialogues at national or regional levels between Governments and indigenous peoples. That depended on the respective country where the indigenous peoples lived. He referred to the case of Venezuela (Bolivarian Republic of) where the Government had done a great amount of positive work to protect GRs and TK of indigenous peoples and there had been a lot of progress. But, in his view, in other countries, such as Colombia, indigenous peoples had been oppressed or, as in case of Chile, put in prisons. He believed it was a contradiction asking those Governments to hold consultations. He concluded that the problem was in promoting dialogue in the negotiations, and indigenous peoples were asking for recognition in a constructive dialogue.

763. The Chair introduced and opened discussion on Proposal 6.

764. The representative of Hokotehi Moriori Trust supported the call for more Member States to contribute to the Voluntary Fund and referred to the recommendations of the Waitangi Tribunal

report on the Wai 262 claim that the Government of New Zealand provide support by means of financial and other contributions to enable the enhanced and direct participation of Maori in national processes. He thanked for the generous contributions of South Africa, Australia, Switzerland and other Member States who had contributed to the Voluntary Fund to date and concluded that that had enabled participation of many indigenous peoples who otherwise would not have been able to attend those important meetings.

765. The representative of IPCB observed that indigenous peoples had the opportunity to nominate only three members to serve on the Voluntary Fund Advisory Board. The practice had been to share the opportunity to serve in that capacity amongst indigenous peoples and to nominate on a regional basis. She believed it was important for them to have that continued flexibility because different indigenous peoples came to different meetings, and it would be hard for them to have a fixed position of indigenous participation through the sessions. She preferred to have the flexibility to nominate based on who was present at each meeting.

766. The representative of INBRAPI believed the proposal regarding amendments to the regulations of the Voluntary Fund was excellent. She thanked all countries who had contributed to the Voluntary Fund. She appealed to Governments who had not yet contributed to do so, as it was essential in the context of the negotiations in the IGC. With regard to paragraph 14, she underlined the importance of the fact that in other fora, such as the CBD, Governments could include representatives of indigenous communities in their national Delegations. Brazil, for example, was one of the biggest economies of the world but few indigenous people had participated in its Delegations to the IGC. She called upon Governments to pay greater attention to that issue and include indigenous peoples in their Delegations.

767. The representative of CAPAJ noted that while often Governments did not have funds to finance travel and accommodation they did have funds for holding meetings in which information from the IGC could be disseminated in the field. And at the same time, information could be collected in the field to enrich the discussions in the IGC. He suggested that the possibility of establishing a separate fund to promote consultations and dissemination of information be considered. Regarding paragraph 14 speaking to the inclusion of indigenous representatives in official Delegations, he believed the Governments should have been be more generous and included indigenous representatives in their Delegations in recognition of their expertise on the issues.

768. The representative of Tupaj Amaru noted that funding was not going to solve the issue of the rights of indigenous peoples. One could invite all indigenous peoples in the world to WIPO and pay for their travel but the problem of the rights of indigenous peoples would not be solved. It was a question of the political will of States and Governments to treat indigenous peoples as peoples with rights, to recognize their right to self-determination. He was of the view that the Voluntary Fund was a mechanism which had given indigenous peoples selective and discriminatory treatment. He believed indigenous people had to be free, independent and be able to speak with dignity in international fora.

769. The Delegation of South Africa sought clarification in relation to paragraph 13 proposing to have a standing mechanism for accreditation of observers and further merging of two advisory bodies. The Delegation wished to know how this would unfold given the fact that the Advisory Board had its own rules of procedure and composition, and what the implications of such merging would be.

770. The representative of FAIRA supported Proposal 6 if there were a benefit of a two-year board in terms of achieving effectiveness in relation to awareness-raising and soliciting funds. He also wished to see a majority of indigenous peoples on the board, to cater for a representation of the people that it was there to assist. He supported the invitation to the Member States to increase participation of indigenous representatives in official Delegations if those were indigenous representatives rather than public servants within Government agencies.

771. The representative of CISA referred to the recommendation concerning inclusion of indigenous peoples in delegations of the Member States and noted that in accordance with the study by Martinez Cobo it was up to States to prove that they had received the consent of indigenous peoples through international treaties and other levels of recognition to limit or to stop such recognition. States should have taken into consideration the international status that indigenous peoples carried as subjects of international law who had never relinquished that status.

772. The Chair introduced and opened discussion on Proposal 7.

773. The Delegation of Australia stated that Australia was a strong supporter of indigenous and local community participation in the IGC as underscored by its recent contribution to the Voluntary Fund. The Delegation thanked the Secretariat for the proposals for enhancing participation of observers in the IGC and stated that it was broadly supportive of the proposals but wished to consider them in more detail in the context of the discussion. The Delegation believed that Proposal 7 could be agreed by the Member States at the session and expressed its support for it.

774. The representative of Tupaj Amaru stated that since the beginning of the IGC Indigenous Caucus had benefited from the advice of the Secretariat, and all the information prior to the meetings had always been very much appreciated. He believed that Indigenous Caucus should have been strengthened, as it was a consultative body to exchange ideas and experiences, as well as to foster dialogue with the Chair and the Secretariat.

775. The representative of FAIRA supported Proposal 7, as it was very important to have access to the Secretariat and bring concerns to the Secretariat prior to the session of the IGC, as long as that would not detract from the Secretariat's efficiency in providing session papers on the website prior to the meetings as it was doing then.

776. The Chair introduced and the opened discussion on Proposal 8.

777. The representative of FAIRA suggested that the Secretariat revise the web site and make more easily accessible for indigenous peoples.

778. The representative of Tin Hinan suggested that further collaboration be explored between the existing indigenous media and WIPO in that context. That would help disseminating information among and raising awareness of indigenous peoples, as well as other Government and civil society actors. She informed that there was a global media coordination of indigenous peoples that covered the five regions and was accessible for every country. In addition, there were other networks managed by indigenous peoples and their organizations world-wide.

779. The Delegation of Australia supported the intervention by the representative of FAIRA regarding the web site. It also suggested that Proposal 8 be agreed upon at the session.

780. The representative of Tupaj Amaru noted that logistical support had already been in place but could certainly be strengthened. He explained that there was no Internet, telephone or electricity in his community. He regretted that the question of concern to him had not been solved, nor had it been discussed.

781. The representative of CISA noted that indigenous peoples in some States were national security issues and many multinational corporations controlled the media. In his view, when indigenous peoples wished to disseminate information they sometimes talked to journalists who were afraid of their reputation being damaged. He believed it was important to ensure that the issues presented by indigenous peoples could also go out to the mainstream media so that it was not so controlled by either States through security issues or multinational corporations.

782. The representative of Tin Hinan added that other means of communication could include CDs and DVDs that would be distributed at the country level. This could help in promoting awareness-raising on the issue.

783. The Chair introduced and opened discussion on Proposal 9.

784. The representative of FAIRA supported Proposal 9. He suggested that the information gained from any activities by the Secretariat be brought within the framework outlined in Proposals 4 and 7.

785. The representative of Hokotehi Moriori Trust noted that it was important for the work of various UN bodies to be harmonized insofar as it related to natural resources, and cultural and intellectual property of indigenous peoples. He welcomed agreed mechanisms and better coordination and harmonization of such efforts by the UN bodies. He also wished to see further engagement between Indigenous Caucus and the Secretariat in implementation of the proposal.

786. The representative of INBRAPI welcomed the work that had been done by the Secretariat. Referring to good practices of the UN agencies working on the rights of indigenous peoples over their TK, GRs and biodiversity, she emphasized the need for closer work with the ILO on their Convention No. 169. ILO was one of the first UN agencies to thoroughly research and identify the rights and challenges of indigenous peoples. In addition, the UNPFII was a good example for States and other UN bodies because indigenous peoples' participation in the UNPFII was on a basis of equality with States. This was a good practice that could be adopted by other UN agencies. She also referred to the cooperation between the CBD and the FAO in establishing funds for indigenous peoples. She concluded by underlining the need for greater synergy between the work of the CBD and the IGC, particularly in relation to the CBD's multi-year work program on Article 8j and its related provisions, as well as capacity-building programs, such as building the network of indigenous women in Latin America.

787. The representative of the Assembly of Armenians of Western Armenia supported the proposal and noted that some States were proposing to UNESCO to register the intangible heritage together with the tangible assets, and indigenous peoples did not always have an opportunity to use technical means to preserve their heritage.

788. The representative of IPCB referred to the title of the draft study, the participation of indigenous peoples in the IGC processes. While she understood that there was a need for the UN agencies to harmonize with each other, she did not think that that particular proposal was one that addressed the issue of indigenous peoples' participation in the IGC in an adequate way. The other fora treated indigenous peoples' participation to different degrees, such as some were more restrictive, some were more open, and some were more equal. In her view, that did not answer the question that indigenous peoples were trying to address - the issue of indigenous peoples' right to equal participation because the issues in the IGC directly affected indigenous peoples' rights.

789. The Delegation of the United States of America supported the intervention by the representative of IPCB. The Delegation was of the view that the proposal was somewhat different in nature from the other proposals. It recognized that the Secretariat had an existing ability to work with other UN bodies and programs to the extent that their mission was similar and hoped that the Secretariat would continue to conduct those sorts of activities. However, the Delegation preferred not to sanction at that point expansion of the Secretariat's participation in such activities the extent and scope of which was not know, especially in the context of a document towards enhancing the participation of indigenous and local communities.

790. The representative of CISA suggested that Indigenous Caucus discuss the proposal and give further recommendations. He noted that Proposal 9 should have taken into consideration the complaints from indigenous peoples regarding the Nagoya Protocol and its discriminating

effect on indigenous peoples. He believed that it would be good to look at what other bodies were doing or discriminating aspects of the standard-setting they were creating, as indigenous peoples could not take their cases to some of those bodies and set jurisprudence because some States did not recognize them. Indigenous peoples were trying to see how they could remove those discriminating aspects and ensure their participation with the right to self-determination.

791. The Delegation of Venezuela (Bolivarian Republic of) believed that it would be a great step forward to allow indigenous communities to contribute and to participate in meetings as it was happening in the IGC. Referring to Proposal 9, it noted that was important for the IGC to recognize that indigenous peoples were subject to international rights under the United Nations system. The fact that many indigenous peoples did not feel that they were part of represented States did not mean that they were losing their human rights. Often indigenous peoples felt victims of the policies of States, and therefore in order to establish good relationships with international organizations it must have been recognized that indigenous peoples had internationally recognized rights.

792. The representative of Tupaj Amaru stated that indigenous peoples and their representatives were indeed enabled to take part in international fora and in the UN mechanisms. That required accreditation and many indigenous peoples were unaware of the procedures involved. He believed that in relation to the international fora it was important for the Secretariat to consider the ILO Convention No. 169 that had been ratified by many Latin America States and was the only current binding instrument, and the Declaration on the Rights of Indigenous Peoples which was not binding on States. There was, however, a moral obligation for all States to respect the rights of indigenous peoples.

793. The Delegation Chile made some clarifications in view of the previously made statements that had referred to the Government of Chile. It stated that the Government of Chile appreciated the participation of indigenous communities in work of the IGC and the ongoing dialogue with various ethnicities that existed in the country. Their views were taken into account in establishing the State policies that affected energy resources and TK. There was an integrated approach to the indigenous communities and it had been reflected in the State policies. Chile was a unitary State and the Delegation participating in the IGC represented the views and interests of different sectors of the society. The Delegation concluded by urging various NGOs, and in particular Tupaj Amaru, which had made reference to the Government of Chile, to use respectful language because that was the only way in which the IGC could move forward in the discussion. It was in tradition of the Government of Chile to be always open to dialogue with all NGOs that might have had proposals or views to put forward in the course of the session.

794. The representative of the Secretariat of the Convention on Biological Diversity (SCBD) said that it looked forward to developments on the important issue of IP and GRs. Since the adoption of the Nagoya Protocol, on October 29, 2010, at COP10 in Nagoya, Japan, important progress had been achieved towards entry into force of the Protocol. Since its opening for signatures in February 2011, 92 countries had become signatories to the Nagoya Protocol and two countries, Jordan and Gabon, had deposited their instruments of ratifications. With respect to the particular issue addressed by the IGC, as clearly set out in the Nagoya Protocol, the Protocol would be implemented in a mutually supportive manner with other relevant international instruments and due regard would be given to the useful ongoing work under such international instruments and relevant international organizations, provided that they were supportive and did not run counter to the objectives of the Convention and this Protocol. She emphasized that close cooperation between the work of the IGC and the work under the CBD remained more than ever necessary to ensure mutual support. She looked forward to a continued excellent working relationship with the WIPO Secretariat and noted that the CBD Secretariat stood ready to assist the ongoing process.

795. The representative of ARIPO suggested that, in relation to Proposal 9, consideration be given to bodies that were not part of the UN system but equally played a significant role in the work of the IGC, such as ARIPO and OAPI. He further suggested that the proposal be amended to include international organizations apart from the UN agencies.

796. At the invitation of the Chair and in response to the questions that had been raised, the Secretariat, referring to the word "package" in paragraph 4, noted that it had clearly caused some confusion. The wording had been meant to indicate that the options were not alternatives, but rather a series of separate complementary measures. Referring to the question on the rules of procedure in relation to Proposal 2, the question should be addressed by the Legal Counsel of WIPO. In the Secretariat's interim understanding, however, the rules of procedure did not exclude, and neither did they envisage, observers forming parts of groups of Friends of the Chair or co-chairing drafting groups or sub-working groups. Regarding Proposal 3 suggesting that the current panels be transformed into an interactive dialogue, the Secretariat noted that panels had originated from 2004 when the Delegation of New Zealand had made a number of suggestions for improving observer participation in the IGC, and at that time a similar discussion had been held. The suggestion in paragraph 9 was essentially to keep the panel the way that it was but to make two small changes to the format, namely the theme for the panel would be selected by the IGC itself at the preceding session and, secondly, the panel would form a formal part of the session and, subsequently, the discussion taking place at the panel would form part of the report of the session. As for the word "advice" in the paragraph, in understanding of the Secretariat, such kinds of interactive dialogues could provide advice, but not instructions, to the Member States. The Secretariat noted the request by the Delegation of the Russian Federation to translate the draft study into Russian, and stated that this would be done. With regard to paragraph 13 and the question from the Delegation of South Africa on the possibility of merging the proposed intersessional standing mechanisms for accreditation and for the Voluntary Fund Advisory Board, the Secretariat noted that it would require more thinking through. If both ideas were to be accepted in principle, there would be two parallel similar mechanisms, each requiring their own rules, guidelines and administrative support. And it seemed to make sense, in the interest of cost savings and efficiency, to merge the two mechanisms at some stage in the future. If the idea was broadly acceptable to the IGC, the Secretariat could present to the next session of the IGC a more detailed proposal on how it would be implemented in practice. However, all the proposals in the draft study were just ideas presented to the IGC for comment and their implementation required careful analysis.

797. The Delegation of South Africa supported the proposal for the Secretariat to elaborate further on the merger of advisory mechanisms and wished to see more details on the proposal.

798. The Delegation of Namibia sought assurance that the comment made at the beginning of the discussion regarding a better distinction between those who claim to represent indigenous peoples and recognized indigenous nations and peoples would be taken into consideration.

799. The representative of *Akuaipa Waimakat*, speaking on behalf of the Indigenous Caucus, stated that following constructive dialogue with the Chair and the Secretariat, it had decided to reconsider the last paragraph of the statement presented by the Caucus on February 21, 2012. It expressed its willingness to once again participate in the discussions based on some structured proposals, so as to pave the way to indigenous peoples' full and active participation within WIPO, the IGC and its working groups. Referring to document WIPO/GRTKF/IC/20/7, it supported paragraph 8 with the addition that there should be at least two participants from Indigenous Caucus in each drafting group and group of facilitators at the various levels of work on drafting instruments for the IGC. That would be an example of goodwill and good practice of WIPO and the IGC with indigenous peoples, as applied in the IWGs 2 and 3. It believed that accreditation for participation of indigenous peoples in the IGC should have been direct and automatic as for delegations or organizations of indigenous peoples in other UN fora. Regarding categories of observers in the IGC, the Caucus recommended to consider indigenous peoples in a different category from NGOs or industries. It proposed the

establishment of a specific category called “indigenous peoples” on an equal footing with States, which would be consistent with the development of the international law for the protection of the rights of indigenous peoples. The Caucus appealed for the mediation and facilitation by the Chair for the IGC to respect the international legal frameworks of protecting the rights of indigenous peoples under ILO Convention No. 169, Article 8j of the CBD, the UNDRIP and the Nagoya Protocol, and recommended that the General Assembly of WIPO implement further mechanisms that would strengthen indigenous peoples’ full participation, as indigenous peoples and the Indigenous Caucus, so that indigenous peoples could take decisions and fully express their views in the future formal and informal meetings for drafting of the IGC instruments.

800. The Chair recommended that the specific statement in respect of the reversal of the statement of February 21, 2012 by the Indigenous Caucus be taken note of and that the elements of the intervention be taken for consideration at the next session of the IGC.

Decision on Agenda Item 8:

801. *The Committee discussed and took note of the various proposals contained in the “Draft Study on the Participation of Observers in the Work of the Intergovernmental Committee on IP and GRs, TK and Folklore” (document WIPO/GRTKF/IC/20/7) (“the Draft Study”) and, with reference to that document, took the following specific decisions:*

a. With respect to Proposal 1 (revision of the application forms for accreditation to the Committee and the establishment of a standing advisory mechanism on accreditation applications) and Proposal 6 (establishment of a standing Advisory Board for the WIPO Voluntary Fund for Accredited Indigenous and Local Communities), the Committee supported these options in principle and requested the Secretariat to prepare, for the next session of the Committee, a document on the steps necessary for their practical implementation, including relevant draft amendments to the Rules of the WIPO Voluntary Fund for the Committee’s consideration and, if so agreed, transmission by the Committee of those amendments to the 2012 WIPO General Assembly;

b. With respect to Proposal 2 (representatives of observers as members of “Friends of Chair” and as co-chairs of working and drafting groups), the Committee noted that it is always within the discretion of the

Committee's Chair, with the Committee's approval and in accordance with the Committee's Rules of Procedure, to invite representatives of observers to join any "Friends of the Chair" groups that may be established and/or to co-chair working and drafting groups;

c. With respect to Proposal 3 (revisions to the format of the Indigenous Panel), the Committee requested that the document referred to in (a) above provide more information on the practical implementation and procedural implications of this proposal to enable the Committee to take a decision on this proposal at its next session;

d. With respect to Proposal 4 (Indigenous expert workshop preceding one upcoming IGC session), the Committee supported the organization of such a workshop as set out in paragraphs 10 and 11 of the Draft Study;

e. With respect to Proposal 5 (enhancing national and regional dialogue and awareness-raising), the Committee strongly encouraged Member States to organize regional and national consultations as referred to in paragraph 12 of the Draft Study;

f. With respect to Proposal 7 (expanding interaction through information exchange) and Proposal 8 (awareness-raising and communications tools), the Committee agreed with the options in paragraphs 15, 16 and 17 of the Draft Study. The Committee furthermore requested the Secretariat to improve the accessibility of the WIPO website devoted to TK, GRs and traditional cultural expressions. In this regard, the Committee took note that the existing website includes a webpage dedicated to comments from accredited observers, and requested the Secretariat to encourage such observers to provide comments on Committee documents to be made available on the webpage concerned

and to draw the attention of Member States to those comments before each session of the Committee;

g. With respect to Proposal 9 (strengthening cooperation with other United Nations bodies, programs and agencies), the Committee welcomed the continued cooperation of the WIPO Secretariat with other relevant United Nations and regional intergovernmental bodies, programs, organizations and agencies.

AGENDA ITEM 9: PROPOSED REVISION TO THE RULES OF PROCEDURE OF THE INTERGOVERNMENTAL COMMITTEE ON IP AND GRS, TK AND FOLKLORE

802. The Chair opened the floor for discussions on Item 9, and introduced document WIPO/GRTKFIC/20/8.

Decision on Agenda Item 9:
803. *The Committee adopted the amendment to the Rules of Procedure of the Committee as set out in paragraph 5 of document WIPO/GRTKF/IC/20/8.*

AGENDA ITEM 10: ANY OTHER BUSINESS

[Note from the Secretariat: Following consultations, the IGC agreed that all procedural and substantive matters related to the "Joint Recommendation on GRs and Associated TK" (the Joint Recommendation) by the Delegations of Canada, Japan, Norway, the Republic of Korea and the United States of America "(contained in document WIPO/GRTKF/20/9 Rev.) be discussed under Agenda Item 10, "Any Other Business"]

804. The Delegation of the United States of America noted that while the IGC had been reflecting upon how to protect GRs, TK and folklore to benefit mankind, there had been a number of important milestones, including improved search tools and classification systems for patent examiners when they examined patent applications which claimed GRs. The creation of a database that served as a capacity building tool, helped inform the policy debate, and provided illustrative examples of MATs concerning ABS and draft materials on guidelines for IP aspects of equitable benefit-sharing arrangements. In addition, mindful of the concerns addressed at the IGC, the PCT Working Group established additional tools to improve the information available to patent examiners. Those tools included a supplemental international search mechanism and a mechanism for third parties to submit prior art to be considered during the international search and preliminary examination. Furthermore, the International Authorities under the PCT decided to expand the list of periodicals that had been part of the PCT Minimum Documentation by adding the Korean Journal of TK, the Indian Journal of TK and other periodicals. The PCT Minimum Documentation comprised the patent publications and non-patent literature that a patent examiner should search when conducting a search or preliminary examination of a PCT application. National authorities created additional tools, such as patent prosecution highways and databases of information related to GRs and of TK associated with GRs. The Delegation noted that although the IGC had not yet finished its work,

it had made significant contributions in addressing the shared concerns. Building upon the work already completed and in progress, the Delegations of Canada, Japan, Norway, the Republic of Korea and the United States of America proposed a "Joint Recommendation on GRs and Associated TK". It said that the Joint Recommendation recognized the important economic, scientific and commercial value of GRs and associated TK, and the role of the IP system in promoting innovation. Further, the Joint Recommendation stressed the need to prevent patents from being erroneously granted, the need for patent offices to have the appropriate resources to search the prior art, and the necessary administrative measures to reach the appropriate patentability decision. It understood that the ultimate goal of the work in the IGC was to address misappropriation of GRs, TK and folklore. The Joint Recommendation, if adopted, would have been another important milestone of the work of the IGC. Reaching this milestone would not, however, signify that the IGC had reached its ultimate destination. The Joint Recommendation was not intended to prejudice the IGC's continued work on additional means to address the shared objectives. In that spirit, it hoped that the other WIPO Member States would agree that that was the appropriate time to reach another milestone. Adoption of the Joint Recommendation would demonstrate to the international community the IGC's commitment to prevent patents from being erroneously granted, such as by creating and using relevant databases and encouraging compliance with relevant ABS and PIC laws and regulations. The adoption of the Joint Recommendation would encourage WIPO Member States to develop clear, effective and transparent ABS systems, so that potential users of GRs and TK associated with GRs could obtain any necessary PIC and negotiate any necessary MATs. The Delegation concluded that that would be a positive step and welcomed the support of WIPO Member States.

805. The Delegation of Canada, in expressing its support for the Joint Recommendation, said that the proposal was inspired by the format and content of the Joint Recommendations on Provisions Regarding the Protection of Well-Known Marks and the Protection of Marks and Other Rights of Industrial Properties Regarding Designs and Internet, which the Member States were invited to consult. The term "joint" did not refer to the sponsors but to the fact that the Recommendation originated from the General Assembly and the IGC. The Joint Recommendation recommended to the Member States a coherent set of specific approaches to implement principles stipulated in the said recommendation and the preamble. Although the discussions in the session had shown different opinions, the joint objectives, particularly patent recommendations, should not be forgotten. The prevention of erroneous granting of patents was based on the existing capacity of patents, as shown in the joint opinions presented for consideration by the Member States.

806. The Delegation of Norway, as one of the co-sponsors of the Joint Recommendation, hoped that the proposal could form the basis for a positive and concrete outcome on some of the elements discussed in the IGC. It's intention was to contribute to a focused and text-based progress of the IGC's important work. The proposal contained important objectives and principles that, the Delegation hoped, could have consensus. The proposal also included recommendation text that would implement Clusters A and C options. It underlined that the proposal represented a first step and it considered Cluster A, B and C as complementary. It said that it remained a priority that the IGC reach agreement on the introduction of a disclosure requirement.

807. The Delegation of the Republic of Korea expressed its full support for the proposal made by the Delegation of the United States of America on the Joint Recommendation. The Delegation was convinced that the Joint Recommendation was very timely as it addressed pending issues such as preventing erroneously granted patents and the protection mechanism for GRs and TK associated with GRs. It would be able to provide practical solutions to prevent erroneous patents from being granted regardless of the result of the IGC negotiations. Accordingly, indigenous peoples and local communities that had grave concerns about the protection of their GRs could be protected from the limitation of traditional use of their GRs and TK associated with GRs that might have resulted from the erroneous patenting thereof. The

Joint Recommendation would also enable patent offices to make informed decisions on granting patents by enabling them to have the appropriate available information on GRs and TK associated with GRs. It said that the Joint Recommendation was designed within the principle of the global patent system which encouraged innovation by providing incentives for limited time. The Delegation also highlighted the idea of opposition measures which would allow third parties to challenge or dispute the validity of patents by submitting prior art with regard to any inventions related to GRs and TK associated with GRs so that the rights and ownership of GRs would not be taken away by others who filed patent applications either mistakenly or in bad faith. In conclusion, it emphasized that the Joint Recommendation was specific and clear in terms of describing the efficient and appropriate ways to protect GRs and TK associated with GRs. It was confident that it would be significantly helpful in coming up with better solutions at that critical juncture.

808. The Delegation of Japan, as one of the co-sponsors, believed that the Joint Recommendation was useful for the prevention of erroneously granted patents and the prevention of misappropriation of GRs, and led to the progress of discussions in the IGC.

809. The Delegation of Egypt, speaking on behalf of the African Group, noted the limited time for reviewing the document and consequently, its views were preliminary and without prejudice. The Group had conducted initial discussions on that document for information purposes only and had not taken any determination on the document. In terms of substance, it believed that the proposal did not achieve the mandate of the IGC of having an international legal instrument to provide effective protection for GRs using the IP systems, and neither did it address or try to provide sufficient solutions to the challenges and problems that African countries faced in terms of biopiracy and misappropriation of GRs and associated TK and their derivatives. It noted that the document contained some particular options from the single legal text that the IGC had been negotiating and that those selected options had been presented in the proposal in order to move them forward. While acknowledging that the IGC needed to make progress on the issue, selecting some options while leaving others out could not be satisfactory for all the Member States. It also noted that opposition measures in Item 4 was a new issue since the IGC single legal text did not contain that option. It therefore invited the proponents to insert it as part of options in the document of the IGC. The Delegation further noted that the preamble did not contain the principle of sovereignty of States' rights over natural resources as contained in the CBD and the Nagoya Protocol. The document also failed to address: the role of IP systems in protecting GRs, their derivatives and associated TK through the instruments of PIC, MAT and ABS; and the disclosure requirement, which had been a shared objective by the majority of developed and developing countries. In addition, the Group thought that the nature of the proposal was that of recommendations, which as such would not be binding to the WIPO Member States. It also noted that definitions of some terms in the document were not in line with the definitions contained in the CBD and the Nagoya Protocol. The document confirmed its position that databases were indeed supporting measures to provide defensive protection for GRs, but they were not in themselves primary defense measures. It called upon the proponents of databases as primary defense systems to consider and support the point of view that databases were complementary and supporting measures. This had not been stated in their proposal. While noting that the document tried to address the issue of prevention of erroneously granted patents, the proposal did not contain any provisions on enforcement or compliance to ensure that one could be able to prevent granting of erroneous patents. Everything was left to the discretion of the Member States, and there was no international standard in this regard. It also took note of the proposal previously made by the Delegation of Norway, which had been submitted as part of the single legal text but had not been reflected in the Joint Recommendation. It expected that, for purposes of consistency, the document would include the previously made proposal, and in that regard, it invited the Delegation of Norway to consider doing so. It concluded that it could not accept the proposal as a basis for future work.

810. The Delegation of the Russian Federation welcomed the Joint Recommendations and thanked the Delegations that had submitted it. It considered it as being extremely useful for the

IGC's work and for patent offices. The document contained sections such as: definitions, objectives and principles, prevention of erroneous granting of patents, opposition measures, supporting measures, and a proposal on databases. Those were the aspects which should be taken into account by patent offices when drawing up guidelines and, if necessary, supplementary legal documents when carrying out examinations of applications that were based on GRs and TK associated with GRs. That was necessary for the prevention of the erroneous granting of patents. It regretted that the document could not be fully discussed that year because the next two sessions would deal with other issues. The document should have been kept on the agenda so that it could have perhaps been discussed intersessionally. The Delegation requested the Secretariat to organize an intersessional discussion of the document, so that the Delegations could send in comments on the document which could lead to the elaboration of guidelines for GRs.

811. The Delegation of China noted that the document had been submitted rather late, and it therefore had not had time to examine it and receive instructions from the capital. It observed that most of the proposals in the document had been taken up in the facilitators' text. It believed that the proposal could remain on the table and the Member States could make a decision on it later.

812. The Delegation of Iran (the Islamic Republic of) welcomed all proposals made by the Member States with the understanding that such proposals would add value. However, in reviewing any proposal, the IGC had to respect the agreed work program under the mandate. In accordance with the work program, the Committee should undertake text-based negotiations that focused on considering options for a draft legal text. Based on the work program, all the working documents of the session and any new options proposed by the Member States in the course of negotiations had set ground for a consolidated text, which was at that time available due to the hard work of the facilitators and reflected all views in a balanced way. Therefore, any ideas or proposals had to be taken into account in light of the mandate and agreed work program for the IGC. In its view, all the key elements of the proposal had already been incorporated in the single text. The fact that the sponsors of the Joint Recommendation had participated in the working group of the proponents of the various documents on GRs, chaired by the Chair, was also an indication that the proposal had been taken into account. In addition, all the concepts in the proposal had previously been proposed in the course of the IGC negotiations. It recalled that the mandate of the WIPO General Assembly was the result of 10 years of study and deliberations by the Committee and it reflected the pending aspirations of all States which were faced with biopiracy and misappropriation of GRs and associated TK. The mandate could only be fulfilled with the constructive approach of all the Member States. It said that according to the well-established evidences, biopiracy had had adverse effects on the economy of all States. The IGC was entrusted to find an effective and fair solution to the existing challenges. With the current consolidated text that would be sent to the WIPO General Assembly, the Delegation believed that the IGC was moving forward in that direction, although at a very low speed and several gaps still needed to be bridged.

813. The Delegation of Venezuela (the Bolivarian Republic of) thanked the co-sponsors of the proposal and understood that the proposal would be sent back to the capitals for an in-depth review. It believed that the proposal was based on a mistaken principle and had therefore reached erroneous conclusions. In WIPO there was a euphemistic manner of saying "undue appropriation" or "misappropriation" to identify what in the national legislation was referred to by a different term. In addition, in paragraph 2 the proposal talked about important economic, scientific and commercial value leaving out aspects that were essential to indigenous peoples such as moral and cultural values. Paragraph 2 spoke about owners and rights-holders but did not identify indigenous peoples as such. PIC did not appear anywhere in the document, and the definitions only referred to patent offices, whereas GRs did not only involve patent offices but the whole IP system. It further observed that the proposal did not foresee the possibility of indigenous peoples not wanting their knowledge to be patented, and WIPO should be able to grant such protection. Finally, no application had been foreseen in the proposal.

814. The representative of OEAB thanked the Delegations that had produced the document. She believed the document was a well-structured and logical proposal and was in line with the mandate of the IGC on mechanisms for preventing the illegal use of GRs and associated TK. The document aimed at preventing the erroneous granting of patents by taking into account, as far as possible, prior art and creating comprehensive databases on GRs and TK, which, she believed, was extremely important for overcoming the problem. She supported the position of the Russian Federation regarding an intersessional discussion of the document and indicated that OEAB would make further comments on the text.

815. The Delegation of Norway, in response to the question from the Delegation of Egypt, noted that the Joint Recommendation contained elements from Clusters A and C. It did not deal with the disclosure requirement issue. With regard to the disclosure requirement, the proponents of the Joint Recommendation did not have a common view and therefore the proposal did not deal with that issue. It clarified that its earlier proposal dealt with the disclosure requirement, which was a separate issue that would be dealt with as a complementary mechanism to the Joint Recommendation.

816. The Delegation of Namibia while addressing the proponents of the document and more specifically the proponents of databases, recalled the recent scandal caused by publication, on WikiLeaks, documents from the diplomatic service of the United States of America, including those from the Pentagon. The Delegation asked the proponents of databases, were such databases to be hacked and the information placed in the public domain, would that information be treated in the IP system like any other information in the public domain. And if so, who would compensate the owners of the information for the damage? It believed those were very important questions that needed answers before one could even begin to think about making databases an important part of the system.

817. The Delegation of the Philippines acknowledged the efforts of all of the proponents and thanked them for the document. The Delegation said that it reserved the right to provide further comments in the future on account of the lack of time to review the document in detail. However, bearing in mind the mandate of the IGC, as decided by the 2011 General Assembly, it was of the view that a non-binding set of guidelines and recommendations would not ensure the effective protection of GRs. It believed that a legally binding international instrument would be the best way to address the issues that had been put forth since 2001.

818. The Delegation of India thanked the facilitators for their guidance throughout the session, which had helped the IGC to make such a substantial progress in developing the text that was currently on the table. It also noted that the text had been developed based on all of the submissions, and that was how the IGC had progressed. Once the compilation was done, the Delegations had ample opportunity to comment on the different contextual proposals that the LMCs, the African Group and other groupings and countries had made intersessionally. Those proposals were discussed on several occasions. Some of the proponents of the document under consideration also had the opportunity to participate in the facilitators' meeting and to have an in-depth review of the documents. The Delegation wondered on what basis the IGC was going to consider this document at the present session considering that the document had not been part of the documents considered for inclusion in the facilitators' text in the first instance. It believed that the document could be considered at the next session as a proposal from the proponents.

819. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, thanked the authors of the Joint Recommendation and was of the view that the proposal fell within the mandate of the IGC. It aligned itself with other Delegations in indicating the need for more time to study it and discuss it in a future session of the IGC.

820. The Delegation of Algeria, speaking on behalf of DAG, thanked the Delegations who had submitted the draft Recommendations. However, it considered that the proposal did not fall

within the mandate of the IGC. The Group recalled that the mandate had to lead to a draft legal text that would guarantee the effective protection of GRs from misappropriation based on the documents on the agenda. As the proposal had been submitted very late in the session, the IGC was unable to review it and make substantive comments on it. However, it believed that, in view of the absence of substantive elements, such as disclosure requirement, specifications on sanctions in case of misuse, the proposal represented the point of view of just one Member State. The Group felt that the document should be discussed at the next session without prejudice to the negotiations underway.

821. The Delegation of Cameroon, without prejudice to what the African Group had stated earlier, thanked the Delegations that had produced the document. It noted that, as the sponsors had participated in the work of the IGC, they had had the opportunity to be involved in the work, and the document contained some repetitions, such as the definitions. It believed that the proposal could be examined and improved upon at subsequent sessions. With regard to the definitions, it noted that the local peoples and communities were the legitimate holders of the resources. In addition, judicial aspects were not mentioned in the document. Further the burden of proof, which was incumbent upon an applicant in the case of IP had been reversed. A transfer of the burden of proof regarding the information to be requested would increase the work and costs for States that did not have the appropriate technological tools. The Delegation concluded that it would be appropriate to revise the document, as it appeared to be of interest to everyone, but adopting such a proposal would mean moving towards an instrument that would look very much like a contract, and that would be unbalanced.

822. The Delegation of the United States of America, in responding to the Delegation of Namibia, noted that data on TK or any type of knowledge that was not in the public domain would not qualify as prior art under the law of the United States of America, as well as under the laws of many other Delegations. It indicated that it had consistently suggested in the past that such information should not be contained in a prior art database. There were a number of other Delegations that had national TK libraries and had experience with maintaining and utilizing those databases, and they could be consulted further. The Delegation, among other co-sponsors of the Joint Recommendation hoped that the IGC would adopt the Joint Recommendations, as a number of Delegations had requested that discussions of the document be continued at the next meeting of the IGC where GRs would be discussed. Many of the Delegations had expressed the need for more time and referred to the lack of time as being a reason for taking the proposal up at the next session of the IGC. It was happy to keep the document on the table for discussion at the next IGC meeting that would discuss GRs.

823. The Delegation of Indonesia, speaking on behalf of the LMCs, believed that the tabled proposal was a positive gesture from the proponents in enriching the IGC's efforts to achieve a single draft text of an international legal instrument for the effective protection of GRs. It recalled that the Chair had asked for the assistance from three facilitators and proponents to work in a small working group with a view to reaching a solution, and the representatives of the proponents of the proposal were represented in the small working groups. In its view, all the representatives of the proponents in the small working group were supposed to see whether their positions and concerns had been effectively captured in consolidated document. Substantively, there was nothing new in that proposal that had not been reflected in the facilitators' consolidated document. Prior to opening another long debate on the matter, the Delegation wished to ask whether a mere recommendation could ensure the effective protection of GRs as mandated. The LMCs believed that it was imperative for the IGC to move forward and to avoid further unnecessary debate.

824. The Delegation of Brazil supported the previous speakers on the need to move towards an international binding instrument. That was the best way to move forward and to fulfill the mandate of the IGC.

825. The Delegation of Japan appreciated the intervention made by the Delegation of Namibia and the comments regarding the databases made by the Delegation of the United States of America. With regard to the leak of information in the databases, the Delegation believed that the general solution to the problem was to keep the security as high as possible. If the information regarding GRs or TK associated with GRs were to be kept in databases, it could be kept secret. If some patents were to be granted erroneously regarding GRs, anyone could revoke the patent by submitting some kind of evidence as described in paragraph 4 of the Joint Recommendation.

826. The Delegation of Sri Lanka supported the intervention made by the Delegation of South Africa. It believed that the views expressed by the Delegation of the Russian Federation could be a partial solution for that document. The Delegation also fully endorsed the statement made by the Delegation of Iran on behalf of the LMCs.

827. The Delegation of Kenya thanked the Delegations that had submitted the joint recommendation and reiterated what the Delegation of the Philippines had expressed with regard to the fact that a legally binding document would be the utmost solution in trying to alleviate the pains caused by biopiracy and its related activities. It reserved the right to comment on the document due to lack of ample time to make an informed decision. It was the Delegation's hope that the document would be discussed at a later session. The Delegation reiterated its commitment to a system that would provide a lasting solution to dealing with the challenges of preventing the erroneous granting of patents based on GRs and TK. It therefore supported the inclusion of the mandatory disclosure requirement in the patent system as expressed by the African Group and the LMCs.

828. The Chair summarized that the Delegations still needed to study the proposal in greater detail due to common concerns, and it would be sent to the next session of the IGC that would be dealing with the issue of GRs.

829. The Delegation of Egypt noted that, in addition to the summary provided by the Chair, the IGC could not make the determination on the document at that stage, and the proponents could submit it for the agenda for the next session. The Delegations' views should be kept on record and conveyed to the next meeting.

830. The Delegation of South Africa reiterated that in the summary it should be clear that there was only one single text that was going forward as a basis for the IGC's work, so that the idea of forwarding the document would be separated from the recommendation in relation to the working document.

831. The Delegation of Algeria, speaking on behalf of DAG, supported the two Delegations that had spoken before it. It recalled its suggestion that the proposal be examined at a forthcoming session without prejudice to the work done so far. It suggested that it be made clear in the Chair's summary that there was only one single consolidated text.

832. The Chair, on the basis of statements by the Delegations, concluded that the majority of the Delegations were prepared to continue to discuss the document at another session. The Chair proposed that the IGC take note of the proposal by the Delegation of the United States of America and the other co-sponsors and invite the proponents to resubmit the proposal if they deem fit at the next session dealing with GRs. The fate of the document the IGC had been working on in the session was quite clear, however, it was important to allow all Delegations, as it had always done, to submit documents to the next meeting.

833. The Delegation of the United States of America, as it had previously requested on two occasions in the plenary sessions of the IGC, asked the WIPO Secretariat to conduct a study on how existing mechanisms fulfilled ABS goals. It wished to base its positions on data and evidence, and therefore asked the International Bureau to gather and provide data on existing

mandatory patent disclosure systems relating to GRs. It was ready to repeat the questions on which such data was sought. It suggested that the Chair conduct informal consultations with regional coordinators to set the parameters of the study. It was the Delegation's intention that the study would proceed in parallel with the IGC and should in no way slow down its work. In fact, such a study would facilitate the IGC's work by informing the deliberations with data. In addition to the study in the IGC, the Delegation implored on those countries having the mandatory disclosure requirement to share data with the IGC. Only with such data could the Delegation have informed discussions on mandatory disclosure requirements. As it had been noted in the IGC sessions for many years, the Delegation could not support mandatory patent disclosure requirements relating to GRs when there was no evidence that they were effective in addressing shared objectives. On the contrary, the only evidence that had been collected and which appeared to be growing was that such requirements were harmful.

834. The Delegation of Egypt thanked the Delegation of the United States of America for making the proposal and noted that the IGC proceeded on a sound basis and would always be informed by data and knowledge. The last time the Secretariat was requested to prepare a study, the Committee spent three days discussing the terms of reference for it. It did not think that the IGC could do this quickly because there were several ideas on that. One view of the Group was that there were other studies that had been conducted on the issue. It suggested that the IGC request the Secretariat to prepare a list of studies conducted on the issue of disclosure and also in relation to biopiracy of genetic materials and associated TK derivatives. After receiving such list of studies, the Member States would have time to review them and see whether or not they were sufficient to inform the discussion. IGC could then see if there was a need for a conference, a workshop or a symposium that WIPO could organize for the Member States to share their national experiences with regard to disclosure and biopiracy. It concluded that at that stage it might not be practical to agree on a study.

835. The Delegation of Japan supported the intervention made by the Delegation of the United States of America. It believed a factual analysis on the disclosure requirement would be very important and helpful to move the discussion forward.

836. The Delegation of South Africa fully supported the statement made by the Delegation of Egypt on behalf of the African Group and wished to include on the list of studies that could be done some work on the use of databases as a defensive mechanism. The Delegation wished to keep the discussions focused on the mandate that the IGC had, which did not contain calls for studies. Studies were complementary, but not essential to the work of the IGC.

837. The Delegation of Namibia supported the interventions by the Delegations of Egypt and South Africa. In its view, one of the problems was that there had not been substantial discussions of the real issues pertaining to the disclosure requirement. It did not believe that the study of the existing disclosure system would be useful for a number of reasons, including the lack of data from which to extrapolate valid conclusions. It further noted that what the IGC had been advocating was a universal mandatory disclosure requirement which was very different from an arbitrary national disclosure requirement and would have a very different effect on the uses of GRs and associated TK. If all users of those resources had to make a disclosure at all patent application offices, the desired effect would have been achieved, which was to motivate users to get PIC and to conclude MATs. The argument that the universal mandatory disclosure requirement would be a norm-setting exercise to try and learn lessons from the implementation of the disclosure requirement in a particular jurisdiction was logically flawed and ultimately futile. It believed there were some issues that could be usefully studied to inform the discussion around disclosure in the IGC, including: (1) mandatory or voluntary, (2) national and/or international, (3) triggers or the degree of proximity that would trigger the disclosure requirement, (4) acceptable evidence for disclosure, internationally recognized certificate, standard material agreement, (5) exceptional cases where the country of origin was truly unknown and how to deal with that and (6) administration of such a requirement, (7) additional burden on applicants, (8) additional burden on patent examiners, (9) sanctions, (9a) failure to

disclose, (9b) formal disclosure, (9c) sanctions within the patent system, (9d) sanctions outside the patent system, (9e) preventing publication of a stopped application into the public domain, (9f) effective priority date, (9g) the possibility of revocation of patents, (9h) the possibility of assignment of rights, (9i) civil sanctions, (9j) criminal sanctions, (10) the changes that would be required to the PCT and the PLT through real-life scenarios that could be constructed through the information realized through this statement. It was of the view that if the IGC had technical input on that readily available to all the Delegations, it could make some progress because it would be talking from a common frame of reference rather than continuing the futile debate that had been going on. If there was going to be a study, the Delegation proposed that rather than looking at the few isolated examples that were out there, the IGC should have done a theoretical study on this issue and gotten an informed background document that everyone could use. The Delegation further indicated its support for the recommendation by the Delegation of Egypt regarding a compilation. That was a decision by the African Group. The Delegation also agreed with the Delegation of South Africa that studies were not included in the mandate. Having taken note of the particular study requested by the Delegation of the United States of America and supported by the Delegation of Japan, the Delegation believed it would not be a useful study as it was not going to look at what the IGC was trying to achieve, which was the universal mandatory disclosure requirement, but rather at isolated national requirements with too few data points and too short an experience to draw a valid conclusion. It concluded that if indeed it had been the mandate of the IGC to commission studies, it would be more useful to study the points that the Delegation listed.

838. The Delegation of Egypt clarified that the request of the African Group was for Secretariat to compile a list of conducted studies on issues of disclosure and biopiracy. The IGC would receive and study them to see if a seminar or symposium would be necessary taking into account WIPO budget resources.

839. The Delegation of the Republic of Korea was of the view that it was necessary to undertake an objective fact-based analysis of whether the disclosure requirement effectively addressed the concerns of erroneous patents as well as their misappropriation without reducing the incentives to innovate and facilitate benefit-sharing. The Republic of Korea had experienced firsthand the advantages of such patent system and benefited from it in achieving economic and social development in a very short period of time. Accordingly, the Delegation had serious concerns regarding the possible outcome of a disclosure requirement because this might undermined the long-established global patent system, which aimed to encourage innovation through incentives for a limited time. In addition, this requirement could have negative impact on IP administration in each of the Member States. The Delegation recalled that the undertaking of a fact-based objective analysis or impact study was a normal procedure in WIPO. In this regard, it believed that it was especially necessary in the norm-setting work, for Member States to have all the information needed that would allow them to make the most informed decision. It concluded by supporting the proposal made by the Delegation of the United States of America.

840. The Delegation of India supported the suggestions made by the Delegations of Egypt and South Africa. It stated that the IGC needed to look at the evidence that had already been produced over a long period of time starting from the 1998 fact-finding missions that WIPO had conducted and on the basis of which the IGC had actually been formed. In addition, in the process in the CBD leading up to the international treaty, enormous evidence had been generated, as well as the evidence that had been tabled in the WTO when many of the developing countries had produced evidence of erroneously granted patents. The Delegation did not wish to give the impression of being against the patent system, but the issue that the IGC was discussing was that there were many companies claiming TK as their own and thus depriving local communities of their right over the knowledge and the resources. In that regard, the Delegation thought that for the integrity of the patent system itself it was important that such patents were not granted. Thus it was important that all of the evidence of wrong and erroneous patents be put on the table and prepared by the WIPO Secretariat within the budgetary

resources, and than one could consider the gaps and the additional points that needed to be made based on that information.

841. The Delegation of Australia acknowledged the high relevance of the technical issues raised by the Delegation from Namibia to further discussions notwithstanding whether any studies did or did not go ahead. It believed that that was a good summary of the technical issues that needed to be explored at some time to move the work forward.

842. The Delegation of China supported the proposal by the Delegations of South Africa, Egypt and India. It felt that IGC should have adhered to the mandate of the General Assembly.

843. The Delegation of Zambia supported what the Delegation of Egypt had presented and wondered whether it was possible to take such a decision under agenda item “Any Other Business” as it would have had implications in terms of finances and resource.

844. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, recognized the need for evidence in any policy-making process and welcomed any suggestions for studies, including the technical issues raised by the Delegation of Namibia. However, it felt that any suggestions needed to be considered carefully in order to assess the added value of the proposals. Those suggestions should therefore be given full consideration at a future session of the IGC which would deal with GRs. Responding to the suggestion by the Delegation of Egypt, if the IGC was going to ask the Secretariat to compile a list of studies that had already been completed, then the list should extended to all studies on disclosure of origin and not just studies on issues related to biopiracy.

845. The Delegation of Iran (Islamic Republic of) supported the Delegation of Egypt and other Delegations. It welcomed the collection of any information for making an informed decision, but it should not have distracted the IGC from its main objective, which was to elaborate and put in place a mandatory disclosure system.

846. The Delegation of Brazil supported what had been put forward by the Delegations of Egypt, South Africa and India regarding the compilation of existing material so it would prevent the IGC from reinventing the wheel on existing material. It was important to keep the mandate which was to proceed with a single legal text with the aim of achieving a mutually supportive system between the IP systems, the Nagoya Protocol and the CBD. It would be easier to find in the compilation of such studies prepared by WIPO a number of examples of the lack of mandatory disclosure requirements and the concept it had for the countries which held GRs. The Delegation referred to cases involving patents related to Brazilian GRs, such as a fruit called cupuacu to which some patents were applied in several parts of the world in 1998. This could be simply addressed if there were a mandatory disclosure requirement in place. Another example was that of vegetable called copaiba, which had been used by traditional communities for years, and there were also some patent applications on that.

847. The Delegation of Kenya extended its support for the position of the African Group as expressed by the Delegations of Egypt, South Africa and Namibia on having a possible national conference or symposium where it was willing to actively participate by sharing its numerous practical examples of misappropriation of GRs and associated TK in Kenya and the financial losses that had been incurred. There were no longer arguments as to whether or not a knowledge-based economy was the way to go towards achieving developmental goals. For example, the main objective was the alleviation of poverty, and in a country like Kenya which was rich in biodiversity it has become the focus to support innovations which involved the utilization of GRs and associated TK and thus promoting the creative industries. It believed that the recommendations made by the Delegations should have been considered as one of the options that could be used to convince the supporters of the non-disclosure requirement of the urgency of including the mandatory disclosure within the patent system.

848. The Chair summarized that there was no emerging consensus on the study being a matter for decision at that stage. There was an introduction to a simple proposal for the compilation of existing studies with two or three additional elements. There was also emerging consensus on the view that the commissioning of a study with its attendant budgetary implications as well as any consideration of a seminar with budgetary implications would need to be taken at another session when it would be properly before the Delegations with sufficient information to guide them.

849. The Delegation of the United States of America, referring to the proposal by the Delegation of South Africa, was not sure that it fully understood what was contained in that particular proposal other than the review of literature. The Delegation had reviewed the literature itself and was not satisfied with what was contained in it. It stated that it would be more comfortable seeing a broader package of studies moving forward in tandem. It could support studies that would look at the national implementation of ABS systems and disclosure requirements; however, it could not support studies that would look at theoretical issues. It believed that the discussions should have been grounded on national experience and national implementation which had been done for a period of more than 10 years at that time. It also could not support a study on amending international agreements at that stage until the appropriate way forward had been found.

850. The Delegation of the Russian Federation supported a factual study on disclosure of the origin of GRs. In its view, it should include the issues as listed by the Delegation of Namibia.

851. The Delegation of Bolivia (the Plurinational State of) did not wish the study to prejudice the progress the IGC had achieved. It supported the proposal by the Delegations of Egypt, India and South Africa. For 12 years the IGC had been working on hundreds of studies, some of which could give some guidance to the Delegation of the United States of America. It said that it would be important to consider the compilation of WIPO, WTO and UNCTAD studies before the IGC moved onto a new study. The mandate did not foresee a study as it would not be appropriate. If the IGC were to decide to go ahead with the study, the terms of reference should be defined by the Member States and the experts must be appointed by the Member States as well.

852. The Delegation of Sri Lanka expressed its serious concerns regarding the mandatory disclosure clause. It drew attention to Article 17.2 of the Nagoya Protocol as an appropriate text. It endorsed the valuable contributions by the Delegations of Egypt, South Africa and India.

853. The Delegation of Egypt noted that the idea of the compilation of studies was useful, as long as it was not a burden for the Secretariat, and that the IGC could proceed on an informed discussion at the next session that would deal with the GRs.

854. The Chair noted that there was no agreement to proceed with a study at that time. There seemed to be the general view that the question of whether to proceed with the study and the elements of such a study should have benefited from further detailed submission by proponents. The Chair suggested that that be done for submission to the next session of the IGC that would deal with GRs.

Decision on Agenda Item 10:
855. *The Committee noted the submission of a "Joint Recommendation on GRs and Associated TK" (WIPO/GRTKF/IC/20/9 Rev.) and invited the proponents to resubmit the proposal, if they deem fit, at the next*

session of the Committee dealing with the theme of GRs.

856. *The Committee noted a number of proposals for studies, literature reviews and meetings concerning IP and GRs, and took further note of the Chair's recommendation that the issue could be considered again at the next session of the Committee at which the theme of GRs is discussed.*

AGENDA ITEM 11: CLOSING OF THE SESSION

857. The Delegation of the European Union, speaking on behalf of the European Union and its Member States, agreed with the decision to transmit the facilitators' text as a working document to the General Assembly, commenting that the text contained divergent options, was still a work in progress and needed further work and consolidation. It recalled that a detailed explanation of its proposal for disclosure of origin was contained in document WIPO/GRTKF/20/INF/8. It added that all three topics discussed in the Committee, namely TK, TCE and GRs, should be treated in an equal manner and that their results should considered jointly in a recommendation to the General Assembly to be prepared at the 22nd Session of the Committee. It flagged that it was reluctant to agree on future extended sessions as it was difficult for all experts to participate fully in such lengthy meetings.

858. The Delegation of Egypt, speaking on behalf of the African Group, expressed the hope that the discussions on TK and TCEs would find soon a speedy outcome and achieve the objective of ensuring a legal instrument or instruments for GRs, TK and TCEs. It highlighted that those issues were of great importance to African countries and that there was a need to remain engaged.

859. The Delegation of South Africa joined the Delegation of Egypt in expressing faith and reiterating commitment to the process. It also thanked the Secretariat for having made sure that the documentation was available on time and captured the information rightly.

860. The Delegation of Zimbabwe concurred with the comments of both African delegations.

861. The Delegation of Iran (Islamic Republic of), speaking on behalf of the Asian Group, and the Delegation of Algeria, speaking on behalf of the Development Agenda Group (DAG), expressed their appreciation for the progress made during the session.

862. The Delegation of Sri Lanka thanked, among others, indigenous and local communities representatives for their participation in the present session of the Committee.

863. The Delegation of the United States of America commended the Chair for a firm guidance on the procedure that, with the assistance of the three facilitators, had produced a draft consolidated document ready to be passed on to the General Assembly. It expressed its commitment to continue to participate actively in the negotiations.

864. The Delegation of Italy, speaking on behalf of Group B, reassured the Chair on the constructive engagement of the Group.

865. The Delegation of Paraguay, speaking on behalf of GRULAC, restated its approval of the text provided by the facilitators and commented that it was very important to have a single document on GRs.

866. The above Delegations and the Delegations of Jamaica, China and Hungary also thanked the Chair, Vice-Chair, facilitators, other delegations, the Secretariat and interpreters.

867. The Chair expressed his gratitude to all Delegations for the constructive work that had enabled the Committee to follow its mandate and present a single text for submission to the General Assembly. He also acknowledged the contribution made by the indigenous and local community representatives. He took note of the constructive suggestions of several delegations on how to advance the work, from the suggestions regarding technical elements made by the Delegation of Namibia to other observations. He invited Delegations to also consult during the intersessional period, so as to help make final and decisive progress. He expressed his commitment to remain at the disposal of Delegations during this period as well as during sessions for consultations and exchanges. He also thanked the Secretariat and said that his contacts would be available through the Secretariat.

Decision on Agenda Item 11:

868. *The Committee adopted its decisions on Agenda Items 2, 3, 4, 5, 6, 7, 8, 9 and 10 on February 22, 2012. It agreed that a draft written report, containing the agreed text of these decisions and all interventions made to the Committee, would be prepared and circulated before March 31, 2012. Committee participants would be invited to submit written corrections to their interventions as included in the draft report before a final version of the draft report would then be circulated to Committee participants for adoption at the Twenty-Second Session of the Committee.*

[Annexes follow]

LISTE DES PARTICIPANTS/
LIST OF PARTICIPANTS

I. ÉTATS/STATES

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

AFGHANISTAN

Fraidoon AMEL, Attaché, Permanent Mission, Geneva

AFRIQUE DU SUD/SOUTH AFRICA

Yonah Ngalaba SELETI, Chief Director, National Indigenous Knowledge Systems Office, Pretoria

Tom SUCHANANDAN, Director, Science and Technology Department, National Indigenous Knowledge Systems Office, Pretoria

Elena ZDRAVKOVA (Ms.), Senior Manager, Registrar of Patents and Designs, Department of Trade and Industry, Pretoria

Mandixole MATROOS, Second Secretary, Permanent Mission, Geneva

ALGÉRIE/ALGERIA

Abdelhamid HEMDANI, sous-directeur, Département de la protection du patrimoine, Ministère de l'agriculture et du développement rural, Alger

Mohamed BOUDRAR, directeur général, Office national des droits d'auteur et droits voisins (ONDA), Ministère de la culture, Alger

Boumediène MAHI, conseiller, Mission permanente, Genève

Ahlem Sara CHARIKHI (Mlle), attaché, Mission permanente, Genève

ALLEMAGNE/GERMANY

Tilmann Andreas BUETTNER, Desk Officer, Federal Ministry of Justice, Berlin

Ursula MONNERJAHN (Ms.), Desk Officer, Federal Ministry of Food, Agriculture and Consumer Protection, Berlin

Heinjoerg HERRMANN, Counsellor, Permanent Mission, Geneva

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[Annex II follows]

Date: February 22, 2012

Consolidated Document Relating to Intellectual Property and Genetic Resources

Chairman's Note

This text represents the results, at the conclusion of the IGC's 20th session, in accordance with the mandate of the WIPO General Assemblies (contained in WO/GA/40/7). It represents a work in progress and is without prejudice to the positions of the participants.

Where one or more options are presented on any issue it is understood that the possibility remains for there to be a **no** option or additional options on the issues.

The titles by the facilitators[1] that are used are indicative of the content only and they do not form a framework for the document.

[1] Facilitators titles are boxed.

INTELLECTUAL PROPERTY AND THE PROTECTION OF GRS [THEIR DERIVATIVES] AND ASSOCIATED traditional knowledge: NEGOTIATING TEXT

LIST OF TERMS

[Associated traditional knowledge] / [traditional knowledge Associated with genetic resources]

Option 1. "Associated traditional knowledge" means knowledge which is dynamic and evolving, generated in a traditional context, collectively preserved and transmitted from generation to generation including but is not limited to know-how, skills, innovations, practices and learning, that subsist in genetic resources.

Option 2. "traditional knowledge" means the content or substance of knowledge that is the result of intellectual activity and inside a traditional context and includes the know-how, skills, innovations, practices and learning that form part of traditional knowledge systems.

Option 3. "traditional knowledge related to genetic resources" as it is understood in the CBD and related instruments and the International Treaty on Plant Genetic Resources for Food and Agriculture of the Food and Agriculture Organization (ITPGRFA). As a measure under patent law, the focus is on traditional knowledge that can give rise to a technical invention.]

Biotechnology

"Biotechnology" as defined in Article 2 of the Convention on Biological Diversity means any technological application that uses biological systems, living organisms or derivatives thereof, to make or modify products or processes for specific use.

Country of Origin

Option 1. "Country of origin" is the country which possesses those genetic resources in in-situ conditions.

Option 2. Country Providing/Providing Country - In accordance with Article 5 of 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, a "providing country" is the country of origin or that has acquired the genetic resources and/or that has accessed the traditional knowledge in accordance with the Convention on Biological Diversity.

Option 3. "Country providing genetic resources" is the country supplying genetic resources collected from in-situ sources, including populations of both wild and domesticated species, or taken from ex-situ sources, which may or may not have originated in that country.

[Derivative

"Derivative" means a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity.]

Genetic Material

"Genetic material" means any material of plant, animal, microbial or other origin containing functional units of heredity.

Genetic resources

Option 1. “Genetic resources” are genetic material of actual or potential value.

Option 2. ”Genetic resources” as it is understood in the CBD and related instruments and the International Treaty on Plant Genetic Resources for Food and Agriculture.

In situ conditions

“In situ conditions” means conditions where genetic resources exist within ecosystems and natural habitats, and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties [Article 2, CBD].

Internationally Recognized Certificate of Compliance

[(j) Internationally recognized certificate of compliance shall mean the instrument foreseen in Article 17.2 of 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.]

Physical Access

“Physical access to the genetic resource” is its possession or at least contact which is sufficient enough to identify the properties of the genetic resource relevant for the invention.

Source

Option 1. “Source” refers to any source from which the applicant has acquired the genetic resource other than the country of origin, such as a research center, gene bank or botanical garden.

Option 2. “Source” should be understood in its broadest sense possible:

(i) Primary sources, including in particular [Contracting Parties] [Countries] providing genetic resources, the Multilateral System of ITPGRFA, indigenous and local communities; and

(ii) Secondary sources, including in particular ex situ collections and scientific literature

Utilization

Utilization of genetic resources” means to conduct research and development including commercialization on the genetic and/or biochemical composition of genetic resources, [their derivatives and associated traditional knowledge] including through the application of biotechnology] [as defined in Article 2 of the Convention on Biological Diversity].

POLICY OBJECTIVES

OBJECTIVE 1: Compliance with International/National laws relating to prior informed consent, mutually agreed terms, ABS laws and disclosure[2]

1. Ensure [applicants for intellectual property rights [patents] involving the utilization of genetic resources [their derivatives] and associated traditional knowledge] [those accessing [and/or using]] genetic resources [,their derivatives] and associated traditional knowledge comply with [international rights and national legislations [national law and relevant conditions for [requirements[3] of the country providing[4] for prior informed consent, mutually agreed terms, fair and equitable] access and benefit-sharing [and disclosure of origin.]

Guiding Principles Objective 1

1.1. **Roles and Rights of [States, Nations, Indigenous Peoples, Local Communities and right owners].**

1.1.1 Option 1. Recognize [the wide variety of kinds of [ownership] arrangements pertaining to] [sovereign rights of States] over genetic resources [, their derivatives] and associated traditional knowledge [, including the sovereign rights of [States] nations and peoples, the rights of indigenous peoples and local communities, [as well as private property rights]] in accordance with domestic legislation [in patent applications].

1.1.2 Option 2. [Sovereign States have the authority to determine access to genetic resources in their jurisdiction. Subject to national legislation, persons accessing traditional knowledge associated with genetic resources from the knowledge [holder(s)] [owners] and applying that knowledge in the development of an invention should obtain approval from the knowledge [holder(s)] [owners] and seek their involvement.]

1.1.3 Option 3. To ensure respect for [the sovereign rights of peoples partially or entirely under occupation] over their genetic resources and associated traditional knowledge, including the principle of prior informed consent and mutually agreed terms and total and effective participation.

1.2 **Respect for Rights of Indigenous Peoples and Local communities.**

[Ensure respect for the principle of self determination of indigenous peoples and local communities, [including] as well as peoples partially or entirely under occupation] and their rights over genetic resources and associated traditional knowledge, including the principles of prior informed consent, mutually agreed terms, and full and effective participation, noting the United Nations Declaration on the Rights of Indigenous Peoples.]

1.3 **Procedural Burden.**

[To ensure that patent applicants are not burdened with unreasonable procedures for relevant conditions for access, use and benefit-sharing under national law] when seeking patent protection.]

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2 Boxed and/or bolded headings are Facilitators text to enhance clarity in the document.

3 National law and requirements include customary norms.

1.4 [**Transparency in ABS.**

A requirement in national and international patent applications to disclose the source would increase transparency in access and benefit sharing with regard to genetic resources and traditional knowledge].

OBJECTIVE 2: Prevent [intellectual property rights] [patents] from being granted in error [in bad faith].

2.1 Prevent [intellectual property rights] [patents] involving the access and utilization of genetic resources, [their derivatives] and/or associated traditional knowledge from being granted [in bad faith]:

(a) [[in error for inventions that are not novel [new] or inventive] [that do not satisfy the patentability criteria];
(b) [where there is no prior informed consent, mutually agreed terms [and [/or] fair and equitable benefit-sharing, and disclosure of origin] or related national law and requirements are not satisfied; and
(c) [or that was granted in violation of the inherent rights of the original owners].

Guiding Principles Objective 2

2.2. **Certainty of Rights.**

2.2.1 Option 1. The [intellectual property] [patent] system should provide certainty of rights for legitimate users[5] and providers of genetic resources, [their derivatives] and/or associated traditional knowledge.

2.2.2 Option 2. The patent system should provide certainty of rights for users of genetic resources and traditional knowledge and shall not impose requirements that detract from legal certainty such as mandatory disclosure requirements relating to genetic resources and traditional knowledge.

2.3 **Compliance with Patentability Requirements.**

Patent applicants should not receive exclusive rights on inventions that are not new or inventive.

2.4 [**Compliance with disclosure, prior informed consent and fair and equitable benefit sharing requirements.**

intellectual property rights applicants should not receive exclusive rights where free, prior and informed consent and fair and equitable benefit-sharing requirements for accessing and using genetic resources [and their derivatives] [and their associated traditional knowledge] have not been met [ensuring free prior informed consent and fair and equitable benefit-sharing for indigenous peoples and local communities]]

[5] This requires a definition.

2.5 [**Disclosure Requirements.**

Persons applying for [intellectual property rights] [patents] involving the use of genetic resources and/or associated traditional knowledge have a duty [of good faith and candor] to disclose in their applications [all background information] all relevant [known] information relating to the genetic resources [, their derivatives] and associated traditional knowledge, including the country of [source or] origin.]

2.6 **Mutual Trust.**

[The disclosure of the source would increase mutual trust among the various stakeholders involved in access and benefit sharing. All of these stakeholders may be providers and/or users of genetic resources and traditional knowledge. Accordingly, disclosing the source would build mutual trust in the North – South – relationship. Moreover, it would strengthen the mutual supportiveness between the access and benefit sharing system and the patent system.]

2.7 **Patents on Life Forms**[6]

2.7.1 Option 1. Ensure that no patents on life and life forms are granted for genetic resources and associated traditional knowledge.

2.7.2 Option 2. Enhance the availability of patent protection for life forms and new uses for known substances in order to create benefits and support benefit-sharing from the use of genetic resources and associated traditional knowledge.

OBJECTIVE 3: Ensuring intellectual property [patent] offices have the required information to make proper decisions in granting intellectual property [patent] rights.

3. Ensure that [[intellectual property] [Patent] offices] the office that has responsibility for [processing and/or management of] examining [intellectual property and] [patent] applications [should] have [access to] [all] the appropriate information [on genetic resources, [their derivatives] and/or associated traditional knowledge] needed to make proper and informed decisions in granting [intellectual property rights] [patents].

Guiding Principles Objective 3

3.1 **Prior Art.**

[Intellectual property] [Patent] offices should [must] consider all relevant prior art [[as far as known to the applicant] relating to genetic resources, [their derivatives] and associated traditional knowledge] when assessing [the eligibility for grant of [intellectual property rights]] [the patentability of an invention] [a patent].

3.2 **Applicant(s) Disclosure Requirement.**

3.2.1 Option 1. [Intellectual property] [Patent] an applicant[s] [should] must disclose all background information of genetic resources, [their derivatives] and associated traditional knowledge relevant for determining the eligibility conditions. Such information shall include confirmation through the mandatory disclosure requirements that prior informed consent has

[6] Where one or more options are presented on any issue it is understood the possibility remains for there to be a **no** option on the issue

been obtained and access has been granted on mutually agreed terms which can be made through an internationally recognized certificate of compliance.

3.2.2 Option 2. Technical prior art: Disclosing the source of genetic resources and traditional knowledge in patent applications would assist patent examiners and judges in the establishment of prior art with regard to inventions that somehow relate to these resources or this knowledge, including use of databases of traditional knowledge that is prior art.

3.2.3 Option 3. Promoting transparency and dissemination of information by disclosing country of origin and publishing and disclosing technical information related to new inventions, where appropriate and where publicly available, so as to enrich the total body of technical knowledge accessible to the public.

3.3 **Traceability.**

Disclosing the source in patent applications would allow the providers of genetic resources and traditional knowledge to keep track of the use of their resources or knowledge in research and development resulting in patentable inventions.

3.4 **Rights of traditional knowledge holders.**

There is a need to recognize that some holders of traditional knowledge may not want their knowledge documented.

OBJECTIVE 4: Relationship between international, [regional] agreements, instruments and treaties

4.1 Option 1. [Establish a] [Recognize] the coherent and mutually supportive [system] relationship between [intellectual property rights] [patents] involving the utilization of genetic resources, their [derivatives] and/or associated traditional knowledge and [existing] relevant international [and regional] [agreements and treaties] instruments, [including ensure consistency with international legal standards in the promotion and protection of the [collective] rights of indigenous peoples.]

4.2 Option 2. [Promote a mutually supportive relationship] [Promotion of cooperation] with relevant international agreements [and processes].

Guiding Principles Objective 4

4.3 **Respect and Consistency.**

4.3.1 [Promote respect for [and seek consistency with] other relevant international [and regional] instruments [and processes].

4.3.2 The work of the IGC should not prejudice the work pursued in other fora.]

4.4 **Cooperation, Awareness and Information Sharing/Linkage CBD/ITPGRFA.**

Promote [cooperation] [awareness and information sharing] with relevant international [and regional] instruments [and processes] [and support, in particular, the implementation of the Convention on Biological Diversity and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilization to the Convention of Biological Diversity and ITPGRFA.]

OBJECTIVE 5: Role of intellectual property System in promoting innovation and knowledge, technology transfer.

5.1 Recognize [and maintain] [strengthen] the role of the [intellectual property] [patent] system in promoting innovation, transfer and dissemination of technology [, to the mutual advantage of stakeholders, providers, holders and users of genetic resources, their [derivatives] and[/or] associated traditional knowledge [in a manner conducive to social, cultural and economic welfare wellbeing and development [while]:

(a) [contributing] ensuring to the protection of genetic resources, [their derivatives] and[/or] associated traditional knowledge.

(b) preventing the adverse effects of the [intellectual property] [patent] system on the [indigenous peoples] indigenous and local communities' [customs, beliefs and rights, traditional knowledge] laws, practices, knowledge systems and rights with the aim of recognizing and protecting the rights of [indigenous peoples] indigenous and local communities to use, develop, create and protect their knowledge and innovation in relation to genetic resources].

Guiding Principles Objective 5

5.2 **Maintaining Incentive for Innovation**

[Maintain the incentives for innovation provided by the intellectual property system.] [Recognize and maintain the role of the intellectual property system in promoting innovation, noting the relationship with genetic resources, [their derivatives] and/or associated traditional knowledge [and in the protection of traditional knowledge, genetic resources, [their derivatives] and/or associated traditional knowledge and traditional cultural expressions and fair and equitable sharing of benefits arising from their use.]

5.3 **Legal Certainty.**

[Promote] To [strengthen legal] certainty and [clarity] [scope] of intellectual property rights [, noting the relationship with genetic resources, [their derivatives] and/or associated traditional knowledge and obligations with respect to the protection of traditional knowledge [beneficiaries] [of indigenous peoples and local communities], genetic resources, [their derivatives] and/or associated traditional knowledge and traditional cultural expressions and certainty and clarity for prior informed consent and fair and equitable benefit-sharing].

5.4 **Protect Creativity and Reward for Investment.**

5.4.1 Option 1. To protect from national and international biopiracy, creativity, reward investments and ensure prior informed consent and fair and equitable benefit-sharing with the [indigenous peoples and local communities, [and] traditional knowledge [holders] [owners]] [traditional knowledge beneficiaries].

5.4.2 Option 2. Protect creativity and reward [public, private and community] investments [and ensure prior informed consent and fair and equitable benefit-sharing, mutually agreed terms] [made in developing a new invention [which has been developed in full compliance with national laws and requirements, including the principles of prior informed consent, fair and equitable benefit-sharing, mutually agreed terms].

5.5 **Transparency.**

Promote transparency and dissemination of information [by disclosing country of origin of genetic resources] [, where not in contrast with public morality and/or order public,] [and providing sufficient protection] by:

(a) [publishing and disclosing technical information related to new inventions, so as to enrich the total body of technical knowledge accessible to the public;
(b) disclosing country of origin and publishing and disclosing technical information related to new inventions, [where appropriate and where publicly available], so as to enrich the total body of technical knowledge accessible to the public; and
(c) increase legal certainty and trust between users and providers of genetic resources and traditional knowledge through a mandatory disclosure of origin or source.]

[ARTICLE 1]
[[SUBJECT MATTER OF PROTECTION]
[OBJECTIVE]

1.1 [[Protection] this instrument shall [extend] apply to any [utilization of] intellectual property right derived from genetic resources, [their derivatives] and associated traditional knowledge.]

[ARTICLE 2]
[[BENEFITS] / BENEFICIARIES [OF THE PROPOSALS]]
[OBJECTIVES]

OPTION 1

2.1 Measures related to the compliance with existing rules of access and benefit-sharing derived from the utilization [for the protection] of genetic resources,[their derivatives] and associated traditional knowledge shall be for the benefit of country providing such resources and knowledge [of origin of genetic resources].

2.2 Parties shall respect the rights of indigenous and local communities in the traditional knowledge associated with genetic resources, [their derivatives] in accordance with the [domestic]/national legislation and existing international agreements and treaties, in particular the Convention on Biological Diversity and 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 and ITPGRFA.

2.3 The beneficiaries of genetic resources and associated traditional knowledge under this instrument shall have the following exclusive rights that:

(a) arise out of the existence of knowledge (de facto rights);
(b) are inalienable and in perpetuity as long as knowledge exist;
(c) are intergenerational, i.e., passed on to future generations; and
(d) to authorize or deny access to the use of genetic resources and associated knowledge.

OPTION 2

2.4 A global and compulsory system creates a level playing field for industry and the commercial exploitation of patents, and also facilitates the possibilities under Article 15(7) of the CBD for the sharing of the benefits arising from the use of genetic resources.

[ARTICLE 3]
[SCOPE [OF [LEGAL] PROTECTION]]
[[MANDATORY] DISCLOSURE REQUIREMENTS]

LEGAL PROTECTION

3.1 [The [Contracting Parties] [Countries] shall provide legal protection to genetic resources and associated traditional knowledge as a unique knowledge system that has the following characteristics:

(a) traditional knowledge, genetic resources, landscapes, cultural and spiritual values and customary laws, are inextricably linked and together maintain the integrity of knowledge systems.
(b) genetic resources and biodiversity cannot be separated from traditional knowledge as intangible and tangible components cannot be separated.
(c) genetic resources and associated traditional knowledge is part of the collective, ancestral, territorial, spiritual, cultural and intellectual heritage.
(d) genetic resources and associated traditional knowledge is transmitted from generation to generation in diverse forms and is inalienable, indivisible and imprescriptible.

3.2 No registration of knowledge is required for rights to be legally recognized].

DISCLOSURE PROTECTION

OPTION 1

3.3 [Contracting Parties] [Countries] shall provide in [their national intellectual property] [patent] legislation a mandatory disclosure requirement. The disclosure requirement should be mandatory. This implies that it should be implemented in a legally binding and universal manner.

3.4 Check Point:

(a) Option 1. [Contracting Parties] [Countries] shall appoint national intellectual property offices as a checkpoint for disclosure of the country of origin and source of genetic resources, [their derivatives] and associated traditional knowledge [and for their monitoring.]
(b) Option 2. The patent system must provide for a mandatory disclosure requirement ensuring that the intellectual property Offices becomes a key checkpoint for disclosure [and monitoring] of the utilization of genetic resources and/or associated traditional knowledge (in line with Article 17 of the CBD Nagoya Protocol).

OPTION 2

3.5 [Contracting Parties] [Countries] may provide in their national patent legislation a mandatory disclosure requirement.

OPTION 3

3.6 Patent disclosure requirements shall not include a mandatory disclosure relating to genetic resources [, their derivatives and associated traditional knowledge] unless such disclosure is material to the patentability criteria of novelty, inventive step or enablement.

3.7 Patent applicants shall be under no requirement to disclose the source, origin or other information relating to genetic resources [unless such information is material to the patentability requirements of novelty, inventive step or enablement.

Types of [intellectual property] [patent] right applications relevant to disclosure requirements/[Trigger points]

Sub-option 1

3.8 The invention must be directly based on the specific genetic resources. [in the claimed invention and] In such circumstances:

(a) The invention must make immediate use of the genetic resource, that is, depend on the specific properties of this resource;
(b) The inventor must have had physical access to this resource, that is, its possession or at least contact which is sufficient enough to identify the properties of the genetic resource relevant for the invention; and [or]
(c) [If the applicant is aware that the invention is directly based on traditional knowledge associated with genetic resources, that is, the inventor must consciously derive the invention from this knowledge].

Sub-option 2

3.9 The application involves genetic resources, [their derivatives] and associated traditional knowledge.

Sub-Option 3

3.10 A patent disclosure requirement related to genetic resources [their derivatives] and associated traditional knowledge shall not apply to the following:

(a) all human genetic resources including human pathogens;
(b) derivatives;
(c) commodities;
(d) traditional knowledge in the public domain;
(e) genetic resources found outside of national jurisdictions; and
(f) all genetic resources acquired before the national implementations of the Convention on Biological Diversity and 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.

Sub-Option 4

3.11 The disclosure requirement shall apply to invention that concerns or uses genetic resources and/or associated traditional knowledge. For genetic resources, the disclosure requirement shall apply even where the inventor has altered the structure of the received material.

Content of the Disclosure

Sub-option 1

3.12 Parties shall require applicants to disclose the country providing such resources and the source in the country providing the genetic resources and/or [their derivatives] and associated traditional knowledge.

3.13 Parties shall also require that applicants provide a copy of an internationally recognized certificate of compliance (IRCC). If an IRCC is not applicable in the providing country, the applicant should provide relevant information regarding compliance with prior informed consent and access and fair equitable benefit-sharing as required by the national legislation of the country providing the genetic resources and/or associated traditional knowledge, that is, the country of origin of such resources or a country that has acquired the genetic resources and/or associated traditional knowledge in accordance with the Convention on Biological Diversity.

Sub-option 2

3.14 Mandatory disclosure of information in the patent application of the following:

(a) The applicant should declare the country of origin, or if not known, the source of the specific genetic resource to which the inventor has had physical access and which is still known to him.
(b) In the exceptional case that both the country of origin and the source are unknown to the applicant this should be declared accordingly.

Sub-option 3

3.15 Patent applicants must declare the primary source to fulfill the requirement, if they have information about this primary source at hand, whereas a secondary source may only be declared if patent applicants have no information at hand about the primary source. In case the source is unknown this must be confirmed by the patent applicant.

Sub-option 4

3.16 Country of origin and source of genetic resources, [their derivatives] and associated traditional knowledge.

3.17 Prior informed consent, either by the certificate of origin or by any other document issued in accordance with the domestic law of country of origin. In case the country of origin is not identifiable even after making reasonable efforts, certificate of evidence issued in accordance with the domestic law of country providing the genetic resources.

3.18. Evidence of benefit sharing under mutually agreed terms entered with the beneficiaries as define in Article 2 in accordance with their domestic legislation.

3.19 Written and oral information regarding traditional knowledge associated with genetic resources, [their derivatives] for enabling search and examination of the intellectual property application including the details of the holder of the traditional knowledge.

Sub-Option 5

3.20 Mandatory disclosure requirements shall be met by providing an internationally recognized certificate of compliance as described in Article 17.2 of 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.

Sub-Option 6

3.21 The patent application shall include information on the country from which the inventor collected or received the genetic resources and/or associated traditional knowledge (the providing country). If it follows from the national law in the providing country that access to genetic resources or traditional knowledge shall be subject to prior consent, the application shall state whether such consent has been obtained.

3.22 If the providing country is not the same as the country of origin of the genetic resources and/or the associated traditional knowledge, the application shall also state the country of origin. For genetic resources, the country of origin means the country from which material was collected from its natural environment and, for associated traditional knowledge, the country in which the knowledge was developed. If the national law in the country of origin requires that access to genetic resources or associated traditional knowledge shall be subject to prior consent, the application shall state whether such consent has been obtained.

3.23 If the information set out in paragraphs 1 and 2 is not known to the applicant, the applicant shall state the immediate source from which the inventor collected or received the genetic resources and/or associated traditional knowledge.

3.24 If access to genetic resources has been provided in pursuance of Article 12.2 and Article 12.3 of the ITPGRFA, a copy of the standard material transfer agreement stipulated in Article 12.4 of the Treaty shall be enclosed with the patent application instead of the information stipulated in the first and second paragraphs. If the applicant has obtained an internationally recognized certificate of compliance as mentioned in Article 17.4 of the Nagoya Protocol on Access and Fair and Equitable Sharing of Benefits Arising from the Utilization of Genetic Resources to the Convention on Biological Diversity that covers the genetic resources the invention concerns or uses, a copy of the certificate shall be enclosed with the patent application instead of the information stipulated in the first and second paragraphs.

Actions of the [intellectual property] [patent] office

Sub-option 1

3.25 Put in place an adequate information dissemination system to enable an opportunity by relevant authorities from other [Contracting Parties] [Countries], indigenous and local communities or any other interested parties to submit information relevant to search and examination of an intellectual property application pending before national intellectual property offices in order to better assess compliance with the eligibility criteria for the grant of intellectual property rights.

3.26 That the intellectual property offices while examining the intellectual property application ascertain whether the applicant has comply with the mandatory disclosure requirements as per clause 1(a) of this Article and take necessary measures as mandated in this instrument in case of non compliance.

3.27 That the national [intellectual property] [patent] officers [shall] should not grant patents on life forms , or parts thereof, in the form of biological or genetic resources as they are found in nature, that are only isolated or characterized as such, as well as [their derivatives] and associated traditional knowledge.

Sub-option 2

3.28 Parties shall publish information disclosed jointly with the publication of the application or the grant of patent, whichever is made first.

Relationship between PCT and PLT[7]

Sub-option 1

3.29 Amend relevant provisions of the PCT and PLT to include a mandatory disclosure requirement of the origin and source of the genetic resources.

Sub-option 2

3.30 Amend relevant provisions of the PCT and PLT, in particular Rules 4.17, 26ter and 51bis, to include a mandatory disclosure requirement of the origin and source of the genetic resources, [their derivatives] and associated traditional knowledge. The amendments shall also include requiring confirmation of prior informed consent, evidence of benefit sharing under mutually agreed terms with the country of origin.

Sub-option 3

3.31 Amend the PCT Regulations to explicitly enable the national patent legislation to require the declaration of the source of genetic resources and traditional knowledge in patent applications (proposals for specific wording are contained in document WIPO/GRTKF/IC/20/INF/10 Appendix 1). The proposals thus leave it up to the national legislator to decide whether such a requirement is to be introduced in the national patent legislation.

3.32 Based on the reference to the PCT contained in Article 6.1 of WIPO's Patent Law Treaty (PLT), the proposed amendment to the PCT would also apply to the PLT. Accordingly, the [Contracting Parties] [Countries] of the PLT would also explicitly be enabled to require in their national patent laws that the patent applicants declare the source of genetic resources and/or traditional knowledge in national patent applications.

[7] Where one or more options are presented on any issue it is understood the possibility remains for there to be a **no** option on the issue

Sub-option 3

3.33 Amend the PCT and PLT to reflect a mandatory disclosure requirement of the origin of the genetic resource, incorporation of the "internationally recognized certificate of compliance" as stipulated in the Nagoya Protocol and any other submission that may be tabled by member countries.

Sub-option 4

3.34 [Contracting Parties] [Countries] of the PCT shall take steps to amend the guidelines for search and examination procedures for patent applications to ensure that they take into account the disclosure of the origin of genetic resources, [their derivatives] and associated traditional knowledge. The provision is applicable to regional patent authorities as well as the international search and examination authorities under the PCT.

DEFENSIVE PROTECTION

Data Base Inventory

3.35 [WIPO begin developing an inventory of databases with [requesting] the assistance of Member States and information resources on genetic resources and associated traditional knowledge but at the same time maintaining protection of indigenous sources where such cultural protocols exist to ensure the prior informed consent of the indigenous peoples and local communities.]

Information systems on GR for defensive protection

OPTION 1

3.36 Develop a database related to genetic resources and to traditional knowledge accessible by examiners worldwide in order to avoid the erroneous granting of patents for genetic resources and related traditional knowledge.

3.37 A summary, which has been written in a language which every examiner can understand, be attached to documents written in indigenous languages.

3.38 Each country to assess and compile the information concerning genetic resources and the related traditional knowledge under its own responsibility.

3.39 An all-in-one consolidated system or multiple systems easily searchable with one click.

3.40 Searchable databases should be in the possession of, and maintained by, each participating WIPO member states. The database will be composed of a WIPO. portal site as well as databases of WIPO member states, which are linked to this portal site.

3.41 The WIPO portal site is only accessible to patent offices and other registered intellectual property addresses.

OPTION 2

3.42 Collect genetic resources and associated traditional knowledge into databases.

3.43 There is a minimum standard to harmonize the structure and content of these databases.

3.44 WIPO administers a system to access the local, regional and national databases of genetic resources and associated traditional knowledge.

3.45 Establishment of an international gateway on traditional knowledge.

OPTION 3

3.46 Make available written and oral information regarding traditional knowledge associated with genetic resources, [their derivatives] for enabling search and examination of the [intellectual property] [patent] application including the details of the holder of the traditional knowledge.

3.47 Put in place an adequate information dissemination system to enable an opportunity by relevant authorities from other [Contracting Parties] [Countries], indigenous and local communities or any other interested parties to submit information relevant to search and examination of an [intellectual property] [patent] application pending before national [intellectual property] [patent] offices in order to better assess compliance with the eligibility criteria for the grant of intellectual property rights.

3.48 That the national intellectual property offices [shall] should consider all relevant written and oral [information] prior art relating to genetic resources, [their derivatives] and associated traditional knowledge which is available to them, regardless of the language, from all countries when conducting search and examination for determining the eligibility criteria for granting of [intellectual property] [patent] rights.

OPTION 4

3.49 Develop databases related to genetic resources, [their derivatives] and associated traditional knowledge accessible to relevant competent authorities and other parties [indigenous peoples and local communities] in order to [ensure the free prior informed consent] avoid the erroneous granting of patents for genetic resources and related traditional knowledge and ensure transparency, traceability and mutual trust taking into account access and benefit sharing arrangements as provided for under the CBD and the Nagoya Protocol.

3.50 Efforts should be made to codify the oral information related to genetic resources, [their derivatives] and associated traditional knowledge for the purpose of enhancing the development of databases.

[Additional and Complementary Protection Measures/Guidelines or recommendations on defensive protection]

OPTION 1

3.51 That the national [intellectual property] [patent] offices [shall] should develop appropriate and adequate guidelines for the purpose of conducting search and examination of [intellectual property] [patent] applications relating to genetic resource, [their derivatives] and associated traditional knowledge considering existing <u>prior art accessible to the examiners, as appropriate</u> [and additional information provided by the applicants, as well as accessible to the examiners].

OPTION 2

3.52 Recommendations or guidelines for search and examination procedures for patent applications to ensure that they better take into account the disclosure of the origin of genetic resources.

3.53 Use of available databases on genetic resources and/or associated traditional knowledge.

Patents on life forms and naturally occurring genetic resources[8]

3.54 Option 1. No intellectual property rights shall be granted to genetic resources that naturally occur in situ and ex situ.

3.55 Option 2. Enhance the availability of patent protection for life forms and new uses for known substances in order to create benefits and support benefit sharing from the use of genetic resources and associated traditional knowledge.

3.56 Option 3. That the national [intellectual property] [patent] offices [shall] should not grant patents on life forms, or parts thereof, in the form of biological or genetic resources as they are found in nature, that are only isolated or characterized as such, as well as [their derivatives] and associated traditional knowledge.

[ARTICLE 4]
[PROPOSAL ON COMPLEMENTARY] [PROTECTION] MEASURES

OPTION 1

4.1 [Contracting Parties] [countries] may facilitate access to information, including information made available in databases, relating to genetic resources, [their derivatives] and associated traditional knowledge with the intellectual property offices of [Contracting Parties] [countries] to this instrument.

4.2 [Contracting Parties] [countries] shall ensure that:

(a) Confidentiality of such information provided to the intellectual property offices as stated in clause [1.1.] is maintained by the such offices and the applicants who have access to such information, in accordance with [domestic] international rights and law national legislation or contractual obligation [, except where the information is cited as prior art during the examination of a patent application].
(b) Any violation of the same shall be considered as an act of unfair competition and a violation of contractual obligations or an infringement of the protection provided in this instrument and be subjected to sanction as provided in this instrument.]
(c) They share information and best practices in tech transfer and contracts related to genetic resources through WIPO databases for such information and further develop guidelines for model contractual provisions.
(d) They share information on intellectual property guidelines for access and equitable benefit-sharing and request WIPO to conduct a study on licensing practices on genetic resources.

8 Where one or more options are presented on any issue it is understood the possibility remains for there to be a **no** option on the issue.

OPTION 2

4.3 A simple notification procedure should be introduced to be followed by the patent offices every time they receive a declaration; it would be adequate to identify in particular the Clearing House Mechanism of the CBD/ITPGRFA as the central body to which the patent offices should send the available information.

OPTION 3

4.4 Establish a publicly available list of government agencies competent to receive information about patent applications containing a declaration of the source of genetic resources and/or traditional knowledge. Patent offices receiving patent applications containing such declaration could inform the competent government agency that the respective State is declared as the source. WIPO could, in close collaboration with the CBD/ITPGRFA, consider the possible establishment of such a list of competent government agencies.

[ARTICLE 5]
RELATIONSHIP WITH INTERNATIONAL AGREEMENTS

5.1 [Contracting Parties] [Countries] shall establish a coherent system and promote mutually supportive relationship between intellectual property rights involving the utilization of genetic resources, [their derivatives] and associated traditional knowledge and existing international agreements and treaties.

5.2 [Contracting Parties] [Countries] shall support, in particular, the implementation of the Convention on Biological Diversity (including communication with its Clearing House) and the Nagoya Protocol on Access to genetic resources and the Fair and Equitable Sharing of Benefits arising from their Utilization to the Convention of Biological Diversity, the ITPGRFA and the TRIPS Agreement and, as the case may be, of regional agreements. PLT and PCT would need to be amended.

5.3 The disclosure of source requirement enables the [contracting Parties] [countries] of relevant international agreements, including the CBD/ITPGRFA, the PCT, the PLT and the TRIPS Agreement to fulfill their respective obligations.

[ARTICLE 6]
INTERNATIONAL COOPERATION

6.1 [Relevant WIPO bodies to encourage Patent Cooperation Treaty members to develop a set of guidelines for the [search and examination] administrative disclosure of origin or source by the international search and examination authorities under Patent Cooperation Treaty including additional information arising from the disclosure requirement as provided in this instrument.]

[ARTICLE 7]
TRANSBOUNDARY COOPERATION

7.1 [In instances where genetic resources and associated traditional knowledge associated with genetic resources [of indigenous peoples and local communities] is located in territories of different [Contracting Parties] [countries], those [[Contracting Parties] [Countries]] countries [shall] should co-operate by taking measures that are supportive of and do not run counter to the objectives of this instrument.]

[ARTICLE 8]
SANCTIONS, REMEDIES AND EXERCISE OF RIGHTS

OPTION 1

8.1 Sanctions that go to the status of a granted patent right

Sub-Option 1

8.2 Patents granted without disclosing country of origin or source shall be subject to issuing of mandatory licenses, as foreseen in Article 31 of the TRIPS Agreement.

Sub-Option 2

8.3 Countries which revoke patents for failure to disclose the source of origin of a genetic resource or failure to comply with ABS laws shall pay adequate remuneration to both the country of origin and the patent holder.

Sub-Option 3

8.4 Any patent relating to genetic resources or traditional knowledge, the commercialization of which is subject to regulatory review, shall be entitled to extension of the term of the patent to compensate for delays caused by such regulatory review. Such patent term restoration shall be made available for a period that corresponds to the period of delay in commercialization caused by the regulatory review.

Sub-Option 4

8.5 Any patent relating to genetic resources or traditional knowledge whose grant is unduly delayed by the imposition of a mandatory disclosure requirement relating to the same shall be entitled to an extension of the patent term. Such patent term extension, corresponds to any period of delay in patent grant caused by the imposition of such mandatory disclosure requirements.

Sub-Option 5

8.6 [Contracting parties] [Countries] shall ensure, in accordance with their legal systems, adequate criminal, civil and administrative enforcement procedures and dispute resolution mechanisms are available under their laws against the willful infringement of the protection provided to genetic resources, [their derivatives] and associated traditional knowledge under this instrument.

8.7 [Contracting Parties] [Countries] shall provide that administrative and/or judicial authorities have the right to:

(a) Revoke intellectual property rights; and
(b) Render unenforceable intellectual property rights when the applicant has either failed to comply with the obligations of mandatory disclosure requirements as provided in this instrument or provided false or fraudulent information.

8.8 Where a dispute arises in relation to mutually agreed terms between users, beneficiaries and providers of genetic resources, [their derivatives] and associated with genetic resources each Party may be entitled to refer the issue to an alternative dispute resolution mechanism recognized by domestic legislation.

Sub-Option 6

8.9 Countries may take other measures and sanctions, including revocation, against the violation of the mandatory disclosure requirements.

Sub-Option 7

8.10 Administration and/or judicial authorities shall have the right to revoke, subject to Article 32 of the TRIPS Agreement, or render unenforceable a patent.

Sub-Option 8

8.11 If it is discovered after the granting of a patent that the applicant failed to declare the source or submitted false information, such failure to comply with the requirement may only be a ground for revocation or invalidation of the granted patent in the case of fraudulent intention (Article 10 PLT).

OPTION 2

8.12 Sanctions of an administrative character or that are outside the [intellectual property] [patent] system.

Sub-option 1

8.13 The patent system should provide certainty of rights for users of genetic resources and traditional knowledge and shall not impose requirements that detract from legal certainty.

Sub-option 2

8.14 [Contracting parties] [Countries] shall ensure, in accordance with their legal systems, adequate criminal, civil and administrative enforcement procedures and dispute resolution mechanisms are available under their laws against the willful infringement of the protection provided to genetic resources, [their derivatives] and associated traditional knowledge under this instrument.

8.15 [Contracting Parties] [Countries] shall provide that administrative and/or judicial authorities have the right to:

(a) Prevent the further processing of the intellectual property applications.
(b) Prevent the granting of intellectual property rights.

Sub-option 3

8.16 Patent applications shall not be processed without completion of such requirements.

Sub-option 4

8.17 Countries shall impose sanctions, which shall include administrative sanctions, criminal sanctions, fines and adequate compensation for damages.

Sub-option 5

8.18 Where it is proved that the patent applicant has disclosed incorrect or incomplete information, effective, proportionate and dissuasive sanctions outside the field of patent law should be imposed on the patent applicant or holder. If the applicant provides supplementary information during the processing of the application, the submission of this supplementary information should not affect the further processing of the application. For reasons of legal certainty, the submission of incorrect or incomplete information should not have any effect on the validity of the granted patent or on its enforceability against patent infringers.

8.19 It must be left to the individual [Contracting State] country to determine the character and the level of these sanctions, in accordance with domestic legal practices and respecting general principles of law. Both within WIPO as in other international fora means could be discussed to develop such sanctions.

Sub-option 7

8.20 Administration and/or judicial authorities shall have the right to prevent (a) the further processing of an application or (b) the granting of a patent

Sub-option 8

8.21 [Contracting Parties] [Countries] shall, in accordance with their national legal systems, provide for adequate measures for the refusal of patent applications on the grounds of non compliance and willful infringement of the protection of genetic resources, [their derivatives] and associated traditional knowledge, in pursuance of the applicable provisions of these regulations.

Sub-option 9

8.22 If the national law applicable by the designated office requires the declaration of the source of genetic resources or traditional knowledge, the proposed amended Rule 51bis.3(a) of the PCT regulations requires the designated office to invite the applicant, at the beginning of the national phase, to comply with this requirement within a time limit which shall not be less than two months from the date of the invitation. [Appendix I of 20/INF/10.]

8.23 If the patent applicant does not comply with this invitation within the set time limit, the designated Office may refuse the application or consider it withdrawn on the grounds of this non-compliance.

8.24 Furthermore, if it is discovered after the granting of a patent that the applicant failed to declare the source or submitted false information, such failure to comply with the requirement may not be a ground for revocation or invalidation of the granted patent. However, other sanctions provided for in national law, including criminal sanctions such as fines, may be imposed.

Sub-option 10

8.25 There shall be no sanction within the patent system for failure to meet any mandatory disclosure requirement relating to genetic resources or traditional knowledge nor shall failure to meet such requirements cause delay in processing or grant of the patent.

OPTION 3

8.26 If it is discovered after the grant of a patent that the applicant failed to disclose the information required or submitted false and fraudulent information, or it is demonstrated by the evidence that the access and utilization of genetic resources and/or associated traditional knowledge violated the relevant national legislation of the country providing genetic resources and/or associated traditional knowledge, that is, the country of origin of such resources or a country that has acquired the genetic resources and/or associated traditional knowledge in accordance with the CBD/ITPGRFA, [parties] Countries shall impose sanctions, which shall include administrative sanctions, criminal sanctions, fines and adequate compensation for damages. [Parties] Countries may take other measures and sanctions, including revocation, against the violation of the mandatory disclosure requirements.

[ARTICLE 9]
[TECHNICAL ASSISTANCE, COOPERATION AND CAPACITY BUILDING

9.1 Relevant WIPO bodies shall develop modalities for the creation, funding and implementation of the provisions under this instrument. WIPO shall provide technical assistance, cooperation, capacity building and financial support for developing countries in particular the least developed countries to implement the obligations under this instrument.

[End of Annexes and of document]