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

Twenty-First Session
Geneva, April 16 to 20, 2012

DRAFT REPORT

Document prepared by the Secretariat

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 Twenty-First session in Geneva, from April 16 to 20, 2012.

2. The following States were represented: Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bangladesh, Barbados, Belgium, Belarus, Bolivia (Plurinational State of), Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czech Republic, Democratic People's Republic of Korea, Denmark, Djibouti, Ecuador, Egypt, Estonia, Ethiopia, Finland, France, Georgia, Germany, Greece, Holy See, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Irak, Ireland, Italy, Jamaica, Japan, Kenya, Kuwait, Latvia, Lebanon, Libya, Lithuania, Madagascar, Malaysia, Morocco, Mexico, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Qatar, Republic of the Congo, Republic of Korea, Romania, Russian Federation, Rwanda, Saudi Arabia, Senegal, Serbia, Singapore, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syrian Arab Republic, Thailand, Trinidad and Tobago, Togo, Tunisia, Turkey, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Venezuela (Bolivarian Republic of), Viet Nam, and Zimbabwe. The European Union ("the EU") was also represented as a member of the Committee.

3. The following intergovernmental organizations ("IGOs") took part as observers: Eurasian Patent Organization (EAPO), European Patent Office (EPO), Food and Agriculture Organization of the United Nations (FAO), International Organization of La Francophonie (OIF), Organization of Eastern Caribbean States (OECS), Patent Office of the Cooperation Council for the Arab States of the Gulf (GCC), Organization for Economic Cooperation and Development (OECD), Organization of the Islamic Conference (OIC), South Centre, World Trade Organization (WTO), World Health Organization (WHO).

4. Representatives of the following non-governmental organizations ("NGOs") took part as observers: American Intellectual Property Law Association (AIPLA); Association IQSensato (IQSensato); Association for the Development of the Angolan Civil Society (ADSCA); Brazilian Association of Intellectual Property (ABPI); Center for Studies and Research in Law of the Intangible (CERDI); *Centrale sanitaire suisse romande* (CSSR); Chamber of Commerce and Industry of the Russian Federation (CCIRF); *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); Federation of Environmental and Ecological Diversity for Agricultural Revampment and Human Rights (FEEDAR & HR); Foundation for Aboriginal and Islander Research Action (FAIRA); Foundation for Research and Support of Indigenous Peoples of Crimea (FRSIPC); Foundation for Solidarity and Social Welfare Projects (FOSBES); Global Development for Pygmies Minorities (GLODEPM); Graduate Institute for Development Studies (GIDS); Health and Environment Program; Himalayan Indigenous Nationalities Preservation Association (HIWN); Himalayan Indigenous Women Network; 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); 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 Federation of Reproduction Rights Organizations (IFRRO); International Indian Treaty Council (IITC); International Society for Ethnology and Folklore (SIEF); International Trademark Association (INTA); International Video Federation (IVF); Knowledge Ecology International, Inc. (KEI); *Latín Artis;* Maasai Experience; Matonyok Nomads Development Organization (MANDO); Pacific Islands Museums Association (PIMA); Research Group on Cultural Property; Russian Association of Indigenous Peoples of the North (RAIPON); Tebtebba Foundation – Indigenous Peoples' International Centre for Policy Research and Education; The International Committee for the Indigenous Peoples of the Americas (INCOMINDIOS); *Tin-Hinane*; Trade, Human Rights, Equitable Economy (3D); Traditions for Tomorrow; West Africa Coalition for Indigenous Peoples' Rights (WACIPR).

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

6. Document WIPO/GRTKF/IC/21/INF/2 provided an overview of the documents distributed for the Twenty-First 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.

8. Mr. Wend Wendland of WIPO was Secretary to the Twenty-First session of the Committee.

AGENDA ITEM 1: OPENING OF THE SESSION

9. The Director General, Mr. Francis Gurry, opened the session by congratulating the Chair, His Excellency Ambassador Wayne McCook of Jamaica, for his dedication to the process and his desire to ensure that the Committee moved forward. He was pleased to see so many participating delegations and said that this was a demonstration, once again, of the very great importance they attached to the Committee and their constructive engagement in a process that was not an easy one. He reminded that it was the second of three meetings that would focus on a particular issue. He hoped that the very constructive spirit that had prevailed in the Twentieth session that had taken place in February 2012 on genetic resources ("GRs") would continue in this session on the equally difficult subject of protection of traditional knowledge ("TK"). He shared the wish of the Committee to present to the 2012 General Assembly a very positive report about the progress the Committee had made. He expressed his gratitude to the indigenous and local communities' representatives for their dedication to and their participation in this process. He noted that they had met on April 15, 2012 in preparation for this session. He expressed his gratitude to the donor countries which had contributed to the WIPO Voluntary Fund and renewed his call to all the delegations to find a way to augment the resources to the Fund and enable it to keep supporting the participation of indigenous and local communities' representatives. He recalled the need

for the Committee to elect another Vice-Chair at the present session in accordance with the decision the Committee had made at its previous session.

10. The Chair, echoing the introductory remarks of the Director General, said that focus and efficiency in keeping to the Committee's mandate were principles that were shared by all delegations and participants. He said that the Committee would endeavor to work constructively to meet its objectives. He informed the Committee that he had been consulting with regional coordinators on the work program and working methodology in view of this session. He thanked the regional coordinators for their engagement and their constructive guidance. He also thanked the Vice-Chair, Ms. Alexandra Grazioli of Switzerland, for her assistance and support. He was also thankful to the Secretariat for its preparation of the present session. The Chair was aware that regional coordinators were consulting with their respective groups and informed that he would meet again with them during the lunch break before the plenary would resume its work in the afternoon. He reminded the Committee that he had also met with the Indigenous Caucus and thanked their representatives for their useful inputs and suggestions. He announced he would meet with them again during the week. He hoped to be able to lay out a proposed work program and working methodology for the rest of the week when the plenary would resume its work in the afternoon. He recalled that the present session constituted a negotiating session and that no opening statements were provided for in the agenda. He offered the possibility for regional groups or Member States wishing to make general opening statements to hand such statements to the Secretariat in order to have them reflected in the report as was the case in previous sessions. He recalled that the present session was a five-day session as mandated by the WIPO General Assembly. He said that the Committee should reach an agreed decision on each agenda item as it went along and that the decisions as already agreed would be circulated in writing for formal confirmation by the Committee on April 20, 2012. The report of the session would be prepared after the session and circulated to all delegations for comment. As the next session of the Committee was only ten weeks away, the report of the session would only be presented in all six languages for adoption at the Twenty-Third session of the Committee

AGENDA ITEM 2: ELECTION OF OFFICERS

Decision on Agenda Item 2:
11. *Upon the proposal of the Delegation of the Islamic Republic of Iran, on behalf of the Asian Group, and seconded by the Delegation of Egypt, on behalf of the African Group and the Delegation of Algeria, on behalf of the Development Agenda Group ("the DAG"), the Committee elected as its second Vice-Chair,*
Mr. Bebeb A.K.N. Djundjunan of Indonesia, for the 2012-2013 biennium.

AGENDA ITEM 3: ADOPTION OF THE AGENDA

Decision on Agenda Item 3:
12. The Chair submitted the draft agenda circulated as WIPO/GRTKF/IC/21/1 Prov. 2 for adoption and it was adopted.

AGENDA ITEM 4: ACCREDITATION OF CERTAIN ORGANIZATIONS

Decision on Agenda Item 4:
13. *The Committee unanimously approved accreditation of all the organizations listed in the Annex to document WIPO/GRTKF/IC/21/2 as ad hoc observers, namely: Taiñ Adkimn Mapuche Indigenous Association (Asociación indigena Mapuche Taiñ Adkimn); Indigenous Center for Sustainable Development Association (Asociación Centro Indígena para el Desarrollo Sostenible) (CINDES); Zande Cultural Association (Association Culturelle Zande); D Besi Lukaya Associaiton (Association D Besi Lukaya) (ABL); IPS Inga-Camentsa Del Alto Putumayo Indigenous Association (Asociación Indigena IPS Inga-Camentsa Del Alto Putumayo); Werken Kimun Mapuche Corporation (Corporacion Mapuche Werken Kimun); High Authority "Embroideres Union" Traditional Devil Dance (Diablada Tradicional "Union Bordadores" del Gran Poder); Federation of Indigenous Border Communities of Putumayo (Federación de Comunidades nativas Fronterizas del Putumayo) (FECONAFROPU); Action Group for Literacy and Social*

and Cultural Advancement (Groupe d'Action pour la promotion socio-culturelle et alphabetization); Global Development for Pygmy Minorities (GLODEMP) (L'O.N.G. GLODEPM); Non-governmental Organization Rayouwan Mata (L'O.N.G. Rayouwan Mata); Old River Productions and Legal Services (Les Productions et Services Juridiques de la Vieille Rivière); Pinyin Development Organization (PDO); Public Association Regional Centers for Education for Sustainable Development RCE Kyrgyzstan; and, Solidarity for a Better World (Solidarité pour un Monde Meilleur) (SMM).

AGENDA ITEM 5: PARTICIPATION OF INDIGENOUS AND LOCAL COMMUNITIES

14. The Chair introduced documents WIPO/GRTKF/IC/21/3 and WIPO/GRTKF/IC/21/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, independent, 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/21/3. As the Director General also did at the opening of the session, the Chair encouraged States to make pledges to contribute to the Fund and requested them to seek authority to do so from capital, if needed.

15. In accordance with the decision of the IGC at its seventh session (WIPO/GRTKF/IC/7/15, paragraph 63) IGC 21 was preceded by a half-day panel of presentations, chaired by Mr. Nadir Bekirov, President, Foundation for Research and Support of Indigenous Peoples of Crimea (FRSIPC), Simferopol, Ukraine. The presentations were made according to the program (WIPO/GRTKF/IC/21/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 "Intellectual Property, Genetic Resources and Associated Traditional Knowledge: Community Perspectives on Traditional Medical Knowledge": Mr. Paul Linton, Assistant Director of Public Health, Cree Board of Health and Social Services of James Bay, Cree Nation of Mistissini, Québec, Canada; Ms. Leilene Marie Carantes-Gallardo, Bureau Director, Office of Empowerment and Human Rights, National Commission on Indigenous Peoples, Quezon City, Philippines; and Mr. Daniel Mpoiko Kobei, Executive Director, Ogiek Peoples' Development Program, Nakuru, Kenya.

Mr. Linton, the keynote speaker, discussed the experience of the Cree Nation in the development of its research agreement for the anti-diabetic plants research project with scientists from various universities in Canada. In their experience, free, prior and informed consent (FPIC) was the *sine qua non* for all discussions about granting access to and protection of TMK, as it was through FPIC that the community could ensure that the basic principles underlying the Cree system and its rules of operation would be recognized and maintained. The research agreement was legally binding and enforceable between the parties, despite the absence of a specific law for the protection of TMK in Canada.

At the very beginning of the Anti-diabetic plant project, the elders from Mistissini – many of them recognized as healers - were asked by a director in the local administration to discuss the issue of benefit sharing and come to a consensus. Their response was unequivocal: the benefits from the medicines belong to all the people. In their view, the potential benefit from understanding the efficacy of the medicines for diabetes, which was still a very new, should be shared with all people from all places whose health might benefit. Specifically, potential commercial benefits should be shared by the entire Cree Nation and used to enhance the health of the people.

There were several lessons learned from the Cree experience that could guide the IGC in its negotiations: (1) a legally-binding framework to protect TK would greatly facilitate negotiations with non-collaborative parties to ensure that TMK is protected; (2) Based on Cree experience, TMK that is in the public domain should not be excluded from the subject matter of protection; (3) Any instrument developed should be flexible and allow the Indigenous communities themselves to determine who the beneficiaries of protection should be, according to their own evolving practices; (4) Disclosure should occur with the prior informed consent of the knowledge holders, the indigenous source of the knowledge should be made known, and the knowledge should only be used in accordance with the cultural practices of the knowledge holders, which may mean that no commercial use whatsoever is possible; (5) The prior informed consent of the Indigenous groups is needed for the development of domestic/national limitations and exceptions; and, (6) Use by third parties of TMK should be done with the full consent of the knowledge holders, and in partnership with the knowledge holders (if they so wish), and it should acknowledge the beneficiaries.

Ms. Leilene Marie Carantes-Gallardo presented a case analysis of the FPIC process in relation to community intellectual property rights in Bakun, Benguet and to bioprospecting and drug discovery in the Philippines. She recalled that indigenous cultural communities/ indigenous peoples (ICC/IP) had the right to FPIC for any use, development or extraction of natural resources in their ancestral

domain. Under the Indigenous Peoples Rights Act (IPRA) of the Philippines, FPIC was defined as the consensus of all members of the ICCs/IPs determined in accordance with their respective customary laws and practices, free from any external manipulation, interference coercion, and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community. The National Commission on Indigenous Peoples (NCIP) was the agency mandated to implement the law to protect and promote the interest and well being of the ICCs/IPs with due regard to their beliefs, customs, traditions and institutions.

Ms. Carantes-Gallardo emphasized the need for a *sui generis* system for TMK protection, which would include as essential elements an FPIC process, a memorandum of agreement (MOA), and a benefit-sharing mechanism. It was also important to build the technical capacity of indigenous peoples to assess the value of their TMK and to monitor and enforce the MOA, including through an accessible complaints mechanism. Finally, it was evident from the cases presented that there was a need for the establishment of legally binding international norms to prevent misappropriation of TMK.

Mr. Daniel Mpoiko Kobei shared his experience on the protection of traditional medical knowledge of the Ogiek People in Kenya. He emphasized that Traditional Knowledge was a multifaceted concept that encompassed several components: it was generally produced in accordance with the individual or collective creators' response to and interaction with their cultural environment and represented cultural values; it was not merely learned by rote and handed down from one generation to the other, but a continuous process of verification, adaptation and creation. Traditional Knowledge was dynamic and innovative, evolving every day in response to changing environmental and social circumstances.

He stressed that States should recognize Indigenous Peoples as holders of valuable TMK, which could make important contributions to sustainable social and economic development. States should play a big role in promoting the domestic implementation of international human rights laws that provide standards on the rights of indigenous peoples and put in place special measures that would facilitate full involvement and participation of indigenous peoples in policy formulation and implementation."

16. The Chair opened the floor for comments on Agenda Item 5.

17. The representative of FAIRA, speaking on behalf of the Indigenous Caucus, thanked the donors and contributors to the Fund as it had allowed indigenous representation at the IGC over a period of time. He especially thanked the Australian Government for its significant donation, the delegation of Norway, and the Swiss Federal Institute of Intellectual Property.

18. The representative of CAPAJ indicated that a number of representatives of his organization had enjoyed support from the Fund, and this had worked to the benefit of indigenous peoples. He thanked the Secretariat and donor States for their hard work and assured them that their support and efforts made a difference, but wished that indigenous participation were broader. For centuries indigenous peoples had contributed to the wealth of the world, and from a moral and material point of view,

perhaps it was time to reverse that trend. He said that where a shipwrecked Spanish galleon containing gold and silver mined from indigenous peoples' territories was found by a North American enterprise, Spain had claimed the treasure in the American courts and was declared the rightful owner. He stated that in light of similar historical events, it would be proper for the Spanish Government, as well as other states, to make a contribution to the Fund.

19. The representative of Tupaj Amaru noted a selective discriminatory policy of double standards in distribution of funds from voluntary funds of WIPO and other United Nations bodies to indigenous representatives. He observed that, the same people from the same regions or countries attended the IGC but had not made any contribution to the work of IGC, as shown in the reports. He wondered why some indigenous peoples and countries seemed to be discriminated against, as in the case of the Plurinational State of Bolivia, which, according to him, never had a representative invited to the IGC, despite the fact that 60 percent of its population was indigenous.

20. The representative of PIMA thanked donors to the Fund for enabling her to participate in the IGC as representative of her organization and of indigenous peoples from the Pacific.

21. The representative of the Health and Environment Program thanked countries like Australia and Switzerland for their donations to the fund. She raised some concerns on the application process such as the requirement to indicate the name of an indigenous people rather than the name of an NGO, in the application form, the difficulty in getting visas in instances when the applicant was an illiterate indigenous person, and the under-representation of African indigenous peoples' among the beneficiaries of the Fund.

22. The representative of the GIDS noted that it was crucial for indigenous peoples to have access to the IGC negotiations, which dealt with a subject matter important for them. It said that it would be dictatorial to discuss TK without the presence of indigenous peoples. He called on Member States to contribute to the Fund.

23. The representative of CISA commended the Fund as a positive mechanism that enabled indigenous peoples' participation in the IGC and helped them understand the international issues under discussion. He disagreed with having the same indigenous persons benefitting from the Fund every year and called for a review of the system for identifying beneficiaries of the Fund.

Decision on Agenda Item 5:
24. The Committee took note of documents WIPO/GRTKF/IC/21/3, WIPO/GRTKF/IC/21/INF/5 and WIPO/GRTKF/IC/21/INF/7.

25. 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.

26. The Chair proposed, and the Committee elected by acclamation, the following eight members of the Advisory Board to serve in an individual capacity:
Mr. Tomás Alarcón Eyzaguirre, President, Comisión Juridica para el Autodesarollo de los Pueblos Originarios Andinos (CAPAJ), Tucna, Peru;
Mrs. Leilene Marie Carantes-Gallardo, Consultant, Tebtebba Foundation, Indigenous Peoples' International Centre for Policy Research and Education, Baguio City, Philippines;
Ms. Edwina Lewis, Assistant Director, International Policy and Cooperation Section, IP Australia, Canberra, Australia;
Mrs. Ewa Lisowska, Senior Policy Advisor, International Cooperation Division, Patent Office of the Republic of Poland, Warsaw, Poland;
Mr. Mandixole Matroos, Second Secretary, Permanent Mission of the Republic of South Africa, Geneva;
Mr. Juan Camilo Saretzki, First Secretary, Permanent Mission of Colombia, Geneva;
Mr. Kijoong Song, Deputy Director, Korean Intellectual Property Office (KIPO), Daejon, Republic of Korea;
Mrs. Tarisi Vunidilo, Secretary-General, Pacific Islands Museum Association (PIMA), Port Villa, Vanuatu. The Chair of the Committee nominated Ms. Alexandra Grazioli, Vice-Chair of the Committee, to serve as Chair of the Advisory Board.

AGENDA ITEM 6: TRADITIONAL KNOWLEDGE

27. The Chair reported on the extensive consultations he had held with regional coordinators. In proposing a work program for this session of the IGC, the Chair said that he would be guided by the principles of transparency, fairness and equity, inclusiveness, efficiency, orderliness, focus and discipline. The Chair also took into account that this was the 21st session of the IGC and that the text before the IGC was not new. He recalled that a text had first been drafted in 2004, and successive drafts had been worked on at IGC sessions ever since. Significant changes had been made to the text at the second Intersessional Working Group ("IWG") that had met in February 2011. He added that this text had been further negotiated at IGC 18 in May 2011. Certain key articles were then focused on at the IGC 19 in July 2011. He said that these articles were, therefore, more advanced than the other articles. The text before the IGC that were annexed to document WIPO/GRTKF/IC/21/4 had, therefore, already been through several rounds of discussion and drafting in the IGC plenary and in the IWG. He highlighted, though, that many complex issues remained unresolved. Key issues, as the mandate of the IGC identified, were the definition of the subject matter, beneficiaries, scope of protection, and exceptions and limitations. Much work was still needed, bearing in mind the IGC's mandate to submit to the WIPO General Assembly in October 2012 a text or text(s) for the WIPO General Assembly to take stock, consider progress, and decide on convening a Diplomatic Conference. In this regard, the Chair considered that while the session should focus on the four key issues he had mentioned, the task of IGC 21 was to submit to the General Assembly a text on TK that had been revised in its entirety at this session. He stated that this was in line with a coherent and complete approach to TK. He reminded the IGC that this was the last session of the IGC on TK before the General Assembly. Therefore, he proposed that the IGC start with Articles 1, 2, 3 and 6 of the text, followed by the remaining articles and, thereafter, the Objectives and Principles. In terms of making progress on the text, the Chair hoped that, by the end of the session, the IGC would be able to transmit a next version of the text to the General Assembly that had fewer options and had been further consolidated. He hoped that the IGC could aim to have no more than three, at the most, distinct options under each article. Ideally, of course, one option would be preferred. In order to achieve this goal, the Chair proposed to start with a plenary discussion of the text in document WIPO/GRTKF/IC/21/4. He proposed that there would be no live drafting at that first stage. The Chair would plan to introduce each article as set out in the Annex to document WIPO/GRTKF/IC/21/INF/4, with reference to the useful note prepared by his predecessor, His Excellency Ambassador Philip Owade of Kenya. He recalled that the plenary was where the negotiations took place and where decisions were taken. He was mindful, however, that the plenary was large and he called on delegations individually and in their various groupings to discuss substantive issues with each other, inter-regionally. In the same vein, he encouraged the observers, especially the custodians of TK, that is, the indigenous and local communities, to engage with each other and with the Member States, as well as the Member States to engage with the observers as well. He reminded the IGC that this was a negotiation. Only through discussion, mutual respect and constructive pragmatism on all sides could progress be made. While he encouraged Member States and observers to interact with each other, he did not propose to establish any "Friends of the Chair" group or other smaller negotiating group. There would, therefore, not be any smaller groups at the outset of the

process created by or driven by the Chair. However, in order to assist the plenary in its work, he proposed that the IGC continue the practice of appointing facilitators. These facilitators would, on the basis of the plenary discussion that would take place, consolidate the text, eliminate any duplication and integrate any new ideas into the text. The facilitators, as had been the practice, would be experts with technical competence and drafting ability. They would not represent their countries or regions, and would not negotiate. They could, however, consult informally with delegations and observers to clarify interventions previously made in the plenary. The Chair had been advised that at IGC 19 in July 2011, Mr. Nicolas Lesieur from Canada and Ms. Andrea Bonnet Lopez from Colombia were the facilitators on TK and that their work had been widely appreciated by the plenary. As they were both present, and for continuity, he proposed appointing them as facilitators at that session. The Chair would allow further discussion on the possibility of putting forward one more facilitator who would enable Mr. Lesieur and Ms. Bonnet Lopez to benefit from additional support in this session. The text that these two facilitators plus one, if so agreed, would present ("Rev. 1") to the plenary for review. At that stage, there would be live drafting using clear and simple rules that the Chair would propose when the IGC reached that part of the meeting. The objective of this round was not to further expand the Rev. 1 facilitator's text unless additions would represent truly new ideas that were relevant and important to the objectives of the text. The Chair recalled that the text that was annexed to WIPO/GRTKF/IC/21/4 had already been through several rounds of discussion going back many years. The idea was not, therefore, to further complicate the text, or to tinker with existing wording. Where portions of the text could be deleted, that would be good. The Chair would go back to these rules at a later stage. During live drafting, in line with the rules and practice of the IGC, the Chair would allow textual proposals by observers. These would be entered into the text on the screen and remain there if supported by at least one Member State. After this review by the plenary, Rev. 1 would go back to the facilitators, who would have a short time to make any last consolidations that they could. The facilitators' text as revised ("Rev. 2") would then go back to the plenary for a last review. At that stage, delegations would be allowed to break for consultations and return to make comments on the text but without new drafting, because the text at that stage would be the text that would be sent forward to the General Assembly. Any further work on text would have to take place at the next IGC on TK. Therefore, there would be three rounds of work by the plenary at this session, and two rounds of work by the facilitators. With this background, the draft program the Chair proposed was on the screen and would be made available outside for continuous reference. As before, the Chair sought the indulgence and understanding of the IGC that, as there was little time and much to achieve at this session, the revisions of a text would be available in English only. Interpretation in all six UN languages in the plenary would still be provided. Last, the Chair reminded that he remained available to consult at any time with Member States and with observers as and when necessary. He would seek to meet with the regional coordinators and other groupings from time to time. He also wished to advise that he had met with the Indigenous Forum the previous day and that he and the Chair of the Indigenous Caucus for this session, Mr. Jim Walker, representative of FAIRA, would meet daily. The Chair opened the floor for comments on the broad outline or order of work and invited any Member State who had comments to make them at that time.

28. The Delegation of Egypt, on behalf of the African Group, thanked the Chair for the opportunity to consult with him. It noted that the Committee had a clear mandate for its present session and would, in accordance with the decision of the General Assembly, need to work to expedite text-based negotiations with the objective of reaching

agreement on the text of an international legal instrument or instruments which would ensure the effective protection of TK. It agreed that the draft text before the Committee was not new and had been developed over time and that perhaps the Committee had in front of it a draft text which contained the options which would provide effective protection. It also believed that the work of the Committee should continue to benefit from clear principles. Amongst them, of course, were the principles of transparency, inclusiveness, and the need to make progress. The objective was to make real progress during the session and try to reach as much as possible of "matched text" to submit to the General Assembly. It hoped that the outline of the work program would allow ample time to conduct informal consultations and negotiations amongst delegations so as to reach convergence of views and be able to support this process and make advancement on the text. In this regard it hoped that there would be no changes in the positions expressed on the articles. It would do its best to support the process and looked forward to constructive and productive negotiation during the week.

29. The Delegation of the EU, speaking on behalf of the EU and its Member States, acknowledged the mandate by the General Assembly on the work program for this session on TK with a focus on the four articles dealing with subject matter of protection, beneficiaries, scope of protection, and limitations and exceptions. In particular, it attached great importance to reaching an agreement on the definition of TK in Article 1, and on beneficiaries in Article 2. Without prior agreement on definition and beneficiaries, it would be extremely difficult to finalize the other draft articles. It reiterated its position with regard to bringing forward the discussion on the Policy Objectives (the "Objectives") and General Guiding Principles ("the Principles") which stood at the forefront of the Annex to document WIPO/GRTKF/IC/21/4. It stated that they constituted the foundation of any instrument on TK so that such a discussion was necessary in order to set out the content of the substantive articles. Although, it would have preferred to have discussed Objectives and Principles before a discussion on the articles, it was pleased to have assurance from the Chair that there was time set aside to do so. It would also support the suggestion to appoint a few facilitators with the understanding that those appointed had the necessary expertise in this field and that the text that was produced would be discussed in plenary.

30. The Delegation of the Islamic Republic of Iran, on behalf of the Asian Group, expressed its appreciation for the Chair's tireless effort in consulting the regional coordinators so as to come up with a method of work with the view of advancing a single text forward to the General Assembly in 2012. It agreed with the Chair's proposal and method of work which tried to insure transparency, inclusiveness and efficiency. It looked forward to a constructive discussion and tangible result.

31. The Chair noted that there was no objection to the approach that had been proposed, and that it was agreed that the Committee would proceed along the lines outlined in his statement.

32. The Delegation of Egypt, on behalf of the African Group, being guided by the Chair's remarks regarding a further expert who could assist the process of facilitation, was pleased to nominate Dr. Walid Taha, Judge with the Ministry of Justice and Advisor to the Ministry of Foreign Affairs in Egypt, to act as a third facilitator. He said that Dr. Walid Taha had experience in intellectual property ("IP") issues and had been working on the issue of TK for the past four years.

33. The Chair expressed his appreciation to the African Group for its support in the facilitation process. He called for comments from other delegations on the proposal for a third facilitator. As there were none, the Chair welcomed Dr. Walid Taha to the team of facilitators. The Committee would proceed by discussing the Annex to document WIPO/GRTKF/IC/21/4 in plenary. This would be a discussion of the issues to help the facilitators with their work. As he had indicated at the previous session, the note prepared by Ambassador Philip Owade of Kenya had been very helpful in advancing and assisting the work of the Committee. The Chair would introduce each article with a reference to the main outstanding issues signaled by Ambassador Owade. For ease of reference, his note was available in document WIPO/GRTKF/IC/21/INF/4. Against this background the Chair opened the floor for discussion on Article 1.

34. The Delegation of Mexico proposed, and with the aim of creating as clean a text as possible, that the Committee base its discussions on Option 2 which was broader than Option 1and could cover the concerns and comments of other delegations.

35. The Delegation of the EU, speaking on behalf of the EU and its Member States, believed that the definition of TK was a fundamental element of the work of the Committee with regard to finding solutions on safeguarding TK. With agreement on a clear definition of TK, the Committee could ensure that it worked from the same point of reference and would be in a much better position to finalize the other draft articles. It preferred a fairly clear and simple definition and therefore supported working on Option 1, as stated in Article 1.1. In order to obtain an even clearer definition, it proposed to add, at the end of Article 1.1 under Option 1, the sentence “as set out in accordance with the criteria for eligibility” so as to clearly establish the link between the definition and the criteria which had to be read together. It was of the view that Option 2 of Article 1.1 was too open-ended. As regards the criteria for eligibility, it found that a list of criteria was an appropriate way to support the definition of TK. It could, therefore, support Option 1 regarding Article 1.2. However, concerning letter (d), it could not support a reference to “a reasonable period of time”, nor to “prior informed consent” and suggested that those references be deleted. It also believed that the criteria set out in Option 1 should be cumulative and it suggested that an “and” be added between each criteria. It considered that the criteria in Option 2 that regarded Article 1.2 did not sufficiently support the definition of TK.

36. The Delegation of Cameroon indicated that while Option 1 regarding the definition of TK was concise, it was perhaps too simplistic and even hermetic. It recalled that TK was a dynamic and evolving concept and this did not come out in the definition proposed under Option 1. If this was not part of the definition, then a part of the concept of TK could be omitted. At the same time, it noted that with regard to the text of Option 2, the Committee may need to choose between “dynamic” and “evolving”, because in its opinion the two meant the same thing.

37. The Delegation of Ecuador agreed with the Delegations of Mexico and Cameroon, that the preferred option was Option 2. Being dynamic was part of the very essence of TK, as was the fact that TK had to be passed from generation to generation. It also believed that TK should not be limited to specialized knowledge and, consequently, for a biodiverse and ethnically diverse country like Ecuador, the protection of TK was fundamental. In relation to the criteria for eligibility listed under Option 1, such a list could be a double-edged sword in that the only criteria for eligibility would be those which were listed in that option. Consequently, it preferred Option 2 and agreed with the

Delegation of Cameroon that the language could be improved because of the similar meanings of “dynamic” and “evolving”.

38. The Delegation of Norway indicated that with respect to the definition of TK, it supported Option 1. With respect to the criteria for eligibility, it also supported Option 1. Further, it indicated that the criteria for eligibility in letters (a), (b), (c), the second letter (d), and letter (g) should be cumulative. Letters (e) and (f), on the other hand, should be deleted.

39. The representative of Tupaj Amaru wished to second the proposal made by the Delegation of Mexico to consider Option 2 for the definition of TK. He had some comments to make on Option 2 as to what was understood by the specific forms of knowledge which were referred to. He wished the authors of this definition to explain exactly what they meant when they referred to codified knowledge systems. Indigenous peoples wanted a definition which was clear, complete, and clearly understandable. Defining TK, which had been in existence for perhaps millions of years, had a life of its own and was transmitted from generation to generation, was extremely complex and indeed arbitrary. He said that nobody could define exactly what TK was.

40. The Chair indicated that he had detected a challenge in that the representative of Tupaj Amaru had said that TK could not be defined. He asked him to make his comments specifically on the options before the Committee as work had to proceed expeditiously.

41. The representative of Tupaj Amaru indicated that he could not say that he was in favor of this or the other option. Instead, he wished to propose a new article for the definition that would read as follows: “For the purpose of this international instrument, the term traditional knowledge shall be understood as the cumulative and dynamic conglomeration of traditional knowledge made up of traditional and collective knowledge, which are constantly evolving, the innovations, experience and creative practices, traditional technologies, ecological knowledge which is closely related to language, social relationships, spirituality, natural cycles, the conservation and sustainable use of biodiversity, the profound connection between the indigenous people, the land and nature, and this knowledge which has been preserved within indigenous communities from time immemorial and which is passed from generation to generation”. The second part would read as follows: “Traditional knowledge represents the output of collective creativity, the results of the talents and genius of human kind and their ability to understand society and the world, which essentially form an intrinsic part of the world heritage and a positive proof of human history through time and space.”

42. The Chair noted that no delegation supported the insertion of the new language proposed by the representative of Tupaj Amaru.

43. The Delegation of Canada, with a view to simplifying the text, suggested a new definition for TK as contained in Option 1 of Article 1.1 on subject matter of protection. The alternate language would read as follows: “Traditional knowledge means knowledge resulting from intellectual activity including know-how, skills, innovations, practices, and learning which is collectively generated, preserved, and transmitted in a traditional and intergenerational context within an indigenous or local community”. With regard to Article 1.2, which addressed the criteria for eligibility, the Delegation of Canada preferred Option 1, like the Delegation of the EU. It noted that when drafting, for the sake of clarity, it was important to be clear about what TK was eligible for protection and

what TK was not eligible for protection. This was a very important element to consider. It preferred this option as the list was cumulative, which provided further clarity. Finally, it noted that moving forward the Committee work would need to consider the relationships between the three texts before it, that is, the one on TK, the one on Traditional Cultural Expressions ("TCEs") and the one on GRs. It added that the Committee needed to review the respective provisions addressing the subject matter of protection in the three texts to ensure that there was coherence and minimal overlap within the wording related to the subject matter of protection.

44. The Delegation of China noted that with regard to the definition of TK, Option 2 included many suggestions coming from delegations in Asia and Africa. It stated that Option 2 was precise, complete and open. For these reasons, it preferred this Option. With regard to the criteria for eligibility, the Delegation noted that Option 1 listed different criteria under letters (a) to (g). It added that the criteria listed under letters (d) to (g) had to be given special attention. Upon creation, TK was transmitted from generation to generation, which meant it was open. With regard to countries which had a long history, for example in relation to traditional medicine and other TK, this TK had sometimes been codified, and its scope of transmission was quite large. This kind of TK was obviously known by people outside the community, but whether it was open or still secret, it needed to be protected so as to prevent its misappropriation. For these reasons, the Delegation of China suggested that appropriate criteria and measures to protect TK were needed and that TK that was already in the public domain should not be excluded.

45. The Delegation of Australia considered that Option 1 of both Articles 1.1 and 1.2 best reflected drafting that clearly articulated the subject matter. It noted the interventions regarding the "dynamic" and "evolving" nature of TK. It agreed with this concept but thought that, while not the best drafting, this was captured by the phrase "developed within" in Option 1 of Article 1.1. It further agreed with the interventions that had suggested that the eligibility criteria should be cumulative. In looking at the eligibility criteria in Option 1 of Article 1.2, it noted that letters (d), (e) and (g) seemed to be addressing the same policy issue of publicly available knowledge. These could be simplified to capture this issue in one criterion. It also wished to retain letter (f) as a place marker pending the structure and function of Article 9. Regarding the language "generation to generation", while it agreed with the concept of the passing on of knowledge, this language could have a negative impact in Australia because many TCEs and TK were skipping generations, or being transmitted in a manner that was not strictly in accordance with customary protocols due to issues such as disengagement, poverty, health or incarceration. Previous language in the text had included "intergenerational", which perhaps dealt with this issue, or a clarifier such as "not always sequential". The Delegation of Australia was not necessarily suggesting a drafting change, but wanted the concerns regarding the specific language "generation to generation" to be recognized.

46. The Delegation of Morocco preferred Option 2. However, it indicated that for the purpose of the present instrument, the term "traditional knowledge" meant all knowledge and intellectual activities that were dynamic, evolving and were passed from generation to generation, in a traditional context and in a codified form, be that oral or other.

47. The Delegation of Switzerland supported Option 1 of Articles 1.1 and 1.2. As regard Article 1.2, it shared the views expressed by the Delegation of Norway and did not support letters (e) and (f) as their policy intent remained unclear. It saw merit in further discussing the proposal for a definition provided by the Delegation of Canada as

it appeared to be short and concise. However, it wished to have the text in writing so as to be able to study it better.

48. The Delegation of the United States of America believed that the definition of TK was fundamental to the work of the IGC. It expressed its concern about the breadth of the definitions that had been provided in the two options and believed that the concept that TK should be passed from generation to generation should be captured in at least one of the definitions. Therefore, of the two options for paragraph 1.1, it preferred Option 1, with the inclusion of the limitation that TK should be passed from generation to generation. It wished to thank the Delegation of Canada for its constructive contribution with the definition that it had provided and look at that language more carefully before determining whether it could support it. Regarding paragraph 1.2, it preferred Option 1, based on its scope. In addition, it supported the second alternative letter (d) as it believed that any subject matter that was widely known or used outside of the community should not qualify as protectable TK regardless of prior informed consent. Finally, it expressed its concern about letter (f) because it believed that there could be overlapping between TK and IP protection, as for example in the area of trade secrets.

49. The Delegation of India supported Option 2 of Article 1.1, which had been taken from the Like-Minded Countries' ("LMCs") contribution in document WIPO/GRTKF/IC/21/5. It believed that since there was a reference to "knowledge that is dynamic and evolving", there might not be a need to refer to uses "resulting from intellectual activities" as TK which was dynamic and evolving would result from these activities. It noted that some fine-tuning was needed in the language when the facilitators would sit to define these options.

50. The Delegation of New Zealand preferred Option 1 in both the definition of TK and the criteria for eligibility. It believed, as the Delegation of Canada had also pointed out, that this would clearly delineate between what was TK and what was protectable TK. Like other Delegations, it found that the criteria should be cumulative. It supported the comment made by the Delegation of Australia about what was meant by "from generation to generation". In its concept as well, TK could often skip one or two generations depending on the best person to pick that up. It suggested some ideas for the simplification of the text that could be useful for the facilitators. The first related to Option 2. The concept of "generation to generation" appeared both in the definition of TK and then again in the eligibility criteria under Option 2. There seemed to be a duplication that facilitators may wish to look at. The second suggestion on simplification of the text related to the list of eligibility criteria in Option 1. The Delegation suggested that facilitators consider whether the matters that had been listed and matters (d) through (g) had any duplication with the article on scope of protection. The blanket inclusion of these matters in subject matter of protection could be an issue because these were issues that the IGC might want to differentiate between when it started discussing scope. Giving an example, it explained that the Committee might still wish to offer protection against disrespectful use of TK or require acknowledgment when there was an existing IP right. It said that the proposal that the Delegation of Australia made could be a way to deal with this. Lastly, the Delegation of New Zealand noticed three differences between the TCE text and the TK text that facilitators might want to think about when working through. Firstly, both options in the TCE text had a final sub-paragraph which read: "the terminology used to describe the protected subject matter should be determined at the national, regional and sub-regional levels". However, this was not present in the TK text. Secondly, in the TK text, reference was made to "cultural

identity", whereas in the TCE text reference was made to "cultural and social identity and cultural heritage". It noted that "cultural heritage" was a term that was more closely associated with TCEs. However, it questioned whether the terms "social identity" as well as "cultural identity" were relevant for the TK text. Finally, the Delegation of New Zealand noted that the TCE text had an additional eligibility criterion of TCEs being "maintained, used and developed" and this did not appear explicitly in the TK text. It observerd as well that paragraph 1.1 of Option 1 made reference to "developed within" and this seemed to be the same concept but perhaps not as clearly articulated as it was in the TCE text.

51. The representative of FAIRA, speaking on behalf of the Indigenous Caucus, supported the option submitted by the Delegation of Mexico in relation to Option 2. However, he wished to include within that definition in Option 2 the words "cultural beliefs", so that it would read "traditional knowledge also includes knowledge that is associated with cultural beliefs, biodiversity, traditional lifestyles and natural resources" because as indigenous peoples knew, TK arose from cultural beliefs. He added that this encompassed the concept of spirituality as well.

52. The Chair noted that there was no Member State support for the proposal made by the representative of FAIRA on behalf the Indigenous Caucus.

53. The Delegation of the United Republic of Tanzania supported Option 2 of paragraph 1.1 for the definition. In relation to that Option, a small change needed to be made on the wording "intellectual activity" which seemed to confuse and needed fine-tuning. On the issue of the criteria for eligibility, the Delegation supported Option 2.

54. The Delegation of the Plurinational State of Bolivia supported Option 2 of the definitions and wished to include some terms to make Option 2 clearer: "Traditional knowledge is knowledge that is dynamic, in constant evolution, resulting from intellectual activities passed from generation to generation. It is inalienable, indivisible, imprescriptible and include among others know how, skills, innovation, processes, learning and teaching, and apprenticeship in codified, oral and other forms of traditional systems. Traditional knowledge includes territorial, historical, spiritual knowledge, and knowledge related to biodiversity, natural resources, traditional lifestyles".

55. The Delegation of Peru expressed its preference for Option 2 of the definition. It considered it to be more complete and to form a better basis. It added that Option 1 was concrete but very simplistic and did not provide the requisite protection. With regard to criteria for eligibility, it found that Option 2 was quite clear and complete and included elements that could provide adequate protection. It recalled that criteria for eligibility were important as they would decide what was protected and ensure that TK was protected for the communities' benefit.

56. The representative of CAPAJ emphasized that the intervention made by the representative of FAIRA on behalf of the Indigenous Caucus was a product of collective deliberation among all of the indigenous observers. He regretted that no Member State supported his proposal, and wished to say that they had wanted to incorporate, into the concept of TK under the definition, the spiritual aspect of the production of TK among traditional peoples. These were not only products of an intellectual activity, but they also had an ingredient of cultural beliefs and spiritual beliefs. These ingredients were really what differentiated it from academic knowledge. He said that academic knowledge was purely a product of the intellect, whereas traditional building from the indigenous peoples

also included spiritual experiences and beliefs. He called upon Member States to reflect on this. He suggested that the facilitators take this concept into account during their discussions.

57. The Delegation of Egypt supported Option 2 of the definition because it was more comprehensive and provided a clear definition for TK. It noted that there were some similarities between Option 1 and Option 2, as they both captured the issues of know-how, skills, innovations, practices, teachings and learning. In this respect, it was hoping the facilitators could find the language that would combine both options. In relation to the criteria of eligibility, it supported Option 2 because it was more clear and simple, and in line with the language proposed by the LMCs. It had difficulty with the Alternative in Option 1, paragraph 1.2, because it promoted a list of negative criteria for the protection of TK. Although TK could be in the public domain, it still saw the importance of protecting it and recognizing it.

58. The Delegation of Indonesia wished to recall document WIPO/GRTKF/IC/21/5, which had been produced by the LMCs in Bali as revised and modified in Geneva. With regard to the definition of the TK itself, like the LMCs, it preferred Option 2. With regard to the criteria for eligibility, it supported Option 2, although specific modifications could apply. It wished to request that the facilitators consider the criteria put forward by the LMCs in document WIPO/GRTKF/IC/21/5.

59. The Delegation of Brazil supported Option 2 for the definition of TK. It considered that this definition had to be detailed. It also wished to add some elements from previous drafts of this discussion which referred to TK being “inalienable, indivisible and imprescriptible”. It noted that these three elements were present in previous discussions. It considered that it was important that they continue to be present in the definition. Regarding the criteria for eligibility, it preferred Option 2 which was simpler than Option 1 and answered the needs that this proposed instrument was trying to fulfill.

60. The Delegation of Sri Lanka recalled the definition of TK that had been proposed by the LMCs in document WIPO/GRTKF/IC/21/5 as it was in full agreement with that document. However, having supported that definition, it wished to add some language and make some amendments to that definition. It considered that TK meant “the content or substance of knowledge that is the result of intellectual activity and insight in a traditional context and includes know how, skills, innovations, practices, and learning that form part of traditional knowledge system and knowledge that is embodied in the traditional lifestyle of a community or people, or is contained in written or codified knowledge systems passed between generation and traditional knowledge is not limited to any specific technical field and may include traditional agriculture, environmental, health care, and medicinal knowledge, associated with genetic resources or other components of biological diversity, and know how of traditional architecture and construction technologies”.

61. The Delegation of Japan preferred Option 1 for the definition as the narrower definition would make the scope of TK clearer, which would lead to the proper protection of TK. It found, however, that the scope of TK was still vague both in Option 1 and 2. It said that the requirement to be “traditional” for example was not shown at all. Furthermore, it was unclear what was included in “traditional context”. The scope of TK needed to be clearly defined to the extent that certainty and predictability were ensured. Generally speaking, it was not appropriate to oblige any concrete measures about a

subject matter the scope of which was vague. Despite the fact that the scope of TK was vague, even after intensive work through the IWG and IGC sessions held the previous year, it remained that a clear definition was a prerequisite for further steps. With regard to Article 1.2, the Delegation of Japan stated that the scope of protected subject matter was still vague in these two options, even by the combination of Articles 1.1 and 1.2. It stressed that unless the definition stipulated in the former article would successfully manage to determine the proper scope of TK, nothing would be solved fundamentally. Finally, it found that alternatives (d) and (e) of Option 1 were relatively preferable in the light that providing protection of TK already in the public domain prevented innovation.

62. The representative of ICC supported Option 1 for the definition. He said that this option was at least clearer than Option 2. He sympathized with the comments made by the Delegation of Japan about vagueness. Clarity from the point of view of people who had to observe these treaties was extremely important. Under the criteria for eligibility, he supported Option 1, too. It was important to exclude either letter (d) or (e) or some version of them. It was very difficult to protect what was well known, particularly if it was widely circulated. Not everyone had been happy with letter (f), protection by an IP right. The representative of ICC could not see why this exclusion should be made. He said that IP rights regularly overlapped, generally speaking, and that there was no reason why they should not. He reminded that the IGC was considering a new kind of IP right. There seemed to be no reason why TK of a particular type should not be the subject of a trademark applied by the owners of that TK which would be an additional aid in exerting their rights over it.

63. The Delegation of the Republic of Korea was of the view that the definition of TK was very important and had therefore to be clear as a prerequisite for addressing other issues relating to the protection of TK. Criteria for eligibility had to contribute to limiting any legal and policy uncertainty. With regard to the criterion of eligibility in relation to the public domain, the Delegation of the Republic of Korea wished to remind Member States of its importance and highlighted the difficulty of the issue. It wished to focus, in particular, on differentiating between TK in the public domain and TK not in the public domain. It stated that the Committee needed to make a distinction between the private use of TK and non commercial uses for teaching, experimentation and scientific research. It added that it was important as well that there be an exception for the protection of TK where the subject matter was a method of healing treatment for humans. In this regard, it wished to support Option 1 of the definition of TK and Option 1 of the criteria for eligibility. With regard to letter (d) in Option 1 of paragraph 1.2, it preferred letter (d) without prior informed consent. It also proposed to add “and” at the end of each sentence for the purpose of clarifying the characteristics of criteria for eligibility of TK which should be cumulative.

64. The Delegation of Turkey stressed that some elements in the definition of TK in Option 2 had to be clarified, as already pointed out by the Delegation of Australia. In relation to the words, “passed on from generation to generation”, it noted that it was not clear how many generations these words implied as this was a subjective concept. In relation to the word “evolving”, it indicated that TK did not have to be evolving and might be the same today, as it was centuries ago.

65. The Delegation of the Islamic Republic of Iran indicated that, at this stage of negotiations, the Committee should try to merge Options 1 and 2 of the definitions. In doing so, key element such as the evolving and dynamic nature of TK, and its

intergenerational nature, should be taken into account. It requested the facilitators to move in this direction. Regarding the criteria for eligibility for protection, it found that Option 2 was simple to understand and included important element such as the cultural identity linkage, and the element of generation to generation. This option gave a clearer idea of what could be protected.

66. The Delegation of Trinidad and Tobago agreed with the Delegations of Cameroon and Ecuador that the language ought to be improved. Out of both options for the definition, it preferred Option 2. While it appreciated the difficulty in perfectly defining TK, it believed that Option 2 was more all inclusive and comprehensive and reflected the definition of TK the closest, at this time. It also believed that the criterion of "generation to generation" was important and had to be expressly stated in any definition of TK.

67. The Delegation of the Russian Federation stated that the issue of the definition was, of course, one of the most important questions. Therefore, it believed that Option 1 was more acceptable. However, it did not exclude the possibility of improving this option further. It thanked the Delegations of Canada and Australia for the proposals they had made to improve Option 1. Their proposals and other proposals for improvement of this definition would certainly be considered. With regard to the issue of criteria for eligibility, Option 1 was preferable, at the current stage of discussions.

68. The Chair opened the floor for discussion on Article 2 of the annex to document WIPO/GRTKF/IC/21/4.

69. The Delegation of Egypt believed that Option 1 was captured in Option 2, especially by letters (a) and (b). It supported Option 2 because it encompassed Option 1 and in this regard it wished to request the facilitator to simply merge Options 1 and 2.

70. The Delegation of the EU, speaking on behalf of the EU and its Member States, believed that the identification of the beneficiaries of protection of TK was important. Together with the definition of TK, Article 2 was a key article, which formed the basis for the work of the Committee. A clear indication was needed of those who should be the beneficiaries of the protection of TK. This was closely linked to the issue of access and benefit-sharing. The Delegation of the EU supported Option 1. It believed that indigenous peoples and local communities should be the beneficiaries of protection of TK. It therefore did not support Option 2. In addition, it considered that references to families and individuals may be ambiguous and, therefore not sufficiently clear to identify beneficiaries. Furthermore, it did not find that nations should be considered as beneficiaries, although it fully acknowledged the concerns of certain Member States. It believed that it was still the indigenous peoples and local communities of that territory that should be regarded as the beneficiaries, not the state or nation.

71. The Delegation of Mexico, like the Delegation of the EU, preferred Option 1, with one addition at the end so that the full text would be "[b]eneficiaries of protection of traditional knowledge, as defined in Article 1, are indigenous peoples/communities, local communities and other denominations figuring under national legislation of each state".

72. The Delegation of Indonesia, speaking on behalf of the LMCs, supported Option 2. It recalled the LMCs' contribution which was in document WIPO/GRTKF/IC/21/5 and wished that this be used by the facilitators to do the fine-tuning of the options.

73. The Delegation of Norway supported Option 1. Regarding the choice between the terms “indigenous peoples” and “indigenous communities”, it supported the use of the term “indigenous peoples”.

74. The Delegation of Barbados supported Option 2 which was the only option that would allow for the protection of the vast majority of TK in Barbados. This was because TK was not owned by indigenous people, who as such did not exist in Barbados.

75. The Delegation of Brazil supported Option 2 with some amendments. The first sentence would read “[b]eneficiaries of protection of traditional knowledge, as defined in Article 1, may include the following categories, even when the traditional knowledge is held by the individuals within the categories”. The list would then include “indigenous peoples/communities, local communities and traditional communities.” The Delegation had reservations in relation to letters (d)(families) and (e) (nations). It said that letter (f) (individuals) was already reflected in its proposed amendment. On letter (g) starting “where traditional knowledge is not specifically attributable”, it wished to amend the last line to: “any national entity that may be determined by domestic law”.

76. The Delegation of the United States of America supported Option 1 of Article 2 as it believed that indigenous peoples and communities were the most appropriate beneficiaries of TK protection. It was concerned about the inclusion of families, nations, and individuals in Option 2. In addition, it sought clarification on the meaning of “traditional communities” in Option 2.

77. The Delegation of China stated that its country didn’t have the concept of indigenous people, but understood and supported their rights and claims in this regard. It supported Option 2 because it included indigenous people and communities and also satisfied its concerns, especially letters (e) and (g) in relation to families and national entities. It highlighted that China was a vast country with many ethnic groups and that TK was very rich in China. Holding and transmitting this TK resulted in complicated situations. Therefore, the Delegation of China believed that the concept of local communities should be flexible and should be determined in accordance with national situations.

78. The Delegation of Morocco supported Option 2 because it covered all possible situations across the globe. The primary beneficiaries had to be the indigenous peoples and local communities, but not all countries accepted the concept of indigenous peoples or local communities. It noted that countries might have TK which could not be attributed to indigenous people or to a local community. It said that Option 2 covered all possible circumstances.

79. The Delegation of Sri Lanka supported the LMCs’ proposal, as expressed in document WIPO/GRTKF/IC/21/5, except for the fact that it wished to refer to “national law”, instead of “domestic law”.

80. The Delegation of Turkey believed that Article 2 should be as inclusive as possible in order to satisfy the needs of the Member States and also of the indigenous peoples. For this reason it supported Option 2.

81. The representative of the Health and Environment Program said that her organization was based in Cameroon. In this regard, she did not have a precise concept of what was meant by “indigenous peoples”. She said that the various regions of

Cameroon had 240 different ethnic groups, each of which had its own specificities. She said that there was no national or domestic legislation in this area. She wished to support Option 2, so that all possible groupings of indigenous peoples could be covered. However, she noted that the French text was not clear regarding letter (g). She stressed that it had to be clear that it was domestic law which was going to be protecting the groups that were referred to under letter (g).

82. The Chair noted that in many systems domestic law was consistent with national law and proposed that the interpreters properly reflect what domestic law meant in various systems. Unless the proponents had intended it to be separate, the concern of the representative of the Health and Environment Program could be captured by appropriate review of the language. In that case, he would not need to ask that the intervention of the representative of the Health and Environment Program be supported by a Member State. He recommended that the facilitators take the concern that was raised into consideration.

83. The Delegation of Peru preferred Option 1 of Article 2 as it covered the most important manners of defining or identifying beneficiaries. However, it believed that by looking at earlier versions of that article, there may be a possibility to satisfy the concerns of some of the countries which had felt that there was no concept of indigenous peoples, as well as some of the concerns expressed earlier by other Delegations.

84. The Delegation of the Russian Federations supported Option 1. As to Option 2, the inclusion of individuals and families among the beneficiaries had to be considered in greater depth if they were to be included.

85. The Delegation of Ethiopia supported Option 2 because it protected the interests of all contributories for the generation and preservation of TK.

86. The Delegation of Japan agreed with the Delegation of the EU that subject matter and beneficiaries were two vital elements to establish an instrument relative to protection and subject matter. It stressed that the scope of beneficiaries was unclear because the scope of TK was unclear as well.

87. The Delegation of Switzerland supported Option 1. It considered that the term “local communities” was to be understood broadly so that it covered a wide range of communities holding traditional knowledge. Like other Delegations, it did not support Option 2, in particular because of the mention of nations among the potential beneficiaries of protection. Furthermore, it questioned the inclusion of families and individuals within the beneficiaries.

88. The Delegation of the Republic of Korea supported Option 1. It stated that the definition of the beneficiaries of TK was very important and tied the willingness to provide protection to the existence of knowledge that had been generated, preserved and transmitted in a traditional context so that it was distinctly associated with a specific community or people and was integral to the cultural identity of the community. It believed that TK holders should be indigenous peoples and local communities because they were the ones who generated and transmitted the knowledge.

89. The representative of Tupaj Amaru proposed an article that would merge Options 1 and 2. This article read as follows: “[t]he beneficiaries of legal protection of traditional

knowledge which are of national and universal dimensions as defined in Article 1 are the indigenous peoples and local communities and their descendents: (a) who are custodians and responsible for the care and safeguarding of traditional knowledge in conformity with customary law; (b) those who use, develop, and transmit traditional knowledge from generation to generation as authentic and genuine representations of their cultural and social identity and their cultural heritage. The beneficiaries or owners have a right to enjoying the just and equitable benefits of the dissemination of their traditional knowledge innovations and related practices for the conservation of biodiversity and the sustainable use of their components". He deeply regretted that indigenous peoples had to ask for permission from the Member states, which had exploited indigenous peoples and their wealth, in view of submitting proposals.

90. The Chair noted that there was no support from a Member State for the proposal made by the representative of Tupaj Amaru.

91. The Delegation of the Plurinational State of Bolivia supported Option 1, provided that the earlier proposal to include the wording "any national entity as determined by national or domestic law" was accepted. It did not agree with the inclusion of families and individuals as this would run counter to the concept of collective knowledge, which was contained in TK.

92. The representative of FAIRA, speaking on behalf of the Indigenous Caucus, proposed the use of the terms "indigenous peoples and local communities" in both Options 1 and 2, so that the terminology identified indigenous peoples and local communities specifically, but not all communities. He explained that Option 2 (a) and (b) would be amended so that letter (a) would refer to "indigenous peoples", and letter (b) would refer to "local communities".

93. The Chair noted that the Delegation of Australia supported the proposal of the representative of FAIRA speaking on behalf of the Indigenous Caucus.

94. The representative of CISA agreed with the representative of Tupaj Amaru that "peoples" should be included in the list of beneficiaries.

95. The Delegation of Trinidad and Tobago supported the suggestions of the Delegation of Barbados and indicated that it preferred Option 2. It said that in some countries, especially small island states, there were no indigenous people or local communities. As a result it believed that a text on beneficiaries of protection had to reflect these realities. It also agreed with the Delegation of Morocco that while the primary beneficiaries were indigenous people and local communities, the text had to cover all possible circumstances, especially those peculiar to small island states.

96. The Delegation of Sudan preferred Option 2. It wished, however, to amend letter (g), so that it would read: "where traditional knowledge is not specifically attributed or confined to an indigenous peoples or local community, or it is not possible to identify the community that generated it, any national entity determined by national law instead".

97. The representative of CAPAJ was pleased that the Delegation of Australia had supported the proposal made by the representative of FAIRA on behalf of the Indigenous Caucus which was an inclusive way of working in plenary. He suggested that when working on these proposals, the facilitators had to bear in mind that there were cross-border indigenous communities and indigenous peoples who were not covered by

a single legislation but in fact could be affected by national domestic law from several countries.

98. The Chair then introduced Article 3, on scope of protection and opened the floor for discusssion.

99. The Delegation of Mexico proposed that in relation to Article 3, Option 2 be the basis for the Committee's debate. It believed that it was both more prescriptive and more detailed and was based on States' responsibilities and obligations. Option 2 stated the rights of indigenous people, but also the obligation of the States to protect such rights. It suggested that in all paragraphs, and particularly in letters (d), (e), and (f) of paragraph 3.1, the word "holders" be replaced by "owners". It said that the communities were the owners of TK and that this knowledge was sometimes transmitted to a doctor who was in that case the holder, but not the owner. Further, it believed that in paragraph 3.1, letter (e) should be deleted, since the concept it referred to was already covered in letter (d) on the question of prior and informed consent. Paragraph 3.2 was acceptable to the Delegation of Mexico. Regarding paragraph 3.3, it believed that there was a minor inconsistency in letter (c) which rather than being a letter (c), should be a chapeau for the *romanito* paragraphs. Letter (c) should therefore be deleted, and its content should be a stand alone heading. In *romanito* (i) the word "holder" should be replaced by the word "owner", and in *romanito* (ii) and (iii) the draft should be changed to read, in *romanito* (ii): "encourage use of traditional knowledge in a manner that respects the cultural norms and practices of its owners" and, in *romanito* (iii): "establish mutually agreed terms between owners and holders or users of traditional knowledge, most particularly when traditional knowledge is secret or has not been broadly disseminated, respecting the decisions of the traditional communities to permit or prohibit access to that knowledge."

100. The Delegation of New Zealand wished to make some suggestions on simplifying the text. It believed that Article 3 could be brought down to two much shorter options, one reflecting the exclusive rights approach, and one reflecting the regulatory approach. It stated that this could be done by removing the repetition that was present in Option 1, paragraph 3.2, and in Option 2, paragraph 3.1. It noted that both of these Options were lists of factors that would be included in an exclusive rights model and could be merged together. It noted as well that where there were differences in the scope of the obligations, for example in one list there were references to prior informed consent and disclosure, while in the other there was none. It said therefore that those could simply be square bracketed. That would get the text down to two much simpler options. Regarding the definition of utilization, it said that it was useful to keep it in here, but it noted as well that it was clogging up the text. It said that the best place for definitions was probably in a definition section. It suggested therefore that the facilitators just put this into a footnote as a place holder that could be picked up dealt with later on. Finally, on the issue of domestic/national legislation, the Delegation of New Zealand recalled that this had already been dealt with at an earlier session of the IGC and suggested that the result of that discussion be consulted.

101. The representative of Tupaj Amaru wished to propose new text for Article 3 on scope of protection: "[t]he contracting parties recognize the holders of and beneficiaries of traditional knowledge in conformity with Article 2, the exclusive rights: to control, preserve, distribute, exploit and practice their traditional knowledge and their traditional expressions; to authorize, to give access to or to prohibit access to, to prohibit misuse,

misappropriation of traditional knowledge and derivations of the traditional knowledge in accordance with mutually agreed terms to prevent the undue use, elicit appropriation, acquisition through fraudulent means, appropriation, exploitation of this traditional knowledge without fundamental free prior informed consent on the part of the traditional knowledge holders; with regard to traditional knowledge and intellectual property rights of those using traditional knowledge without the authorization of holders of this traditional knowledge of the country of origin, without presenting proof of free prior informed consent; to prohibit use of traditional knowledge outside of their traditional context and without having recognized the source and origin of this knowledge and in prejudice to the holders of traditional knowledge. Acts of acquisition, appropriation such as means of unfair competition, through robbery, trickery, including recourse to violence in order to obtain commercial benefits, industrial advantages and monetary advantages will be subject to civil and criminal sanctions. The contracting party shall establish appropriate mechanisms and effective measures in order to guarantee the application of the rights to protection of traditional knowledge as stipulated in this article in conformity with the customary law of the traditional peoples."

102. The Chair noted that there was no support from a Member State for the proposal made by the representative of Tupaj Amaru.

103. The Delegation of India supported Option 2 for Article 3. However, it had difficulty with the fact that it was the result of a merge of Options which had been suggested earlier in the facilitators' text. In fact, Option 2 was the LMCs' text which had been put as it was in the facilitators' text. Unfortunately paragraph 3.3 was also added as part of Option 2. It requested that paragraph 3.3 be separated from Option 2. That paragraph could be considered along with Option 1, or as an independent option. Further, it saw a problem with the suggestion of the Delegation of New Zealand to merge Option 1, paragraph 3.2, and Option 2, paragraph 3.1. While it was true that both were dealing with exclusive right, there were conceptual differences between them. It noted that there were differences, for example with reference to the disclosure requirement which it thought was important and should be retained in Option 2 as it was.

104. The Delegation of the EU, speaking on behalf of the EU and its Member States, believed that there should be some flexibility when providing for appropriate measures concerning the scope of protection of TK. It therefore supported Option 1 in paragraph 3.1 of Article 3. That option provided the necessary possibility for Member States to set out adequate provisions in their national law. It found, however, that there should be no reference in letter (a) to secret TK. It expressed concern on the definition of "commercial use" in letter (c). It could not support Option 2 in paragraph 3.1, since this option contained binding treaty language, which was not acceptable. In particular, it could not accept the reference in Option 2, paragraph 3.1, letter (e), to a mandatory disclosure requirement. With regard to Option 2, paragraph 3.3, this paragraph was covered by Option 1.

105. The Delegation of Norway found the different proposals for Article 3 quite complex as they were dealing with a lot of difficult issues. The mandatory disclosure, for example, was one of them. The Delegation of Norway supported mandatory disclosure, but it did not see that as an issue which was relevant to the scope of protection. It considered that it should be dealt with in a separate article. It wished to make a textual proposal as an alternative option for Article 3, which also merged Article 3 with Article 4. The new Article 3 as proposed would deal with scope of protection and sanctions.

Paragraph 1 would read: “[a]ccess to and use of traditional knowledge requires prior informed consent from the indigenous peoples or local community that is the beneficiary of protection according to Article 2. The use of such knowledge shall be in accordance with the terms the beneficiary may have set out as a condition for the consent. Such terms can inter alia determine that benefits arising from the use of the knowledge shall be shared with the beneficiary”. Paragraph 2 would read: “[i]n addition to the protection provided for in paragraph 1, users of traditional knowledge which fulfills the criterion in Article 1, paragraph 2(a) shall: (a) acknowledge the source of traditional knowledge and attribute the beneficiary, unless the beneficiary decides otherwise; and (b) use the knowledge in the manner that respects the culture and practices of the beneficiary.” Paragraph 3 would read: “[w]hen traditional knowledge is accessed or used in a manner that contravenes any of the provisions in paragraphs 1 and 2, the beneficiary shall have the right to: (a) request that the judicial authorities order the infringer to desist from further infringements; and (b) a fair compensation from an infringer who would knowingly, or with reasonable grounds to know, engaged in the infringing activity.” Paragraph 4 would read: “[t]he parties shall provide adequate and effective measures to ensure the application and enforcement of the provisions set out in paragraphs 1 to 3.” Finally, paragraph 5 would read: “[p]rotection of traditional knowledge under this instrument shall not affect: (a) access to or use of knowledge which is invented independently of traditional knowledge of indigenous peoples or local communities or is discovered from other sources than indigenous peoples or local communities; (b) generation, sharing, preservation and transmission and customary use of traditional knowledge by the beneficiaries in the traditional and customary context”.

106. The Delegation of Morocco supported Option 2 and was also in favor of the definition being moved to a specific article on use. It felt that it was necessary to have a definition of misappropriation and misuse, as could be found under Option 2, paragraph 3.1, letter (d). It proposed the following definition: “[w]ithin the context of the present instrument, misappropriation and misuse mean: (a) the acquisition, appropriation or use of traditional knowledge in violation of the provisions of this text and particularly in the absence of free prior informed consent of the beneficiaries as defined in Article 2; (b) the gaining of advantages from the appropriation or use of traditional knowledge when the person who has acquired, appropriated or is using traditional knowledge, whether they are aware of it or not, has taken advantage of that traditional knowledge, which has been gained or used in unfair manner.”

107. The Delegation of Brazil supported Option 2. It also supported the comments made by the Delegation of India concerning the elimination of paragraph 3.3. Further, it had some amendments to propose to Option 2. In the first sentence after the word "ensure", it wished to insert the words “according to national legislation”. The sentence would read: “Member States shall ensure, according to national legislation, that the beneficiaries (…)". It also wished to eliminate the word "exclusive" from that sentence. In paragraph 3.1, letter (a), it wished to eliminate the word “exclusively”. Further, it preferred to have letter (e) in a separate paragraph, as it was its understanding that it referred to an obligation of Member States. In that separate paragraph, it also wished to make two amendments. First, it wished the first line to read: “require, in the application for the granting of a intellectual property rights (…)”. Second, it wished to add a final sentence to this paragraph, referring to the internationally recognized certificate of compliance 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 (“the CBD Nagoya Protocol”), so that the sentence would read:

"Such evidence may be obtained through an internationally recognized certificate of compliance (IRCC)". Finally, on letter (f), the Delegation of Brazil wished to insert the words "beyond its traditional context" after the word "knowledge" so that it would read: "prevent the use of traditional knowledge beyond its traditional context without acknowledging (…)."

108. The Delegation of France supported what had been stated by the Delegation of the EU and preferred Option 1, except for the reference to the secret knowledge. It could not accept Option 2 since the concept of collective rights was not recognized in the Constitution of its country.

109. The Delegation of the United States of America supported Option 1 of Article 3. Within Option 1, it suggested the insertion of the word "protected" before the phrase "traditional knowledge" in paragraph 3.1, letters (a) through (c). Also within Option 1, it did not support the optional addition of paragraph 3.2 because it was too prescriptive. Finally, it could not accept the inclusion of mandatory disclosure in Option 2, letters (e) and (f).

110. The Delegation of Egypt supported the statements made by the Delegations of India, Morocco, Brazil as well as the proposal made by the LMCs. It also wished to have clarification on the issue of collective rights. It believed that collective rights were one of the basic concepts associated with TK. It was possible for peoples to renounce collective rights, but doing so would certainly be a retrograde step.

111. The Delegation of Cameroon wished to draw attention to the use of some terms and expressions which may cause ambiguity. It said that the Committee was working on a legal text and needed to be as precise as possible. It referred to a language problem in the optional addition of paragraph 3.2, letter (c) in Option 1, which dealt with a fair and equitable share of benefits. It noted that "fair" came from law while "equitable" came from equity. It said that these were therefore two different concepts, adding that some deals could be fair but not necessarily equitable. It considered that equity was the more flexible term and wished to propose that the sentence read "have a fair and at least an equitable share". Further, in relation to that optional addition, it noted there were some redundancies among the various sub-paragraphs. It did not entirely agree with the proposal that letters (e) and (d) could be combined. It wished to make a new proposal which would fit well both in form and content, and to use the wording: "prevent misappropriation and misuse, including abusive use and acquisition, appropriation, utilization or practice of traditional knowledge without the necessary provision of mutually agreed terms or the identification of the origin of this knowledge."

112. The Delegation of South Africa preferred Option 2 with the deletion of paragraph 3.3 as proposed by the Delegation of India. It noted that the issue of collective rights had to be viewed in line with the scope and the beneficiaries. Referring back to Article 2, it said that in Option 2 of Article 2 on beneficiaries, letters (a), (b) and (c) would fall under the collective category, whereas (d), (e) and (f) would fall out of it.

113. The Delegation of the Republic of Korea considered that an article on scope had to provide Member States with maximum flexibility in order to allow them to define the scope of protection based on national law. In this regard, it wished to point out that prior informed consent on TK would impose burdens on potential users of the TK and cause adverse effects on innovation. In addition to that, it noted that it was not even clear how patent disclosures were a means to protect TK and how a disclosure requirement would

lead to the TK being protected. It stated that disclosure requirements would cause patent offices to undertake additional responsibilities outside of the patent process. It supported paragraph 3.1 of Option 1.

114. The Delegation of Switzerland supported Option 1 of Article 3.1, as this option provided adequate flexibilities to the national implementation. It recalled that the proposals it made regarding the disclosure of the source also covered TK. Notwithstanding this, it felt that the issue of disclosure requirements should not be dealt with in Article 3 as was proposed in Option 2. Furthermore, as regarded the specific text proposed in letter (e) of Article 3.1 in Option 2, it did not see what the country of origin of TK would be. As regarded the proposed inclusion of a reference to the internationally recognized certificate in this letter (e), it highlighted the fact that the relevant Article 17 of the CBD Nagoya Protocol only applied to GRs but not to TK. It thus did not think that a reference would be appropriate in letter (e) which only covered TK. As regarded the proposed definition of the term "utilization" in Option 2, of Article 3.2, it was important to note that the definition of the same term was contained in Article 2 of the CBD Nagoya Protocol and that the two definitions differed considerably from each other. It said that it was therefore hesitant to include a definition in the international instrument that was being elaborated in the IGC which would differ from the definition of the same term in another relevant international instrument.

115. The Delegation of Canada supported the remarks made by the Delegation of the EU about the importance of ensuring flexibility in Article 3. It also supported the comments made by the Delegation of the Republic of Korea regarding the importance of ensuring that the measure supported innovations. In the interest of clarifying the text further, it proposed the chapeau of Article 3.1 as follows: "Member States should provide adequate and effective legal, policy or administrative measures, as appropriate and in accordance with their respective national law".

116. The Delegation of the Islamic Republic of Iran supported Option 2, which had key elements to ensure effective protection of TK such as prior informed consent and mandatory disclosure. It proposed to delete Article 3.3 or separate it from Option 2. It suggested deleting the word "knowingly" in Article 3.3(c).

117. The Chair introduced Article 6 "Exceptions and Limitations" and opened the floor for comments.

118. The Delegation of Australia stated that it had looked at Article 6 from the point of view of simplification. One way to restructure was to have a shared Articles 6.1, 6.2 and 6.3, as there appeared to be convergence on those elements. That could be followed by the inclusion of Article 6.6 in square brackets, and then followed by the optional additions of Articles 6.4 and 6.5. It said that such a restructuration would capture all the policy interests in the cleanest way. Article 6.1 dealt with the important issue of the interface between customary law and national law. It suggested rewording Article 6.1 as follows: "Measures for the protection of traditional knowledge should not restrict the generation, customary use, transmission, exchange and development of traditional knowledge by the beneficiaries, within and among communities in the traditional and customary context, consistent with the national laws of the Member States".

119. The Delegation of Mexico proposed the following wording for Article 6: "Measures for the protection of traditional knowledge should not restrict, [according to domestic/national law,] the generation, customary use, transmission, exchange and

development of traditional knowledge by the beneficiaries, within and among communities in the traditional and customary context. The protection of traditional knowledge does not affect: (a) the use of traditional knowledge in archives, libraries, museums or cultural institutions for non-commercial cultural heritage purposes, including for preservation and display; (b) the reproduction of traditional knowledge on the part of an archive or library, for reasons of security and preservation and which would find at risk of disappearing; (c) the use of traditional knowledge in the academic and private scope and for non-commercial purposes; (d) the use of traditional knowledge in activities of scientific and technological research, purely experimental for teaching or for trials; (e) the reproduction in administrative or legal procedure."

120. The Delegation of Canada proposed to add "Member States understand that" at the beginning of Article 6.1, and to replace "Member States" at the beginning of Article 6.3 with "[a]nd that they may". It also proposed to replace Article 6.4(a) with "the use of traditional knowledge in archives, libraries, museums or cultural institutions recognized under the appropriate national law for non-commercial cultural heritage or other purposes in the public interest, including for preservation, display, research and presentation should be permitted." It explained that the change was to clarify for the sake of certainty that the cultural institutions were those recognized under appropriate national laws. The other addition would be for the public interest to allow flexibility to accommodate different national realities.

121. The Delegation of New Zealand supported the drafting suggestions made by the Delegation of Australia on condensing the options down. Regarding the two different options of Article 6.3, the differences were that one had a reference to "with the prior informed consent of the beneficiaries". It proposed to bracket the reference to prior informed consent to reflect the two options. The two options in Article 6.3 were basically the formula for how to create domestic exceptions. It considered running the two options in Article 6.3 together as a merged set of criteria. It suggested bracketing "should be permitted" in Article 6.4(a) because the phrase had already existed in the chapeau. Regarding Article 6.5, it believed that it should be dealt with in the scope of protection, as in the TCEs text.

122. The Delegation of Norway stated that Article 6 dealt with a lot of possible exceptions. That article should be worded in a shorter and more general way. According to Article 30 of the TRIPS Agreement, it proposed a new text: "Parties may adopt appropriate exceptions, provided such exceptions are limited and do not conflict with a normal utilization of the beneficiaries rights according to Article 3 and do not unreasonably prejudice the legitimate interests of the beneficiaries, taking into account the legitimate interests of third parties." It believed that the protection of TK should not hinder customary use or affect independent discoveries. However, it thought that those issues should be dealt with in Article 3, as it had proposed before.

123. The Delegation of China believed that Article 6.5 of Option 1 greatly narrowed down the scope of the protection. Some TK, which had a long history and had been widely distributed and even documented, was not confined to a local community or specifically attributable to any beneficiary. Therefore, if such knowledge was excluded, the effective and full protection of all kinds of TK which that instrument was supposed to provide would be affected.

124. The Delegation of South Africa, speaking on behalf of the African Group, stated that there were common grounds on the two options of Articles 6.1 and 6.2, which both dealt with the rights of knowledge holders and the perpetuation of the use of that knowledge within their own communities. Article 6.3 which dealt with the rights of users was where the difference began. In order to save time, it suggested focusing on the difference to clean the text. Regarding Option 2, it thought that the alternatives were confusing and needed to be sorted out. There could be a different way of numbering those options.

125. The Delegation of the EU, speaking on behalf of the EU and its Member States, believed that a clear distinction should be established between the utilization within and among indigenous peoples and local communities and the utilization outside. It could support Article 6.1 in Option 1, including the text in Article 6.3 and in the second alternative of Article 6.3 subparagraphs (a) and (b). It thought that exceptions and limitations should be dependent on prior informed consent. Therefore, it did not support the alternative language of Article 6.3. It accepted the additional wording in Articles 6.4 and 6.5, which clarified situations where there were fully justified reasons for permitting acts. That otherwise might not be permitted according to Article 6. Regarding Article 6.6, it did not see a need to specifically address the issue of secret or sacred TK.

126. The Delegation of the Republic of Korea drew the attention of other Delegations on the importance of the issue of public domain and highlighted its difficulty. It also highlighted the matter of differentiating between TK in the public domain and TK not in the public domain. It suggested making distinctions between the private use of TK and the non-commercial use for teaching, experimentation and scientific research. There should also be an exception for TK where the subject matter was a method of treatment for humans. It supported Articles 6.1, 6.2, 6.3, 6.4 and 6.5 of Option 1 and did not support the alternatives.

127. The Delegation of the Russian Federation believed that exceptions and limitations should always be established, taking into account a balance between the public interest and the appropriate protection. Option 1 should be the basis for further work. However, it did not exclude the possibility of allowing the facilitators to think about some way in which they might be able to merge Articles 6.1, 6.2 and 6.3. It might be possible to merge them and find some kind of common formulation. It was necessary to keep Articles 6.4 and 6.5. It believed that there were a number of items that could be considered alongside other articles in order to avoid any overlap or redundancy.

128. The Delegation of the United States of America supported Option 1 of Article 6. It supported alternative Article 6.3. Regarding Article 6.5, it suggested replacing the preamble with the following: “There shall be no infringement when traditional knowledge”. It proposed to add the following new paragraphs: “6.7. Protected traditional knowledge shall not be deemed to have been misappropriated or misused if the protected traditional knowledge was: (i) obtained from a printed publication; (ii) obtained from one or more holders of the protected traditional knowledge with their prior informed consent; or (iii) mutually agreed terms for access and benefit sharing apply to the protected traditional knowledge that was obtained, and were agreed upon by the national contact point. 6.8. Except for the protection of secret traditional knowledge against disclosure, to the extent that any act would be permissible for third parties under the national law for knowledge protected by patent or trade secrecy laws, such act shall not be prohibited by the protection of traditional knowledge. 6.9. National authorities shall

exclude from protection traditional knowledge that is already available without restriction to the general public. 6.10 National authorities may exclude from protection diagnostic, therapeutic and surgical methods for the treatment of humans or animals. 6.11. National authorities, in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use, authorize the use of protected traditional knowledge, without the consent of the protected traditional knowledge holder."

129. The representative of CAPAJ suggested removing the brackets around Article 6.6. It said that this was essential for indigenous peoples. Despite having suffered for so many years of colonization, indigenous peoples still continued creating and developing new innovations. In some cases, they assimilated elements of other cultures. He believed that secret and sacred TK should not be subjected to exceptions and limitations.

130. The Delegation of Switzerland supported Option 1. It believed that the current text could be simplified. One good way would be to omit the repetitions of the two options by merging identical texts and by introducing square brackets around the differences.

131. The Delegation of the Islamic Republic of Iran suggested replacing "Member States" with "Contracting Parties" throughout the text, including that article. It supported Article 6.1 of Option 2.

132. The representative of FAIRA, speaking on behalf of the Indigenous Caucus, suggested the removal of the brackets around Article 6.6 of Option 1 and Article 6.4 of Option 2. It proposed to bracket Article 6.4(a) of Option 1. He said that any knowledge held in archives, libraries, museums or cultural institutions for non-commercial cultural heritage purposes did not prevent anyone from using that knowledge as indicated in Article 6.5. . He proposed to delete Article 6.5.

133. The Chair noted that the Delegations of Sri Lanka, the Plurinational State of Bolivia and Ecuador supported the proposals made by the representative of FAIRA, speaking on behalf of the Indigenous Caucus.

134. The Delegation of the Bolivarian Republic of Venezuela supported the removal of the brackets around Article 6.6. Secret and Sacred TK was part of indigenous peoples and it should not be subjected to any commerciality nor patentability. It suggested removing the brackets and moving it under the Principles. It did not support the Article 6.9 that was proposed by the Delegation of the United States of America.

135. The Delegation of the EU, speaking on behalf of the EU and its Member States, disagreed with the removal of the brackets around Article 6.6. The brackets in the text showed a divergence of views on secret and sacred TK.

136. [Note from the Secretariat: There was a discussion on the process regarding the removal of the brackets. The Delegation of the United States of America suggested not getting into a live-drafting exercise at that stage and letting the facilitators work on it. The Chair agreed to return to the question of bracketing or not at a later stage.]

137. The Chair introduced Article 4 "Sanctions, Remedies and Exercise of Rights", and opened the floor for comments on Article 4.

138. The representative of Tupaj Amaru stated that Article 4 was very important. It proposed a new text as follow: "1. Contracting Parties shall adopt, in accordance with their respective legal norms and in accordance with the international instruments, the effective and appropriate mechanisms to ensure the protection of traditional knowledge against any illicit or illegal appropriation. 2. In cases of misappropriation of traditional knowledge which is in danger of extinction and according to Article 3, Contracting Parties shall establish appropriate mechanisms for applying this article, including a mechanism for Arbitration and Mediation, effective enforcement procedures and dispute settlement between beneficiaries and users of traditional knowledge, without prejudice to the provisions of other instruments, for sanctions, administrative appeals in civil and criminal matters. 3. In accordance with Article 4, an appropriate body shall be established, in consultation with and with consent of indigenous peoples to provide advice and assistance to beneficiaries as defined in Article 2 in order to ensure the compliance of their rights and application of sanctions set forth in this Article. 4. Contracting Parties shall provide cooperation and assistance to beneficiaries for the purpose of facilitating the application of the measures for compliance in the national territory and borders of the neighboring countries envisaged in this instrument."

139. The Chair noted that there was no support from a Members State for that proposal.

140. The Delegation of New Zealand believed Article 4.1 applied only to Options 1 and 2 and that Option 3 had its own inbuilt Article 4.1. Regarding Options 2 and 3, there was one common provision which dealt with dispute resolution. It noted that there might be some way to restructure that article. Regarding Option 3, it observed that it was most similar to the TCEs text. It observed as well that the means of redress for safeguarding the protection granted by that instrument should be governed by the legislation of the country where the protection was claimed. It hoped that the facilitators could pick up that important element.

141. The Delegation of Canada stated that, as pointed out by the Chair, one of the issues was whether to take a flexible or prescriptive approach. From a technical point of view, it noted that, if one was taking a more flexible approach, it was probably important for the facilitators to note that there were actually probably two possibilities for the name of the provision. It invited the facilitators to consider that this article should also be "Application" instead of "Sanctions, Remedies and Exercise of Rights". It proposed the text as follows: "Member States should endeavor to provide adequate and effective legal policy or administrative measures to the application of this instrument as appropriate and in accordance with their respective national law."

142. The Delegation of Japan believed that Article 4.1 was well balanced between concreteness and flexibility and it was enough without further provisions on that respect. Since the scope of TK was vague, it would be better that that article had some flexibility. It expressed therefore a preference for Article 4.1. While it would prefer not to have Articles 4.2 to 4.5, Article 4.2 of Option 1 would be acceptable after the insertion of "as appropriate" between "available" and "under their laws".

143. The representative of the Health and Environment Program stated that Article 4.5 should be more focused. She proposed to use "shall" instead of "should".

144. The Chair noted that there was no support for that proposal.

145. The Delegation of the EU, speaking on behalf of the EU and its Member States, agreed with some comments made regarding the structure of Article 4. It said that there was a need, as guidance principle for the facilitators, to ensure that there was a clear delineation between the different options and that the numbering was addressed to ensure the options are clear enough. It supported Option 1 as contained in Article 4.2. It also supported Article 4.2 of Option 3. It reiterated that it preferred to use "should" instead of "shall" throughout the text, because it did not feel that this should be a binding instrument.

146. The Delegation of the United States of America supported the proposal made by the Delegation of Canada to change the title to "Application". Such a title would not prejudge the outcome of the negotiations. In Article 4.1, it suggested inserting the word "should" after "Member States". It supported Option 1. In Article 4.2 of Option 1, it proposed to bracket "shall" and "or negligent".

147. The Delegation of South Africa stated that there should be well defined and clearly articulated sanctions, remedies and exercise of rights, considering that the definition of TK was flexible and the rights of beneficiaries were clearly articulated. It said that it was important that the IGC was working towards a legally binding instrument and added that the IGC should eliminate any vagueness. It supported Option 2 because it provided a broad definition of the different instruments that could be used.

148. The Delegation of Mexico preferred Option 2.

149. The Delegation of Brazil supported Option 2 with some amendments. It proposed to replace "criminal, civil and administrative" with "criminal, civil or administrative", and to delete the terms "border measures", "effective" and "expeditious". Regarding Article 4.5, it proposed to add at the beginning of the sentence "Member States shall/should provide relevant measures". It did not support any reference to "an alternative dispute resolution mechanism" in Article 4.4. Therefore, it suggested deleting Article 4.4.

150. The Delegation of Cameroon suggested replacing the title with "Application of Sanctions and Rights", which could cover the whole procedure, including remedies. It proposed a new language for Article 4.1 which could also be the chapeau as follows: "[m]ember States shall adopt the measures necessary to ensure the application of this instrument." It believed that there were no fundamental differences between Options 2 and 3 and that those two options could be merged. It hoped that the facilitators could do it. Regarding Option 3, it wondered whether policy measures could be considered as sanctions in a legal instrument. Regarding Article 4.1 of Option 3, it proposed to replace the last sentence with "Where appropriate, sanctions and remedies should take account of the activities of indigenous people and local communities."

151. The Delegation of Switzerland supported Article 4.1. It saw merit in further considering the proposal made by the Delegation of Canada regarding the title and wording of Article 4.

152. The Delegation of the Republic of Korea supported the proposal made by the Delegation of Canada on the title of Article 4. It supported Article 4.1 and Option 1 of Article 4.2. It suggested deleting "or negligent" in Option 1 of Article 4.2. It also supported Article 4.3 in Option 3.

153. The Delegation of Norway referred to its proposal for a new text on Article 3 that integrated elements of sanctions and remedies. It believed that the elements of sanctions and remedies that were in some options in Article 4 could be integrated in Article 3 as suggested before. It suggested that Article 4 or any other appropriate article could include an obligation on disclosure. It proposed therefore a new Article 4bis "Disclosure Requirement" as follows: "1. Patent and plant variety applications that concern an invention that relates to or uses traditional knowledge shall include information on the country from which the inventor or the breeder collected or received the knowledge (the providing country), and the country of origin if the providing country is not the same as the country of origin of the traditional knowledge. The application shall also state whether prior informed consent to access and use has been obtained. 2. If the information set out in paragraph 1 is not known to the applicant, the applicant shall state the immediate source from which the inventor or the breeder collected or received the traditional knowledge. 3. If the applicant does not comply with the provisions in paragraphs 1 and 2, the application shall not be processed until the requirements are met. The Patent or Plant variety office may set a time limit for the applicant to comply with the provisions in paragraphs 1 and 2. If the applicant does not submit such information within the set time limit, the Patent Office or Plant variety office may reject the application. 4. Rights arising from a granted patent or a granted plant variety right shall not be affected by any later discovery of a failure by the applicant to comply with the provisions in paragraphs 1 and 2. Other sanctions, outside of the patent system and the plant variety system, provided for in national law, including criminal sanctions such as fines, may however be imposed."

154. The Delegation of Australia agreed with the general comments made by some Delegations regarding the need for flexibility and clarity in Article 4. It believed that the policy intents were not well defined and not particularly clearly articulated in any of the options. It agreed with the Delegation of New Zealand that Option 3 probably captured the key issues most clearly. It was important to recognize that any procedures that might be enacted should not be burdensome for holders of TK. It proposed a simplified language of Article 4.3 as follows: "[t]hese measures should be accessible and not burdensome for holders of traditional knowledge".

155. The Delegation of the Russian Federation preferred Option 1 of Article 4.2. It believed that at present provisions relating to an alternative dispute resolution mechanism should not be excluded. It believed that Option 3 contained a number of interesting and useful proposals that could be taken into account by the facilitators.

156. The Chair introduced Article 5 "Administration of Rights" an appropriate national or regional competent authority or authorities and opened the floor for comments.

157. The Delegation of Canada proposed the following text: "5.1 Member States may, in consultation with the holders of traditional knowledge, establish an appropriate national or regional competent authority or authorities. The functions may include, but need not be limited to: (a) disseminating information about traditional knowledge and its protection; (b) providing advice to traditional knowledge holders and users on the establishment of mutually agreed terms; (c) assisting, where possible and appropriate, the holders of traditional knowledge in the use of their traditional knowledge." It proposed to eliminate Article 5.2. It also proposed Article 5.3 as follows: "[t]he identity of the national or regional authority or authorities should be communicated to the World Intellectual Property Organization." It proposed Article 5.4 as follows: "[t]he

establishment of a national or regional authority or authorities under this instrument is without prejudice to the ability of traditional knowledge holders to administer their traditional knowledge, in accordance with domestic law." It proposed to rename Article 5 "Administration".

158. The Delegation of New Zealand suggested restructuring Article 5 into two options. Option 1, which would more fit in a centralized national authority approach, would include Articles 5.1, 5.2 and 5.3. Option 2, which would for those more interested in a more relaxed competent authority approach, would include alternative of Article 5.1 and Article 5.4. Regarding communication to WIPO, it was not sure why some Delegations wanted to foresee that. It noted that it would be difficult to implement in some countries, such as New Zealand. It had no intention of establishing one single authority that would deal with those issues for the tribes of New Zealand. There were many tribes with many authorities and it was difficult to tell who they were and what they did. It believed that there would be a massive compliance exercise to try to tell WIPO who they were and WIPO would not want countries to do that. It suggested deleting the text that appeared before Article 5.1, because it duplicated.

159. The Delegation of Mexico stated that there were two alternatives of Article 5.1(b). It would be better to renumber them as Alternatives (i) and (ii). It suggested eliminating Article 5.1(c) because it had already been included in the article regarding sanctions.

160. The Delegation of Sri Lanka supported the suggestion made by the Delegation of Canada that Article 5 should be "Administration" not "Administration of Rights". It believed that there should be authorities under Article 5. However, it suggested studying more on how to establish such authority or authorities. It believed that the authority or authorities should be intergovernmental, because the national or regional character would not meet the need for the rights holders. The facilitators should consider what the authorities should consist of. Regarding the functions, it believed that the authority or authorities should have a jurisdiction not only for TK but also for other aspects. The indigenous representatives should be invited to be members of such authority or authorities.

161. The Delegation of the United States of America supported the comments made by the Delegation of New Zealand regarding the difficulties with establishing a centralized system for the administration of rights. It proposed the following alternative to Article 5.1: "(1) Researchers and others should seek the prior informed consent of communities holding traditional knowledge, in accordance with customary laws of the concerned community, before obtaining protected traditional knowledge. (2) The rights and responsibilities flowing from access to protected traditional knowledge should be agreed upon by the parties. The terms for the rights and responsibilities may include providing for the equitable sharing of benefits arising from any agreed use of the protected knowledge, the provision of benefits in exchange for access, even without benefits being derived from use of the traditional knowledge or other arrangements as agreed. (3) Measures and mechanisms for obtaining prior informed consent and mutually agreed terms should be understandable, appropriate and not burdensome for all relevant stakeholders, in particular for protected traditional knowledge holders; and should ensure clarity and legal certainty."

162. The Delegation of the EU, speaking on behalf of the EU and its Member States, approved the possibility for Member States to establish national or regional authority or

authorities. It found that such bodies could be for the benefit of indigenous people and local communities. With regard to the chapeau of Article 5.1, it could support the current wording which was "A Member State may, in consultation with the holders of traditional knowledge, in accordance with its national law, establish or appoint an appropriate national or regional competent authority or authorities." It believed that the functions of the authority should be determined in consultation with the holders of TK. However, it did not believe that the functions as such should be authorized by the holders. It did not find that the authorities should be enabled to act as a judiciary or an enforcement agency. Moreover, the authority should not be competent to administer TK protection in situations where there was no holder of that TK. That would not be consistent with the definition of beneficiaries. It added that the functions of the authority or authorities might include, according to national law, activities related to dissemination of information concerning protection of TK and assisting TK holders on aspects concerning the use and practices with regards to TK. It supported that the identity of the authority should be communicated to WIPO.

163. The Delegation of the Republic of Korea fully endorsed the suggestions made by the Delegation of Canada on the title of Article 5 and the new text.

164. The Delegation of the Plurinational State of Bolivia proposed to add a paragraph at the beginning: "[t]he creation of a national or regional authority or authorities under this Article shall be established according to national legislation of Member States and the rights of the owners of traditional knowledge to administer their rights under their protocols and customary laws and practices." Regarding Article 5.2, it proposed as follows: "[w]here traditional knowledge fulfills the criteria under Article 1, and is not specifically attributable to or confined to a community, the authority may, with the consultation and approval of the traditional knowledge owners [holders] where possible, administer the rights of that traditional knowledge, in accordance with national laws."

165. The Delegation of the Russian Federation generally supported the idea of establishing a national or region authority for the administration of rights. Regarding the functions to be attributed to such a body, those were functions that required some further clarification. It was not possible for such an authority to decide unilaterally whether or not a particular action was an infringement or an act of unfair practice. Such a decision could only be taken by a judiciary body or by another appropriate authority. It therefore requested the IGC to further clarify the functions of such an authority. Finally, it supported Articles 5.3 and 5.4.

166. The representative of Tupaj Amaru stated that the Delegation of the EU, speaking on behalf of the EU and its Member States, had mentioned, in his view, that there was no owner of TK. He wondered who were the owners or custodians of TK, should that be the case. There were so many square brackets and alternatives in the text that the IGC would never be able to adopt an international instrument. He proposed a new Article 5 "Application of Collective Rights" as follows: "5.1. Contracting Parties shall establish, in consultation with the owners or holders of the traditional knowledge, and with their free prior informed consent, a national authority or authorities with the following functions: (a) adopt appropriate measures to guarantee the safeguarding of traditional knowledge; (b) disseminate information and promote practices, studies and research for the conservation of traditional knowledge when it is required by their holders; (c) give assistance to the holders on the exercise of their rights and obligations in case of disputes with users; (d) inform the public regarding the threats facing traditional

knowledge; (e) verify whether the users have obtained the free prior informed consent; and (f) supervise the fair and equitable sharing of benefits derived from the utilization of traditional knowledge. 5.2. The nature of the national or regional authority or authorities, created with the participation of indigenous peoples, shall be communicated to the Secretariat of the World Intellectual Property Organization."

167. The Chair noted that the Delegation of Sri Lanka partially supported the proposal made by the representative of Tupaj Amaru.

168. The Chair introduced Article 7 entitled "Term of Protection" and opened the floor for comments.

169. The Delegation of Cuba supported Option 1 with the deletion of "should". It would support that option provided that the definition of TK in Article 1 included that TK was inalienable and imprescriptible.

170. The representative of Tupaj Amaru supported the comments made by the Delegation of Cuba. He proposed a new text as follows: "The protection shall be applied and last for the life of indigenous peoples and local communities as stipulated in Article 1. (a) The protection shall remain while the immaterial cultural heritage is not accessible to the public domain. (b) The protection of secret, spiritual and sacred traditional knowledge shall last forever. (c) The protection against biopiracy or any other infringement carried out with the intention of destroying wholly or partially the memory, the history and the image of indigenous peoples and communities."

171. The Chair noted that the Delegation of Sri Lanka supported the proposal made by the representative of Tupaj Amaru.

172. The representative of FAIRA, speaking on behalf of the Indigenous Caucus, supported the proposition made by the Delegation of Cuba.

173. The Delegation of Canada proposed language as follows: "Member States may determine the appropriate term of protection which may last as long as the TK fulfills the criteria of eligibility for protection according to Article 1."

174. The Delegation of Mexico supported Option 1.

175. The Delegation of Ecuador supported Option 1, as supported by the Delegation of Cuba. It believed that the word "shall" should remain. It hoped that that provision would be binding.

176. The Delegation of Sri Lanka supported Option 1 with the word "shall". It thought that there should be a better phrase for "as long as the traditional knowledge fulfills" because that phrase was not set into a diplomatic language. It wished that the facilitators could take note of that. Since there was a reference to Article 1, it emphasized that "traditional medicine" should be added to Article 1.

177. The Delegation of the EU, speaking on behalf of the EU and its Member States, supported Option 1.

178. The Delegation of India supported Option 1.

179. The Delegation of the United States of America supported the new option proposed by the Delegation of Canada.

180. The Delegation of Brazil supported Option 1, since it could not accept the distinction among terms of protection based on the value and characteristics of TK as referred to in Option 2.

181. The Delegation of the Plurinational State of Bolivia supported Option 1. Following the comments made by the Delegation of Cuba, it proposed the language as follows: "Protection of traditional knowledge shall last as long as traditional knowledge fulfills the criteria of eligibility for protection according to Article 1. Traditional knowledge is transmitted from generation to generation in different forms, and is inalienable, indivisible and imprescriptible."

182. The Delegation of the Trinidad and Tobago supported Option 1. It preferred "shall" instead of "should". Regarding the comments made by the Delegation of Sri Lanka, it suggested replacing "fulfills" with "satisfies".

183. The Delegation of Turkey supported Option 1. It proposed to add at the end of Option 1 "and holders want traditional knowledge to be protected".

184. The Delegation of Egypt supported Option 1 with the use of the word "shall".

185. The Delegation of New Zealand supported Option 1. It noted that it seemed that no Delegations supported Option 2 so far. It wondered whether the proposer of Option 2 could explain how that option could work. It found that it was difficult to understand how the law would distinguish between characteristics and value of TK.

186. The Delegation of the Russian Federation supported Option 1.

187. The representative of the Health and Environment Program preferred the word "shall". Regarding the comments made by the Delegation of Sri Lanka on traditional medicine, she suggested using the term "health", because it was difficult to determine what constituted a medicine and what did not.

188. The Chair noted that the Delegation of Sri Lanka supported the second proposal made by the representative of the Health and Environment Program.

189. The Chair introduced Article 8 entitled "Formalities" and opened the floor for comments.

190. The Delegation of Australia preferred Option 1. From a policy point of view, it raised a question regarding Option 2. It observed that it did not seem to be any particular reason why the protection of TK required some formalities. In its view, there did not seem to be any particular reason why particular circumstances in any Member State would require formalities for the protection of TK.

191. The Delegation of Oman supported Option 2. It believed that Option 2 would guarantee protection in an appropriate way. It encouraged countries to maintain registers.

192. The Delegation of Côte d'Ivoire supported Option 1. It wondered whether it would be possible to merge Articles 8.1 and 8.2.

193. The representative of Tupaj Amaru believed that Article 8 created many barriers which could prevent the protection of TK.

194. The Delegation of Sri Lanka supported Option 1. It proposed an alternative language: "The protection of traditional knowledge shall not be subject to any formality. However, in the interest of transparency, certainty and the conservation of traditional knowledge, the relevant national authorities may maintain registers or other records of traditional knowledge."

195. The Delegation of Peru believed that the protection of TK should not be subject to any formality. It supported Option 1. It agreed with the comments made by the Delegation of Australia. It stated that there was no argument justifying the need for formalities in the instrument. Other Delegations had referred to the issue of recognition of TK. However, it believed, regarding Option 2 that "conservation" as referred to should be optional, but not a condition.

196. The Delegation of New Zealand supported the statements made by some Delegations that it was important not to require formalities. It noted that registers were a delicate issue for a number of countries with indigenous populations who did not want the State to take a role in documenting their TK for a number of reasons. It echoed the statement made by the Delegation of Australia. It understood that some countries found registers helpful. If those countries wanted to have registers, that was absolutely fine. However, it said that there was no need to have it written in that instrument.

197. The Delegation of Morocco supported Option 1. It understood the concerns expressed by some Delegations on the issue of registration. If the IGC wanted to have a truly international instrument, all Delegations should bear in mind the concerns of different countries. It proposed to keep Option 1 of Article 8.1 and to add a new paragraph: "Nonetheless in consultation with rights holders, Member States may envisage any form they see fit for the registration of traditional knowledge".

198. The Delegation of the Republic of Korea supported Option 2. Regarding Article 8.2, it proposed to replace "may" with "should", and to replace "relevant national authorities" with "a relevant national authority or authorities".

199. The Delegation of the EU, speaking on behalf of the EU and its Member States, supported Option 1 of Article 8.

200. The Delegation of Ecuador preferred Option 1, which it thought best reflected the interest of its country. It believed that this Option was not an obstacle to countries that wished to establish a registration system. It noted that countries could do so with the agreement of indigenous peoples or decide to set up a register for the purpose of the conservation of TK.

201. The Delegation of the Trinidad and Tobago supported the proposal made by the Delegation of Sri Lanka. It preferred Option 1 of Article 8.1 and agreed with the linkage or the integration of Option 1 of Article 8.1 with Article 8.2.

202. The representative of FAIRA, speaking on behalf of the Indigenous Caucus, supported the comments made by the Delegation of Australia in relation to Option 1 of Article 8.1. It also supported the additions made by the Delegation of Sri Lanka.

203. The Delegation of the United States of America believed that formalities might be required for the protection of TK. Therefore, it supported Option 2 with an amendment. It suggested replacing “requires” with “may require”.

204. The Delegation of Jamaica supported Option 1. It also recognized the fact that a registration system would be something good to have in place. It would not want to be mandatory, but it recognized its importance.

205. The Delegation of Brazil supported Option 1. It believed that indigenous peoples and local communities had several ways of organization. In Brazil, some of them did not have any written registry of their knowledge. For that reason, it could not expect them to fulfill formalities in order to have their rights protected.

206. The Delegation of China believed that the protection of TK should not be subject to any formalities. In the meantime, it agreed with Article 8.2 which provided, in the interest of transparency, that certain national authorities might maintain registers or other records of TK.

207. The Delegation of the Russian Federation believed that Option 1 was the most appropriate. On the issue of registers, it thought that such registers might be maintained by national authorities if they so wished.

208. The Delegation of the United Republic of Tanzania supported Option 1 and it wished to maintain the word “shall”.

209. The Chair introduced Article 9 entitled “Transitional Measures and opened the floor for comments.

210. The Delegation of Norway supported the text of Article 9.1. It proposed a new paragraph as follows: “Notwithstanding paragraph 1, anyone who, before the date of entry into force of this instrument, has commenced to utilize traditional knowledge which was legally accessed, may continue a corresponding utilization of the traditional knowledge. Such right of utilization shall also, on similar conditions, be enjoyed by anyone who has made substantial preparations to utilize the traditional knowledge. The provision in this paragraph gives no right to utilize traditional knowledge in a way that contravenes with the terms the beneficiary may have set out as a condition for access.”

211. The Delegation of Canada noted that the exact format of provisions relating to transitional measures would be determined by the sort of instrument. It wanted to ask the facilitators to consider the different sorts of instruments that might be envisaged in formulating the options as it would affect the technical wording.

212. The Delegation of Australia supported the comments made by the Delegation of Canada. One of the pillars of IP protection was certainty of rights. Both options of Article 9.2 were not entirely clear in terms of the objectives to be achieved. It proposed an alternative Article 9.2 as follows: “The States should ensure that the rights already acquired by third parties are not affected/remain protected”.

213. The Delegation of Brazil supported Option 1. Its understanding was that this instrument could not have retroactive effects on the rights previously acquired. It proposed Article 9.3 as follows: "Provisions under this instrument shall not be applied retroactively."

214. The Delegation of the EU, speaking on behalf of the EU and its Member States, fully supported that only that TK which fulfilled the requirements eventually agreed upon Article 1 should be covered by that instrument when it entered into force. It supported the comments made by the Delegation of Australia and echoed by the Delegation of Canada concerning the final nature of the instrument. With regard to Article 9.2, it recognized that certainty of IP was important in that respect and that it preferred Option 1.

215. The Delegation of the United States of America supported Article 9.1 with an amendment. It suggested replacing "moment of the provisions coming into force" with "adoption of this agreement". The intention of that amendment would be to reflect the position that the Delegation would not like to prejudice the outcome of the negotiation. It also supported Option 1 with some amendments. It suggested bracketing "already" and adding at the end of that paragraph "at the adoption of this document". That intended to reflect that there was no retroactive effect. The Delegation would be willing to consider the proposed new paragraph by the Delegation of Brazil.

216. The Delegation of the Russian Federation believed that there should be no retroactivity. It supported Option 1.

217. The Chair introduced Article 10 entitled "Consistency with the general legal framework" and opened the floor for comments.

218. The Delegation of Canada stated that it was difficult to determine the exact language as the IGC had not yet determined the exact sort of instrument it was negotiating. It drew some attention to the work that the IGC had done on TCEs with a very similar article. It suggested that the facilitators might wish to look at that article, as it might actually speed the process.

219. The representative of Tupaj Amaru proposed the following text: "The provisions under this instrument should in no way diminish the protection measures that have already been granted under the auspices of other instruments or treaties. These provisions should be applied in accordance with the respect of the cultural heritage of mankind as understood by 2003 Convention for the Safeguarding of the Intangible Cultural Heritage of UNESCO. They should also be fully in line with the FAO's 2001 International Treaty on Plant Genetic Resources for Food and Agriculture. They should be in line with the provisions of the UN Declaration on the Rights of Indigenous Peoples adopted in 2007."

220. The Chair noted that the Delegation of Sri Lanka supported the proposal made by the representative of Tupaj Amaru.

221. The Delegation of New Zealand stated that the two options of Article 10.1 seemed to be quite similar. The key concept in both options focused on consistency with relevant international instruments. There was no need to have two options doing that. It suggested adding a second element which was "IP". It proposed the text as follows:

“Protection under this instrument should be consistent with other relevant international instruments including international intellectual property instruments.”

222. The representative of the Health and Environment Program, with regard to Option 1, indicated that the CBD Nagoya Protocol was not well-known and had yet to be ratified by a number of countries. She had misgivings about it as serving as the legal basis of the discussions. It was more appropriate to refer in general terms to international and regional instruments, putting the CBD Nagoya Protocol to the side, because there were regional agreements such as those of the African Regional Intellectual Property Organization (ARIPO), as well as others, which had to be taken into account. She stressed the importance of knowing exactly how many instruments would be mentioned in the article.

223. The Delegation of the United States of America preferred Option 2, and offered the following edits: at the end of the first line, it wished to replace the word "the" with the word "any." In the second line, the first occurrence of the word "the" could be deleted. That slightly modified formulation did not imply that other agreements necessarily provided protection for TK.

224. The Delegation of Brazil supported Option 2 of Article 10.1, and the alternative of paragraph 10.2.

225. The Delegation of the Russian Federation preferred Option 2. However, it wished to shorten it to: “Protection under this instrument should leave intact and should in no way affect the rights or the protection provided for in international legal instruments.” In other words, it wished to delete everything that came after “legal instruments.” In that abbreviated version, it was acceptable.

226. The Delegation of the EU, speaking on behalf of the EU and its Member States, supported Option 2 of 10.1, while maintaining the brackets around the references to specific treaties which it felt were not necessary. It did not support paragraph 10.2.

227. The Chair introduced Article 11, which dealt national treatment and other means of recognizing foreign rights and interests,. and opened the floor for comments.

228. The Delegation of New Zealand said that Article 11 had been the subject of much struggle, and so far the language was along the lines of national treatment. But it noted that a number of Delegations had raised the question of whether national treatment was appropriate, particularly when a number of countries had specific protection in place for indigenous peoples, which went to the very heart of the relationship between a State and the indigenous peoples. It said that the IGC had considered the principle of reciprocity, which would work up to the standard set in the international instrument. But if a country wanted to go further and provide a higher protection internally because of a special relationship with the indigenous peoples in the country, it would not be required to offer that to other countries. The Delegation of New Zealand proposed some language, as discussed with the Delegation of Australia, for the facilitators to consider: “The national of a party may only expect protection equivalent to that contemplated in this instrument in the territory of another party, even where that other party provides for more extensive protection for its nationals.” It recognized that the language was not eloquent, but the idea was there for the facilitators to consider.

229. The Delegation of the EU, speaking on behalf of the EU and its Member States, fully acknowledged the need for appropriate means of recognition of foreign rights holders. However, it did not support an international legally binding instrument as an outcome of the negotiations. Therefore, it could not accept Article 11 in its current form. It suggested that further deliberations be carried out to meet the concerns with regard to foreign rights holders.

230. The Delegation of the United States of America supported the concept of national treatment as reflected in the article. However, it stated that it registered Native American insignia, but not the insignia of all native people. Therefore it wished to further consider the issue.

231. The Delegation of Norway proposed new text in Article 11, in a similar way to what had been proposed by the Delegation of New Zealand: "Each Contracting Party shall, in respect of traditional knowledge that fulfills the criteria set out in Article 1, accord, within its territory, to beneficiaries of protection as defined in Article 2 whose members primarily are nationals of, or are domiciled in the territory of, any of the other Contracting Parties the same treatment that it accords to its national beneficiaries."

232. The representative of Tupaj Amaru wished to submit a new article, closely related to the UN Declaration on the Rights of Indigenous Peoples.

233. The Chair explained that no new articles would be added until the completion of the work on the existing Articles and Principles and Objectives. The Chair opened the floor on Article 12.

234. The representative of Tupaj Amaru proposed a new, cleaned up, amended and corrected version of Article 12: "For the purposes of the present instrument, in instances where traditional knowledge is located in territories of different countries, Member States in consultation with indigenous peoples and with their prior informed consent, shall commit to set up cooperation measures at bilateral, regional and international level within the framework of the exchange of information and experiences and/or common experience in the promotion of the above- mentioned knowledge. Without prejudice to the provisions of domestic legislation or the common law rights of indigenous peoples, State parties shall recognize the protection of traditional knowledge as a matter of collective interest for humanity as a whole."

235. The Chair noted that there was no Member State support for the proposal by the representative of Tupaj Amaru.

236. The Delegation of the EU, speaking on behalf of the EU and its Member States, said that, in the first paragraph, the phrase "prior informed consent" was not appropriate. It said that it was a drafting issue for the facilitators to take into account. Also, the content of the second paragraph belonged rather under "Objectives and Principles" than under an article, because it was more general in nature.

237. The Delegation of the United States of America supported the first paragraph, and preferred the "should" formulation. It had concerns about the feasibility of a global mutual benefit-sharing mechanism, as stated in the second paragraph. In addition, it proposed the following new language: "In order to document how and where traditional knowledge is practiced, and to preserve and maintain such knowledge: Efforts should be made by national authorities to codify the oral information related to traditional

knowledge for the purpose of enhancing the development of databases of traditional knowledge so as to preserve and maintain such knowledge. Efforts should also be made to facilitate access to information, including information made available in databases, relating to traditional knowledge by intellectual property offices. Intellectual property offices shall ensure that: such information is maintained in confidence, except where the information is cited as prior art during the examination of a patent application."

238. The Delegation of Australia suggested simplifying paragraph 1 as follows: "In instances where traditional knowledge is located in territories of different Member States, those Member States should cooperate in addressing instances of trans-boundary traditional knowledge."

239. The Delegation of Japan supported the intervention made by the Delegation of the United States of America, with regard to the creation of a database of TK to preserve the knowledge and to facilitate access.

240. The representative of CAPAJ said that it was appropriate to take into account the fact that indigenous peoples predated republics, countries, institutions, even in colonial times, and that they had a long-standing history of production of knowledge and cultural expressions which had been forged through permanent and ongoing contact with the land and ecosystems. However, as a result of historical circumstances, those territories were divided into parts, and that had interrupted the continuous work and production by those peoples. He considered that the proposal made by the Delegation of the United States of America had to be analyzed, because, as indigenous peoples, he felt it would be appropriate to look at the issue, not necessarily from the point of view of enabling access, but rather of enabling the continued production by indigenous peoples, despite that their territories had been divided along political or geographical lines. Therefore, he requested that the facilitators take that into account.

241. The Chair opened the discussion on Objectives and Principles. He said that Objectives and Principles had not been discussed by the IGC for some time. Some of the Objectives were more directly related to IP than others. There was considerable scope for reduction and greater focus, and he particularly invited the IGC to remove those that were not IP-related. He recalled that the IGC was dealing with the misappropriation of TK, and therefore, IP-related forms of protection of TK. He opened the floor for comments on Objectives and Principles.

242. The Delegation of the EU, speaking on behalf of the EU and its Member States, echoed some of the Chair's comments, and recalled that the instrument was for the protection of TK and that the IGC had to limit those objectives to that issue. It recalled that the role of the Objectives and Principles was to inform and direct the work of producing an instrument, and to help in understanding the context of the instrument. They were not intended to preempt the instrument or act as an anchor to ensure that the elements were included in the instrument. It added that the IGC had to set out what it wished to achieve, but not necessarily in such detail. Turning to the text, it felt that the options for Objectives which began on the last third of page 3, with (i) "recognize the holistic nature of traditional knowledge…" and ran on to the start of page 4, were more direct and focused than the first sixteen Objectives. It considered those as an alternative to the first sixteen Objectives and supported using them as the basis of the work. It suggested replacing, in Objective (i), the word "holistic" with the word "distinctive" and, in Objective (vi), the word "repress" with "prevent." In Objective (iii), it suggested adding, at

the end of “meeting the actual needs of holders (…)”: “taking into account the fair and legitimate balance that must be struck between the different and relevant interests that have to be taken into consideration.” Finally, on Objective (ix) , it proposed deleting “and the principles of free and prior informed consent.” It said it wished to return at a later stage to address the Principles.

243. The Delegation of Japan, first, recalled that Objectives and Principles were important, as the basis on which substantive provisions were built. Second, there remained a lot of unresolved questions, even after vigorous work at the IGC and IWGs. The Delegation was ready to engage in work with a constructive spirit towards common understanding on those remaining questions, which was an essential and appropriate process to reach a concrete outcome. As to Objectives, items (i) and (ii), considering that science developed by utilizing the accumulation of intelligence and by creating or finding novel knowledge based on it, if scientific value was to be recognized in line with the aforementioned idea regarding TK, the discussion had to be based on the premise that TK could be utilized by a third party in some manner. That concept had to be reflected in the Objectives, Principles, or in any substantive Article. Objective (iv) and each Article were provided on the basis that TK had to be protected from utilization by other parties, as well as preserved. It had to be reasonably explained from which factors of TK that basis derived. It considered that the value of TK and its protection had not yet been properly illustrated and rationalized. It noted that, in order to construct a legal framework, an appropriate logic to support the substantive aspect of the structure had to be fully elaborated. If the value and the protection of TK were grounded in cultural identity, it was reasonable to think that other parties than TK holders were not allowed to make use of the TK. In that context, no rationale could be found in recognizing the scientific or economic value based thereon in TK.

244. The representative of FAIRA, speaking on behalf of the Indigenous Caucus, suggested inserting the word “peoples” after “indigenous” in the phrase “indigenous and local communities” in items (i) and (x).

245. The Chair noted that the Delegations of Australia, Bolivia and Norway supported the proposal made by the representative of FAIRA, speaking on behalf of the Indigenous Caucus.

246. The Delegation of Canada recalled that there were two options for Objectives: detailed ones and higher-level ones. It was preferable to work on a shorter, more high-level list, and to identify Objectives that could be combined. For example, item (iv) and (v) could be integrated into one higher level Objective. Similarly, items (vi) and (viii) could be integrated into an Objective focusing on the principle of community development. In addition, the promotion of creativity and innovation, which had been a key part of the Committee’s discussions over the last sessions, could also be added. With respect to item (iii), the user perspective (those engaging with the beneficiaries) had to be added as an overriding principle. It was important to determine whether to work on the comprehensive list on pages 1, 2 and 3, or on the short list on pages 3 and 4. It reserved its comment until later.

247. The Delegation of Mexico commented on the Objectives as a whole, and reserved its right to speak on specific parts in more detail. On item (i), it preferred “holistic” to “global” or “overall.” It also wished to remove the words “economic” and “commercial.” It supported item (ii), and wished to remove the square brackets around “protection of the

environment." On item (iii), it wished to replace "holders" with "owners." It also called for the addition of "through fair benefit-sharing." Under item (v), it suggested changing the word "connected" in the Spanish version to "associated" knowledge. It requested that the language of the text be based on other existing international instruments such as the CBD Nagoya Protocol. Under item (vii), it called for the replacement of "customary laws" with "customary and community laws," again on the basis of the language of the CBD Nagoya Protocol. In the title of item (viii), the language in square brackets had to be deleted, leaving simply "repress misappropriation and misuse." Under item (x), it wished to replace "holders" with "owners and custodians." Under item (xi), it suggested modifying the Spanish version of the title and making the following amendments: "Ensure the safeguarding of traditional knowledge on the basis of customary laws, protocols and community procedures, through prior informed consent, and exchanges, based on mutually agreed terms in coordination with international regimes governing genetic resources." Under item (xi), it wished to add the word "fair" prior to "equitable." Under item (xii), it wished to add "the establishment of mutually agreed terms" at the end. Under item (xiii), it suggested adding the words "owners and custodians" after and before the word "holders" as had been suggested previously. It also wished to replace "traditional" with "indigenous" and "connected" in Spanish with "associated." On item (xiv), it proposed deleting the bracketed language, and inserting "each country may consider on the basis of prior informed consent with indigenous peoples and local communities the creation of digital libraries of traditional knowledge and associated genetic resources." Finally, on item (xvi), it wished to replace the word "global" with the word "collective."

248. The representative of the World Health Organization (WHO) said there were many therapeutic philosophies, products and practices in the realm of traditional medicine. Traditional medicine was the sum total of knowledge, skills and practices based on the theories, beliefs and experiences, and indigenous to different cultures, and used to maintain health, as well as to prevent, diagnose, improve or treat physical and mental illnesses. The WHO had acknowledged and embraced traditional medicine as part of healthcare systems worldwide for many years, and developed its first official traditional medicine strategy in 2002. There was therefore an overlap between the work of the IGC and that of WHO. The decisions made by the IGC and the Member States of WIPO could have an impact on public health. It was in the interest of public health that the potential of traditional medicine be realized and made accessible to a wider population. Therefore, it was important that any alternative IP protection system for TK not restrict access to traditional medicine, to the detriment of efforts to further develop existing treatments, to develop products or to provide access to such treatments in a wider patient population. Traditional medicine was widely used and was of rapidly growing health and economic importance. In some Asian and African countries, up to 80 percent of the population used traditional medicine to help meet their healthcare needs. In Asia and Latin America, traditional medicine had played a historic and cultural role in healthcare systems and continued to be integrated in national health services. It was true that despite the potential of many traditional therapies, and their widespread and centuries-old use, many of them remained unevaluated and their use was not monitored. That lack of knowledge often did not allow physicians to identify safe and effective traditional therapies and to promote their rational use. For traditional medicine to play a greater role as a source of rational healthcare, more research was required on the safety, efficacy and quality of related products and practices. Traditional medicine as such was also an important source of knowledge for the further development of new modern medicines and treatments. For example, many medicinal products used in

today's modern medicine were in fact derived from compounds isolated from or found in a medicinal plant or developed through the application of modern technologies to traditional medicine and medical knowledge. In that context, IP rights and the work of the IGC played a significant role. The representative of the WHO stated that the WHO's mandate under the Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property ("the Global Strategy") was to maximize innovation to meet the needs of developing countries, and to promote access to medicines for all. In the sphere of protecting TK, the Global Strategy noted the importance of access to traditional medicine and medicinal knowledge in the patent examination process, including, where appropriate, information on traditional medicine in digital libraries, in order to prevent the misappropriation of such knowledge. He noted that this principle was mentioned in the Policy Objectives under discussion in the IGC. The Global Strategy also supported related, ongoing discussions, including the IGC deliberations. From the perspective of public health, a new system of protecting TK should not only provide for a fair and equitable sharing of benefits, but should also support public health objectives. To realize the full health benefits of traditional medicine, further research in that area was required. He said he had already mentioned briefly the widespread use and the great importance of traditional medicine for public health, as well as the need to gather information on the safety, efficacy and quality of existing treatments. He had also mentioned the importance of traditional medicine as a potential source for the development of new modern medicines. It was desirable that any new protection system for TK pursues ongoing innovation as an objective, and he noted that this was one of the Objectives under discussion in the IGC. Any new protection system should not only provide protection to the owner of TK, but should also allow the development of new treatments based on traditional medicine and more broadly allow for innovation for public health and the sharing of any benefits arising out of the commercialization of resulting products and therapies. Both for the research into existing traditional medicine as well as development of new treatments and therapies required a certain degree of access to related knowledge. As the WHO Commission on Intellectual Property, Innovation and Public Health pointed out in 2006 in its report, there was a risk "that introducing a form of intellectual property protection for traditional knowledge may actually had the effect of restricting access by others, thereby inhibiting downstream innovation." Any alternative IP protection system for TK should not restrict access to traditional medicine to the detriment of efforts to further develop existing treatments. In the interest of public health, the potential of traditional medicine was realized and was made accessible to a wider public. Those objectives were not contradictory to other conquering principles and objectives, namely the principle of prior informed consent, the need to prevent the misappropriation of TK and the need for a fair and equitable benefit-sharing system with regard to the commercialization of TK. He added that this would allow for the mutual benefit of the public and TK holders, whether individuals or communities. Within the context of traditional medicine, he mentioned a recent example of access and benefit-sharing mechanism which was incorporated in the recently adopted WHO Pandemic Influence Preparedness Framework for the Sharing of Influenza Viruses and Access to Vaccines and other Benefits. He explained that this framework balanced the need to share influenza viruses of human pandemic potential on the one hand, and on the other, the benefits arising from the sharing of those viruses, including access to and distribution of affordable diagnostics and treatments. He added that those two objectives were equally important parts of the Collective Action Framework for Global Public Health. The Framework managed to provide for access and benefit-sharing while meeting public health needs at the same time. He congratulated the IGC for the progress made so far on that important topic. He was confident that the IGC would be successful in fulfilling its

mandate to create an international legal instrument to ensure the effective protection of GRs, TK, and TCEs, and he hoped that the legal instrument would also contribute to innovation and promote access to new medical products derived from TK for the benefit of public health.

249. The Delegation of Cameroon clarified that it was up to delegations to make comments and up to the facilitators to work out how to put that into drafting language. It pointed out the excessive use of synonyms and redundant language, for example in Objective (iv), the words "preservation," "preserving," "protecting" or "maintaining" appeared on pretty much every line. It was of the view that those redundancies could be cleaned up, and proposed a more concise version of that paragraph which could read: "promote and support the preservation of traditional knowledge through respect and maintenance of traditional knowledge systems." It added that on page 2, item (viii) could be shortened and redundancy avoided as follows: "illicit use of knowledge, misappropriation of traditional knowledge, unfair and inequitable use, misappropriation and misuse" could be replaced with "all other unfair practices, commercial or otherwise," recognizing the need to adapt approaches to national and local needs. Under item (xi), "in coordination with" could be replaced with "in line with", or "in conformity with." Finally, "recognition of holistic nature of traditional knowledge" was essentially a summary of everything that preceded it and there was an opportunity to economize on drafting. It said that in any event, under item (iii), it was more appropriate to state "satisfying the actual needs" or failing that, "responding to the actual needs of holders."

250. The representative of FAIRA, speaking on behalf of the Indigenous Caucus, wished to see among the Objectives a stronger link between indigenous peoples and TK. At the moment, he noted that it existed in item (i). He reminded that TK systems were frameworks for ongoing innovation, distinctive intellectual and creative life, that were fundamentally important for indigenous peoples and local communities and had equal scientific value. He argued that there needed to be a stronger tie, because those knowledge systems were frameworks intrinsic to indigenous peoples and local communities. The terms were not strong enough to express that linkage. In other words, and throughout the Objectives, there had to be an emphasis on indigenous peoples as owners, not just holders of the TK systems.

251. The Chair said that the facilitators were taking note of the comments. He also sought clarification on whether there was a textual proposal to change "holder" to "owner."

252. The representative of FAIRA, speaking on behalf of the Indigenous Caucus, explained that there had to be a clear link between indigenous peoples as owners and TK.

253. The Chair noted that the Delegation of Australia supported that general comment and the specific recommendation, which would be taken into account by the facilitators.

254. The Delegation of New Zealand mentioned, firstly, as mentioned by other delegations, that the shorter form of Objectives on page 3 was a better place to start, for less detail meant less disagreement. Secondly, there was some duplication between some Objectives and Principles; for example, those dealing with "meeting the actual needs," "respect for other international instruments," and the concept of "equitable benefits-sharing." Clarification was needed on what an objective was and what a principle was, because there was some overlap, and on whether both were needed in

the instrument. Thirdly, it agreed with the Delegation of Canada and others, that there was some duplication within the Objectives, and noted that the Delegation of Canada had made some useful suggestions on how to condense those. Fourthly, it noted that at least one of the Objectives was not an objective, e.g., item (i) regarding the "recognition of the holistic nature and value of TK." That was a contextual statement in a preamble rather than an objective.

255. The Delegation of the United States of America thanked the Secretariat for its work on the revised Objectives contained in document WIPO/GRTKF/IC/21/4. That document would serve as a useful basis to continue the work and to deepen understanding of the objectives of the IGC's work, so as to formulate appropriate solutions. It hoped that the IGC's work would be informed by successful national experiences. It wished to see additional Objectives reflected in the text. The first was to "Safeguard and promote innovation, creativity, and the progress of science," which provided new inventions that improved the quality of lives. The second was to "Safeguard and promote the transfer of technology on mutually agreed terms." Whether the technology was reflected in a patent, trade secret, know-how, or a commercial secret such as the traditional medicine of a medicine man, that technology had to be transferable on mutually agreed terms, and any contract should be respected. Finally, it was important for the document to reflect the importance of access to knowledge. Accordingly, the third objective to be added was to "Promote access to knowledge and to safeguard the public domain." It added that access to knowledge benefited the public as well as research institutions.

256. The representative of the Health and Environment Program was pleased with the statement made by the representative of the WHO. She wondered how one could reconcile respect for TK systems and protection of the environment. The Objectives had to be more explicit. She wondered how would TK holders preserve the environment, while developing their TK activities.

257. The representative of WHO suggested discussing this separately with the representative of the Health and Environment Program.

258. The Delegation of Brazil, on Objective (vii), suggested deleting "while recognizing the value of a vibrant public domain." Further, on item (viii), it suggested replacing "repress" with "enforce protection against" and eliminating "unfair and inequitable uses," so the sentence would read: "enforce protection against misappropriation and misuse." The same changes would be made to the body of that item. On item (xii), it suggested replacing "promote" with "guarantee." Accordingly, in the body of that item, it suggested the same change. Its next suggestion on item (xii) was to end the sentence at "the principle of prior informed consent." The rest of the sentence could be deleted. On item (xiii), it suggested replacing "desired" by "requested." On the grant of IP rights, it suggested eliminating the word "improper" so the sentence would read "preclude the grant of IP rights to unauthorized parties." On item (xiv), it suggested replacing the word "curtail" by "impede." It said it had taken note of other Delegations' comments on the text and thanked them for their contributions. It reserved the right to come back to the Objectives at a later stage, with the benefit of having analyzed other Delegations' suggestions.

259. The Delegation of Switzerland welcomed the opportunity to continue the discussions on Objectives and Principles at the IGC. Since it viewed agreement on those as a crucial prerequisite for advancing the work on the Draft Articles, like other

Delegations, it considered the second set of objectives set out on pages 3 and 4 to be the preferred basis for further discussions. It noted that those objectives were more concise and shorter than the first set, while at the same time they contained the main thrust of the more extensive objectives in the first set. It added that they reflected well the discussions held so far in the IGC. It therefore suggested focusing the discussions on the Objectives in the second set.

260. [Note from the Secretariat: Vice-Chair, Mr. Bebeb A.K.N. Djundjunan of Indonesia, was chairing the session at this time]. The Vice-Chair opened the floor on General Guiding Principles.

261. The Delegation of the United States of America thanked the Secretariat for its work on the revised Principles as contained in the Annex to document WIPO/GRTKF/IC/21/4. Although the document talked about balance and equity, it was concerned that the document did not convey that a vibrant public domain was critical to the needs of societies. As a result, it suggested adding some additional principles. First, there had to be a principle to recognize that knowledge that was in the public domain was the common heritage of mankind. Furthermore, it wished to include a principle that it was important to protect, preserve and expand the public domain, because the public domain was essential for creativity and innovation. In order to protect the public domain, there had to be a principle of the need for new incentives to share knowledge and to minimize restrictions on access. It also suggested the addition of a principle that any monopoly on the right to use certain information should be for a limited time. It added that there had to be a principle that recognized the importance of protecting and supporting the interests of creators.

262. The Delegation of Australia suggested that the facilitators consider the Objectives and Principles of the three texts on TCEs, GRs and TK, which were interrelated and could be harmonized.

263. The Delegation of the EU, speaking on behalf of the EU and its Member States, said that in Principles (a) and (b) the reference to “needs” and “rights” needed to be clarified. If those terms were to be maintained, it wished to see them redrafted in such a way as to reference TK protection. Principles (a) and (j) were slightly duplicative; one was about being responsive to the needs, and the other was about providing assistance to address the needs. Echoing the point made by the Delegation of New Zealand, parity between the Principles and Objectives had to be ensured and any duplication removed. As previously stated by the Delegation of the EU, the IGC had to consider the relevance of principles, once a fully elaborated set of objectives had been drafted.

264. The representative of FAIRA, speaking on behalf of the Indigenous Caucus, suggested expanding Principle (b) to recognize the principle of the recognition of rights of indigenous peoples, as enunciated in the UN Declaration on the Rights of Indigenous Peoples and the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention 169). That followed on from the statement made by the Delegation of the EU that a principle of recognition of rights was too broad. It suggested that it either be incorporated as recognition of indigenous rights, or that indigenous rights be included within Principle (b).

265. The Vice-Chair noted that the proposal made by the representative of FAIRA, on behalf of the Indigenous Caucus, was supported by the Delegations of the Plurinational State of Bolivia and Sri Lanka.

266. The Delegation of Canada reiterated its statement made with regard to the Objectives, emphasizing the importance that the Principles be very high-level. It supported the insertions proposed by the Delegation of the United States of America regarding the public domain, creativity and innovation. As mentioned, those had been important parts of the discussion over the past IGC sessions. It wished to make Principle (a) higher level, and to add the element of balance, for it to read as follows: "Principle of responsiveness to the interests of traditional knowledge holders and those who make use of traditional knowledge." It proposed rewording Principle (b) as "Principle of recognition of the interests of holders of traditional knowledge." Principle (c) would read "Principle of effectiveness and accessibility." In the interest of keeping things higher level, it proposed keeping the international elements in one Principle (g), which would read "Principle of respect for and cooperation with other international instruments and processes." It proposed deleting Principle (f) and rewording (h) for it to read: "Principle of respect for use and transmission of traditional knowledge."

267. The Delegation of Brazil, on Principle (f), wished to insert, after "access to": "traditional knowledge and." The sentence would read: "Principle consistent with existing legal systems, providing access to traditional knowledge and associated genetic resources." On Principle (j) it wished to replace "respect for and preparation with other" with "cooperative interface among" so the sentence would read: "Principle of cooperative interface among international and regional (…)." At the end of the sentence, it wished to replace "instruments and processes" by "negotiation processes." It also reserved its right to come back to that text at future sessions, in the light of the contributions made by other Delegations.

268. The representative of CAPAJ acknowledged and was grateful for the endorsement given by certain Member State Delegations for the proposals made by the representative of FAIRA on behalf of the Indigenous Caucus. He was very grateful for that, particularly with regard to Principle (b) on recognition of rights. He also mentioned that a demonstration of TK, a performance of pre-Colombian instruments, and a demonstration of how those instruments had been assimilated with those that were brought over during the colonial period, would take place in Room B on the following day.

269. The representative of FAIRA, speaking on behalf of the Indigenous Caucus, wished to insert, after Principle (h), a new principle: "Principle of recognition of respect for indigenous knowledge, cultures and traditional practices, and the contributions to sustainable development, and problem management of the environment." In that regard, he acknowledged and gave due respect to the source of indigenous knowledge and TK systems: indigenous cultures and peoples.

270. [Note from the Secretariat: The Chair was chairing the session again at this point]: The Chair noted that the proposal was supported by the Delegation of Sri Lanka and that it would be given consideration by the facilitators.

271. [Note from the Secretariat: This part of the session took place after completion by the facilitators of their first revision of the text]: The Chair presented the facilitators' text (Rev. 1) regarding the Draft Articles on the protection of TK. He thanked the facilitators for having worked under time pressure to deliver their text. He invited the facilitators to introduce Rev. 1 and update the IGC on the timetable for delivery of the Rev. 1 on Principles and Objectives.

272. On behalf of the facilitators, Ms. Andrea Bonnet Lopez shared with the Committee the method used for drafting Rev. 1. The facilitators had tried, as much as possible, to bring together all the various options and converge them into one, including elements identified in the plenary as most important, or those giving rise to the most amount of discussion. There were divergent viewpoints and areas of convergence, which were indicated in the text in square brackets and in bold. As an illustration, in the text of Article 1, there were sentences in square brackets and in bold, which indicated the items identified as being the most important. Those representing areas of divergence were not in bold but simply in square brackets. New text contributions made by delegations in plenary at this session were underlined and without square brackets, because they did not give rise to debate in the plenary. There were recurring themes on alternative language reflected throughout the text, such as “shall or should”, “Member States or contracting parties”, and “owners or holders”. It was for the plenary to decide whether text proposals for definitions should be included in the draft articles or in a different document for negotiation. Another item for consideration of the plenary was whether the text should be in the passive or active voice. She appealed to the Delegations of the United States of America and Sri Lanka to meet with the facilitators to straighten out the language of their text proposals. She also indicated that the facilitators could meet with any other delegation was seeking clarity any of the elements previously raised in the plenary. She said that the Principles and the Objectives were not included in Rev. 1 for lack of time, and would be taken up later during this session. [Note from the Secretariat: in the ensuing discussion, many delegations expressed appreciation for the work of the facilitators].

273. The Delegation of Egypt, speaking on behalf of the African Group was of the view though, that IGC 21 was not conducting text-based negotiations with the objective of reaching agreement on a text of an international legal instrument, which would ensure the effective protection of TK. So far, the work of IGC 21 was limited only to expressing previously-known positions on the working document WIPO/GRTKF/IC/21/4. In light of the discussion the Chair held at the beginning of IGC 21, pursuant to the adopted work plan, it recalled that the African Group had proposed that Member States should have the opportunity to conduct informal negotiations, using the facilitators’ text as basis, focusing on the four articles mandated by the General Assembly.

274. The Chair recalled that the plenary had already agreed on the process it would follow. It would be difficult at that stage to fundamentally change the process. He sought clarification from the Delegation of Egypt, speaking on behalf of the African Group, on identifying what was a text-based negotiation and what was not. That would help the IGC to determine whether there was a basis for entering a discussion on revising the working procedure.

275. The Delegation of Egypt, speaking on behalf of the African Group, reiterated that its proposal was to have informal negotiations between the Member States who had intervened on the four key articles. It said that the African Group wished to meet with those Member States to explore ways to advance the text. It agreed with a break for brief consultations on the facilitators’ text, and wished that time would be allocated for informal, cross-regional negotiations to proceed. It reserved its right to conduct a comparison between the Annex to document WIPO/GRTKF/IC/21/4 and the facilitators’ text in order to accurately and faithfully achieve the mandate given by the General Assembly to the IGC.

276. The Chair proposed a break to allow for consultations in whatever configurations delegations chose to use. He would come back to the question of how to define "text-based negotiations" because it seemed there was a need to be very clear on what distinct forms of negotiation existed and when they would qualify as text or non-text-based. In so far as the Chair understood, once words were put together in script then that would be work on a text. If there was a term of art for text-based negotiations, then it would need to be introduced, and all Member States would have to agree on what that term of art would be. He reiterated the invitation of the African Group for cross-regional consultations to advance priority elements of the text, but within the context of the mandate of the IGC to deal with all of the text.

277. [Note from the Secretariat: This part of the session took place after consultations had taken place]: The Chair noted that, consistent with the appeal for cross-regional discussions, the Delegation of Egypt, on behalf of the African Group, had extended an invitation to other delegations to engage in forward-moving discussions on the elements of the facilitator's text. It was his understanding that the discussions had been constructive and useful. He took note of the efforts made in that process. The Chair explained that the process of negotiating the text as submitted by the facilitator remained as was indicated initially. The IGC would proceed to live drafting in the plenary. He hoped that the live drafting and the negotiation would benefit from any informal consultations that took place, but those would not replace the live drafting process in plenary. The Chair invited the regional group coordinators to make short statements, if they so wished.

278. The Delegation of Paraguay, speaking on behalf of GRULAC, highlighted the good work carried out by the Chair. As to the method, the use of terms such as "should", "shall", "Member States" and "Contracting Parties" should be included as one of the main issues of the text.

279. The Delegation of Egypt, speaking on behalf of the African Group, indicated that, the exercise of live drafting could benefit from some guiding principles. First, the IGC should focus and be guided by the objective of the whole process which was to provide protection to TK. Second, it was necessary to focus on the issues related to norm-setting. Third, the IGC could benefit from the elements of convergence which were identified by the facilitators, since it was a good analysis that one could capitalize upon. It said that one could try to streamline the elements of convergence. It recognized that there would remain areas of divergence that were also identified by the facilitators and that it was necessary to think about how to manage those areas of divergence. It hoped that the process would allow the reaching of a more streamlined text.

280. The Chair outlined the suggested guidelines for the live drafting process as follows. Discussions would proceed article by article in the same order as in the previous plenary discussion. After the articles, the objectives and principles would be addressed. He wished to focus on the areas of divergence, which had been placed in bold and in brackets in the facilitators' text, to see if any of that language could not be bolded nor bracketed by consensus. Delegations could also add new text that truly represented new ideas that were not already captured in the text. The goal was neither just to modify existing language nor to simply add additional versions of existing text. The plenary discussion should try to identify duplication or overlap, which might enable options or language to be deleted. Any deletion would be made unless a Member State opposed it. The addition of new brackets was discouraged. All provisions were options

and, therefore, by definition were notionally in brackets. Where convergence could take place, a bracket might need to be inserted merely as a placeholder for an area of disagreement. The text would be put up on the screen and changes would be introduced as follows. Proposed insertions and additions would be underlined. Proposed deletions or questioned passages would be put between square brackets. Slashes would separate drafting options. Options for stand-alone paragraphs or articles might be introduced by "Option" or "Alt" and may be numbered where appropriate. Names of proponents would not be included in the text. More general comments that were not specific textual amendments would be reflected in the report of the session. Live drafting would continue until the end of the day in line with the agreed indicative program. The text as so edited on the screen would be made available to the facilitators who would produce a Rev.2 on April 20, 2012. Delegations would have a chance to peruse that text and comment it in plenary. There would be no further live drafting at that stage and comments would be reflected in the session's report. The text at that stage would be noted and transmitted to the General Assembly. The Chair stressed that he did not wish to see the addition of text that was not relevant. He wished to see a focused effort on seeking convergence wherever that could be achieved. He opened the floor for comments on Article 1.1.

281. The Delegation of Australia referred to the policy intent of the definition in Article 1 and pointed out that the definition did not need to carry all that weight. Many of the elements in the definition might be very important in the broad sense, but they did not appear to be a strong policy rationale for the purposes of the instrument. It considered that increasing the elements appeared to decrease the value of the definition in terms of any legal certainty flying from the protection granted in the instrument. It wished to ask the demandeurs to explain why those elements where there was divergence were included from a policy point of view and what they saw as the policy consequences or outcomes of either including them or excluding them. That would help to understand the purpose of many of the inclusions in the text. It was happy to consider the value of accepting the direct linkage to indigenous peoples or local communities rather than "within a traditional context". It noted that the concept of TK passed on "from generation to generation" that previously appeared in the eligibility criteria at 1.2 had been removed from that Article and had been included in 1.1. It also noted that "techniques" and "processes" did not appear to offer anything further and were just a repetition, since techniques were captured already by "know-how" and processes were captured by "practices". It did not agree with the language "as set out in the criteria for eligibility", because it was not necessary, from a policy or drafting point of view. The elements that the facilitators had identified as being convergent texts were probably the only elements that needed to be included, as well as some language in the last part of the facilitators' text.

282. In response, the Delegation of South Africa, speaking on behalf of the African Group, pointed out that the reference to "knowledge that is dynamic and evolving" was essential and should be retained, since the knowledge that had been passed on from generation to generation did not remain the same. It argued that the knowledge changed as each generation adapted it to its own uses, it was passed on and another generation changed it. It noted that if that phrase was not retained, TK would become static, frozen at a particular time, and the value that each generation added would not be captured. Regarding the phrase "resulting from intellectual activity", it preferred not to have it there, since it mixed two policy frameworks and could be confusing, one that was based on an understanding that that knowledge was collectively owned, used by the

communities, passed on from generation to generation, etc., and another one based on conventional IP rights based on individuals.

283. The Delegation of the Plurinational State of Bolivia recalled that the process came from the need to confer legal protection against misappropriation of TK. That protection was not achieved with the conventional instruments of IP rights, it was necessary to develop *sui generis* norms. In that context, it was important to distinguish between two legal frameworks, the conventional and the *sui generis*. It was important to spell out the true nature of TK. It agreed with the Delegation of South Africa on that TK was dynamic and evolving. It spelled out what was in its view the properties of TK: it was inalienable, indivisible and imprescriptible, in the view of the indigenous peoples of the Plurinational State of Bolivia. It could not be taken by another entity and could not be given away by the indigenous peoples. TK had to be considered as a whole which could not be fractured or fragmented. Since TK was passed on from generation to generation, was evolving and dynamic, it could not prescribe. Those characteristics of TK had to be retained. It stated that to make the paragraph more readable, it could be a good idea to separate it in two paragraphs: one about the nature of TK and its properties, and another one about the uses of TK, which would start with "and which may be associated with agricultural, environmental, (…)". It suggested adding after "developed within a traditional context": "by an indigenous people or local community".

284. The representative of FAIRA, speaking on behalf of the Indigenous Caucus, suggested the removal of brackets in the last sentence of the definition of TK. It pointed out that, without recognizing that as part of the definition of TK, there would be no linkages with indigenous peoples which the instrument intended to protect.

285. The Chair noted that the Delegations of the Plurinational State of Bolivia and the Bolivarian Republic of Venezuela supported that proposal.

286. The Delegation of the United States of America noted that the last sentence was not completely clear because it seemed to be missing a noun.

287. The Chair noted that there was no consensus on the removal of those brackets.

288. The Delegation of India supported the Delegation of South Africa on the question of retaining the reference to "knowledge that is dynamic and evolving" and removing from the text the reference to "resulting from intellectual activity". It would prefer to have an inclusive definition. Therefore, it wished to bracket "refers to" and replace it by "includes". It wished to retain the reference to TK "which may subsist in codified, oral or other forms", since it clarified the nature in which the knowledge had been expressed and brought more clarity to what needed to be covered. It explained that in its country, there was a large amount of knowledge that remained in codified and oral forms. It understood the spirit of the intervention made by the Delegation of the Plurinational State of Bolivia, regarding the inclusion of the reference to the "inalienable, indivisible and imprescriptible" features of TK, but it felt that the best place for that reference was Article 3.

289. The Chair suggested that questions be posed through consultations among delegations; otherwise, the objective of simplifying the text would not be achieved. It invited the plenary to try to seek convergence on deletions.

290. The Delegation of Sri Lanka recalled that it had requested the inclusion of a reference to “traditional agricultural, environmental, health care and traditional and indigenous medical knowledge” after “which may be associated with”. It wished to see that added to the text.

291. The Delegation of the Bolivarian Republic of Venezuela had concerns regarding the use of the term “*apropiación indebida*” in Spanish. It had checked the criminal codes of the Latin American countries and that term seemed to have a meaning related to delivery (“*entrega en depósito*”) and breach of trust. Therefore, it wished to see, in the objectives, in (vi), an explanation of how the term “*apropiación indebida*” would be understood in Spanish. It supported the statement of the Delegation of the Plurinational State of Bolivia and wished to see the brackets removed. It did not believe that there was a contradiction between what was said by the Delegation of the Plurinational State of Bolivia and the Delegation of India. The reference to the “inalienable, indivisible and imprescriptible” features of TK could be included in the definition in Article 1 and also in Article 3. It noted that there had been consensus regarding the removal of the brackets as suggested by the representative of FAIRA speaking on behalf of the Indigenous Caucus, since no one had opposed that. To give continuity and complete the elimination of those brackets, it could be discussed what the Delegation of the United States of America had pointed out and see what that Delegation proposed afterwards.

292. The Chair noted the comments made by the Delegation of the Bolivarian Republic of Venezuela. He pointed out that the facilitators had indicated six core elements of divergence. He also recalled that when the Delegation of Australia intervened at the outset of the discussions, it focused on specific elements of divergence and offered questions that might help to clarify its position. He wondered whether to return to such an approach. He did not want to go to a small group format because he hoped to maintain transparency, openness and inclusiveness in the process. He had seen constructive requests for clarification which might assist in guiding convergence. He suggested using the facilitators’ notes as a point of departure and focusing on addressing the areas of divergence.

293. The Delegation of Brazil proposed to keep “dynamic and evolving”, as proposed by the Delegation of South Africa, on behalf of the African Group. It proposed to replace “refers to” with “includes”, as proposed by the Delegation of India. Regarding the concept of “inalienable, indivisible and imprescriptible”, it suggested keeping it and it was flexible in terms of the placement. It could agree with the facilitators on keeping it in Article 3.

294. The Delegation of the United States of America repeated its query related to the last sentence. It suggested adding “heritage” after “material”. It embraced the remarks made by the Delegation of India that it should be recognized whether TK was subsisted in codified, oral or other forms. Regarding the two choices of “intergenerational” and “from generation to generation”, it might be that it proposed the second phrase. It could support to delete that phrase if there was consensus to use “intergenerational”.

295. The Chair noted that there had been an objection regarding the deletion of “from generation to generation”. The text would be kept as is.

296. The Delegation of Cameroon supported the comments of the facilitators that certain phrases, such as “traditional knowledge is part of the collective, ancestral, territorial, cultural, intellectual and material of indigenous peoples and local

communities", could be better suited for a preamble language. It believed that "inalienable, indivisible and imprescriptible" should be retained as characteristics of TK. It disagreed to include those elements in Article 3 where those elements might be watered down.

297. The Delegation of Cuba supported to maintain "inalienable, indivisible and imprescriptible". It was flexible about the location of that part, either in Article 1 or Article 3.

298. The Delegation of Colombia suggested removing the brackets around "is knowledge that is dynamic and evolving and". It was important to keep it in the definition. It did not opposed to include "inalienable, indivisible and imprescriptible" in Article 3, as long as it remained in the text.

299. The representative of Tupaj Amaru stated that the facilitators had complicated the text, which was full of brackets. the Delegation of Sri Lanka had not been included. He agreed that TK was dynamic and evolving and added that it was a reality and that he had included that concept in his proposal. He agreed to include the concepts of indivisible and imprescriptible, either in Article 1 or in other articles. He preferred to use the term "from generation to generation" which had been used throughout the text.

300. Ms. Andrea Bonnet Lopez, speaking on behalf of the facilitators, asked the Delegation of Sri Lanka to clarify what it had supported and what it had not supported regarding the proposal made by the representative of Tupaj Amaru. The facilitators would include the proposals according to the rules given by the Chair, if the Delegation of Sri Lanka provided clarification.

301. The Chair noted that the text proposed by the representative of Tupaj Amaru would be included if the entire proposal was supported by the Delegation of Sri Lanka. The Chair recalled that proposals from observers could be included in the text only if they were supported in their entirety by at least one Member State delegation without any amendment.

302. The Delegation of Egypt, speaking on behalf of the African Group, expressed concerns about the text which was full of brackets. Based on the comments made by the facilitators, it proposed an alternative: "For the purposes of this instrument, traditional knowledge includes collectively generated and preserved from generation to generation or intergenerational know-how, skills, innovations, practices and teachings. They exist or develop *inter alia* by indigenous or local community." It believed that the alternative did not comprise the whole definition, but was the language that Member States had agreed upon. It added that there would remain other elements of divergence which needed to be discussed.

303. The Delegation of India partially supported the proposal made by the Delegation of Egypt, on behalf of the African Group. It disagreed with the use of the word "collectively".

304. The Delegation of Barbados agreed substantially with the proposal made by the Delegation of Egypt, on behalf of the African Group. It could not agree with the last line. Beneficiaries or who constituted the beneficiaries was an important issue. It could accept that proposal if "indigenous or local community" was replaced by "the beneficiaries as defined in Article 2".

305. The Delegation of the EU, speaking on behalf of the EU and its Member States, thought that some elements of the proposal made by the Delegation of Egypt, on behalf of the African Group certainly had value. It stated though, that it was difficult to make more comments without examining it or discussing it among its Member States.

306. The Delegation of Mexico suggested eliminating the text of the facilitators and working on the basis of the text proposed by the Delegation of Egypt, on behalf of the African Group, even though there were some elements which not all the Delegations shared. It noted that the missing elements could be incorporated as well.

307. The Delegation of the Plurinational State of Bolivia suggested keeping focus on the facilitators' text and said that if delegations worked on the alternative, the new elements would be added, and at some point the IGC would come back to the facilitators' text again.

308. The Delegation of Morocco supported the proposal made by the Delegation of Egypt, on behalf of the African Group. The idea was to start with a basic minimum that everyone agreed on, before adding the elements which would be acceptable to all.

309. After informal consultations, the Chair noted that the alternative proposed by the Delegation of Egypt, on behalf of the African Group, would be kept. He invited the IGC to continue its discussion on the facilitators' text.

310. The Delegation of Mexico suggested inserting "that can be general, secret and/or sacred" covered by brackets after "process". It recalled that this was a concept which had been discussed in IWG 2 and that this concept was essential for the indigenous peoples and local communities from Mexico. Regarding "inalienable, indivisible, and imprescriptible", it preferred to keep it in Article 1. It proposed to remove the brackets around "is knowledge that is dynamic and evolving and", "the processes", "developed within a traditional context", "are inalienable, indivisible, and imprescriptible", and "and which may subsist in codified, oral or other forms."

311. The Delegation of the EU, on behalf of the EU and its Member States, could not support the removal of those brackets.

312. The representative of the Health and Environment Program supported removal of the brackets around everything relating to health. She argued that health was an extremely important issue in Africa, where people lived in the context of poverty. Traditional medicine was used by many persons. She proposed to remove the brackets around "and which may be associated with agricultural, environmental, healthcare and medical knowledge, biodiversity, traditional lifestyles and natural and genetic resources, and know-how of traditional architecture and construction technologies."

313. The Chair noted that the proposal made by the representative of the Health and Environment Program to remove those brackets was objected to by at least one Member State.

314. The Delegation of New Zealand regarding TK being dynamic and evolving, thought that that language had not added to the core elements of the definition of TK. However, after listening to the explanation of the Delegation of South Africa, on behalf of the African Group, it understood that to be about the concept of TK developing over time, and not being static. It agreed with that concept, and could agree to remove the

brackets around it. However, it addressed concerns that instances of TK that had not developed over time and had been static could not be protected. It noted that a possible way around this problem was to take the approach adopted in the TCEs text, where both options included the concept of TCEs being "used, maintained or developed". Regarding "resulting from intellectual activity", it could agree to remove that aspect of the definition, since the concept of intellectual activity is implied in the concept of knowledge. For the next version of the text, it suggested using a structure more similar to that on the page of comments by the facilitators, which would give a clearer idea of what the IGC had agreed and disagreed on.

315. The Delegation of Canada, in proffering a solution to the points of divergence as noted by the facilitators' comments on paragraph 1 of Article 1, viewed item (vi) under the "elements of divergence" as preamble language which could be moved to the Principles and Objectives' section to provide an introduction to the definition text which was being negotiated. It sought further clarification, from the proponents, on the intent of the use of the term "territorial" within item (vi) as well as the meaning of "other forms" in item (v). It recalled its earlier intervention regarding the interrelationship between the different texts under discussion at the IGC and requested to know whether the reference to "other forms" possibly referred to TCEs such as a song or dance that was used to transmit the knowledge. The Delegation of Canada finally stressed the importance of item (ii), which dealt with intellectual activity, within the instrument as this served to ensure that the subject matters being addressed within the instrument fell within the mandate of WIPO itself as set out in the 1967 WIPO Convention. It noted that the 1967 WIPO Convention, which referred to activities relating to intellectual activity in the industrial, scientific or artistic fields, provided a guideline and also informed the language for item (ii).

316. The Delegation of Morocco proposed to the facilitators that Article 1 be comprised of two paragraphs. The first, it explained, should include all of the elements that were intrinsic parts of TK, while the second should provide a descriptive paragraph which could illustrate what was meant by TK.

317. The representative of FAIRA, speaking on behalf of the Indigenous Caucus, thanked the Delegation of the United States of America for its suggestion of the word "heritage" which was missing from the last sentence of Article 1.1 and requested that the brackets around the sentence be deleted.

318. The Delegation of the United States of America expressed its support for the proposal by the representative of FAIRA, speaking on behalf of the Indigenous Caucus.

319. The Delegation of India opposed the removal of brackets from the last sentence of Article 1.1 as proposed by the representative of FAIRA, speaking on behalf of the Indigenous Caucus, and supported by the Delegation of the United States of America, and explained that this was because of the use of the phrase "indigenous peoples and local communities". It pointed out that it would however be willing to consider the removal of the brackets if the phrase were to be replaced with the word "beneficiaries".

320. The Chair proposed that the brackets be retained and requested further consultations between delegations on whether the sentence still required further adjustments.

321. The Delegation of the Bolivarian Republic of Venezuela noted that it had no reservations in supporting the removal of the square brackets as proposed by the representative of the Indigenous Caucus.

322. Mr. Nicolas Lesieur, speaking on behalf of the facilitators, noted that based on the rules they adopted in ensuring consistency while preparing the draft, the final sentence in Article 1 was not meant to be placed in brackets. While accepting responsibility for the error, he explained that, any new language that was added by the facilitators, as was the case in this instance, was typically not placed in square brackets. This explanation, he noted, did not preclude delegations from subsequently inserting brackets around the text.

323. Based on the clarification by the facilitators, the Chair requested the removal of the brackets to ensure consistency, as the bracketed area contained new language by the facilitators. He further noted that there were divergent views on the matter and consequently urged the facilitators to take those into account.

324. The Delegation of the EU, speaking on behalf of the EU and its Member States, observed, with respect to the phrase “knowledge that is dynamic and evolving” and the comments of the Delegation of New Zealand, that a definition as against a description of TK was preferred. It highlighted the importance of recognizing that TK was dynamic and susceptible to change but expressed its concerns about including such a descriptive phrase in the definition. It explained that if the definition incorporated such descriptive terms which could apply to TK, there was the eventual risk of limiting the definition only to TK which complied with the descriptive terms and excluding from protection TK which was not dynamic or evolving. It therefore suggested that in general terms, the definition should exclude, as much as possible, descriptive terms which described potential characteristics but not essential features. It recognized that those were still characteristics and could probably be included in the preamble text. It aligned itself with the intervention by the Delegation of Canada, and suggested that the last sentence of Article 1 could be incorporated in a preamble text. It requested for the brackets around the final sentence of Article 1 (“Traditional knowledge is part of the collective, ancestral territorial, cultural, intellectual and material heritage of indigenous peoples and local communities”), to be re-inserted.

325. The Delegation of Barbados was of the view that the definition of TK in Article 1.1 needed to be widened so as to reflect that TK was not limited to the knowledge of indigenous peoples and local communities. It highlighted that this was important as the present definition ignored the existence of a wide range of TK which existed in the Caribbean. It therefore requested that the phrase “indigenous peoples and local communities” be replaced with “the beneficiaries as defined in Article 2”.

326. The Delegation of Australia thanked the Delegation of South Africa for its response to the questions which the Delegation of Australia had raised earlier with respect to some of the language in the definition. It aligned itself with the intervention by the Delegation of New Zealand and expressed its support for the interventions which recognized the value and importance of the dynamic and evolving nature of TK. It reiterated its concerns however that if the definition referred only to the dynamic and evolving nature of TK, it would exclude TK which was not dynamic and evolving. It expressed its willingness to consider removing the brackets around “is knowledge that is dynamic and evolving and” as long as the drafting took their concerns into account. It

noted that the phrase “and developed within” seemingly captured the notion of TK being dynamic and evolving and expressed its openness to further consultations in this regard. It expressed its support for the intervention by the Delegation of Canada with respect to the preamble nature of item (vi) of the facilitators’ elements of divergence and finally expressed its concerns with the language “refers/includes” in Article 1.1 which, it noted, would, against the policy intent of the IGC, result in a definition of TK, which included any knowledge which was dynamic and evolving.

327. The Delegation of Sudan observed that the descriptive terms “inalienable, indivisible and imprescriptible” as used in Article 1 were substantive issues which related more to the scope of protection, and bore no relationship with the definition.

328. The Delegation of South Africa acknowledged the interventions by the Delegations of Australia and New Zealand with respect to the dynamic and evolving nature of TK. It noted however that from the perspective of the knowledge holders and practitioners who held the knowledge from within knowledge systems, TK was a living knowledge. It called on Delegations to look deeper into what made it distinctive as TK, and examine the “evolving and dynamic” issue within the context of TK rather than a broader knowledge system, which was outside the scope of TK. It noted that the phrase “and which may be associated with agricultural, environmental, health care and medical knowledge, biodiversity, traditional lifestyles and natural and genetic resources, and know-how of traditional architecture and construction technologies” was purely descriptive and stated that those portions, which were illustrative and purely descriptive, could be deleted as they were not properly suited for the normative section, while the items which were intrinsic to the knowledge itself should be retained within the text. It reiterated that TK was a living knowledge which was constantly added unto generationally. With respect to the intervention by the Delegation of Canada on transferring the last sentence to the preamble, the Delegation noted that based on the explanation proffered, item (ii) of the “elements of divergence” which dealt with intellectual activity, could similarly be transferred to the preamble.

329. The Chair closed the floor on discussions on Article 1.1 and opened the floor for discussions on Article 1.2.

330. The Delegation of Mexico noted its satisfaction with the paragraph presented on “elements of convergence” as it appeared. It, however, requested that the word “integral” be maintained without the brackets, and word “linked” deleted.

331. The Delegation of India reiterated its earlier objection to the use of the word “integral” to the cultural identity, as it noted that the use of the word “integral” narrowed the type of TK that could be protected. It noted that within the context of its use in the article, which referred to the “cultural identity of the beneficiaries as defined in Article 2”, there was a need to set a standard which was flexible enough to accommodate different varieties of TK that needed to be protected under the instrument. It said that “integral” was a word which created limitations and exceptions to that scope. It therefore expressed its support for the use of a more flexible word like “associated with” or “linked.

332. The Chair requested the Delegations of Mexico and India, as well as other delegations which shared either position, to engage in an open-ended consultation on whether the scope should be restricted or broadened through the use of “integral” or “linked” respectively.

333. The Delegation of India expressed its objection to the use of the word “collectively” before “generated, shared and preserved” as this imposed an obligation to demonstrate that the creation of the knowledge took place collectively. It noted that this was not necessarily the way in which the knowledge developed in practice within the communities. It explained that TK could sometimes, for instance, start with an individual before spreading to the community and could also develop in a variety of other ways. The use of the word “collectively” before “generated, shared and preserved” only set further restrictions on the types of TK that could be protected under this instrument. It noted that it had no objection to removing “generated, shared and preserved” and replacing same with “collectively linked to the cultural identity of beneficiaries as defined in Article 2”, however where “collectively” was used with “generated, shared and preserved”, it limited the protection of TK that had been originated, used, preserved and enjoyed by the community.

334. The Chair, based on the intervention of the Delegation of India, stated that “collectively” be placed in brackets.

335. The representative of FAIRA, speaking on behalf of the Indigenous Caucus, expressed his support for the intervention made by the Delegation of India with respect to having the word “collectively” deleted, and also expressed his support for the word “linked” to be maintained and “integral” to be deleted.

336. The representative of the Health and Environment Program aligned herself entirely with the intervention of the representative of the Indigenous Caucus. She was of the view that the word “collectively” should be removed as TK could be held by individuals, for instance, in some cases of traditional medicine where procedures could be developed by individuals.

337. The representative of Tupaj Amaru stated that TK was collective and not individual, a position which he noted, had been discussed for years within the IGC and as such, the IGC would be inconsistent to suddenly just change its views in this respect. He noted that TK was integral, and expressed his support for the proposal put forward by the Delegation of Mexico and requested that after the term “integral”, “closely linked” should be maintained. He referred to the sentence “(…) closely linked to the sustainable use of biological diversity and the deep relationship of the aboriginal man to earth” as contained in the UN Declaration on the Rights of Indigenous Peoples and stressed that this global vision should be maintained in the negotiating text.

338. The Delegation of the Bolivarian Republic of Venezuela aligned itself with the intervention made by the Delegation of Mexico, and expressed its support for the intervention by the representative of Tupaj Amaru, to the extent of maintaining the words “collectively” and “integral”. It explained that this was based on its national law which recognized Venezuelan TK as collective, and even though such knowledge could be born in a person, it ultimately became a collective thing which then went beyond the individual.

339. The representative of Tin Hinane aligned herself with the intervention of the representative of Tupaj Amaru and requested that the words “collectively” and “integral” remain included within the text.

340. The Delegation of Ecuador considered that TK was the property of indigenous populations or peoples. It was of the view that a country's TK could be generated by

individuals without eroding the fact that it remained collective TK. It drew a distinction between the generation of TK and the ownership of TK and noted that it was important to discuss and settle the distinctions so as to be able to progress on the discussions. It finally reserved its position on the use of the word “integral” or “linked” as both had their advantages and disadvantages.

341. The representative of FAIRA, speaking on behalf of the Indigenous Caucus, requested, in the light of the comprehensive explanation offered by the Delegation of the Bolivarian Republic of Venezuela and others, to withdraw his earlier intervention, and expressed support for the position of the Delegations of Ecuador, the Bolivarian Republic of Venezuela and the representatives of Tupaj Amaru and Tin Hinane, with respect to maintaining the words “collective” and “integral” within the text.

342. The Delegation of Australia observed that much of the complexity of the text resulted from the lack of agreement on the fundamental policy issues of the status of particular elements of TK with respect to whether it was secret and sacred, or whether it was publicly known but not free for public use, or whether it was in the public domain. It noted that clarity needed to be provided in this respect as this would greatly assist in identifying the policy outcomes that needed to be sought in any particular article of the text.. It noted that from a drafting point of view, and from the point of view of clarity and legal certainty as to the application of the instrument, Article 3 would provide the best avenue to deal with such issues. It, however, argued, on the basis of the criteria as laid out in Article 1.2, that subparagraph (a) needed to be kept, while subparagraph (c) needed to include the word “integral” as such word would link it directly to the cultural identity of indigenous peoples and local communities. It noted that there was some flexibility around subparagraphs (c), (d) and (f) as these addressed fundamental policy issues and opined that the three elements could be collapsed. The Delegation of Australia pointed out that, with respect to the “elements of divergence” that were raised by the facilitators, the word “and” should be inserted under item (vii) instead of “or” after the next-to-last item in the list, with a view to making the list cumulative. It noted that if the elements were not made cumulative, the breadth of protection would be too wide and would make the application of the instrument impossible.

343. The Delegation of South Africa noted that some of the contents of Option 2 in the Annex to WIPO/GRTKF/IC/21/4 were not reflected in the facilitators’ text. It pointed out, for instance, that the issue of “generation to generation”, which was an important element to be retained in the text, was one in which there was divergence and which was not included within the “elements of divergence”. It aligned itself with the intervention of the Delegation of Australia with regard to policy issues, and noted that there were two policy frameworks, conventional and *sui generis*. It stated that the first policy issue related to bringing in issues of IP rights as a conventional domain within the particular work that was being done at the IGC, and hence, introducing the debates surrounding the “public domain” into the text. To this end, it noted that a clear articulation that the efforts at the IGC were geared towards a *sui generis* instrument would assist to set a criterion, and prevent a clash of policy issues. It noted that this was important as there was a constant repetition of the intersection of these two policy frameworks in the discussions. It stressed the importance of agreeing on a position, which it noted would influence the manner in which issues were handled at the IGC. It suggested engaging in a side talk with the proponents with a view to finding a lasting solution to the issue.

344. The Delegation of Colombia, referring to the intervention of the Delegation of South Africa, considered that it would have been relevant to take into account Option 2 of the Annex to WIPO/GRTKF/IC/21/4 as it represented the interests of its country. It offered its support to the position espoused by the Delegation of India with respect to eliminating the term "collectively" for the reasons that were stated by the Delegation of Ecuador.

345. The Chair opened the floor for comments on Article 2 in the facilitators' text and noted that the facilitators' opening provision as presented, defined beneficiaries without qualification, and set out optional additions (i), (ii), (iii), (iv), and (v), as variations which had different levels of support, but no convergence within the IGC. The Chair called for comments on the facilitators' options, as well as comments on whether or not the opening provision, which was presented as reflecting a convergent view of the IGC, was a truly representative view. With respect to the optional additions, he urged Delegations to structure their interventions with a view to enable a determination of what could be added with convergence, what required further discussion and consultation, and what appeared to be unable to achieve convergence at all.

346. The Delegation of Colombia noted that the original language, as contained in the Annex to WIPO/GRTKF/IC/21/4, within the opening provision had been altered and requested that "indigenous peoples/communities", as contained in the original text, be inserted in place of "indigenous peoples".

347. The Delegation of the United States of America proposed the addition of the phrase; "who develop, use, hold and maintain traditional knowledge" after the word "communities" in the opening paragraph.

348. The Delegation of the Bolivarian Republic of Venezuela expressed its support for the intervention made by the Delegation of Colombia, with respect to keeping the original language "indigenous peoples/communities", and pointed out that in its own national legislation, it also referred to "indigenous peoples and communities".

349. The Delegation of Colombia, at the request of the Chair, elaborated on its proposal and explained the distinction between peoples and communities. It pointed out that under its national legislation, an indigenous people referred to a certain number of communities which shared culture, customs and language. Within such an indigenous people, however, clans, tribes or communities could be identified. Consequently, it stressed the importance of explicitly indicating that identical TK was not necessarily shared by all communities of a single indigenous people. The Delegation of Colombia further clarified that though "indigenous communities" were included under the umbrella term "indigenous peoples", not all indigenous communities which formed a part of an "indigenous people" shared the same traditional knowledge with other clans or families, which were also part of that same "indigenous people".

350. The Delegation of New Zealand aligned itself with the view that communities were included within peoples, and observed that where a Member State however recognized indigenous communities as separate from indigenous peoples, it would be appropriate to reintroduce the original language; "indigenous peoples/communities".

351. The representative of FAIRA, speaking on behalf of the Indigenous Caucus, observed that indigenous communities were a subset of indigenous peoples, because indigenous communities were made up of indigenous peoples. Consequently, he felt it

unimportant to include “indigenous peoples/communities” as “communities” would indicate a collective group already contained within “indigenous peoples”.

352. The Delegation of the Bolivarian Republic of Venezuela stated that its legislation provided for indigenous peoples and communities, because though it had indigenous peoples who were in the Amazon area, within the Zulia State, it also had small indigenous communities in the Merida State and other States which could not strictly be considered to be “an indigenous people”. Due to the fact however that they were small communities which had stayed and developed in the area, the protection of such small populations and communities which also maintained their distinct traditional knowledge, remained imperative. It stated therefore that the Constitution of its country referred to “indigenous peoples”, while its Cultural Heritage Act referred to “peoples and communities”. It noted that through this, protection extended to all indigenous peoples as well as small communities.

353. The Delegation of South Africa observed that the convergence being sought would require the inclusion of both indigenous peoples and indigenous communities so that no one was excluded. It therefore proposed the insertion of “indigenous peoples and communities” instead of “indigenous peoples/communities”.

354. In the absence of objections to the proposal by the Delegation of South Africa to replace “or” with “and” between “indigenous peoples” and “communities”, the Chair said that it was adopted by the Plenary.

355. The representative of Tupaj Amaru reminded Delegations that indigenous peoples and local communities had been spoken of over the years, and it was therefore impossible at the present stage to change the concepts and definitions of indigenous people. With respect to Article 2, he noted that it was confusing to include families, nations, individuals and States under beneficiaries. He explained that the discussion was centered on indigenous peoples and local communities, which were those groups that were traditionally responsible for safeguarding, protecting, and transmitting TK as established by customary law, and who developed, conserved, used and transmitted that TK from generation to generation. He further stressed that his organization was totally against the inclusion of families, nations and individuals as indigenous peoples, as these categories did not represent owners of TK, noting that those who were trying to include these categories were those who were trying to take away that TK from the indigenous peoples.

356. The Chair clarified that the various categories included in the text as additional options represented areas of divergence and not convergence, and had been included to show that there was no convergence among Members with respect to the inclusion of families, nations and individuals as beneficiaries.

357. The Delegation of Ecuador expressed its support for the interventions made by the Delegations of Colombia and the Bolivarian Republic of Venezuela. It was of the view that the use of the term “peoples” was critical as it formed part of its domestic legislation. It pointed out that Ecuador had nations, peoples, communes and communities, and stated that it would be an impossible task to amend the text on the basis of the specific need of each Member. It therefore recommended the use of broad language and suggested the use of “communities”, which could be interpreted as covering a range of different types of communities. This approach, the Delegation noted, would not prevent States from providing for communes or local communities in their domestic legislation,

as the broad language of the international instrument could be interpreted in terms of the domestic legislation.

358. The Delegation of Honduras sought clarification on the text vis-à-vis its national legislation, in which both peoples and communities were referred to. It observed that document WIPO/GRTKF/IC/20/INF/13 provided a definition of beneficiaries, and included indigenous peoples, indigenous communities, local communities, traditional communities, cultural communities, nations, individuals, groups, families and minorities as the possible categories of beneficiaries. It submitted that this definition provided a clearer picture with respect to possible future interpretations of those who would enjoy protection, and those who would be beneficiaries. It finally noted that its national legislation directly considered and defined a community and a people.

359. The Delegation of India referred to the proposal made by the Delegation of the United States of America for the insertion of the phrase "who develop, use, hold and maintain traditional knowledge". It expressed its reservations in this respect and explained that the language of Article 2 indicated a link between Article 2 and Article 1. Article 1 presented minimum requirements, by providing the definition of TK and the criteria for the identification of TK. As such it viewed the proposed text of the Delegation of the United States of America as an additional burden. It requested to place brackets around this proposal.

360. The Chair encouraged the Delegations of the United States of America and India to further discuss the implications of the sentence that had been added in the light of the particular concern raised by the Delegation of India.

361. The Delegation of Brazil sought to clarify its earlier intervention which had been made within the context of its understanding of "individuals". It explained that it had requested to place "beneficiaries may include" in the chapeau, just before the list of categories, and also insert an additional option "even when traditional knowledge is held by individuals within the categories" at the end of the paragraph, because even where a single person within a community was the holder of TK, the beneficiary was not that single person, but rather the whole community. The intention was therefore to highlight that protection was granted for the entire community. This, the Delegation of Brazil noted, would render the inclusion of a special category of "individuals" on the list unnecessary. It further suggested the insertion of the phrase "that may be" after "national entity" with a view to highlighting that while some jurisdictions may require the identification of this national entity, other jurisdictions may not have this requirement under their national law.

362. The representative of the Health and Environment Program expressed her support for the intervention made by the Delegation of South Africa, and stated that it had properly clarified what was meant by indigenous peoples and communities. She further explained that a single "people" could be dispersed and cited the example of her own indigenous people, the Bassa people of Cameroon, who were widely spread in several other countries in the region.

363. The Delegation of Mexico proposed the adoption of language which was much simpler and all-encompassing. For this reason, it supported the removal of the options (i), (ii), (iii) and (iv), and proposed that the latter part of option (v), "any national entity determined by national law", be placed in the caput of the Article so as to read: "(…) are indigenous peoples, and local communities, and any national entity determined

by national law". This would ensure that all the other options remained covered, and render the elaboration of options and subcategories a matter for States' national legislations.

364. The Delegation of Ecuador noted that within its territory, beneficiaries as mentioned in options (ii), (iii) and (iv), were not recognized and therefore expressed its support for the proposal made by the Delegation of Brazil on the ground that it was broad enough to encompass all possibilities, and also left room for national legislations to deal with the various specific issues.

365. The Delegation of Switzerland commended the efforts of the facilitators and supported the view that all additional options be deleted, as these failed to add anything to the part which had been agreed upon. With respect to the inclusion of "individuals", it proposed a way forward which it described as being slightly different from the approach of the Delegation of Brazil, yet convergent in substance. It reiterated its opposition to the inclusion of "individuals" within the options, due to the fact that TK was of a collective nature even where held by particular individuals within a community. It recognized that some Delegations wished to explicitly include the fact that TK was sometimes held by individuals and deferred to the constructive solution adopted during the negotiation of the CBD Nagoya Protocol on a similar issue. It proposed that the word "individuals" in Article 2 be deleted, and a preamble paragraph be inserted which acknowledged that indigenous and local communities had the right to determine the responsibilities of individuals within the communities as also provided for under Article 35 of the UN Declaration on the Rights of Indigenous Peoples. It invited proponents of the term "individuals" and also the Delegation of Brazil, to reflect on this compromise proposal. With respect to local communities, it viewed local communities in a broad sense, as including, for example, local communities in Switzerland and observed that such a broad understanding could resolve the concern of small-island states which possessed knowledge created within a traditional environment, as these could also be considered as local communities. It objected to the intervention and proposal made by the Delegation of Mexico on the ground that it represented an approach which was too broad. It conceded that it could possibly accept the deletion of all other additional options; however, the insertion of the clause referring to "national law" was an approach which it viewed as being too broad. It noted that the terms indigenous peoples, local communities and indigenous communities were broad enough to encompass all that was in definition under those categories, such as individuals and families. It however objected to the concept of nation, which it pointed out, fell outside its expectation of the instrument.

366. The Chair requested the Delegation of Switzerland to hold further conversations with the Delegation of Mexico with a view to aligning their positions.

367. The Delegation of Barbados disagreed with the facilitators' analysis that there was convergence with respect to the facilitators' text as it could not accept any definition of beneficiaries that was restricted to indigenous peoples and communities. It rejected the suggestion by the Delegation of Switzerland to have its islands referred to as local communities, and proposed the insertion of language which referred to small-island States or took into account the realities of island States.

368. The Delegation of South Africa aligned itself with the intervention of the Delegation of India and objected to the proposal made by the Delegation of the United States of

America to insert the phrase “who develop, use, hold and maintain traditional knowledge”.

369. The Delegation of Canada welcomed further clarification by the Delegation of Mexico on its understanding of the term “national entity” as determined by national law being applied in practice.

370. The Delegation of Brazil, with respect to the proposal made by the Delegation of Mexico, suggested amending the phrase to read “and/or any national entity”, instead of “any national entity”.

371. The Delegation of Trinidad and Tobago expressed its support for the intervention of the Delegation of Barbados, and noted the need for the inclusion of language in Article 2 which took into consideration the realities of small island states.

372. The Chair closed the discussion on Article 2 and opened the floor for discussions on Article 3.

373. Mr. Nicolas Lesieur, speaking on behalf of the facilitators, explained that they were unable to achieve the same format in Article 3, as with the previous two articles, as they were unable to reduce the available options to less than two due to the divergence in the various options. He further noted that options one and two, as presented, reflected on one side a measures-based approach and on the other side a rights-based approach.

374. The Delegation of India indicated its support for Option 2, and requested the insertion of the word “collective” after “exclusive” so as to read: “exclusive collective rights.” It observed that the phrase “according to national law” could reduce the scope of protection provided for in subparagraphs (a) to (g), and consequently requested that the phrase be placed in brackets. It expressed its preference for “shall” over “should” and offered alternative language for subparagraph (g). It requested to delete the phrase “the application for intellectual property rights involving the use of their traditional knowledge” and to insert “in the procedure for the granting of intellectual property rights involving the use of their traditional knowledge” at the end of the subparagraph. It explained that its proposal did not affect the substance of the provision but rather the procedure as it would provide flexibility to national governments to decide whether they required the disclosure at the point of time of the application or at the time of granting of the patents. It expressed however its strong support for subparagraph (g) and requested the removal of the square brackets from the subparagraph.

375. The Delegation of Norway commended the facilitators for their good work. It observed though, that its earlier proposal for an alternative wording on Article 3 had not been reflected in the text.

376. The Delegation of the Bolivarian Republic of Venezuela thanked the facilitators for their work and noted that there were two different focuses reflected within Article 3; those who wanted a *sui generis* system of protection and those who sought something different. It expressed its support for Option 1.

377. Referring to the proposal made by the Delegation of India, the Delegation of France requested the reference to “collective” rights in Article 3.1 of Option 2, to be put into square brackets as the Constitution of its country did not recognize collective rights.

378. The Delegation of Colombia supported the intervention made by the Delegation of India with respect to Article 3.1(g) under Option 2, and stressed that it was important for the textual insertions proposed by the Delegation of India to be reflected in the text. This, it explained, was important for its national situation, as it had a fairly complex application process which was broken down into several stages. It stated that this would enable information to be introduced at all stages of the application process and guarantee that the rights of TK holders be properly upheld.

379. The Delegation of Brazil, with respect to option 2, requested that the word "commercial" in Article 3.1(c) be placed in brackets. It also expressed its support for the interventions made by the Delegations of Colombia and India with respect to their proposed language for Article 3.1(g).

380. The Delegation of Mexico highlighted the importance of referring to the owners, and not holders of traditional knowledge. It explained that the owners of TK could be members of the community, while the holders of the TK could be other members of the same community. With specific reference to Option 1, the Delegation of Mexico requested the insertion of "in compliance with the right of local communities to decide to grant access to that knowledge or not" at the end of Article 3.1(b)(iii).

381. The Delegation of South Africa commended delegations for their fair approach to the negotiations. It expressed its support for option 2, and aligned itself with the proposed amendments to Article 3.1(g) by the Delegation of India. It noted that, with respect to collective rights as referred to by the Delegation of France, it had amended its domestic law to recognize the collective rights of beneficiaries and consequently, it could also be done by other States.

382. The representative of Tupaj Amaru, in response to the intervention made by the Delegation of France, noted that indigenous peoples had always lived collectively and in accordance with collective rights and their own traditions, and that these rights could not be ignored simply because they were not recognized under the Constitution of France. He noted that international law remained supreme over national law. He expressed his support for Option 2, though with slight amendments. With respect to Article 3.1(b), he requested that the wording from his original proposal, "prohibit misappropriation", which reflected appropriate legal terminology, be used. He further stressed the need to clearly define whether (b) was about the prohibition of TK without consent.

383. The Delegation of Australia, with respect to Article 3.1(b)(iii), proposed the insertion of "with prior informed consent" immediately after "mutually agreed terms". It further noted, with respect to the issue of "holders", that in the light of previous IGC discussions, there had been a lot of debate on whether the appropriate term was "holders" or "owners". It noted that the proper determination of the appropriate terminology would depend largely on the national legal system, as well as the traditional and customary protocols and laws that existed within indigenous communities. Though not associating itself with any of the terms, it requested further reflection on which of the terms accurately reflected the actual conditions of indigenous communities, the maintainers and developers of TK. To this end, it proposed the insertion of "owners" after "holders".

384. The Delegation of Sudan, offered suggestions on both Options 1 and 2, and asked for a clear distinction between TK holders and owners in the exercise of rights. It noted that both options were a bit general and broad. In Article 3.1(a) of Option 1, it requested

that the phrase “other exploitation” be limited or clearly defined. In Article 3.1(a) of Option 2, it requested the deletion of the words “enjoy” and “protect” as they were very broad and general.

385. After consultations, the Chair requested the facilitators to explain the adjustments that would be made to Article 3 in the forthcoming revised version (Rev. 2).

386. Mr. Nicolas Lesieur, speaking on behalf of the facilitators, explained that the revised Article 3 would include an Article 3bis, which would incorporate the proposal submitted by the Delegation of Norway that had inadvertently been omitted by the facilitators in the presentation of the first version of the draft article. It would be inserted as Article 3bis, as the proposal sought to combine issues relating to the scope of protection with those relating to sanctions.

387. The Delegation of Norway reoffered introductory comments on its proposal regarding an article 3bis, and explained that the proposal, which reflected a “rights based approach”, sought to merge Article 3 with Article 4 in document WIPO/GRTKF/IC/21/4 with a view to simplifying and restructuring the text. It pointed out that paragraph 1 set out the principle of prior informed consent both for access and use of TK, paragraph 2 provided additional protection for TK that fulfilled the eligibility criterion in Article 1.2(a), paragraph 3 set out provisions on sanctions, including injunctions and compensation where TK was accessed or used without prior informed consent, and paragraph 4 provided for limitations on the scope of protection. It argued that these limitations sought to ensure that protection for TK would not, under any circumstance, affect the access to, or use of knowledge that was invented independent of the TK of indigenous or local communities. It also sought to ensure that such protection did not hinder the generation, sharing, preservation and transmission and customary use of TK by the beneficiaries.

388. The Delegation of Australia thanked the Delegation of Norway for its helpful proposal, but requested additional time to consider it further.

389. The Chair closed the discussion on Article 3, and informed the plenary, based on the review of the written transcription of the proceedings, that there had been no support, contrary to his earlier belief, for the insertion of the language from the representative of Tupaj Amaru, which therefore could not be included. The Chair opened the floor for interventions on Article 6.

390. The Delegation of South Africa proposed the insertion of the following alternative text for Article 6.3: “Contracting Parties may adopt appropriate limitations or exceptions under national law for the following purposes: (a) teaching, learning, but does not include research resulting in profit-making or commercial purposes; (b) for preservation, display and presentation in archives, libraries, museums or cultural institutions for non-commercial cultural heritage purposes, taking account of the legitimate interests of third parties.” It also proposed the following for Article 6.4: “Contracting Parties may permit the use of traditional knowledge for epidemics and natural disaster response, provided that the beneficiaries are adequately compensated”.

391. The Delegation of Japan expressed its reservations towards the use of the word “exclude” in Article 6.6, as its use connoted an exclusive right for which the scope of protection for TK was too vague to support. It noted that the use of “exclude” could prejudice the free examination of the two options presented in Article 3. It proposed to

insert the following wording into the chapeau of Article 6.6: "The provisions of Article 3 shall not apply to any use of knowledge that (…)."

392. The representative of FAIRA, speaking on behalf of the Indigenous Caucus, requested the removal of the brackets from Article 6.4, so as to provide absolute protection to the secret and sacred knowledge of the indigenous peoples.

393. The Delegations of Sri Lanka and South Africa expressed their support for the removal of brackets on Article 6.4 as proposed by the representative of FAIRA, speaking on behalf of the Indigenous Caucus.

394. The Delegation of the EU, speaking on behalf of the EU and its Member States, objected to the removal of the brackets in Article 6.4.

395. The Delegation of Colombia associated itself with the intervention by the Delegation of South Africa to amend the language in Articles 6.3 and 6.4, and further expressed its support for the removal of the square brackets from the previously existing Article 6.4 as proposed by the representative of FAIRA, speaking on behalf of the Indigenous Caucus.

396. The Delegation of India aligned itself with the proposal made by the Delegation of South Africa on Articles 6.3 and 6.4. It however expressed its reservations on the new Articles 6.7, 6.8, 6.9, 6.10 and 6.11, and requested that they be placed within brackets. Elaborating on its concerns, it noted that Article 6.7 indicated a deeming provision and pointed the inconsistency in the use of the phrase "misappropriation or misuse". It also noted that the language "obtained from a printed publication" in Article 6.7(a) had the effect of neutralizing the protection for TK which was being sought. It explained that Article 6.7(b) and (c) seemed to be irrelevant as it was inherently implied that where consent had been obtained from the owner or from the national contact point, there was no need to presume that there was misappropriation or misuse. With respect to Article 6.8, it observed that protection was extended to secret TK only, and felt it was unfair for the patent law and the trade secret law to be applied in this manner. It expressed reservations on Article 6.9, which it described as being too broad. It noted that Article 6.10 seemed to be a little complex within the particular context of TK, and explained that despite the existence of similar wording in Article 27.2 of the TRIPS Agreement, the implications of its use within the context of TK were different. It expressed its support for the text as proposed by the Delegation of South Africa in place of Article 6.11, which it noted addressed the same concern.

397. The Delegation of the United States of America requested to add ", taking account of the legitimate interests of third parties" to the end of the new Article 6.3(b) as proposed by the Delegation of South Africa. It also requested to move the phrase "cultural institutions recognized under the appropriate national law" and place it before the word "archives" so as to read, "(…) the use of traditional knowledge in cultural institutions recognized under the appropriate national law, archives (…)." It said that this proposal would serve to clarify that "recognized under the appropriate national laws" was intended to qualify cultural institutions, instead of the archives, libraries and museums as well as cultural institutions.

398. The Delegation of the EU, speaking on behalf of the EU and its Member States, noted that Article 6.2 seemed to be a duplication of Article 6.3(a) and (b), and expressed its preference for the text in Article 6.3. It therefore requested that Article 6.2 be deleted.

It expressed its support for the amendments as proposed by the Delegation of the United States of America with respect to the alternative subparagraph (b) of Article 6.3.

399. The Delegation of Sri Lanka endorsed the additional text as proposed by the Delegation of South Africa and requested the deletion of the brackets on Article 6.4. It expressed its support for the intervention of the Delegation of India with respect to Article 6.9.

400. The representative of FAIRA, speaking on behalf of the Indigenous Caucus, requested, with respect to Article 6.3, to delete the brackets over the phrase ", with the prior and informed consent of the beneficiaries."

401. The Delegation of the EU, speaking on behalf of the EU and its Member States, opposed the removal of the brackets, as proposed by the representative of FAIRA, speaking on behalf of the Indigenous Caucus. It reiterated its support for Article 6.3, however, with the brackets in place.

402. The Delegation of China expressed its support for the intervention by the Delegation of India, with respect to the deletion of Articles 6.7 to 6.11 and noted that disclosed TK should be protected. It further sought clarification on the meaning of "original work" as contained in Article 6.5(b) within the TK context.

403. The Chair invited the Delegation of China and the proponents of the language of Article 6.5 to consult. He closed the discussion on Article 6 and opened the floor for comments on Article 4.

404. The Delegation of New Zealand thanked the facilitators for their work and observed that some of the policy options had been lost in the transcription by the facilitators. It noted, for instance, that option 3 of the Annex to WIPO/GRTKF/IC/21/4 was much broader than what was reflected in the facilitators' draft document. It pointed out that Article 4.2 focused on enforcement procedures. It was therefore of the view that Article 4 was not just an article which dealt with enforcement, but also included provisions which dealt with application. It noted that this explained why option 3 referred to "appropriate legal policy and/or administrative measures". It suggested that the next version of the draft by the facilitators could consider a broader introduction comprising legal, policy and administrative measures, before providing optional extras which offered a stronger form of protection.

405. The Delegation of India aligned itself with the view expressed by the Delegation of New Zealand with respect to some of the policy options being lost in the draft by the facilitators. It identified three broad policies as being, the general application of the obligation on the part of the Member States on the measures to be taken for implementation of the instrument, the sanctions which Member States would like to use for the enjoyment of the rights, and the principles for the procedure which was to be followed where the rights were being enjoyed. To assist in enhancing the work of the plenary, it suggested, based on its policy observations, the insertion of a shorter version of Article 4: "Contracting Parties shall; (a) adopt, in accordance with their legal systems, the measures necessary to ensure the application of this instrument; (b) provide for adequate, effective and deterrent criminal and/or civil and/or administrative remedies, for the violation of the rights provided under this instrument; and (c) provide procedures for exercise of rights which are accessible, effective, fair, adequate and not burdensome for beneficiaries of traditional knowledge, and, where appropriate, may provide for dispute

resolution mechanism based on customary protocols, understandings, laws and practices of beneficiaries".

406. The Delegation of the United States of America proposed the insertion of the word "protected" before the word "traditional knowledge" in Article 4.3.

407. The Delegation of Cameroon expressed concerns over the provisions in Article 4.3 as it was not exactly clear whether protection was being extended to the beneficiaries, third parties, or even the public at large. It suggested that the article be expanded and made clearer.

408. The Delegation of South Africa thanked the Delegation of India for its intervention and expressed its support to the shortened proposal on Article 4 as submitted by the Delegation of India. It offered further clarification to the source of the proposal by the Delegation of India, by noting that subparagraph (a) was drawn from the original Article 4.1, subparagraph (b) from the original Article 4.2, and subparagraph (c) was a combination of Articles 4.3 and 4.4.

409. The Delegation of Brazil expressed its gratitude to the Delegation of India for its proposal, and noted that though the shortened text seemed to reflect its views, it would examine in detail the proposal before offering its comments. It requested that the word "and" in the phrase "criminal, civil and administrative" in Article 4.2, be replaced with "or".

410. The Delegation of Algeria aligned itself with the views expressed by the Delegations of India and South Africa, and expressed its support for the proposal as put forward by the Delegation of India. It however expressed its preference for the insertion of "national laws" in place of "legal systems" in subparagraph (a).

411. The Delegation of Colombia also expressed its support for the proposal by the Delegation of India. It however requested for brackets to be placed, within the proposal submitted by the Delegation of India, around the phrase: "and, where appropriate, may provide for dispute resolution mechanism based on customary protocols, understandings, laws and practices of beneficiaries" in subparagraph (c), on the ground that it would be very difficult to implement in national systems the inclusion of the practices and laws of the beneficiaries.

412. The Delegation of the EU, speaking on behalf of the EU and its Member States, noted, like the Delegation of New Zealand, that some of the policy intent of the Annex to document WIPO/GRTKF/IC/21/4 had been lost in the amalgamation of previous texts by the facilitators with the view to create new options. It pointed out that the new Option 1 contained different previous options which however had different intentions at a very basic level. Though it had no definite suggestions on how to disentangle the text with a view to reflecting the options in a better way, it called on Delegations to reflect on the possibilities of presenting the text in a better way.

413. The Delegation of Norway reintroduced its proposal of a new article 4bis that it submitted earlier on during the session but which was omitted in the facilitators' text. It explained that its proposal was a provision on the disclosure requirements, where a patent application concerned an invention in which TK had been used. It reminded that this provision concerned all types of TK, including those which were not associated with GRs.

414. The Delegation of Japan requested that the entire proposal of Article 4bis be bracketed. In the interest of time, it declined to further elaborate on its rationale, which it noted had been repeatedly expressed during the discussions on mandatory disclosure requirements in IGC 20.

415. The representative of the International Chamber of Commerce (ICC) expressed his opposition to Article 4bis as proposed by the Delegation of Norway.

416. The Delegation of the EU, speaking on behalf of the EU and its Member States, requested the insertion of brackets around the entire Article 4bis. It however noted that the bracketing of the text was not for the same reason as the Delegation of Japan. It was of the view that further discussion was required on TK with respect to the application of the disclosure requirement, and as a result it could not offer any support at this stage to the proposed article.

417. The Delegation of India stated that, in principle, it looked forward to the presence of a good disclosure requirement in the instrument. It however expressed reservations on the way in which aspects of Article 4bis had been worded. It requested that Article 4bis be expanded to include all aspects of IP and not be limited to patents and plant varieties. It requested a simultaneous change with respect to replacing the word "inventor or breeder" with "applicant", and the word "invention" with "any process or product". It singled out Article 4bis.3 as constituting a major concern and expressed its full reservation on it. It proposed an alternative text for Article 4bis.4 as follows: "Rights arising from a grant shall be revoked and rendered unenforceable when the applicant has failed to comply with the obligations of mandatory requirements as provided for in this article or provided false or fraudulent information." With respect to Article 4bis.1, it proposed inserting brackets around "patent and plant variety", "an invention", and "inventor or the breeder", and replacing them with "intellectual property", "any process or product" and "applicant" respectively. On Article 4bis.2, it similarly requested that "inventor or breeder" be replaced with "applicant". On Article 4bis.3, it requested that "patent or plant variety" be replaced with "intellectual property", and "patent or plant variety office" be replaced with "intellectual property office".

418. The Delegation of the Plurinational State of Bolivia, providing an initial reaction, believed that the proposal by the Delegation of Norway could prove extremely useful. It however noted that the protection should extend beyond patents and plant varieties, to include all intellectual property rights, and to this extent, it aligned itself with the proposal made by the Delegation of India.

419. The Chair closed discussions on Article 4 and opened the floor for interventions on Article 5.

420. The Delegation of Australia observed that the issue of administration of rights was one which centered on national circumstances. It sought clarification on the policy intent for the prescription of such measures for Member states as it saw no circumstance where it should be made mandatory. It noted that the instrument should afford Member States sufficient flexibility to address appropriate administration measures for protection of rights vested in indigenous communities. It stated that a national authority would never own the rights but could perhaps act as an agent for beneficiaries if they so desired. It further observed a repetition of the language relating to "the establishment of an authority without prejudice to the national law and the rights of traditional knowledge holders", as contained both in the chapeau and in Article 5.4 and requested the

facilitators to look into it. It argued that Article 5.1(b), (d) and (e) were not IP issues, and requested that they be placed in brackets. It further stated that Article 5.1(g) was an issue for the courts or the legal system of the States and requested that it also be placed in brackets. It sought clarification from the proponents as to the inclusion of Article 5.3 as it found no justification for its inclusion. It expressed its uncertainty as to the possible practical methodology for the implementation of Article 5.5 and requested that Article 5.3 and Article 5.5 be similarly placed in brackets.

421. The representative of Tupaj Amaru observed that Article 5.1 (c) contained some ambiguity with respect to the terms holders/owners. He explained that indigenous peoples were both the owners and holders of TK and distinctions could not be made between holders and owners. He therefore suggested the use of "holders and owners" in place of "holders/owners" and requested the removal of brackets over the terms. He also requested the removal of the brackets over the phrase "holders/owners" in Article 5.1 (f), the deletion of the phrase "in accordance with national law" in Article 5.2 and the replacement of the word "should" with "shall" in Article 5.3. He finally reiterated that his proposal on Article 5 should be included in the text on the basis of the support it received from the Delegation of Sri Lanka.

422. The Chair, with a view to establishing clarity regarding the procedure, referred to the written transcription of the proceedings bearing the response by the Delegation of Sri Lanka on this issue. According to the transcript, as read out by the Chair, the Delegation of Sri Lanka stated "…that partially we agree and we endorse, we qualify what the last speaker has mentioned". The Chair explained that this intervention did not provide a sufficient basis for the insertion in the text of a proposal from an observer. He however, pointed out that if the Delegation of Sri Lanka would retract its statement and enter a new unqualified expression of support, the Committee could consider the request of the representative of Tupaj Amaru.

423. The Delegation of the United States of America proposed the insertion of the following additional language under the last paragraph of Article 5.1: "To assist transparency and compliance, Member States may establish a database to enable information to be collected on parties involved in agreements providing for mutually agreed terms as under Article 3. This information may be supplied by any of the parties involved in the agreement."

424. The Chair closed the discussion on Article 5, and opened the floor for interventions on Article 7.

425. The Delegation of the EU, speaking on behalf of the EU and its Member States, observed that two extremely divergent and mutually exclusive points of view, namely, that protection should be unlimited, and that protection should be subjected to limitations, had been taken into account through the text as presented by the facilitators. While expressing its appreciation to the facilitators for their efforts, it opined that it would better serve the interest of the IGC to leave them as separate options as this represented an exceptional occasion where the process of negotiation would have to decide on one option over the other. It further sought clarification on whether an additional option had been created by the facilitators which enabled Member States the flexibility to determine a term of protection. It recalled Option 2 of the previous text, which stated that duration of protection varied, and noted that there could be a difference between what was presently reflected in the text, and what was contained in Option 2 of

the previous text. It however reiterated that it believed that an unlimited term of protection was acceptable, provided that the criteria for eligibility continued to be met.

426. The Delegation of the Plurinational State of Bolivia noted that it had made some suggestions on the language at the last plenary which had not been noted by the facilitators. It requested for its proposal to be reflected. It further suggested the insertion of a new paragraph as follows; “traditional knowledge are transmitted from generation to generation and thus are imprescriptible”.

427. The Delegation of South Africa, speaking on behalf of the African Group, stressed the importance of Article 7 to the African Group and commended the efforts of the facilitators in the drafting of the Article. It noted that the phrase “as long as the traditional knowledge fulfils the criteria of eligibility for protection according to Article 1” took into consideration Option 2 as contained in Article 7 of the Annex to WIPO/GRTKF/IC/21/4 and urged the Delegation of the EU to consider this phrase as having taken care of their concerns as espoused in their intervention on Article 7.

428. The Chair opened the floor on Article 8.

429. The representative of Tupaj Amaru said that the facilitators’ text contained a highly arbitrary term of protection for TK, which depended on admissibility criteria. He asked who would establish and define those criteria, and who would be charged with interpreting them and thereby decide on the term of protection. The facilitators had complicated the issue by coming up with something quite contrary to the original draft. He referred to the proposal he had made in that regard.

430. The Chair recalled that the representative of Tupaj Amaru had proposed language on Article 7 that was not yet in the text, for it was still being typed. The plenary would return to it. He said that the transcript confirmed that Tupaj Amaru’s proposal on Article 7 had been supported by the Delegation of Sri Lanka. Therefore, in keeping with the rules, it needed to be put into the text. .

431. The representative of Tupaj Amaru agreed with the Chair’s guidance. He was grateful for the initiative taken to support indigenous peoples' cause. He reserved the right to return to Article 7 at the appropriate time.

432. The Chair clarified that the action on Article 7 was driven by the rules of procedure which bound the Chair and the Committee.

433. The Delegation of India wished to bracket the alternative under Article 8.

434. The Delegation of Bolivia noted that the facilitators' text did not record the name of the delegation that had proposed the alternative.

435. The representative of Health and Environment Program had concerns over the types of formalities that would be required and whether they would be too burdensome for indigenous peoples to fulfill. Formalities should not hinder the holders of TK from exercising their rights.

436. Nicolas Lesieur, on behalf of the facilitators, said that the alternative put in square brackets by the Delegation of India had been proposed by the Delegation of Sri Lanka, with a view to merging the two options.

437. The Chair opened the floor on Article 9.

438. The Delegation of Brazil recalled that the provisions under the proposed instrument should not be applied retroactively.

439. The Delegation of the EU, speaking on behalf of the EU and its Member States, appreciated the content of the alternative, but preferred to stick to non-treaty language. It thus wished to bracket the alternative.

440. The Delegation of India also wished to bracket the alternative because it wanted to study it in detail and come back to it.

441. The representative of Tupaj Amaru was disappointed to note that once again the facilitators had rendered the text more complicated. They had placed square brackets, underlined and crossed out text, and that did not facilitate the work of the IGC. He wished to table once again his proposal which unfortunately was not on the screen.

442. The Chair explained that if the proposed text had not been supported by a Member State, it could not be taken up at that stage.

443. The representative of Tupaj Amaru drew attention to the fact that his proposals on Articles 9, 10 and 12 had been supported by the Delegation of Sri Lanka. He said the Secretariat and the Chair appeared to be running counter to the principles governing the IGC's work.

444. The Chair asked the Delegation of Sri Lanka if it had supported the proposal on Article 9 made by the representative of Tupaj Amaru. He allowed the Delegation to review its documents and share its intervention so that if there had been any error of transcription, one could compare that with what the Delegation recalled from its records.

445. The Delegation of Sudan suggested that paragraph 1 read as follows: "[t]hese provisions shall apply to all traditional knowledge which, at the moment of these provisions coming into force, fulfill the criteria set out in Article 1."

446. The Chair said that the facilitators had reminded him that wherever the word "shall" appeared in the text, there was ordinarily a proposal for "should." Therefore, the word "shall" would be underlined. The Chair opened the floor on Article 10.

447. The representative of FAIRA, speaking on behalf of the Indigenous Caucus, in Option 2, proposed removing the brackets around paragraph 10.1 including the brackets around "protection under this instrument should leave intact (…)" He also suggested removing the brackets around "in particular the Nagoya Protocol (…)" to the end of that sentence. He also requested the brackets to remain around 10.2 for deletion. However he supported in alternative 10.2: "in accordance with Article 45 (…)" on the basis that those two paragraphs actually represented some protection for indigenous peoples with GRs and TK.

448. The Chair noted that there was no Member State's support for that proposal.

449. The Delegation of the EU, speaking on behalf of the EU and its Member States, continued to support the option that it had previously supported. There was an opportunity to merge Options 1 and 2 since there was a certain similarity in the

language, and to use brackets to indicate that not only should the protection take account of other instruments but it should also leave intact and in no way affect the protection provided under those other legal instruments. Brackets could be used to differentiate between the two for countries that were unable to support one or the other. It also stated that there should not be any specific reference to the CBD Nagoya Protocol in that article or in the instrument. The article did refer to other international instruments, and it was implicit that the CBD Nagoya Protocol was covered. As to Alternative 10.2, notwithstanding its importance, the UN Declaration on the Rights of Indigenous People was outside the scope of WIPO and therefore there should not be a reference to it either.

450. The Delegation of Cameroon pointed out that Alternative 10.2 seemed to actually stigmatize indigenous peoples. The text had to cover many more groups, many more peoples. It therefore wished to bracket it.

451. The Chair opened the floor on Article 11.

452. The Delegation of Sri Lanka wished to delete the term “domestic” in the second paragraph.

453. The Delegation of South Africa noted that in Articles 10 and 11, there was not much of a divergence over philosophies or policies. It was more or less in the same line. It asked whether the IGC should continue in that manner and work towards having one shorter article. It did not have any specific phrasing yet.

454. The Delegation of India wished to bracket the two alternatives.

455. The Chair opened the floor on Article 12.

456. The Delegation of the United States of America wished to make the reading of the article easier. The sentence beginning with “Efforts should/shall also be made to facilitate (…)” had to be a separate paragraph. Then, the sentence beginning with “Efforts should/shall be made by national authorities to codify (…)” also had to be a separate paragraph. And a separate paragraph starting with “Efforts should/shall also be made to facilitate access to information (…)” had to be created. Finally, a separate paragraph started with the words “Intellectual property offices should/shall (…)”. Overall, the Delegation of the United States of America supported the language of the last three new paragraphs; but it saw the language above it redundant.

457. The Delegation of South Africa wished to bracket Alternative 2.

458. The Delegation of the EU, speaking on behalf of the EU and its Member States, supported Alternative 1. As a general comment, throughout the text, it suggested aligning the use of the terms “option” and “alternative.” It preferred the term “option.”

459. The Chair opened the floor on Objectives and Principles.

460. Nicolas Lesieur, on behalf of the facilitators, said that the version on the screen was the one that had been circulated the day before. It predated some of the discussions held in plenary, which would be reflected in the revised version (Rev. 2).

461. The Delegation of the EU, speaking on behalf of the EU and its Member States, said that there were two separate lists of objectives, considered as two different options.

Items (i) to (ix) would be listed as a separate option. It supported the second list, with some changes. In item (i) it had requested that the word "holistic" be replaced with the word “distinctive.” In item (iii), it had requested the addition at the end of the sentence of “taking in to account the fair and legitimate balance which must be struck between the relevant and different interests that have to be taken in to consideration.” In item (vi) it had requested that the word “repress” be replaced with “prevent.” Finally, in item (ix), the text at the end of the sentence after the word “conduct” would be placed in square brackets.

462. The representative of the Indigenous Caucus asked to verify that the word “peoples” had been indeed introduced after the word “indigenous” throughout the document.

463. The Delegation of Australia made general comments on the Objectives to inform future work. Firstly, it was important that the Objectives succinctly articulate the key policy outcomes that the mandate addressed; those were to protect the TK of indigenous peoples and local communities from misappropriation, including preventing IP being granted in error or inappropriately, to promote respect for the cultures of indigenous peoples and local communities, to foster respect for and consistency with related international instruments, to promote innovation and creativity and to maintain legal certainty in relation to the IP system. If the instrument achieved that, the mandate would have been fulfilled. Many of the remaining Objectives and Principles reflected aspirations that related to broader international policy issues articulated in other instruments such as the UN Declaration on the Rights of Indigenous Peoples, UNESCO conventions and the CBD. Those would be better articulated in the preamble. The next iteration of the text should attempt to rationalize the content and clarify succinctly the actual objectives of the mandate. It suggested drafting a preamble that captured those other aspects that provided the broader context of the IGC’s work.

464. The Delegation of Canada supported the intervention made by the Delegation of Australia. The Objectives and Principles needed to be more succinct, informing the details provided in the Articles. It also supported the suggestion made by the Delegation of the EU to separate the two sets of Objectives, and to make the second set a stand-alone option. It proposed merging items (iv) and (v) and to add after “promote and support”: “the conservation, application and preservation of traditional knowledge systems.” It also suggested merging items (vi) and (viii) and to add “promote community development.” Finally, it suggested adding an item to promote creativity and innovation.

465. The Delegation of Kenya, on behalf of the African Group, thanked the Secretariat for the professional manner of conducting the process. It wished to add, after item (xi), the following Objective: “Promote mandatory disclosure requirement—Ensure mandatory disclosure requirement of the country of origin of traditional knowledge and associated genetic resources that were related or used in the patent application.” Regarding the Principles, it wished to merge items (a) and (j), as well as (f) and (g). It also wished to delete items (k) and (l) regarding the public domain.

466. The representative of Tupaj Amaru did not agree with the change from “holistic” to “collective” in item (i). Under item (ii), both terms “owners” and “holders” had to be used. He proposed the following, which was in line with the UN Declaration on the Rights of Indigenous Peoples, the CBD and other UNESCO instruments: “Traditional knowledge constitutes the collective cultural, ancestral and spiritual heritage of peoples and is to be

considered as a sacred secret of a mysterious nature and should be used against this background. Traditional knowledge intrinsically connected to the use and exploitation of natural resources in the context of traditional life ought to be considered as vital to the preservation and sustainable use of biodiversity and a guarantee of future security."

467. The Chair noted that there was no support for that proposal.

468. The Delegation of New Zealand, with regard to the footnotes, noted that the alternative with footnote 9 next to it, read that the said alternative was a merger between sub-objectives (vi) and (vii), which were about misappropriation and consistency with international agreements and did not seem relevant to the concept of promoting community development. It requested the facilitators to review the cross-referencing of the footnotes in the text. The Delegation of New Zealand also expressed its support for the comment made by the Delegation of the EU, speaking on behalf of the EU and its Member States, about the sub-list under Objective (xvi) that was a sort of a stand-alone summary of objectives. It also supported the suggestion made by the Delegation of Australia on the way forward in relation to the Policy Objectives and Principles.

469. The representative of FAIRA, speaking on behalf of the Indigenous Caucus, registered his support for the intervention by the Delegation of Australia, stating that the proposal would be beneficial to indigenous peoples.

470. The Delegation of Cameroon proposed the merger of Principles (f) and (g) in the following manner: "Principle of compatibility or consistency, respect for other instruments and international processes as well as regional and cooperation processes including those processes governing genetic resources".

471. The Delegation of Japan suggested that the whole paragraph regarding the mandatory disclosure requirement, as introduced by the Delegation of Kenya be bracketed.

472. The Delegation of Morocco in supporting the position of the Delegation of Kenya on behalf of the African Group noted that the Objectives and Principles, as set out, were the fruits of more than a decade of discussion. It seemed that some of those principles had already been transformed into substantive articles embodying the essential gist of those objectives. It also supported the intervention made by the Delegation of Australia and said that it considered that there was a need for many of those principles to be brought together in the preamble. In so doing, the Committee would be able to address a number of the issues raised by indigenous peoples concerning some of the principles which would be better placed in the preamble than in the body itself.

473. The Delegation of the Republic of Korea also supported the insertion of square brackets around the entire text proposed by the Delegation of Kenya, speaking on behalf of African Group, regarding the mandatory disclosure requirement.

474. The Delegation of Algeria supported the proposal made by the Delegation of Kenya, speaking on behalf of the African Group, particularly, the proposal to delete Principles (k) and (l).

475. The Delegation of the United Republic of Tanzania expressed its support for the proposals made by the Delegation of Kenya, speaking on behalf the African Group, because issues of mandatory disclosure and country of origin were vital to it. It further

suggested that the two elements be included in both the Policy Objectives and General Guiding Principles. It therefore proposed the amendment of the Principles, alternative 2, (e) to read "[p]rinciple of mandatory disclosure of country of origin and equity and including benefit sharing".

476. The Delegation of the United States of America expressed its support for the comments made by the Delegations of the EU and Canada with respect to the sub-items, (xvi) and believed that it should be a separate alternative. It also signaled a willingness to have reference made to the protection of the public domain listed in those sub-items.

477. The Delegation of the EU, speaking on behalf of the EU and its Member States, expressed its support for the second alternative of Principle (b). It also supported comments made previously concerning the amalgamation of Principle (j) with Principle (a). It further reiterated the need for reducing duplication between the Principles and the Objectives. In respect to the new Principles that had been added under (k) to (o), it needed time to reflect on them and on the effect they might have on the work of the Committee.

478. The Delegation of India, on Objectives, preferred the retention of the term "holistic" and requested to have square brackets around the term word "distinctive" whenever the term occurred. Further on alternative Objective (x), it observed the alternative seemed to be too broad and although it was for the promotion of creativity, it was not comfortable with the wording. It therefore requested to have it bracketed. Then on the Objective relating to the "utilization of traditional knowledge by third parties", it noted that that again was too broad. It explained that it was not against the notion of public domain but the notion needed to be clarified in the context of TK since public domain in the IP context was different. It therefore wanted to have square brackets on the respective Objective, noting that it would come back with language at an appropriate time addressing the issue of public domain in the context of TK. It also supported the proposals made by the African Group on disclosure and the deletion of the alternatives in (k) and (l).

479. The Delegation of Switzerland supported the approach suggested by the Delegation of Australia on streamlining of the text and the avoidance of duplication as highlighted by the Delegation of the EU. It finally made an addition to Objective (iii), third line before the word "contribute" proposing to add "under national and international law" for consistency with the corresponding objective in the TCEs document.

480. The Delegation of India, on Article 1.2 requested to have square brackets inserted from paragraph (c) to (e). On paragraph (b), after "…[linked]", it proposed the addition of the words "identified/associated with" and instead of the word "shared", it preferred to use the word "transmitted".

481. The Delegation of South Africa, referring to its previous intervention, said that the word "generation to generation" had not been included in the list of divergences.

482. On Article 7, the Chair invited the Delegation of Sri Lanka to clarify the scope of its approval for the language introduced by the representative of Tupaj Amaru.

483. The Delegation of Sri Lanka, in response, confirmed its explicit approval for the introduction of proposals by the representative of Tupaj Amaru on Articles 7 and 10. It

also agreed with the Chair that partial support, which it had previously extended to Article 5, would not meet the test of approval of a proposal by an observer.

484. The representative of Tupaj Amaru, on his proposal, i.e., alternative Article 7, said that he simply wanted to ensure that Member States paid close attention to the content and scope of the text, and the amendments thereto. The proposal was taken from a number of texts which sought to ensure the enhanced protection of TK. In conclusion, he hoped that it would be recorded that the Delegation of Sri Lanka had also offered support to his intervention on Article 2.

485. The Delegation of South Africa, on the Alternative to Article 7, said that as much as it understood the depth of the alternative proposal by the representative of Tupaj Amaru, it believed that it complicated many of the issues and it, therefore, wanted to have it in brackets.

486. [Note from the Secretariat: This discussion took place after the facilitators had prepared Rev. 2 of the text]: The Chair opened the floor for comments on the revised facilitators' text (Rev. 2), dated April 20, 2012 and titled "The Protection of Traditional Knowledge: Draft Articles". He advised that participants could only make interventions based on omissions or mistakes. Any comments of a valuable nature which might guide the facilitators could be taken provided that they were succinct and concise, due to time constraints.

487. With respect to the text on Article 3bis and 4bis, the Delegation of Norway noted that a few words were missing from the text. It said that Article 3bis.1, should read "indigenous peoples or local community". Then in Article 3bis.3 (b), after the word "reasonable", the word "grounds" was missing while Article 3bis.5 (a) and (b), should read "indigenous peoples or local communities". Article 3bis.5 (b), should read in the second line after the word "knowledge": "by the beneficiaries in the traditional and customary context". Further on Article 4bis.1, the Delegation of Norway requested that the words "any process or product", in the second line, be underlined because it was not part of its original proposal. The same applied to Article 4bis.3, where it said "intellectual property". On Article 4bis.4, the first paragraph, it said that the alternative Article should not be underlined since it was part of the proposal it had initially submitted.

488. The Delegation of India, before making its intervention on the substance, sought clarification as to what the Chairman's note included in this revised version actually meant, particularly, the second sentence, "it represents work in progress and is without prejudice to the positions of the participants".

489. [Note from the Secretariat: The Chairman's note as drafted read as follows: "This text represents the results, at the conclusion of the IGC's 21st Session, in accordance with the mandate of the WIPO General Assemblies (contained in WO/GA/40/7). It represents a work in progress and without prejudice to the positions of the participants."]

490. The Chair, in response, advised that the Chairman's note was the same as the note agreed upon during IGC 20, as an explanatory note in the text going forward from that session. It repeated verbatim part of the language that was agreed at that time.

491. On Article 1, the Delegation of India recalled its previous reservation, as had other Delegations, on the words "inalienable, indivisible and imprescriptible" and requested to have square brackets inserted. Similarly, on indigenous people and local community, it

had previously requested that reference be made to beneficiaries in general rather than specifically to indigenous people and local community to avoid further complications. On Article 7, it recalled there was a suggestion that the complete text of the two options would be brought back, and that seemed to be missing. On Article 11, it observed that square brackets were missing on alternative 2.

492. The Delegation of the Plurinational State of Bolivia said that in Article 7, optional additions to Option 1, its proposal had been separated into two paragraphs, (a) and (b) and had therefore lost its meaning. The said paragraph should read "traditional knowledge is transmitted from generation to generation and thus traditional knowledge is imprescriptible".

493. The Delegation of the United States of America said that it embraced the remarks by the Delegation of India as to "inalienable, indivisible and imprescriptible". It also shared the concerns that Article 1, to the degree it expressed indigenous people or local community, it would be better to use the word "beneficiary persons". It believed that was a point that had also been made by the Delegation of Barbados. On Article 1(e), based on its previous proposal, the word "material heritage of indigenous people and local communities" was missing. It did not seek to press that word necessarily upon the Committee but other participants had also alluded to it.

494. The Delegation of Trinidad and Tobago recalled that earlier in the week, the Delegation of Sri Lanka had expressed its discomfort with the term "fulfills" in Article 7 and it had therefore proposed the use of the word "satisfies". Following consultations with the Delegation of Sri Lanka, they both realized that that had not been reflected in the current text. Also with respect to Article 1, it shared the point of view of the Delegations of India and the United States of America on the use of the word "beneficiaries".

495. The representative of Tupaj Amaru expressed the concern that the facilitators' text with square brackets and multiple options would in no way facilitate the Committee's work. He added that discussions of the texts at the next session would simply repeat the same exercise. On omissions, although a number of delegations had made reference to the imprescriptible nature of TK, it had not been included in the text. Also, the proposal by the Delegation of the United States of America to include "of material heritage" had not been captured in the text. In light of those omissions, he said that there was a need to modify the working methods. Finally, he expressed the wish to submit his amended text to the Secretariat, requesting the Chair to ensure their publication as a working document. He further thanked the Delegation of Sri Lanka for its support and the Chair for his patience.

496. The Chair invited the facilitators to take the floor regarding possible omissions, mistakes and process.

497. On behalf of the facilitators, Ms. Andrea Bonnet Lopez, at the outset, thanked all those who had spoken on the revised version of the facilitators' text. They were pleased to hear the comments made by all Member States. The work had not been easy and they were very grateful to all for their understanding. By the same token, she thanked the Delegations of Norway and India for having approached them and expressed the hope that the Secretariat would be in a position to facilitate the continuation of their work in order to ascertain that all proposals were correctly reflected. She also explained that with reference to the proposal made by the Delegation of the Plurinational State of

Bolivia, the facilitators did not have the opportunity to undertake drafting as such. What they had done was to identify all those proposals which had been submitted to plenary for discussion. She further advised that if the Delegation of the Plurinational State of Bolivia was seeking the inclusion of the paragraphs as submitted in writing, it would be done. With regard to the comments, she requested that the last note on the first page which indicated that the facilitators had not worked on the objectives and principles be deleted.

498. The Chair then opened the floor for general comments regarding the format of the final text that would be forwarded to the WIPO General Assembly. He further advised that all comments related to the text had already been made and the new comments would relate to form, and not to substance.

499. The Delegation of Algeria, speaking on behalf of DAG, said that it had not taken the floor, thus far, because it had believed that the process would lead to a document that would enable the Committee to make progress. The Committee, however, found itself yet again with a text and a Chairman's note which, it felt, was misplaced. The Delegation of Algeria failed to understand why the note was inserted, particularly given the fact that its inclusion had not been discussed in plenary. Thus, the liberty taken in the inclusion of the note did not appear to follow any procedure. Drawing from comments previously made, it understood that the Chairman's note had been included on the basis of previous discussions on GRs and, in this regard, it reminded the Committee that the process on GRs had not reached the same level of maturity as the TK one and, therefore, the two processes could not be compared and could not operate in the same way. It formally requested the removal of the Chairman's note.

500. The Delegation of Egypt, speaking on behalf of the African Group, also requested the deletion of the Chairman's note recalling that at the IGC session on GRs, a Chairman's note had been included at the request of one delegation and that the Committee had agreed to proceed on that basis. This did not, however, mean that it should be reflected in each of the texts that would be submitted to the WIPO General Assembly. It also recalled that no Member State had, so far, requested the additional of a Chairman's note. Further, with reference to the additional comments reflected on page 3 on bullet points 2, 3 and 4, it recalled that all Member States had had the opportunity to reflect their positions in the text, whether in the form of square brackets, deletions or even new language. All the positions had, therefore, been captured in the text and, as a result, the disclaimer was unnecessary. On the basis of the precedence that that might set, it reiterated its request for the deletion of the Chairman's note. The Delegation also requested the removal from the text of the comments by the facilitators on each article as they were not negotiated text and did not form part of the negotiated draft articles. It suggested, for the sake of guidance, that they be captured as part of the report of the meeting.

501. The Chair noted that there were two lines of discussion, one regarding the Chairman's note and the other regarding the comments and annotations made by the facilitators.

502. The Delegation of Indonesia, speaking on behalf of the LMCs, also sought clarification on the insertion of Chairman's note in the facilitators' document, since there had been no discussion or agreement during the plenary on that issue. It also believed that there had been no agreement at any IGC session that the Chairman's note adopted

at IGC 20 would be used as a template for all IGC draft articles texts. It believed that all the positions of the delegations were reflected in the facilitators' revised text. Inserting the Chairman's note seemed to negate all the hard work that had been done at this session.

503. The Delegation of the EU, speaking on behalf of the EU and its Member States, strongly supported keeping the Chairman's note because it did not reflect a negation of the work done, and it did not reflect a get-out clause. Rather it reflected a very useful explanation of the status of the document which may otherwise not entirely be captured by the title. By the indicative titles of the various sections of the revised facilitators' text which were presented as articles, they could be interpreted by some as being a drafted treaty. It did not consider that the text was yet at a sufficient level of maturity to go beyond consideration for further work. It recognized that in discussions that had taken place earlier in the week, the Chair had said that all the work that the Committee would do in the course of the week would still be considered as options and that the Committee still had a lot more to do. It observed that even by the end of the week of the present session it still had a lot more to do. It, therefore, felt that the Chair's helpful note clarified this and aided those considering the document at the WIPO General Assembly in October 2012. With respect to the comments by the facilitators, again it felt that the comments by the facilitators were a useful addition to help understand the text. For that reason, it preferred to see that they remained.

504. The Delegation of South Africa expressed its full support for the views expressed by the Delegation of Egypt, speaking on behalf of the African Group. On the issue of the Chairman's note, it said that the TK document that was submitted through IGC 19, went to the WIPO General Assembly and had been accepted. It further said that the Committee's task was to refine it and make it a document that would be presented to the WIPO General Assembly. It observed that it was not the Committee's place to judge the maturity of the document, but the responsibility of the WIPO General Assembly. In this regard, reference should be made to the mandate which required the Committee to work on the document. It emphasized that if the Chairman's note did not negate the document, then it had no place in it and served no purpose and should, therefore, be removed. Looking at the history of the document on TK which had gone through many processes, it was difficult for it to accept its insertion. It further noted that the facilitators' comments gave an opportunity for the inclusion of further amendments, but the Chair's position seemed to be different. It therefore sought clarification.

505. The Chair advised that there would be no further substantive adjustments to the document beyond those which had been taken in the previous discussion on omissions and mistakes and if there was any different view expressed, it would not stand.

506. The representative of Tupaj Amaru said that the Chairman's note indicated that progress had been made despite the fact that it had previously indicated that the text submitted by the facilitators had been rendered more complex. In terms of the jurisprudence of international treaties and instruments, he could not see a text that had been submitted as the work of a Committee. It also fully supported the removal of the notes. In conclusion, he said that the indigenous participants seemed to be superfluous, adding that the Committee would continue to lack legitimacy for as long as it continued to refuse the contributions of indigenous peoples. This had to be made clear at the WIPO General Assembly.

507. The Delegation of the Islamic Republic of Iran said that, the objective of the Chairman's note should be to transmit the draft articles to the WIPO General Assembly. This should be reflected in the decision of the IGC rather than in the note. It added that IGC 20 was different from IGC 21 in terms of the maturity of the negotiated text and observed that in the Chairman's note, there was no mention of the developed nature of the TK text. It believed that all Member States and observers had negotiated with good will, and the last phrase in the Chairman's note undermined the transparency and good will of the participants.

508. The Delegation of the Bolivarian Republic of Venezuela voiced its support for the statements made by the Delegations of Algeria, speaking on behalf of DAG, Egypt, speaking on behalf of the African Group, and South Africa. It did not think that the problem lay with the Chairman's note and whether or not to agree with its inclusion. Rather it was a problem of procedure. It said that everything done in plenary needed to be presented to plenary and agreed upon by plenary, particularly, if there was a document being transmitted to the WIPO General Assembly. It, therefore, supported the removal of both the note and the facilitators' comments because they were not necessary for the WIPO General Assembly's consideration.

509. The Chair said that the Chairman's note was not something to which the Chairman was wedded. Decisions were made by the Committee and not by the Chair. The text reflected in its plain meaning nothing that the Chair deemed prejudicial to the status of the document. He said that he would, however, not defend a position with which the Member States were uncomfortable. The manner of decision-making as to whether the Chairman's note, or any other note remained, was in the hands of the Committee.

510. The Delegation of the United Republic of Tanzania thanked the Chair for his remarks and expressed its support for the comments made by the Delegations of Egypt, speaking on behalf of the African Group, and Indonesia, speaking on behalf of the LMCs, on the deletion of the Chairman's note and the facilitators' comments.

511. The representative of Health and Environment Program also supported the comments made by the Delegations of Egypt, speaking on behalf of the African Group and South Africa, saying that at no point in the discussions had the Committee discussed it. She expressed the fear that the Chairman's note would dilute the work that had been done in the past couple of days. She also believed that the debate seemed to be running on forever and feared that the Committee would not be able to reach a solution within the desired time period. She also feared that the Committee would continue coming back to the same divergent positions.

512. The Delegation of Ethiopia supported the statement as articulated by the Delegation of Egypt, speaking on behalf of the African Group, and requested, as a matter of principle, the deletion of the Chairman's note and the facilitators' comments.

513. The Delegation of Kenya also fully supported the comments made by the Delegation of Egypt, speaking on behalf of the African Group, and Indonesia, speaking on behalf of the LMCs.

514. The Delegation of the United States of America identified three components which the Committee seemed to be discussing: the Chairman's note; the notes and observations on page 3; and the subsequent facilitators' comments. It was struck by the fact that if one read the Chairman's notes it stated the obvious, i.e., the text represented

the results at the conclusion of IGC 21 in accordance with the mandate of the WIPO General Assembly; it represented a work in progress; and it was without prejudice to the positions of the participants. For someone outside of WIPO watching what the Committee had done, they would be struck as well that the Committee was struggling over phrases which were obviously true and whether or not they could be included in a document. In the interests of reaching consensus, it could understand the desire to remove the Chairman's note and it appreciated the Chair's willingness to do so. It said that it would concur with that, if that was the will of the plenary. As to the notes and observations on page 3, it believed that those did provide an important background for the reader, particularly, as to explaining the grammatical or the notation system used in the document. As to the facilitators' comments found throughout the document, it would not support their deletion from the document. It further said that its understanding, in listening to the intervention by the Delegation of Indonesia, was that it was proposing the deletion of the Chairman's note but not the others notes, observations and comments. Perhaps others Delegations had understood its remarks to include the deletion of the facilitators' comments, but that was not how the Delegation of the United States of Amarica had understood it.

515. The Delegation of Sri Lanka said that the Committee was wasting its time on an issue which was not relevant to the text. However, going by the comments from other delegations, it suggested that the Chair consider withdrawing the Chairman's note and proceed with other important matters.

516. The Delegation of Hungary, speaking on behalf of Central European and Baltic States (CEBS), supported the comments made by the Delegation of EU. It also supported comments made by the Delegation of the United States of America on the fact that the Chairman's note's reflected plain facts. If, however, the Committee was to eventually decide to remove the Chairman's note, it would also ask that the title of the document be changed. On the issue of the notes on page 3 and the facilitators' comments, it supported the comments made by the Delegation of the United States of America because during the substantive discussions it was under the assumption that the comments would be read together with the articles. It noted that the delegations protesting the inclusion of the comments did not protest at that time. After the discussion on the text was closed, it was implied that the comments would remain. They could not be put away at that stage because the text could not be read without them.

517. The representative of Tin Hinane called upon the Committee to better consider the participation of indigenous peoples in its work by taking into account the UN Declaration on the Rights of Indigenous Peoples as already expressed previously by the Indigenous Caucus at IGC 20.

518. The Delegation of Brazil supported the statements made by the Delegations of Indonesia, speaking on behalf of the LMCs, Egypt, speaking on behalf of the African Group and the Islamic Republic of Iran, on the removal of the Chairman's note.

519. The Delegation of Zimbabwe also requested the removal of the Chairman's note, as well as the comments made by the facilitators. It further supported the proposal by the Delegation of Hungary, speaking on behalf of CEBS, on the change of the title of the document.

520. The Delegation of the Philippines added its voice to those delegations calling for the deletion of the Chairman's note, as well as the notes and observations appearing on

page 3 of the document. The rationale for that being that while, it valued the exemplary work done by all the facilitators, the understanding was that these comments indicated the manner by which the Committee had done its work. But for purposes of submitting the document to the WIPO General Assembly for its independent assessment, it would not be necessary. It suggested that perhaps those elements could be included in the report of the current session.

521. The Delegation of Algeria supported the statements made by the Delegations of Egypt, speaking on behalf of the African Group, and Indonesia, speaking on behalf of the LMCs. It said that it was clear that the Chairman's note was unnecessary and did not need to be in writing. Also, the note did not really help the Committee to understand the document better. It further said that the title would be the best solution to helping the Committee understand the document. It was clear that the document as forwarded was would be a draft and would still needed to be worked on.

522. The Delegation of Indonesia, speaking on behalf of the LMCs, in response to the remarks made by the Delegation of the United States of America, clarified that it was true that in its first intervention, it had requested the deletion of the Chairman's note. Nonetheless, it associated itself with the African Group, in asking that the notes on page 3 and the facilitators' comments be taken out of the document since they were not part of the instrument.

523. The Chair observed that the sense of the room seemed to be as follows. The Chairman's note in the document would not be preferred; the comments of the facilitators, while useful and important for the understanding of the document, should perhaps be placed in another format than as part of the text that would go forward to the WIPO General Assembly; and there was a desire for the annotations by the facilitators to be removed. He was of the view that some of the proposals could be reasonably accommodated by some work on the part of the Secretariat, if there was general agreement. With regard to the annotations, he said that there might be need for more reflection, since some annotations were intended to guide the understanding of the text, e.g., the annotation on page 27 of the document which said "unofficial translation by the facilitators from original Spanish-language text". He questioned whether those explanatory footnotes ought not to remain to guide in the understanding of the nature of the text. He further said that it seemed that the Committee had three issues for decision. The first issue was the status of the chairman's note. He reiterated that the Chair was not wedded to the note. In any event, whether the Chair was wedded or not, all decisions were taken by the Member States. Related to that, he recalled that there was one intervention with respect to the title; and there was a comment of support for the removal both of the Chairman's note and of the introductory notes. He referred to two questions regarding the title and the Chairman's note: first, was the adjustment of the title a materially important issue for the Committee's consideration; second, was the linkage between the title and the Chairman's note a materially important issue for the Committee's consideration? The Chair, based on the balance of interventions, felt that there was a sense that the title should remain and the Chairman's note should go.

524. The Delegation of EU, speaking on behalf of the EU and its Member States, was astounded by the fact that there had been many comments that the note was unimportant. It observed though, that so much importance was attached to its removal. It added that everyone recognized the document to be forwarded as a working document. At the same time, it said that to remove the Chairman's note which identified

it as such, and not indicate explicitly in the title that it was a work in progress would not be acceptable. It requested the Chair to adjourn in order to allow for consultations on proposals that would resolve the issue.

525. The Delegation of Canada was also of the view that the Chairman's note should remain in the text. If not, the title of the document would have to be changed with the qualification "working document" added to the title. Also, it would have to revisit the decisions that would be taken later to be able to reflect the content of the Chairman's note.

526. The Delegation of the United States of America said that the comments made by the Delegation of Canada had spoken to the spirit of its concerns. Having been present in many meetings where the Committee or other committees spent hours fighting about the titles of documents, it did not look forward to a Friday evening like that. It therefore recommended a short break in the hopes that the Committee would find a formula that adequately conveyed the sense of the document as it came out of the Committee.

527. The Delegation of Egypt, speaking on behalf of the African Group, supported the proposal for a break. It also reminded the Committee that the title of the document was taken from document WIPO/GRTKF/IC/21/4 and it hoped that the Committee was not going backwards. The document before the Committee after those five days was one that the Committee had negotiated, and any delegation that did not see its position captured in the document, should say so. It believed that all delegations' positions had been captured in the document. As a way forward, taking into consideration the need for constructiveness and flexibility, it suggested that delegations with reservations on the document state their positions as part of the report of the Committee to show that they did not actually associate themselves with the document and the work that had been done the past five days. It said that this would ensure that their positions appeared on record.

528. The Chair sought clarification from the Delegation of Egypt, speaking on behalf of the African Group, asking whether it was its desire that the groups disassociate themselves from the text.

529. The Delegation of Egypt, in response, said that the positions of Member States requesting the amendment of the title of the document could be recorded in the report of the meeting.

530. The Delegation of Hungary, referring to the document WIPO/GRTKF/IC/21/4, said that the document actually had an introduction which clearly stated that it was a working document and work in progress. A Chairman's note or something reflected in the title to that effect was, therefore, needed.

531. The Delegation of Morocco said that continued discussions on the title would not leave enough time for other issues. It therefore supported the proposal by the Delegation of Egypt, speaking on behalf of the African Group, that the session accept the document as it was, with the title that it currently had as presented in document WIPO/GRTKF/IC/21/4, and that the note be removed.

532. The Chair expressed his appreciation for the comments by the Delegation of Morocco but noted that his hands were tied on that issue. He recalled that the Committee had had the same discussion at the end of the last IGC; it had lasted for an

extended period and the compromise was that the Committee would offer a note in the text to reflect the status of the document. He recalled that the initial submission to qualify the document was presented in a form that, at that time, the Delegation of the Philippines had raised concerns about. And, arising from that discussion, there was consultation on ways in which the matter could be addressed without prejudice to the status of the document. In that context, he adjourned the plenary and asked that the proponents of the specific positions consult with each other.

533. After consultations, the Delegation of the United States America informed the Chair that in a cooperative spirit, the Member States had been able to gather informally and discuss the issues raised. It believed that it had a positive result that everyone was amenable with. The title would remain: "The Protection of Traditional Knowledge: Draft Articles". Then, following the style of document WIPO/GRTKF/IC/21/4, it would be followed by an "Introduction". The introduction would consist of the Chairman's prior note with a change at the end so that the introduction would read: "This text represents the results at the conclusion of the IGC 21st session in accordance with the mandate of the WIPO General Assemblies contained in (WO/GA/40/7). It represents a work in progress." This would be followed by the first five bullet points of the notes on page 3 of Rev. 2 of the facilitator's text with one change pursuant to a facilitator's correction to the third bullet point which should read: "New language added by Delegations in the last iteration of the document is underlined". This would explain the typography of the text. The remainder of the bullet points on page 3 that had not been retained in the introductory paragraphs of document and all the facilitators' comments would be moved to an annex of the document, so that the annex would be called "the facilitators' notes and comments".

534. The Delegation of the Bolivarian Republic of Venezuela expressed its reservations on the use of Chairman's notes that had not been discussed in the plenary. It did not want this to be a precedent.

535. The Chair, in response, clarified that no Chairman's note had ever been included without the assent of the plenary. The only Chairman's note which the Chair had included in the document was the product of a compromise at IGC 20, which was based on the decision of the plenary at that time. The draft presented for comment at the present session had not been the reflection of a decision taken at IGC 21 and the insertion of the Chairman's note had been simply for the Committee's consideration.

536. The Delegations of Egypt, speaking on behalf of the African Group, and the Delegation of Algeria, speaking on behalf of DAG, highlighted that they regarded the TK text as being more mature than the text on GRs.

Decision on Agenda Item 6:
537. *The Committee discussed all the working and information documents prepared for this session under this Agenda item, in particular documents WIPO/GRTKF/IC/21/4, WIPO/GRTKF/IC/21/5, WIPO/GRTKF/IC/21/INF/4 and*

WIPO/GRTKF/IC/21/INF/8. The Committee developed, on the basis of these documents and comments made in plenary, the text "The Protection of Traditional Knowledge: Draft Articles" 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 April 20, 2012, 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 7: PARTICIPATION OF OBSERVERS

538. The Chair recalled that at IGC 20, in February 2012, a draft study on the participation of observers in the work of the IGC contained in document WIPO/GRTKF/IC/20/7, which outlined current practices and potential options, had been discussed. The IGC had taken several decisions in this regard. One of these decisions was to request the Secretariat to prepare a document that described the practical implications of three of the proposals formulated in the draft study, namely: Proposal 1, revision of the application form for ad hoc accreditation to the IGC and the establishment of a standing Accreditation Advisory Board; Proposal 3, revisions to the format of the Indigenous Panel; and Proposal 6, establishment of a standing Advisory Board for the WIPO Voluntary Fund for Accredited Indigenous and Local Communities. The Secretariat had prepared that document, which was before IGC 21 as WIPO/GRTKF/IC/21/6. The Chair also drew attention to document WIPO/GRTKF/IC/INF/9, which had been produced as a direct result of decisions taken on the subject at IGC 20. The Secretariat had provided a briefing to observers that week, also pursuant to decisions taken at IGC 20. The Chair was aware that observers and others might wish to raise new proposals for consideration under agenda item 7 and that would be allowed after discussion on WIPO/GRTKF/IC/21/6 had concluded. He introduced Proposal 1, and invited specific comments on it.

539. The representative of FAIRA, speaking on behalf of the Indigenous Caucus, thanked the Secretariat for its work on the document WIPO/GRTKF/IC/21/6. He supported Proposal 1 and suggested equal representation of States and indigenous peoples in the standing Accreditation Advisory Board. The revised accreditation application form would provide rigor to the identification and legitimatization of indigenous representatives at the IGC, giving some comfort to States in respect of applications for support from the WIPO Voluntary Fund, knowing that organizations applying were truly representative of indigenous peoples.

540. The representative of Tupaj Amaru recalled that the General Assembly of WIPO, in September 2011, had invited the Committee to review its procedures with a view to enhancing the positive contribution of observers, including indigenous peoples, to the IGC process. He observed that the changes proposed in the document were more changes in form rather than substantive changes, thus the Member States of WIPO had not responded to the request of the WIPO General Assembly. He lamented the lack of political will that led to double standards, selective and discriminatory treatment by Member States of proposals by Tupaj Amaru. Indigenous peoples, and particularly Tupaj Amaru, had to beg for support from the same Latin American Governments that despoiled the land and took away natural resources and TK of indigenous peoples, condemning them to poverty and misery. Nevertheless, he thanked the Delegation of Sri Lanka for its courage and political will when it supported his proposals and contributions, which were constructive for the work of the IGC. He emphasized that indigenous peoples attended the IGC not just to thank the Voluntary Fund, nor to warm seats, but to defend their rights and negotiate with Member States for protection of their culture and spiritual heritage, which were still subjected of biopiracy. He wished to exclude indigenous peoples' cultural expressions and heritage from access. The debates and discussions revealed that the only negotiating positions represented at the IGC were the geopolitical interests of the old colonial empires. Those of the North and the South did not recognize indigenous peoples as actors of history.

541. The Chair wondered if there were any specific comments the representative of Tupaj Amaru wished to make on proposal 1.

542. The representative of Tupaj Amaru reiterated that the international community and the Member States of WIPO did not have the political will to listen to the voice of the indigenous peoples. Reacting to document WIPO/GRTKF/IC/21/6, he wished to discontinue the Indigenous Panels, since in their many years of existence, they had not contributed to the progress of the negotiations.

543. The Chair clarified that he had not yet opened the floor for discussions on the Indigenous Panel.

544. The representative of Tupaj Amaru observed that the accreditation process was not clear, IGC participants did not know the organizations seeking accreditation or their guiding principles and rules. Under the agenda item on accreditation of certain organizations, the practice was that the Chair announced that a number of organizations were seeking accreditation and asked whether the Committee approve them or not. He observed that the IGC could not expect to reach out to indigenous peoples and seek their opinion when they were kept at a distance from the actual discussions.

545. The representative of Health and Environment Program related that her organization worked with indigenous peoples in Africa, was based in Cameroon, and had participated in many sessions of the IGC since the beginning. She felt that Africa was underrepresented in the work of the IGC, thus there was a need to bring in people who were properly informed and trained, able to express indigenous viewpoints at the IGC in a scientific and intellectual way, and able to pass on information to different populations who could be accredited to attend the IGC. She preferred to maintain the accreditation application form currently in use. In view of the importance of the accreditation process, she wondered what role people from the communities in Africa could play in the Accreditation Advisory Board. She proposed herself as a member of the Board, and

offered to submit her curriculum vitae and provide information showing that she had a Ph.D. and possessed the capacity to determine which populations ought to be able to attend the IGC.

546. The Chair clarified that discussions had not yet reached a stage that would allow the IGC to reflect on specific matters of composition. He hoped interventions would focus on the principles, procedures, and structures that were contemplated in the document under discussion. He recalled that when this agenda item was taken up in the last session, the IGC was unable to come to clear decisions on a number of elements because the interventions did not give sufficient guidance for the IGC to take a decision. He urged delegations and observers to focus specifically on the proposals contained in document WIPO/GRTKF/IC/21/6, and to indicate where they agreed, where they could make further suggestions, and where they disagreed to ensure clarity in decisions that would be taken.

547. The Delegation of South Africa, speaking on behalf of the African Group, supported the participation of observers in the work of the IGC and had consistently provided resources for observer participation since the inception of the IGC. Therefore, at IGC 20, the Secretariat had been requested to elaborate further on the proposals that were put forth so that the IGC could understand their implications. It did not agree with the mandate proposed for the standing Accreditation Advisory Board, specifically, the power to reject accreditation applications was not in accord with its support for the engagement of indigenous people and local communities in the IGC process. The IGC had never rejected an application before and it saw no reason to give the Accreditation Advisory Board the power of rejection. Further, it was unsure if the Advisory Board should have the right to apply criteria requiring that the applying organization be in conformity with the spirit, process and principles of WIPO, as it could make accreditation too burdensome for indigenous peoples, which typically dealt with a variety of issues. It noted that the proposal allowed deliberations and considerations of the Advisory Board to take place only in English, which would present problems if there were members of the mechanism from French speaking countries of Africa. It noted that the arguments in document WIPO/GRTKF/IC/21/6 for opting not to establish a standing Advisory Board for the WIPO Voluntary Fund would apply in the same way to the proposal to establish a standing Accreditation Advisory Board. In view of the support and value accorded by the African Group to participation of Member States as well as indigenous and local communities in the work of the IGC, it was not in a position to support Proposal 1.

548. The Chair thanked the African Group for its focused comments on the proposal. He sought clarification in respect of the Delegation's observation on the matter of acceptance or rejection: was it the view of the African Group that no application received could be found wanting, or was it that it preferred not to establish a system of criteria and legitimatization that could lead to rejection? From the Chair's understanding of the proposed guidelines, it was not the standing Accreditation Advisory Board that had the power to reject or accept applications. The Advisory Board could recommend, but ultimately the power to reject or accept remained with the IGC, and the fact that the power had never been exercised did not mean it did not exist. If there were a challenge to the accreditation application of an organization raised in the course of plenary, then that challenge would have had to be dealt with. So, substantively, the Chair did not see any change in the competence of the IGC, in view of Proposal 1. It was then a question of criteria that would set benchmarks for the exercise of that power by the IGC. Otherwise there was no need for the agenda item on accreditation of observers,

because all observers would be automatically approved. And it did not make sense to put an item in the agenda for decision of members if the power to make decisions did not exist. The Chair requested an answer and apologized to Delegations if he had exceeded his mandate by making a specific request to the Delegation of South Africa.

549. The Delegation of South Africa, speaking on behalf of the African Group, recalled that in the practice of WIPO as a whole, it was only the IGC that applied Rule 8 (2), of the WIPO General Rules of Procedure which allowed for flexibility in the accreditation process of each Committee. It noted that the mandate from the General Assembly was to enhance the positive contribution of observers, so it did not make sense to limit their participation by creating a body that had the power to determine who participated and who did not. Further, while the mandate of the standing Accreditation Advisory Board was the accreditation of observers in general, the proposed composition in Annex II included two members from accredited observers who represent indigenous and local communities and two from accredited observers who do not represent indigenous and local communities, and it wondered why there was a need to specifically target indigenous people and local communities as specific observers. The Delegation believed that the present system for participation of observers was sufficient, and did not wish to establish a system that would discriminate between different kinds of observers.

550. The representative of CAPAJ did not agree with the proposed addition in the accreditation application form that posed the question “Is your Organization a representative or governance body or structure of an indigenous people or local community?” The question was very vast and included the notion of an indigenous governance body or structure, and this was a matter that needed close attention from indigenous peoples. Specifically, indigenous peoples’ governance bodies had not applied for accreditation with the IGC because that relegated them to the status of mere observers, contrary to their demand for recognition as indigenous peoples with equal status as States, including the right to make textual proposals in the same way as States and the right to vote. Further, it did not believe that the standing Accreditation Advisory Board should have the right to decide on the status of a people or on the legitimacy of the governance bodies and structures of indigenous peoples.

551. The Delegation of Switzerland thanked the Secretariat for the additional information provided in document WIPO/GRTKF/IC/21/6. It supported the adoption of a revised application form with additional questions and felt that the revision would facilitate the appreciation of the representativeness and accountability of applying organizations. It likewise supported the establishment of a standing Accreditation Advisory Board, as that would be the appropriate mechanism to encourage and strengthen the participation of organizations that were clearly representative of indigenous peoples. It agreed that the Board should work intersessionally and electronically and hoped that the Board would be able to assess the applications and to recommend qualified accreditations but also inform the IGC about unqualified applications. It recalled that indigenous representatives themselves supported a system that would allow for a better accreditation process by sharply distinguishing between organizations that do represent indigenous communities and organizations that do not. It wished to add to the proposed principles and guidelines a mechanism that would allow for an election of new members of the Board, to address instances where elected members of the Board were not able to fulfill their two-year tenure. It agreed with the observation made by the Delegation of South Africa, on behalf of the African Group, that

the Board's language of operation could be further considered to ensure inclusiveness of this system.

552. The representative of Health and Environment Program supported the intervention of the Delegation of South Africa, on behalf of the African Group, regarding linguistic representativeness and called for mechanisms that allow strong representation from all of Africa.

553. The Chair emphasized the need for focused guidance on the items before the Committee and invited suggestions for improvement of the proposals.

554. The Delegation of Egypt supported the statement made by the Delegation of South Africa, on behalf of the African Group, to maintain the status quo because the current procedure had served the IGC very well.

555. The Delegation of Australia supported the changes proposed to the application form, and also supported in principle the creation of a standing Accreditation Advisory Board, as it could provide Member States with valuable input for decision-making. The proposals would provide rigor to the existing accreditation process and enhance participation of observers with active and informed capacity to contribute to the deliberations of the Committee. It would also ensure legitimate input from indigenous peoples' representatives.

556. The Delegation of the Bolivarian Republic of Venezuela considered that indigenous peoples should not be considered just as observers among others. The Delegation noted that the issues relevant for and the histories of indigenous peoples were not the same as those of an NGO or an observer representing, for instance, a medical sales company. The history of indigenous peoples and their continuing confrontation with States in which they reside had led to the adoption of the UN Declaration on the Rights of Indigenous Peoples and the law on indigenous communities in Venezuela, which established the rights of indigenous peoples to legitimate representation in all bodies of the States in Venezuela including in the Venezuelan parliament. It was of the view that the persons who were elected by indigenous populations from its country should not have the status of simple observers but should have the right to put forward proposals and vote like States.

557. The representative of CISA clarified that his people, the Aymara, were found in Bolivia, Chile, Peru and Argentina, and that they wished to be considered an indigenous nation. However, since it was not possible to participate in most international forums as nations, they had been represented by NGOs.

558. The Delegation of the Russian Federation supported the changes to the accreditation application form. It agreed that the form should allow applicants to provide information on their activities and the relationship of the organization with IP matters, which would be important for decisions on accreditation. It supported in principle the establishment of a standing Accreditation Advisory Board, but felt that the Board should have the technical possibilities for work because Annex II referred to secure electronic platforms. Further, if the members of the Board were to work in their individual capacities, then there would be no institution that could guarantee that they would be able to work for the two-year duration of their tenure. Finally, the issue of language was important, and it felt that the Board should have the possibility of working in other languages.

559. The Delegation of the EU, speaking on behalf of the EU and its Member States, supported proposals that sought to fortify and rationalize the selection of observers and their financing mechanisms. It therefore supported Proposal 1 on the establishment of a standing Accreditation Advisory Board appointed by the IGC for two years with a proper composition.

560. The Delegation of Germany agreed with the proposal of the Delegation of Switzerland to provide for a mechanism to address instances where elected members of the accreditation Advisory Board were not able to fulfill their two-year tenure. It also proposed the creation of a mechanism for updating of information of accredited observers. Finally, it agreed with the position of the Delegation of South Africa, on behalf of the African Group, that the arguments for not establishing a standing Voluntary Fund Advisory Board apply in the same way to the standing Accreditation Advisory Board.

561. The representative of Tupaj Amaru observed that the proposals in document WIPO/GRTKF/IC/21/6 were formulated under the competency of Member States and not under the competency of indigenous peoples. He noted that Annex II of the document defined different categories of observers, namely those that represented indigenous and local communities and those that do not. However, it did not address the proposal to allow indigenous peoples to propose text in their own right, without the need for support from States for indigenous proposals to remain in the text. He proposed that the IGC adopt the procedure and practice of other UN bodies, such as the Working Group on the Draft Declaration, which had allowed, according to him, indigenous peoples to participate in the same way and with equal status as States.

562. The Chair wondered if the representative of Tupaj Amaru supported or opposed the proposals.

563. The representative of Tupaj Amaru was of the opinion that the proposals were drafted under the competency of States, and it did not matter whether indigenous peoples were in favor or not because his opinion had to be endorsed by a Member State before it could be reflected. He was of the view that the document did not address the matter of allowing equal participation of indigenous peoples or of recognizing the right of indigenous peoples for their proposals to be officially accepted as contributions.

564. The Delegation of New Zealand supported the proposals for the same reasons advanced by the Delegations of Switzerland and Australia.

565. The Chair thanked Member States and observers for their constructive interventions, focused comments, and recommendations for clarification and improvement. He proposed to return to Proposal 1 for decision later on in the session to allow for further consultations to take place on the specific areas that had been raised by a number of delegations. He opened the floor for discussion on Proposal 3 and introduced it briefly.

566. The Delegation of the United States of America, speaking on behalf of Group B, thanked the Secretariat for document WIPO/GRTKF/IC/21/6 and supported Proposal 1 and the status quo as formulated under Proposal 6. On Proposal 3, it preferred that the Panel remain separate from the formal IGC session, but was reported on in the session report, as was the current practice. It did not believe that formalizing the Indigenous

Panel would necessarily enhance mutual engagement and true dialogue between Member States and indigenous peoples and local communities.

567. The representative of Tupaj Amaru said that the Indigenous Panel had not really contributed to the work of the Committee or to the elaboration of text under negotiation. He observed that with the Panel, a whole morning that could have been spent meeting the mandate of the IGC was lost listening to indigenous peoples who did not really address the substance of the issue of biopiracy of TK and GRs. He emphasized that the subject was piracy and biopiracy, and the use of indigenous peoples' GRs by major pharmaceutical companies, which had their headquarters in highly developed countries. He wished, however, to be a panel speaker at the next IGC session, and proposed to speak on the topic of piracy and biopiracy.

568. The Delegation of the EU, speaking on behalf of the EU and its Member States, preferred to maintain the current format of the Indigenous Panel, as previously indicated by the Delegate of the United States of America, on behalf of Group B.

569. The Delegation of Switzerland supported the position of Group B, as articulated by Delegation of the United States of America. It stressed that, from its perspective, the most important recommendation for future panels would be to encourage panelists to focus their approach on issues directly related to IP. It was aware that other issues, such as human rights and biodiversity, were linked to questions addressed by the IGC. However, the work of the IGC was at a stage where the most helpful interventions for negotiations were those that clearly focused on IP. It looked forward to being continuously informed and to profiting from the rich practical experience of indigenous peoples with regard to TK and IP.

570. The representative of Tin Hinane supported Proposal 3 and proposed that States and indigenous peoples discuss the modalities in greater detail in order to come up with more useful proposals. For instance, more detail was needed on the criteria and modalities for selecting panelists, and on whether the selection of panelists needed to be linked to the Voluntary Fund Advisory Board.

571. The Delegation of Sri Lanka supported all the proposals of in document WIPO/GRTKF/IC/21/6.

572. The representative of CAPAJ supported Proposal 3 and agreed that having the panel as a formal part of the IGC would be an improvement, as it would allow follow up on the thematic topics of the panel in relation to the IGC discussions. He proposed that NGOs and observers should be able to propose the topic they considered to be of high importance and also to propose speakers for the panel. He also wished that indigenous peoples could be given more opportunities to hold complementary parallel events.

573. The representative of FAIRA, speaking on behalf of the Indigenous Caucus, supported Proposal 3 and, in case the IGC decided not to approve Proposal 3 and maintain the Panel as an informal part of the IGC, he proposed equal representation of indigenous peoples in the group that selects panel speakers. He supported the proposal of the representative of CAPAJ that panel speakers should address issues on the agenda for discussion by the IGC and present indigenous peoples' positions on draft texts under negotiation, without prejudice to the ability of indigenous peoples to intervene throughout the session.

574. The representative of FRSIPC recalled that the establishment of the Indigenous Panel in 2005, where he had been a panelist, had been a positive step for the indigenous participation in the IGC. He had had the honor of chairing the panel twice and observed that the panel was a very informative and productive approach for receiving first-hand information about the situation of indigenous peoples' protection of their GR, TK, and TCEs, and for direct dialogue between indigenous peoples and Member States. Including the panel as a formal part of the IGC would be welcome and an improvement over the current practice.

575. [Note from the Secretariat: The Vice-Chair, Ms. Alexandra Grazioli, was chairing the session at this point]. The Vice-Chair, thanked everyone for their comments and opened the floor for discussion on Proposal 6, which she briefly introduced.

576. The Delegation of South Africa, speaking on behalf of the African Group, concurred with the analysis provided by the Secretariat and endorsed the recommendation in the first sentence of paragraph 13 to maintain the *status quo*.

577. The Delegation of the EU, speaking on behalf of the EU and its Member States, understood the rationale put forward by the Secretariat to maintain the current modalities of operation of the Voluntary Fund and, therefore, supported Proposal 6. However, it wished to continue to reflect on ways to improve the functioning of the Board of the Fund.

578. The representative of Tupaj Amaru maintained the position it had had since the beginning of the IGC, which was in favor of the Voluntary Fund. Unfortunately, he stated, it seemed the Advisory Board had gone astray from its original mission, so that it lacked transparency and impartiality. He pointed out that the Advisory Board could learn from similar bodies of the United Nations, where Board members were changed every two years. He recalled a report published by special advisor Alfonso Martinez from Cuba that very clearly put forward the rules of operation for the Advisory Board of the United Nations.

579. The Vice-Chair requested that the representative focus his intervention on Proposal 6.

580. The representative of Tupaj Amaru did not support the proposal to establish a standing Advisory Board for the Voluntary Fund. He believed there should flexibility, transparency and non-selectiveness in the operation of the Board, and that the funds should be given to representatives of indigenous peoples who would make a positive contribution to the IGC.

581. The Delegation of the Russian Federation supported the former structure of work of the Advisory Board for the Voluntary Fund, based on the experience of some of its members who had had the opportunity to serve on the Advisory Board. It did not agree with the suggestions of the draft study for a biennial tenure for board members as there was no guarantee that those working in their individual capacity would be able to complete a two-year term. The issue of language was also important and was discussed extensively under Proposal 1. It preferred to maintain the current structure of work of the Advisory Board.

582. The representative of FAIRA, speaking on behalf of the Indigenous Caucus, reiterated his proposal for equal representation of States and indigenous peoples in the standing Advisory Board for the WIPO Voluntary Fund.

583. The representative of Tin Hinane supported the position of the Indigenous Caucus and highlighted the need for equal representation of indigenous peoples in the Advisory Board. She called for the establishment of criteria for selection of indigenous member of the Advisory Board. She proposed the criteria of credibility, impartiality, and familiarity with or sound knowledge of indigenous movements. She did not agree with the proposal in paragraph 10 on decision-making through electronic means because indigenous peoples did not always have ease of access to telecommunications.

584. The Vice-Chair, in her capacity as Chair of the Voluntary Fund Advisory Board, commended the contributions of representatives of the indigenous peoples in the Advisory Board. She noted that their input and the information they provided were important and useful for decision-making of the Advisory Board.

585. The representative of FRSIPC drew on his personal experience as a member of the board of trustees of the United Nations Voluntary Fund from 2003 to 2008 and three years of membership, including as Chair in 2005, in the Advisory Group of the Voluntary Fund for the First Decade of Indigenous Peoples. He observed that in those advisory boards where he had served, indigenous peoples' representatives were substantially more than in the WIPO Advisory Board. There were six indigenous persons in the Advisory Group, representing the different indigenous regions of the world, because it was important, in his view, that the group had good information on the situation of indigenous peoples and organizations in all the different regions. Therefore, he supported the proposal made by the representative of FAIRA, on behalf of the Indigenous Caucus, to broaden the participation of representatives of indigenous peoples in the Advisory Board. He emphasized the necessity for regular, systematic, and good selection process of grantees as well as a good accreditation procedure for observers.

586. The representative of CAPAJ favored the establishment of a standing Advisory Board that would work intersessionally, with sufficient funding for its operation and for disbursement during its two-year mandate. Although the Secretariat was well structured and provided valuable support to the Advisory Board in its present mode of operation, there were unavoidable limitations on the ability of the Advisory Board to work as, for instance, the Board was able to work, in his view, for a maximum of only two or three hours. He proposed a longer agenda for meetings of the Advisory Board, which would not be limited to deciding where funds should be paid, but included the possibility of producing documents that explain selection criteria. The Board could also call upon States to make more contributions to the Fund. The Board could provide a snapshot of the situation of indigenous peoples and recommend what could be done.

587. The representative of Health and Environment Program favored the inclusion in the Advisory Board of someone active in the field and well versed in the situation of African indigenous peoples on the ground, because it was important for members of the Board to have a good knowledge of those applying for funding. It was important to have criteria for choosing beneficiaries of the Fund, such as relevant training in IP and their capacity to speak for those indigenous peoples in the region who were unable to attend the IGC. She recalled her work with indigenous peoples of Cameroon, where she had

the chance to spend eight months visiting various indigenous peoples, and stressed that she was qualified and interested to be part of the Advisory Board.

588. The Vice-Chair invited the representative to focus her intervention on Proposal 6.

589. The representative of Health and Environment Program supported the intervention of the Delegation of South Africa, particularly its explanation of not singling out specific observers in the accreditation application form. Thus, she favored maintaining the current application form.

590. [Note from the Secretariat: The Chair was chairing the session again at this point]: The Chair closed discussion on document WIPO/GRTKF/IC/21/6 and observed that in the discussions there had been broad support but clear opposition as well to Proposal 1. Therefore, it was the Chair's view that the membership was not in a position to adopt Proposal 1. He recommended that further consultations between the parties interested in advancing Proposal 1, be undertaken. With respect to Proposal 3, there was strong opposition to its adoption sufficient to prevent the Committee from proceeding further on the item. On Proposal 6 there was no opposition, which implied retention of the *status quo*. The Chair then invited focused interventions on any additional substantive and clear proposals specific to the subject of observers' participation

591. The representative of FAIRA, speaking on behalf of the Indigenous Caucus, reiterated his suggestion for increased indigenous peoples' participation in the work of the IGC. He supported the proposal of the Delegation of the Bolivarian Republic of Venezuela that the panellists of the Indigenous Panel be invited to address the substantive working documents of the Committee session concerned in order to contribute directly to the development of the work of the IGC. That would provide Member States with information on the indigenous positions on issues contained in agenda items for discussions for the IGC session concerned. He recommended that the Panel be recognized as a formal part of the IGC process and that it be linked to an accreditation process to ensure that presentations by Indigenous Panel members were legitimate. He recommended that Secretariat consult with the Chair of the Indigenous Caucus, intersessionally, regarding selection of panellists for the Indigenous Panel. He reminded the Committee that the United Nations Declaration on the Rights of Indigenous Peoples recognized indigenous peoples as owners and holders of TK and GRs. In that light, he suggested that a new status being that of Indigenous Peoples, separate from observers, be established within the Committee. Within that status, it was suggested that indigenous peoples be represented, as a matter of course, within any "Friends of the Chair" groups that might be established from time to time, and that representatives of indigenous peoples be, as a matter of course, appointed as co-chairs of working and drafting groups. He reiterated his earlier proposal for equal representation with Member States on the Advisory Board of the WIPO Voluntary Fund. He suggested that the practical implications of the proposals in his statement be investigated by the Secretariat for members to consider at IGC 22.

592. The Chair indicated that the statement would be noted and entered into the report. There were specific elements in the statement that required direct consultation with Member States in advance of any effort to have specific consideration of the elements.

593. The representative of FAIRA, speaking on behalf of the Indigenous Caucus, wished to know if the recommendation for the Secretariat to investigate the practical implications of his suggestions required a decision by the IGC.

594. The Chair clarified that if the recommendation of the Indigenous Caucus was for the Secretariat to prepare a further study on the suggestions, then it would need the support of a Member States for it to go forward.

595. The representative of FAIRA, speaking on behalf of the Indigenous Caucus, confirmed that he had recommended that the Secretariat undertake a study.

596. The Chair asked if there was a Member State that would give support to the recommendation, for such a study to be undertaken.

597. The Delegation of Sri Lanka supported the recommendation.

598. The Chair said that, therefore, as there was no objection against such a study, and one State had supported it, the study would be requested from the Secretariat.

599. The document to be provided by the Secretariat would be an INF document, for the information of IGC participants. A determination as to whether, on the basis of the information provided, Member States would be prepared to proceed with the proposals would be a second stage. But, first, an information document would need to be brought to the attention of Member States. Member States and observers would be able to assess the implications of the suggestions made as guided by the information document and, thereafter, to determine how they would wish to proceed.

600. The representative of Tupaj Amaru supported the suggestion made by the representative of FAIRA, speaking on behalf of the Indigenous Caucus for the establishment of a new status for participation of Indigenous Peoples. He supported the recognition of the substantive contributions and inputs of indigenous peoples to the negotiating process and suggested that those contributions be published as a substantive working document of the Committee.

601. The representative of Health and Environment Program supported the suggestion made by the representative of FAIRA, on behalf of the Chair of the Indigenous Caucus.

602. The representative of CAPAJ supported the suggestions made by the representative of FAIRA, on behalf of the Indigenous Caucus, and thanked the Delegation of Sri Lanka for having supported the recommendation for the Secretariat to undertake a study on the proposals. He wished to know if it would be possible for the Secretariat to receive contributions from Member States and indigenous peoples that could expand on and build upon the proposals read out by the Chair of the Indigenous Caucus.

603. The Chair said that the Secretariat would welcome constructive inputs on the listed proposals in order to assist in the preparation of the information document.

604. The representative of CAPAJ thanked the Secretariat for its briefing for observers, especially indigenous peoples who were new to the IGC process or who had not followed the process for some years. He invited the peoples who were new to the process, and also those people on the ground who were unable to attend the IGC, to take a greater interest in the GRTKF website, which contained all the pertinent IGC documents in all the languages. He was of the view that the problem of indigenous participation in the IGC was not due to lack of representation of African indigenous peoples in the work of the Committee or in the Advisory Board or the unequal

representation of indigenous peoples compared to Member States in the Advisory Board. The main problem was that funding was limited and did not enable enough indigenous participants to take active part in the IGC meetings. He emphasized that the indigenous peoples on the ground had the knowledge and were perfectly capable of articulating their positions before the IGC.

605. The Delegation of Egypt proposed to maintain WIPO as a Member State-driven organization. It recalled that Member States had a regulatory status in the process, but that they supported the principles of transparency and inclusiveness by welcoming observer participation. However, it observed that some suggestions made by the Indigenous Caucus had direct systemic implications on the governance of WIPO as a whole, and it believed that the IGC was not the proper place to change the governance of WIPO. It observed that all Committees of WIPO had clear policies and rules of procedure for engaging with observers that had served WIPO well. It reiterated its proposal to maintain WIPO as a Member State-driven organization.

606. The Chair observed that the proposal made by and the Delegation of Egypt would be taken note of.

607. The representative of WACIPR commended the delegations on the decision taken on Proposal 6 under WIPO/GRTKF/IC/21/6, which was to maintain the *status quo*. He thanked the WIPO Voluntary Fund for enabling him to participate at the IGC and suggested that the Secretariat conduct more capacity-building activities for indigenous peoples to enable them to understand the IGC process better and generate enthusiasm and encouragement for the work of WIPO on indigenous peoples.

608. The Chair recalled that WIPO did, in fact, have programs of support and capacity-building. The Chair invited the Indigenous Caucus to comment on the matter regarding the nature of the document that the Secretariat would be requested to prepare.

609. The representative of FAIRA, on behalf of the Indigenous Caucus, clarified that his suggestion was for the Secretariat to provide an information document for the next session, with the possibility of accepting inputs from Member States and observers into the information document.

610. The Delegation of Germany wished to have the proposal regarding the information document in writing for greater clarity on what the IGC was deciding on.

611. The Chair confirmed that the draft decision would be made available.

612. The representative of the Health and Environment Program objected against the suggestion (1) made by the representative of FAIRA, on behalf of the Indigenous Caucus, as it implied that the representatives of her NGO, which represented 240 different ethnic groups with no discrimination in Africa whatsoever, would be treated differently from representatives from indigenous peoples.

613. The Delegation of Canada proposed to reflect in the decision that the suggestion made by the Indigenous Caucus to request an information note on its suggestions had been endorsed by one Member State delegation.

614. The Delegation of Egypt recalled that it wished to see as part of this information document the impact of the suggestions of the Indigenous Caucus on WIPO governance

policy as a whole. It added that it would show flexibility as long at that aspect is part of the information document.

615. The Delegation of Algeria seconded the statement made by the Delegation of Egypt and requested that the information document include the impact in terms of governance policy, as observers could not have the same rights as Member States at WIPO. It said that it would have been easier for it to agree with this decision as drafted, should its wording have included the term “local communities”. It did not request, though, that the decision under item 7 be renegotiated at this juncture of the discussion. But it stated that any reference to indigenous peoples should be accompanied, as a matter of principle, with a reference to “local communities.”

616. The Vice-Chair, Ms. Alexandra Grazioli, recalled that the suggestion made by the Indigenous Caucus to request an information document on its suggestions had been endorsed by one Delegation and not objected to. She added that this document could be discussed at the next session of the Committee and that the statement by the Delegations of Egypt and the Delegation by Algeria would be reflected in the report.

617. The Delegation of Turkey associated itself with the Delegations of Egypt and Algeria. It observed that indigenous people or indigenous peoples meant different concepts in international law.

Decision on Agenda Item 7:

618. *The Committee discussed the proposals in document WIPO/GRTKF/IC/21/6 and agreed that no changes would be made at the present time to the observer accreditation process or the Indigenous Panel. The Committee agreed with the proposal that no changes be made at this time to the arrangements related to the WIPO Voluntary Fund for Accredited Indigenous and Local Communities. The Committee requested the Secretariat to prepare an information document, for the next session of the Committee, providing information on the practical, procedural and budgetary implications of the following suggestions put forward by the Indigenous Caucus, supported by one Delegation, namely that: (1) a*

new status being that of Indigenous Peoples, separate from observers, be established within the Committee, (2) indigenous peoples be represented, as a matter of course, within any "Friends of the Chair" groups that may be established from time to time, (3) representatives of indigenous peoples be, as a matter of course, appointed as co-chairs of working and drafting groups, (4) equal representation with Member States on the Advisory Board of the WIPO Voluntary Fund (in other words, the Board would comprise four representatives of Member States, four representatives of indigenous and local communities, and the Chair of the Board who is a Vice-Chair of the Committee), (5) the Secretariat consult with the Chair of the Indigenous Caucus, inter-sessionally, regarding selection of panelists for the Indigenous Panel, and (6) panelists of the Indigenous Panel be invited to address the substantive working documents of the Committee session concerned in order to contribute directly to the development of the work of the IGC. To assist in the preparation of such document, the Committee invited IGC participants to send written submissions in respect of the suggestions (1) to (6) above to the WIPO Secretariat before May 7, 2012.

AGENDA ITEM 8: ANY OTHER BUSINESS

619. The Delegation of EU, speaking on behalf of the EU and its Member States, was of the view that after having discussed separately GRs, TK and TCEs in three subsequent sessions of the IGC, it would be necessary to wrap up the discussions and agree on the recommendation to be transmitted to the 2012 WIPO General Assembly. It noted with

great satisfaction that last year at IGC 19, the IGC had efficiently prepared a recommendation for the WIPO General Assembly on the renewal of the mandate. It wished to see similar fruitful discussions in July 2012, at IGC 22. The Delegation therefore strongly supported having a specific item on future work on the agenda of IGC 22.

620. The Delegation of Egypt, speaking on behalf of the African Group, drew the attention of the Committee to the decision by the 2011 WIPO General Assembly, paragraph (d), and observed that it was clear that the WIPO General Assembly had decided that it would assess, take stock and make a decision on the Diplomatic Conference. Therefore, the Committee should not reinterpret the mandate or shift responsibility to the IGC. Further, the next session of the IGC had a specific work program which required focusing on four key articles: subject matter of protection, beneficiaries, scope of protection, and limitations and exceptions. It observed that the IGC had only five days within which it was required to cover the specific articles in question, including the remaining provisions. In its view, five days was too short a period to consider additional agenda items that might require lengthy discussions.

621. The representative of CAPAJ, in view of the proposal made by the Delegation of the EU and the concerns raised by the Delegation of Egypt, speaking on behalf of the African Group, vis-à-vis the diplomatic conference, raised concerns about the participation of indigenous representatives. He highlighted the fact that the IGC process was taking place within the framework that had been approved by the General Assembly in 2007 with regard to the rights of indigenous peoples. He reminded the participants that the framework provided to the indigenous peoples by the UNDRIP was the very framework within which indigenous peoples were participating in IGC process. The IGC should therefore not lose sight of these principles when it came to the drafting of the conventional text.

622. The Delegation of Indonesia, speaking on behalf of the LMCs, hoped that IGC 22 would focus on TCEs as mandated by the WIPO General Assembly. It was of the view that IGC 23 would finalize the work that had been done by the preceding sessions.

623. The Delegation of Cameroon suggested that the provisional list of participants include e-mail addresses of the participants. This would enable the participants to discuss intersessionally prior to, during and after the sessions, to enable informal meetings to be held in advance of the session.

624. The representative of Tupaj Amaru said that he had been involved in that debate from its inception. He stated that he had witnessed attempts to obstruct the progress of the texts by delegations from the North pitted against delegations from the South. He noted that there had been a constant difference of opinion and that a rethinking of the working methods was necessary. He did not see the need for the IGC to entrust its work with facilitators as that had complicated the Committee's work. Finally, he requested the Chair to be more flexible on those asking for the floor, particularly indigenous participants at the meeting.

625. The Delegation of the EU, speaking on behalf of the EU and its Member States, said that it was not intended that any agenda item at the next IGC would seek to substitute the work of the WIPO General Assembly or its responsibility to fulfill the given mandate. In its interpretation, it was a normal working practice of WIPO Committees to summarize their work and provide a brief analysis of this to the General Assembly which

would accompany any documents being submitted. Its intention was to provide advice to the WIPO General Assembly which would help the Member States in their work, without which it would be difficult for Member States to take any decisions on the next steps at the 2012 WIPO General Assembly in September.

626. The Delegation of India shared the views expressed by the Delegations of Egypt, speaking on behalf of the African Group, and Indonesia, speaking on behalf of the LMCs and requested that the next IGC be confined to TCEs. It also drew the Committee's attention to the decision by the WIPO General Assembly, noting that IGC 23 had been mandated to consider decisions of the General Assembly and take stock of further work to be finalized on a text or texts. Future work on the text or texts would be based upon the decision of the General Assembly and not upon what the Committee had done at IGC 20, 21 and 22.

627. The Delegation of South Africa rendered its support for the statements made by the Delegations of Egypt, speaking on behalf of the African Group, Indonesia, speaking on behalf of the LMCs, India and the representative of Tupaj Amaru regarding the need to review methods of work for the next session in order to allow for more opportunity for discussion and refinement of the documents. It appealed for the commencement of advance discussions on future work, adding that it may have suggestions on how that could work.

628. The Delegation of Brazil aligned itself with the statements made by the Delegations of Egypt, speaking on behalf of the African Group, Indonesia, speaking on behalf of the LMCs and South Africa.

629. The Delegation of Hungary, speaking on behalf of the CEBS, supported the comments by the Delegation of the EU noting that the IGC at the next session could find a creative way of discussing TCEs and other issues in order to assist the General Assembly. It added that nothing in the mandate prevented the Committee from doing so.

630. Regarding the work plan and methodology for the next IGC, the Delegation of Egypt, speaking on behalf of the African Group, requested for more time for consultations at the next session so as to advance work on the texts.

AGENDA ITEM 9: CLOSING OF THE SESSION

631. The IGC Chair, thanked all delegations for their cooperation, especially the solutions that had been forged. He hoped that at IGC 22 in July 2012, the spirit of negotiation that had led to the magnificent compromise would remain. He further encouraged the participants to talk across groups with each other in the spirit of compromise that had been displayed at the present session. He highlighted that the Committee had been set with an ambitious target and it was clear that the level of readiness to advance, that was critical to shaping a document of convergence, was at best mixed. But for the Committee to meet the mandate that had stretched over 10 years, a change in approach in certain respects was necessary. One approach that could not, however, be changed was that each delegation had the absolute right to represent its position at the session and that negotiations would be open, fair, and transparent. The Chair said that he welcomed initiatives to advance the work of the

Committee in whatever configuration, provided that the principles of fairness, openness and transparency were maintained

632. [Note from the Secretariat: The Vice-Chair, Ms. Alexandra Grazioli of Switzerland, chaired this closing session]

633. The Delegation of the United States of America, speaking on behalf of Group B, said that while the Committee still had substantial work ahead, the session had helped the Committee to identify the points of convergence and to better understand the points of divergence. Further, it strongly believed that the IGC would benefit from a short stock-taking discussion during the next IGC session in July 2012. This would enable the IGC to determine where it was with the draft texts and the way forward.

634. The Delegation of the Islamic Republic of Iran, speaking on behalf of the Asian Group, was pleased to see that the IGC had achieved positive results which would set pace for the next session. It hoped that this would result in guiding the WIPO General Assembly in deciding on a clear work plan to help the IGC meet its objectives in accordance with the given mandate.

635. The Delegation of Indonesia, speaking on behalf of the LMCs, hoped that the upcoming session would also achieve an outcome that could be submitted to the 2012 WIPO General Assembly.

636. The Delegation of Algeria, speaking on behalf of the DAG, said that it expected much more progress in the process, especially at IGC 22 in July 2012.

637. The above-mentioned delegations, including the Delegations of Egypt, speaking on behalf of the African Group, and Paraguay, speaking on behalf of GRULAC, joined in thanking the Chair, His Excellency Ambassador Wayne McCook and the two Vice-Chairs, Ms. Alexandra Grazioli of Switzerland and Mr. Bebeb A.K.N. Djundjunan of Indonesia, for their able leadership, and the facilitators and all delegations for their constructive work. The Secretariat was also thanked for the timely presentation of all documents and for the briefing session held in advance of the session.

638. The Vice-Chair thanked participants for the constructive spirit that they had shown in the course of the week. She believed that progress had been made on the text and hoped for more progress in the future sessions. In echoing the Chair's remarks, she underscored the importance of interaction among participants intersessionally in order to make progress on the text and to foster better understanding among participants in advance of the session.

Decision on Agenda Item 9:

639. *The Committee adopted its decisions on agenda items 2, 3, 4, 5, 6 and 7 on April 20, 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*

May 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-Third Session of the Committee.

[Annex follows]

LISTE DES PARTICIPANTS/
LIST OF PARTICIPANTS

I. ÉTATS/STATES

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

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Kadi PETJE, Senior Manager Copyright, Companies and Intellectual Property Commission (CIPC), Pretoria

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Heinjoerg HERRMANN, Counsellor, Permanent Mission, Geneva

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OFFICE DES BREVETS DU CONSEIL DE COOPÉRATION DES ÉTATS ARABES DU GOLFE (CCG)/PATENT OFFICE OF THE COOPERATION COUNCIL FOR THE ARAB STATES OF THE GULF (GCC)

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OFFICE EUROPÉEN DES BREVETS (OEB)/EUROPEAN PATENT OFFICE (EPO)

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ORGANISATION DES ÉTATS DES ANTILLES ORIENTALES (OEAO)/ORGANIZATION OF EASTERN CARIBBEAN STATES (OECS)

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ORGANISATION DE COOPÉRATION ET DE DÉVELOPPEMENT ÉCONOMIQUES/ ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD)

Rachael RITCHIE (Ms.), Policy Analyst, Science Technology Industry, Paris

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

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ORGANISATION INTERNATIONALE DE LA FRANCOPHONIE (OIF)/INTERNATIONAL ORGANIZATION OF LA FRANCOPHONIE (OIF)

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ORGANISATION DE LA CONFÉRENCE ISLAMIQUE (OCI)/ORGANIZATION OF THE ISLAMIC CONFERENCE (OIC)

Fuat CANAN, First Secretary, Permanent Delegation, Jeddah

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

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

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ORGANISATION MONDIALE DE LA SANTÉ (OMS)/WORLD HEALTH ORGANIZATION (WHO)

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Association américaine du droit de la propriété intellectuelle (AIPLA)/American Intellectual Property Law Association (AIPLA)
Thomas MOGA (Chair, Intellectual Property, Arlington)

Association européenne des étudiants en droit (ELSA International)/European Law Students' Association (ELSA International)
Thomas WITTMANN (Head, Brussels); Hanna BRENTRUP (Ms.) (Delegate, Brussels); Marilena ZIDIANAKI (Ms.) (Delegate, Brussels)

Association internationale des éditeurs scientifiques, techniques et médicaux (STM)/International Association of Scientific, Technical and Medical Publishers (STM)
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Association pour le développement de la société civile angolaise (ADSCA)/Association for the Development of the Angolan Civil Society (ADSCA)
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Traditions pour demain/Traditions for Tomorrow
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VI. BUREAU INTERNATIONAL DE L'ORGANISATION MONDIALE DE LA PROPRIÉTÉ INTELLECTUELLE (OMPI)/ INTERNATIONAL BUREAU OF THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

Francis GURRY, directeur général/Director General

Johannes Christian WICHARD, vice-directeur général/Deputy Director General

Konji SEBATI (Mlle/Ms.), directrice, Département des savoirs traditionnels et des défis mondiaux/ Director, Department for Traditional Knowledge and Global Challenges

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