



WIPO/GRTKF/IC/28/11 PROV. 2
ORIGINAL: ENGLISH
DATE: SEPTEMBER 29, 2014

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

Twenty-Eighth Session
Geneva, July 7 to 9, 2014

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 “the IGC”) held its Twenty-Eighth session (“IGC 28”) in Geneva, from July 7 to 9, 2014.
2. The following States were represented: Afghanistan, Algeria, Angola, Argentina, Australia, Austria, Azerbaijan, Bahamas, Bangladesh, Belarus, Belgium, Bolivia (Plurinational State of), Botswana, Brazil, Bulgaria, Burundi, Cambodia, Cameroon, Canada, Chile, China, Colombia, Congo, Costa Rica, Côte d’Ivoire, Czech Republic, Democratic People’s Republic of Korea, Democratic Republic of the Congo, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Ghana, Guatemala, Guinea, Holy See, Hungary, India, Indonesia, Iran (Islamic Republic of), Italy, Jamaica, Japan, Jordan, Kenya, Kyrgyzstan, Latvia, Lebanon, Libya, Lithuania, Malawi, Malaysia, Mexico, Monaco, Morocco, Mozambique, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Rwanda, Saudi Arabia, Senegal, Serbia, Singapore, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Tajikistan, Thailand, Trinidad and Tobago, Togo, Tunisia, Turkey, United Kingdom, United States of America, Uruguay, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia and Zimbabwe (109). The European Union (“the EU”) and its 27 Member States were also represented as a member of the Committee.
3. The following observers were represented: Palestine, South Sudan (2).
4. The following intergovernmental organizations (“IGOs”) took part as observers: African Regional Intellectual Property Organization (ARIPO), African Union (AU), Asian-African Legal Consultative Committee (AALCC), Eurasian Patent Organization (EAPO), Andean Community General Secretariat, United Nations Permanent Forum on Indigenous Issues (UNPFII), World Meteorological Organization (WMO) and South Centre (8).
5. Representatives of the following non-governmental organizations (“NGOs”) took part as observers: African Indigenous Women Organization; Arts Law Centre of Australia; Assembly of Armenians of Western Armenia; *Asociación Kunas unidos por Napguana*/Association of Kunas United for Mother Earth (KUNA); Center of Multidisciplinary Studies Aymara (CEM-Amayra); Civil Society Coalition (CSC); *Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos* (CAPAJ); CropLife International; Culture of Afro-indigenous Solidarity (*Afro-Indigène*); EcoLomics International; Health and Environment Program (HEP); Incomindios Switzerland; Indian Council of South America (CISA); Indian Movement “*Tupaj Amaru*”; Indigenous Peoples’ Center for Documentation, Research and Information (doCip); *Instituto Indígena Brasileiro da Propriedade Intelectual* (InBraPi); International Association for the Protection of Intellectual Property (AIPPI); International Center for Trade and Sustainable Development (ICTSD); International Chamber of Commerce (ICC); International Federation of Pharmaceutical Manufacturers Associations (IFPMA); International Trademark Association; International Trade Center for Development (CECIDE); International Video Federation (IVF); Knowledge Ecology International (KEI); Maasai Experience; Ngà Kaiawhina a Wai 262; Nigeria Natural Medicine Development Agency (NNMDA); *Solidarité pour un monde meilleur* - Solidarity of a Better World (SSM); Tulalip Tribes of Washington (29).
6. The list of participants is annexed to this report.
7. Document WIPO/GRTKF/IC/28/INF/2 provided an overview of the documents distributed for the Twenty-Eighth session of the Committee.

8. 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.

9. Mr. Wend Wendland of WIPO was Secretary to the Twenty-Eighth session of the Committee.

AGENDA ITEM 1: OPENING OF THE SESSION

10. The Chair of the IGC, His Excellency Ambassador Wayne McCook from Jamaica, opened the Twenty-Eighth session of the Committee. He recognized the positive spirit that had presided over the last two sessions. He noted that the informal meetings and greetings that had preceded the present session signaled how delegations intended to continue to engage in the process fully. He urged that this spirit characterize the present session throughout. He reported that he had witnessed frequent references being made in international fora, particularly in the context of sustainable development, disaster reduction and human rights, to the issue of the handling of traditional knowledge ("TK") and related issues. He stated that it was the responsibility of WIPO Member States not only to match the agenda of the Organization, but to realize that the Committee had been given a responsibility within the multilateral system as a whole. The Chair said that he had been the beneficiary, in such context, of most interesting interventions on the importance of addressing these matters in relation to indigenous peoples. He understood that the Committee could take up the challenge or let it fall. But it should be recognized that in no other forum was the discussion on the treatment of these matters given such focused attention and where so much reliance on a successful outcome rested. In his view, the failure of the IGC process would not just be a failure in the WIPO system, but in the international system as a whole. He thanked the WIPO Director General, Mr. Francis Gurry, for being present once again, as it had been his custom at the outset of each IGC session, to underline the systemic importance of its work. The Chair announced that the Director General would address a particular concern in relation to the WIPO Voluntary Fund and the bases on which effective participation of the indigenous peoples and local communities, as indispensable partners in the IGC process, could be ensured.

11. The Director General thanked the Chair for his introductory statement and welcomed the participants. He noted that they were numerous, and saw it as a reflection of the commitment the Member States made to the IGC, and of the importance that they attached to its process. He endorsed what the Chair had said in his introductory remarks. He found that those remarks captured the essence of the process very well. He reminded the Committee that the General Assembly ("the GA") of September 2013 had adopted a work program, as contained in document WO/GA/43/22, comprising, first, a session on genetic resources ("GRs") that took place from February 3 to 7, 2014 (IGC 26) and which had developed a revised version of the Consolidated Document Relating to Intellectual Property and Genetic Resources (WIPO/GRTKF/IC/28/4) ("the GRs text"); second, a session of ten working days on TK and traditional cultural expressions ("TCEs") that took place from March 24 to April 4, 2014 (IGC 27) and which had developed a revised version of the negotiating texts in this regard, namely "The Protection of Traditional Knowledge: Draft Articles" (WIPO/GRTKF/IC/28/5) ("the TK text") and "The Protection of Traditional Cultural Expressions: Draft Articles" (WIPO/GRTKF/IC/28/6) ("the TCEs text"). In accordance with the work program of the Committee, the present session would be a cross-cutting session of three days that would take stock of the progress made and make a recommendation to the September 2014 GA. Furthermore, it had been decided by the Committee at its Twenty-Sixth and Twenty-Seventh sessions that the revised texts be transmitted to the GA taking place in September 2014, "subject to any agreed adjustments or modifications

arising on cross-cutting issues at the Twenty-Eight session of the IGC in accordance with the IGC's mandate for 2014-2015 and the work program for 2014 as contained in document WO/GA/43/22." The Director General referred to other working documents: a "Joint Recommendation on Genetic Resources and Associated Traditional Knowledge" (WIPO/GRTKF/IC/28/7) that was co-sponsored by the Delegations of Canada, Japan, Norway, the Republic of Korea and the United States of America; a "Joint Recommendation on the Use of Databases for the Defensive Protection of Genetic Resources and Traditional Knowledge Associated with Genetic Resources" (WIPO/GRTKF/IC/28/8), co-sponsored by the Delegations of Canada, Japan, the Republic of Korea and the United States of America; and, a "Proposal for the Terms of Reference for the Study by the WIPO Secretariat on Measures Related to the Avoidance of the Erroneous Grant of Patents and Compliance with Existing Access and Benefit-Sharing Systems" (WIPO/GRTKF/IC/28/9), co-sponsored by the Delegations of Canada, Japan, Norway, the Republic of Korea, the Russian Federation and the United States of America. He referred as well to the document entitled "Participation of Indigenous and Local Communities: Proposal for Subsidiary Contributions to the Voluntary Fund" that had been submitted by the Delegations of Australia, Finland, New Zealand and Switzerland. Echoing what the Chair had stated in his introductory remarks, the Director General emphasized that this document raised a fundamental issue for the IGC. He recalled that the Committee had benefitted greatly from the participation of indigenous and local communities throughout its sessions. A great deal of that participation had been financed through the Voluntary Fund mechanism, a mechanism that had been established by the Member States themselves in order to ensure participation by indigenous and local communities in the IGC. As repeatedly signaled at previous sessions, the Voluntary Fund no longer had any funds in support of such participation. The Director General noted that the proposal that had been put forward sought to address this situation by calling on the regular budget of WIPO to finance the participation of indigenous and local communities. This very important measure would of course require the approval of the Member States within the Program and Budget Committee ("the PBC"), since that Committee was the only entity that was authorized to make or recommend appropriations of money. He reminded, though, that the PBC would be greatly influenced by what the Member States in the IGC would decide to recommend. He added that the alternative to the use of the regular budget would, of course, be the Voluntary Fund itself and its replenishment. The Director General encouraged, therefore, all delegations to consider very seriously whether they were in a position to make contributions to the Voluntary Fund. He acknowledged the generosity of those Member States and other contributors that had contributed so far. As far as the substance of the Committee was concerned, the Director General conveyed to the Committee two additional messages. First, he joined the Chair in encouraging Member States to demonstrate the same constructive spirit and engagement that they had demonstrated in the two preceding IGC sessions. Such engagement was extremely important, as the area that was being addressed was not easy. He said that the work that was being done by the Committee over the course of the years was extraordinary and, as the Chair had said, had become a point of reference throughout the multilateral system. Second, he encouraged the Committee to settle the terms of a recommendation to the GA within the context of the present session itself. He recalled that the GA was not a deliberative body, but was supposed instead to receive recommendations from all the various Committees. The GA was not, therefore, in a position, in the course of its five or six-day meeting, where it had to deal with the whole business of the Organization, to deliberate and to negotiate except on finer points, nor to assume the functions of a committee of experts like the IGC. Finally, the Director General acknowledged the presence of Mrs. Dalee Sambo Dorough, Alaska, United States of America, Chair of the United Nations Permanent Forum on Indigenous Issues ("the UNPFII"), Mr. Marcial Arias, Policy Advisor, *Asociación Kunas Unidos por Napguana* (KUNA), Panama City, Panama, and Ms. Lucy Mullenkei, Executive Director, Indigenous Information Network (IIN), Nairobi, Kenya, who would participate in the session's Indigenous Panel on "Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural

Expressions: Indigenous Perspectives on Cross-Cutting Issues in the WIPO IGC". He acknowledged as well the presence of Mrs. Maria Choque Quispe from Bolivia, Vice-Chair of the UNPFII, who would chair the Panel.

12. The Chair joined the Director General by emphasizing the importance of coming forward with a recommendation to the GA regarding a work program for 2015. As far as the adoption of the decisions and the report of the present session were concerned, he reminded that the draft decisions would be circulated as usual for formal confirmation before the end of the session and that the report of the session would be prepared after the session, circulated to all delegations for comment, and in due course be presented, in the six United Nations (UN) languages, for adoption at the next IGC session.

AGENDA ITEM 2: ADOPTION OF THE AGENDA

13. The Delegation of Japan, speaking on behalf of Group B, was confident that the Committee would be able to make progress under the able leadership of the Chair. The Delegation stated for the record that Group B would not oppose the inclusion of Agenda Item 7 in the Agenda ("Contribution of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore to the implementation of the Respective Development Agenda Recommendations"), but clarified its position that this kind of agenda item should not be a permanent agenda item but an *ad hoc* agenda item.

14. The Chair took note of the statement made by the Delegation of Japan on behalf of Group B concerning the approach it wished to see considered in relation to Agenda Item 7.

Decision on Agenda Item 2:

15. The Chair submitted the draft agenda circulated as WIPO/GRTKF/IC/28/1 Prov. for adoption and it was adopted.

AGENDA ITEM 3: ADOPTION OF THE REPORT OF THE TWENTY-SEVENTH SESSION

Decision on Agenda Item 3:

16. The Chair submitted the revised draft report of the Twenty-Seventh session of the Committee (WIPO/GRTKF/IC/27/10 Prov. 2) for adoption and it was adopted.

AGENDA ITEM 4: ACCREDITATION OF CERTAIN ORGANIZATIONS

17. The representative of Tupaj Amaru thanked the Director General for his introductory statement and for the efforts being made to support the participation of indigenous peoples. With respect to the adoption of the report under Agenda Item 3, the representative was of the view that the report did not take into consideration the constructive contributions which had

been made by some indigenous organizations. He noted that the proposals which had been made by Tupaj Amaru, for instance, appeared to have been discarded. Regarding Agenda Item 4, he observed that the Committee, in his view, had continued for a long time to unanimously agree to the accreditation of organizations without taking into account the details of the applying organizations or whether the applying organizations were indigenous peoples, minorities, or organizations which were applying in order to support multinational enterprises. He pointed out that within all international organizations, where accreditation was being sought, discussions took place on the identity of each individual organization. The representative noted that many of the organizations accredited to the IGC had not made any contribution to the negotiating process.

18. The Chair invited the representative of Tupaj Amaru to clarify whether he had any objection to the accreditation of the two organizations Herbal Anthropology Project (HAP) and the Personal Care Products Council (PCPC), whose applications were contained within document WIPO/GRTKF/IC/28/2.

19. The representative of Tupaj Amaru stated that he was not familiar with the background and details of the organizations contained within the document WIPO/GRTKF/IC/28/2. He explained that he had rather been referring to the accreditation issue in general terms. He observed that there had been no discussion on this within the Committee, and believed that the Committee had not looked into issues, such as, the way each organization operated, the composition of the organizations, or the contributions that the respective organizations could make to the work of the Committee. He was of the view that many applications sought approval merely with the view to acquiring accreditation status, as well as the rights to benefit from the Voluntary Fund. That went against the rationale for which the Voluntary Fund was set up and that would not assist the Committee nor benefit indigenous peoples.

Decision on Agenda Item 4:

20. The Committee unanimously approved the accreditation of all the organizations listed in the Annex to document WIPO/GRTKF/IC/28/2 as ad hoc observers, namely: Herbal Anthropology Project (HAP) and the Personal Care Products Council (PCPC).

AGENDA ITEM 5: PARTICIPATION OF INDIGENOUS AND LOCAL COMMUNITIES

21. The Chair reminded that the Director General had referred at length to the depleted financial situation of the WIPO Voluntary Fund. He supported the Director General's appeal that delegations very seriously consider contributing to the Voluntary Fund and that careful attention be given in a constructive manner to the proposal that the Delegations of Australia, Finland, New Zealand and Switzerland had brought forward in this regard (document WIPO/GRTKF/IC/28/10). He recalled that this proposal had been made available at IGC 27 and that the IGC had decided then to defer its discussion to the present session. The Chair drew attention to document WIPO/GRTKF/IC/28/INF/4 as well, which provided information on the current state of contributions and applications for support, and to document WIPO/GRTKF/IC/28/3 which invited the Committee to proceed with the appointment of the Members of the Advisory Board of the Voluntary Fund. The IGC would revert to this question later. The Chair informed the Committee that he had invited

Ms. Alexandra Grazioli, Vice-Chair of the Committee, to serve as Chair of the Advisory Board. The outcomes of the Advisory Board's deliberations would be reported later in the current session of the IGC in document WIPO/GRTKF/IC/28/INF/6.

22. The representative of the African Indigenous Women Organization (AIWO), speaking on behalf of the Indigenous Caucus, referred to document WIPO/GRTKF/IC/28/10. She thanked the Member States and other contributors that had contributed to the Voluntary Fund so far. Those contributions supported the vital role that indigenous peoples played in the work of WIPO. She emphasized that indigenous peoples had realized that the Voluntary Fund was presently depleted and that the participation of indigenous peoples in the IGC was no longer guaranteed. The Indigenous Caucus supported, therefore, the proposal made by the Delegations of Australia, Finland, New Zealand and Switzerland to request that alternative means of ensuring the participation of indigenous peoples and local communities be implemented and that corresponding changes in the rules of the Voluntary Fund be made. In addition, the representative urged the Member States that had been contributing to the Voluntary Fund to keep supporting it, in order to ensure the participation of indigenous peoples throughout the IGC process.

23. The Chair took note of the support that the representative of AIWO, speaking on behalf of the Indigenous Caucus, had expressed in favor of the proposal made in document WIPO/GRTKF/IC/28/10. He announced that he would open the floor for a full discussion in plenary on the proposal right after the conclusion of the Indigenous Panel.

24. The representative of the Health and Environment Program (HEP) recalled that HEP had been a long-term participant in the IGC process. She wanted to draw the attention of the Committee to the way on which the Caucus identified itself and wished that the Caucus, be it called the "Indigenous Caucus" or the "Indigenous Consultative Forum", make clear in designating itself that it included owners of TK in Africa as well. She thought that the term Indigenous Caucus should be replaced by a designation like "Indigenous Caucus and holders of traditional knowledge". The rights of those holders should also be taken into account within the Caucus itself.

25. The Chair reminded that it was not up to the Chair or the IGC to determine how groups would describe themselves. He said that he would respond to whatever description was forwarded to him. He invited, therefore, the custodians of TK to tell the IGC how their grouping wished to be designated, as that was up to them.

26. In accordance with the decision of the IGC (WIPO/GRTKF/IC/7/15, paragraph 63), the Twenty-Eighth session was preceded by a half-day panel of presentations (see WIPO/GRTKF/IC/28/INF/5). The indigenous panel was chaired by Mrs. Maria Choque Quispe from Bolivia, Vice-Chair of the UNPFII. The Chair of the Panel submitted a written report on the Panel to the WIPO Secretariat which is contained below as edited:

"The Indigenous Panel was held on July 7, 2014. The theme of the Indigenous Panel was: "Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions: Indigenous Perspectives on Cross-Cutting Issues in the WIPO IGC".

The keynote speaker of the Indigenous Panel was Ms. Dalee Sambo Dorough, Chair of UN Permanent Forum of Indigenous Issues. The central theme of Ms. Dorough's presentation was the nature of indigenous rights, including the right to culture and indigenous peoples' cultural heritage. She stated that the United Nations Declaration on the Right of Indigenous Peoples ("the UNDRIP") established some "customary international law" fundamentals in its provisions. Thereby, it established legally binding

international obligations for states, such indigenous peoples' rights that included the right to self-determination, the right to free, prior and informed consent ("FPIC"), the right to culture and the right to identity. She also observed that indigenous peoples hold distinct property rights as collective entities. She invited the IGC to take thoughtful consideration of the UNDRIP and its relevant provisions to establish an innovative and distinct regime which would fully address and safeguard indigenous peoples' rights. Ms. Dorrough concluded by calling for efforts to ensure indigenous peoples fundamental rights and the full and effective participation of indigenous peoples in order to ensure a fair and equitable outcome at the IGC.

The second speaker was Mr. Marcial Arias, Policy Advisor for the *Asociación Kunas Unidos por Napguana* (KUNA). He underlined the important contributions that indigenous peoples had made to the IGC. It was vital therefore for the IGC legitimacy to ensure indigenous participation. His presentation focused on key cross-cutting issues for indigenous peoples in the IGC process: holistic understanding of TK, control over TK, definition of TK, public domain and misappropriation. He emphasized that indigenous peoples did not make any distinction between TK and TCEs. The IGC should therefore consider a holistic approach. Mr. Arias brought forward an example and a question: should a traditional song which had healing uses be considered as a TCE or/and TK? The current texts should not diminish indigenous rights which were recognized by international instruments, particularly the right to self-determination as indigenous peoples, and the right to FPIC. These rights ensure control of indigenous peoples over their TK and TCEs. In Mr. Arias' opinion, developing a definition of TK could discriminate different types of TK and its own innovation process. He pointed out that indigenous knowledge needed an imprescriptible intellectual protection, taking into account the fact that TK was passed from generations to generations. Control over TK should be ensured for future generations. Appropriation and use of TK without FPIC of indigenous peoples should be understood as TK misappropriation. Finally, Mr. Arias pointed out that TK was linked to a range of other issues relating to indigenous peoples, such as cultural and social identity, health and nutrition.

Ms. Lucy Mullenkei, member of the Maasai people in Kenya and Executive Director of the Indigenous Information Network (IIN) in Kenya, highlighted the significance of TK for indigenous cultural identity, for their daily subsistence and as heritage for further generations. She stated that those issues were of deep concern for many indigenous peoples and local communities, including indigenous peoples in Africa. Indigenous discussions and concerns on protection of TK were not limited to IP field: contributions from the Convention Biological Diversity ("the CBD") and discussion on the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Use ("the Nagoya Protocol") should enrich the discussion at the IGC. Recognition of the collective fundamental rights of indigenous peoples has also been increased in the recent decades. Ms. Mullenkei emphasized the need to take into account these collective and recognized rights in the IGC work. She recommended that financial support be secured for the indigenous participation at the IGC. She also recommended developing local capacities, through indigenous data-bases which must be developed at a local level and controlled by the traditional owners. She also invited the IGC to develop innovative solution. The very technology that had made some indigenous knowledge publicly available should be used to ensure that indigenous peoples exercise control over their knowledge.

Ms. Choque closed the Indigenous Panel by thanking the panelists, the Member States and the WIPO Secretariat for having organized the Panel. She also invited Member States to contribute to the WIPO Voluntary Fund, in order to ensure the participation of indigenous peoples in the IGC process."

27. The Chair reopened the floor on Agenda Item 5 and invited the proponents of document WIPO/GRTKF/IC/28/10 to introduce the proposal.

28. The Delegation of Switzerland, speaking on behalf of the proponents, namely the Delegations of Australia, Finland, New Zealand and Switzerland, said that the proposal intended to identify additional sources of funding for the Voluntary Fund in order to make it possible in the future for the Committee to continue to ensure an appropriate level of financing for representatives of accredited indigenous and local communities, namely those who were accredited to WIPO and/or the IGC. The present document WIPO/GRTKF/IC/28/10 intended to see the IGC recommend to the GA that the rules of the Voluntary Fund be amended as a first stage. Later in September 2014, the proponents would introduce a further proposal for consideration and adoption by the PBC that would recommend to the GA that money be allocated in the regular budget in support of the participation of representatives of accredited indigenous and local communities in the IGC, up to an amount that would be determined by the PBC. The WIPO Secretariat, in selecting applicants and providing financial support, would use that amount of money in accordance with the recommendations made by the Advisory Board of the Voluntary Fund. The changes in the rules of the Voluntary Fund as contemplated on page 3 of the Annex of the present proposal would concern Article 6 paragraph (a) and the inclusion of a new paragraph 6(b). Those changes were intended to no longer exclude the possibility in the future of funding being taken from the regular budget with the view to covering the participation of some representatives of accredited local and indigenous communities in the IGC, should the funding of the Voluntary Fund be insufficient. That said, the Delegation added that it had had more in-depth consultations on this issue since IGC 27, involving the Department of Program Planning and Finances in the WIPO Secretariat. It had been pointed out during those consultations that the WIPO Financial Regulations and Rules did not allow that money allocated within the regular budget in accordance with a decision taken by the PBC be transferred to independent funds. Such monies had to remain available instead within the regular budget for subsequent use by the Secretariat in accordance with the decisions taken by the PBC. Proponents had therefore looked back at the present proposal and realized that the addition of a new paragraph 6(b) could be sufficient, complemented by a decision by the PBC on allocating funding within the regular budget in support of accredited indigenous and local communities in the IGC, and on the modalities that would preside over the use of the money thereby allocated. In concluding, the Delegation thanked those delegations and observers that had expressed support or interest for the proposal. It remained available, along with the other proponents, to answer any questions or to provide more information as requested regarding the proposal. The Delegation expressed the hope that the IGC adopt a recommendation that would open up the possibility for the PBC and then the GA to allocate subsidiary funding within the regular budget in support of the participation of accredited representatives of indigenous and local communities in the IGC under precise conditions and modalities.

29. The Chair invited delegations to take careful note of the proposal and the steps that the Delegation of Switzerland indicated would be required. He opened the floor for initial views on the principle contained therein.

30. The Delegation of Australia, as co-sponsor of the proposal, thanked the Delegation of Switzerland for having introduced the proposal. It emphasized, as it had been recognized by the Director General, that indigenous and local community participants had contributed importantly and significantly to the IGC process. The Voluntary Fund was important in this regard as it facilitated indigenous participation. The Delegation found therefore very unfortunate, and more so at that particular juncture of the IGC negotiations, that the Voluntary Fund was completely depleted. It clarified that this proposal as mentioned by the Delegation of Switzerland was focusing on amending the rules of the Voluntary Fund to

simply provide for the possibility that alternative sources of funding be provided. It indicated that a further proposal would be needed and be submitted to the PBC for Member States' consideration and decision with the view to allocating money, likely from Program 4 of the Program and Budget, in support of such participation. The Delegation invited Member States to favorably consider the proposal, and expressed readiness to consider and discuss any concerns that they might have. The Delegation thanked the other co-sponsors of the proposal and the many delegations that had indicated their support.

31. The Delegation of New Zealand, as co-sponsor of the proposal, supported the interventions made by the Delegations of Switzerland and Australia. It said that the proposal looked for a mechanism which would allow the continued participation of indigenous peoples and local communities in the IGC, as such participation was very important. The Delegation invited other delegations to discuss the proposal and share any suggestions or concerns that they might have had in this regard.

32. The Delegation of Chile thanked the delegations that co-sponsored the proposal. The Delegation found it helpful in dealing with the financial situation of the Voluntary Fund and subsequently the lack of funding in support of indigenous participation. It emphasized that participation of indigenous communities alongside with Member States in the IGC was extremely useful and enriching. The Indigenous Panel further illustrated that importance. Subsidiary financing from the regular budget would make it possible for such participation to continue and perhaps be extended. The Delegation urged Member States to consider the proposal positively, as part of the various ways that would ensure effective indigenous peoples' participation.

33. The Delegation of Peru reiterated that the participation of indigenous peoples and local communities in the IGC was absolutely essential. Indigenous peoples' contributions reflected their concerns and viewpoints and helped Member States to carry forward the negotiations. Such contributions were not only very necessary and substantive, but ensured legitimacy in the IGC work. The proposal provided a practical response to a practical problem. The Delegation reiterated its support for it, as it had done during IGC 27. It hoped that the endorsement of such proposal would be one of the specific and tangible outcomes of the present session.

34. The Delegation of the United States of America took note of WIPO/GRTKF/IC/28/10 that recommended that the Voluntary Fund rules be amended to enable contributions to be drawn from the regular budget of WIPO into the Voluntary Fund. The Delegation was strongly supportive of the active participation of indigenous groups in meetings and in text-based discussions at the IGC. Notwithstanding this important need to have relevant parties at those meetings and discussions, the Delegation could not support a recommendation that would allow WIPO's core budget to contribute to voluntarily funded projects. It recalled that WIPO Member States approved, and users of the registration systems largely paid for the program of work and budget of WIPO's core work. Voluntarily funded projects, which are between one or more member states and the organizations, are to cover direct and indirect costs related to the project. It said that this recommendation was the first case of its kind in the United Nations (UN) system to have funding from an UN agency's core budget replenish a voluntarily funded project. Therefore, the Delegation did not support this recommendation. However it did take note of the Delegation of Switzerland comments concerning further thinking on this point. It looked forward to receiving a copy of the revised proposal as described by the Delegation of Switzerland and would welcome further discussions with the Delegation of Switzerland on this. At the outset, the Delegation of United States of America wished to make a few points concerning the comments made by the Delegation of Switzerland. It believed that the new proposal as formulated was an improvement compared to document WIPO/GRTKF/IC/28/10, which had recommended that

WIPO's core budget be used to fund a voluntarily funded project, which was of precedential concern to the Delegation. While the revised proposal would seek to allocate or increase the budget to ensure the participation of indigenous groups at the IGC, it had some questions to ask: how would the proposal ensure that the budget allocation would not set a precedent to have the budgets of other committees expanded to include the participation of non-Member States in those meetings? And how would the proposal provide transparency concerning the proposed expenditure, and how would it be part of WIPO's budgetary process, namely, would it be highlighted as a budgetary line item request in any particular program, assuming Program 4, and would information on actual expenditure be provided in the budget?

35. The representative of CAPAJ indicated that the participation and involvement of indigenous peoples in the IGC laid at its very foundation. Voluntary funding that guaranteed participation of indigenous peoples stemmed from the recognition of their special status. Such funding brought indigenous peoples closer to Member States. He recalled that indigenous peoples participated with the same desire and same interest as governmental delegations. He did not consider that the proposal constituted a precedent by recommending that the WIPO regular budget be used for participants that were not Member States, since the IGC foundation itself specifically required the participation of indigenous peoples. Indigenous peoples were recognized as peoples who had existed long before the Member States had been constituted. They had been recognized a particular status. Funding indigenous participation by using the WIPO regular budget seemed therefore perfectly appropriated.

36. The representative of Tupaj Amaru said that he would state the following in a spirit of respect, but also with the intention to say what he viewed as being the truth. He referred to the objections made by the Delegation of the United States of America against the proposal made in document WIPO/GRTF/IC/28/10. In his view, the Delegation of the United States of America and the Delegation of the EU had been blocking progress within the IGC for the last twelve years and harming indigenous peoples. In his view, those Delegations had also deprived the negotiating texts of real content. The representative could not agree with those texts. He was sure though that the Chair had a great deal of experience regarding these matters. He was, therefore, convinced that the Chair would take the necessary measures to improve the texts and make them acceptable.

37. The indicated that the legitimate concerns of any delegation, like those that had been expressed by the Delegation of the United States of America, would need to be discussed and addressed properly in the course of further consultations and discussions. He clarified further that, as a Chair, he was not a negotiating party at the IGC.

38. The Delegation of the United States of America wished to clarify further that the point it made with respect to the financing of the Voluntary Fund was picking up on a point that the Delegation of Switzerland itself had made, in that the use of the regular budget for Voluntary Funded programs was an issue. The Delegation noted that the Delegation of Switzerland discussed it with the WIPO Department of Program Planning and Finances, while the Delegation of the United States of America had also considered this specific issue internally. It considered indeed that there was a red line in having the WIPO core budget finance and replenish the Voluntary Fund. However this concern was different from the newer consideration, which the Delegation was very interested in, in figuring out how WIPO could have a specific allocation, potentially within Program 4, to ensure the participation of indigenous groups. The Delegation emphasized that it valued the participation of these groups as extremely important in the area that was addressed by the IGC. With that said, the Delegation did have some questions in this regard. It was of the feeling that all Member States should be thoughtful in making sure that they come to an answer that would be in line with the WIPO budgetary process.

39. The Delegation of Switzerland thanked the Delegation of the United States for its comments. It confirmed that it had indeed identified the same issue as the latter Delegation did, in considering its original proposal, and that consequently the change in the rules that might need to be envisaged would only concern a new paragraph 6(b), complemented by a decision of the PBC to allocate funding in support of indigenous and local communities participation in the IGC. The Delegation stood ready, alongside with the other proponents, to interact with the other delegations in finding the best possible formula that would allow the Committee to make headway in this regard with a view to developing a mechanism that would be in line with the Financial Regulations and Rules of WIPO.

40. The Chair took note of the statements made on the proposal. Considering that a further series of formal statements would not allow the Committee to make much progress on the issue, he invited delegations not to embark in a protracted discussion in plenary on the proposal. In his view, two main issues had been raised: on the one hand, the need and importance of replenishing the means of support for participation, which was not in dispute, and, on the other hand, the issue of precedence that the proposal might create. The Chair was of the strong feeling that no effort should be spared in order to find a solution on the matter of support for indigenous participation before the end of the session. He recalled that ultimately a simple solution would be that delegations come back later on during the present session with commitments to the Voluntary Fund that would ensure its sustainability. This would be in fact the Chair's preference, as the proposal under discussion had been made as a last resort, given the drying out of voluntary contributions and the depletion of the Voluntary Fund as a consequence. More generally, he urged the Committee to reflect on the following: was the commitment that had been made by the Committee to ensure support for participation of indigenous peoples and local communities still a commitment that Delegations maintained? He was of the view that the IGC could not afford to give lip service to this commitment. The next step was therefore either to restore funding within the Voluntary Fund or to pull money from another resource. He emphasized that this issue was within the control of the Member States and engage their responsibility. He then suspended Agenda Item 5 for consultations on the matter.

41. The Chair re-opened Agenda Item 5 and asked the proponents of document WIPO/GRTKF/IC/28/10 to report on the consultations they held with other delegations.

42. The Delegation of Switzerland, speaking on behalf of the proponents of document WIPO/GRTKF/IC/28/10, thanked all delegations and observers which worked with them on agreeable solutions in the course of the present session. The proponents sought to identify the most suitable mechanism that could be used in allocating subsidiary resources from the WIPO regular budget in support of the participation of representatives of accredited indigenous and local communities in IGC sessions, in order to ensure somehow continuous support, should the Voluntary Fund be depleted, as it was presently the case. As it previously indicated, the Delegation had had some discussion with the Department of Program Planning and Finances in the WIPO Secretariat. The Delegation had thereafter recognized the difficulty that WIPO would encounter in making a direct contribution to the Voluntary Fund. Based on further consultations, it had come as well to the understanding that there was no need any more to modify the rules of the Voluntary Fund to make it possible for an allocation to be made under the WIPO regular budget in order to provide funding to accredited representatives of indigenous and local communities in support of their participation in IGC sessions. The Delegation had thought alongside with the other proponents that for reasons of transparency it could have been worthwhile keeping proposing to amend Article 6(a) of the Rules of the Voluntary Fund. But since the Delegation realized that such change was no longer necessary either, it was not any more proposed to bring any change in the Rules of the Voluntary Fund. However, the discussion with the WIPO Department of Program Planning and Finances had confirmed the possibility of a

certain sum of money being made available from the WIPO regular budget in order to fund the participation of accredited representatives of indigenous and local communities in the IGC, and of submitting the use by the Secretariat of this allocation to the following conditions: first, that this use accord with the binding recommendation made by the Advisory Board of the Voluntary Fund in line with the Rules of the Voluntary Fund, and secondly, that this allocated amount be used only as a subsidiary way of funding, namely only if the available means in the Voluntary were insufficient for that purpose. The whole mechanism would need obviously to be based on a decision to that effect being taken by the PBC. The Delegation added that it was on that basis and in the light of that understanding that the proponents still intended to submit a proposal to the next meeting of the PBC, as announced at IGC 27. It believed that this approach would not create any particular precedent given the very particular nature of the IGC, the unique character and functioning of the Voluntary Fund that operated within clearly defined mechanism specified within its Rules, when it would come up for example to select those who should receive financial support. The decision that the proponents intended to submit for approval by the PBC would ensure the transparency that was needed in allocating the money as well as defining its amount and its use. Transparency would be indeed a legitimate request for all Member States alike. The usual modalities of reporting within the PBC and those that were specific to the Voluntary Fund would complement transparency as far as the actual use of the allocated money was concerned. The proponents looked forward between the present session and the next session of the PBC to continuing the fruitful exchange of views that they had had thus far with a view of achieving the decision that they wished to see adopted. Such a decision would enable WIPO to keep contributing in support of the effective participation of representatives of accredited indigenous and local communities in the IGC. The Delegation emphasized that all recognized the genuine and useful contribution that the indigenous and local communities had brought to the negotiating process. It clarified that its statement served the purpose of informing the Committee about the outcome of the consultations that took place before and during the present session regarding the proposal, and how the proponents intended to pursue their efforts working with other interested delegations towards the September session of the PBC. It invited the Committee to take note of its statement and strongly hoped to have the allocation of monies to be decided at the PBC meeting, in order to ensure, in a subsidiary way, the participation of representatives of accredited indigenous and local communities in the IGC.

43. The Chair thanked the Delegation of the Switzerland for its statement reporting on the consultations with interested delegations that it had held, together with the other proponents. He understood that the proponents intended to take this matter forward to the next session of the PBC that would meet in September 2014. He read out the draft decision of the IGC in this regard, and it was adopted.

Decision on Agenda Item 5:

44. *The Committee took note of documents WIPO/GRTKF/IC/28/3, WIPO/GRTKF/IC/28/INF/4 and WIPO/GRTKF/IC/28/INF/6.*

45. *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.*

46. *The Chair proposed, and the Committee elected by acclamation, the following eight members of the Advisory Board to serve in an individual capacity: Mr. Arsen BOGATYREV, Attaché, Permanent Mission of the Russian Federation, Geneva; Ms. Hema BROAD, representative, Nga Kaiawhina a Wai 262 (NKW262), New Zealand; Mrs. Catherine BUNYASSI KAHURIA, Senior Counsel, Legal, Kenya Copyright Board, Nairobi, Kenya; Mr. Nelson DE LEON KANTULE, representative, Asociación Kunas unidos por Napguana/Association of Kunas for Mother Earth (KUNA), Panama; Ms. Simara HOWELL, First Secretary, Permanent Mission of Jamaica, Geneva; Mr. Shi-hyeong KIM, Counsellor, Permanent Mission of the Republic of Korea, Geneva; Mr. Carlo Maria MARENGHI, Intellectual Property and Trade Attaché, Permanent Mission of the Holy See, Geneva; Ms. Lucy MULENKEI, representative, Indigenous Information Network, Nairobi, Kenya. The Chair of the Committee nominated Ms. Alexandra Grazioli, Vice-Chair of the Committee, to serve as Chair of the Advisory Board.*

47. *The Chair of the Committee nominated Ms. Alexandra Grazioli, Vice-Chair of the Committee, to serve as Chair of the Advisory Board.*

48. *The Committee took note of the proposal reflected in document WIPO/GRTKF/28/10 and of the information provided during the session by the proponents of the said document on the consultations they held with delegations. The Committee also took note of the intention of the proponents to submit a proposal comprising detailed modalities in this regard for the consideration of the Program*

and Budget Committee at its next session.

AGENDA ITEM 6: CROSS-CUTTING REVIEW ON GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND TRADITIONAL CULTURAL EXPRESSIONS AND TAKING STOCK OF PROGRESS AND MAKING A RECOMMENDATION TO THE GENERAL ASSEMBLY

49. The Chair introduced Agenda Item 6. He informed the IGC that Mr. Ian Goss from Australia would act as Friend of the Chair, as he had done in the last sessions. In addition, the Chair acknowledged the following delegates as facilitators under this agenda item: Mr. Emmanuel Sackey from ARIPO, Mr. Nicolas Lesieur from Canada, Mrs. Margo Bagley from Mozambique and Mr. Justin Sobion from Trinidad and Tobago. He recalled, as the Director General had done, that the present session IGC was instructed by the GA of September 2013, in accordance with the IGC's mandate for 2014-2015 and the work program for 2014 as contained in document WO/GA/43/22, to take stock of the progress made and make a recommendation to the GA of September 2014. Concerning the recommendation to the GA, the Chair recommended that delegations made their general statements in plenary for the record, but engage as soon as possible in consultations with the Friend of the Chair, who would facilitate the preparation of a draft, based on the interventions made in plenary and observations made during those consultations. Moreover, the IGC was meant to undertake a cross-cutting review of the respective texts, namely the GRs text (WIPO/GRTKF/IC/28/4), the TK text (WIPO/GRTKF/IC/28/5) and the TCEs text (WIPO/GRTKF/IC/28/6). Those texts would be transmitted to the GA taking place in September 2014, "subject to any agreed adjustments or modifications arising on cross-cutting issues at the present session". The Chair recalled that this did not mean that the IGC would necessarily make such adjustments or modifications. He nevertheless encouraged a serious discussion on possible ways to achieve consensus around any improvements of the present texts. He said that at least ninety percent of the cross-cutting issues were known, understood and accepted to be so by all participants. He recalled that some ideas had emerged at IGC 26 and 27 which, if built upon, could help lay the groundwork for effective further work at the next phase of the IGC work. He had had consultations with the regional coordinators on the way the IGC would intend to work in that session. Based on a combined reading of the 2014-2015 mandate, the work program for 2014 as well as the decisions of the IGC in the two previous sessions, it was clear that the cross-cutting review should be aimed at cross-cutting elements arising across the three areas of work: GRs, TK and TCEs. The Chair invited delegations to focus interventions on the elements of the text considered to be cross-cutting, with a view to driving convergence around possible adjustments or modifications or laying a foundation on which the IGC could build when it would come back to the discussions on substantive texts in the next phase of its work. He noted that the IGC had received the texts that had emerged from IGC 26 and 27, as well as the other documents as set out in the Agenda (WIPO/GRTKF/IC/28/1) under Agenda Item 6. He invited delegations to have a look as well at his informal issues paper on certain suggested cross-cutting issues as food for reflection. He emphasized that the issues paper did not have any status and had been submitted for consideration as a way to facilitate the discussion, not as a matter to be negotiated. He added that after the plenary statements, the informal expert group would meet in order to continue the discussion under his leadership, with the facilitators' support, and within the usual format that had been adopted at the last IGC sessions. He opened the floor for plenary interventions on cross-cutting issues and any views on the recommendation to be made to the GA.

50. The Delegation of Indonesia, speaking on behalf of the Like-Minded Countries ("the LMCs"), said it was confident that under the able leadership of the Chair, the IGC session would have a constructive and fruitful discussion. The IGC was tasked to continue

to expedite its work, with open and full engagement, on the text-based negotiations with the objective of reaching an agreement on a text(s) of an international legal instrument(s). The Delegation reiterated the LMCs' position that having that instrument(s), namely to ensure effective protection of GRs, TK and TCEs, was of utmost importance. It was of the view that the current IP regime could not sufficiently protect them. The absence of such a legally binding instrument(s) had allowed the continued misappropriation and had contributed to the imbalance of the global IP system. It viewed two important tasks to deal with to move the process forward. First, the IGC needed to discuss cross-cutting issues of the three texts. It noted that there had been progress in the negotiations at IGC 26 and 27. The IGC needed to further identify cross-cutting elements of the three texts at IGC 28. Therefore in facilitating the negotiations, the present session should be utilized effectively and drafting of the texts should be done in the informal expert group for presentation and approval by the plenary, so that the progress made in the text(s) could be reflected in the final versions. That could bring maturity to the texts before transmitting them all to the GA for further decision. The Delegation viewed the urgency to discuss some cross-cutting issues, namely: objectives of the text(s), criteria for eligibility, scope of protection, beneficiaries, databases, disclosure requirement, exceptions and limitations, term of protection and capacity building and technical assistance. However the list was not exhaustive, and the Delegation reserved its right to give further comments on the cross-cutting issues of the three texts during the informal group expert meetings. Second, the IGC should come up with a recommendation for the upcoming GA. As stipulated in the decision of the GA in 2013, the IGC was mandated to finalize the text or text(s) within the 2014-2015 biennium, including by holding additional meetings. It called upon the IGC to recommend to the GA in September 2014: first, to convene three IGC session meetings in 2015; second, to convene Ambassadorial/Senior Capital-Based Officials Meetings in 2015; three, to convene inter-session meetings and cross-regional meetings; fourth, to convene a Diplomatic Conference in 2015; fifth, to request the WIPO GA and PBC to allocate sufficient budget for the 2015 IGC programs. In expediting the negotiating process the IGC needed to have a method of work with a clear timetable. The Delegation suggested the following: first, an half-day for general statements; second, an half-day for general overview of cross-cutting issues; third, two days for the drafting exercise and formulating recommendation. On the Joint Recommendations submitted by a number of delegations (WIPO/GRTKF/IC/28/7 and WIPO/GRTKF/IC/28/8), it said that those issues had been sufficiently captured in the draft texts. Therefore any further discussion on the Joint Recommendations should be done by the time the IGC would discuss the related articles of the three texts. In relation to Background Brief No. 7 "Customary Law and Traditional Knowledge", it was of the view that only having national law was not sufficient. It emphasized that an international legal instrument(s) was urgently required since the use of GRs, TK and TCEs, was borderless, not only bilaterally and regionally, but also globally.

51. The Delegation of Bangladesh, speaking on behalf of the Asia-Pacific Group, expressed its deep appreciation towards the guidance provided by the Chair. The issues paper that he had prepared offered a better understanding of the terms and issues and would help to moving forward the ongoing negotiations. The issues paper illustrated the Chair's deep commitment to the IGC process and the Asia-Pacific Group benefited from it. The Delegation thanked the Vice-Chairs, the facilitators and the Friend of Chair for their forthcoming hard work and important contributions. It also thanked the Director General for his important introductory remarks. The Asia-Pacific Group believed that the shared interest of the Member States to remain engaged with the view to finding just and equitable solutions to the matters of concern regarding the existing IP regime, had so far succeeded throughout the successive prorogation of the IGC mandate. The Delegation thanked the Member States for their continued commitment and their spirit of compromise. However, it expected that the Member States would go beyond the mere renewals of the IGC mandate, and achieve substantial progress to establish an international legal instrument or instruments as

mandated by the 2013 GA. It also expected that IGC 28 would further streamline the drafting texts in order to finalize the draft articles of the forthcoming international instruments. Historically, the Asia-Pacific region had been one of the most resourceful areas of the world for its abundance of GRs and very rich TK and TCEs. In that vast region, whether rich or poor, or young or old, all continued to benefit equally from its distinctive GRs, TK and TCEs. For that, it was of extreme importance to reach an agreement on the protection of GRs, TK and TCEs. The continued misappropriation of the traditional assets must be effectively addressed through the establishment of a mechanism which guaranteed proper access and benefit-sharing ("ABS"). Further to the establishment of a mechanism of ABS through free, prior informed consent ("FPIC") based on mutually agreed terms ("MATs"), the Asia-Pacific Group also recognized the importance of instituting databases and other information systems with the IP Offices so as to help them to avoid the granting of erroneous patents especially for GRs and associated TK. The current texts should serve as the basis of further negotiations. The Delegation did not recognize any hierarchy among the different issues at the IGC. It expected to reach the same level of maturity for all issues with the view to achieving an appropriate international legal instrument or instruments of protection. Addressing and resolving the cross-cutting policy issues, especially those identified and mentioned by the Chair, would be useful and would save the IGC from any possible future duplication of work. One of the most important issues to be discussed at the IGC was the role of the State. While the Member States debated the extent, merit and jurisdiction of that role regarding the ownership of rights, the Asia-Pacific Group considered that there should be ample scope for proper flexibilities for the national legislations to implement the agreed provisions. It expected that, based on the principles of justice and fairness, the IGC would take the right decision that reflected a spirit of compromise. The Asia-Pacific group reiterated its willingness to contribute in an effective and constructive way to the objectives of the IGC for a successful conclusion of IGC 28. Given the importance and complexity of the work, the Member States pertaining to the Asia-Pacific Group would intervene as necessary and in their national capacity during the substantive discussions on specific issues.

52. The Delegation of Japan, speaking on behalf of Group B, reiterated its recognition of the importance of GRs, TK and TCEs, and its position that the protection relating to those subjects should be designed in a manner that promoted and did not inhibit innovation and creativity. It stressed that the form of any international legal instrument or instruments being pursued should follow the substance of the possible instrument or instruments, and the Committee should focus its efforts on reaching a common view on the substance. During the current biennium, two new approaches had been taken. One was the high-level segment, namely the Ambassadorial/Senior Capital-based Officials meeting that had taken place at IGC 26, and the other included cross-cutting segments. At the high-level segment, the feeling had been shared that the lack of common understanding and policy objectives and guiding principles caused divergent and sometimes conflicting views that were reflected in the current draft texts. While Group B recognized the interest of high-level engagement, the technical work by the Committee was the best way to advance the work. With respect to the cross-cutting segment, it had been a good first step to find coherent solutions to certain common issues among subject matters, but further work needed to be done to reach a shared understanding on key issues and mechanisms to address it. Group B welcomed the present cross-cutting and stock-taking session. As for the cross-cutting segment, it looked forward to take further steps to find coherent solutions to the common issues, not only between TK and TCEs discussed at the last session, but also among subject matters including GRs. It thanked the Chair's effort to prepare his issues paper. It thought that the list of issues in the second left column of the Chair's issues paper could enable an organized and structured discussion at the cross-cutting segment, noting that the Chair had stated that the issues paper did not have any status, was not the subject matter to be negotiated and was just material that Member States could use if they so wished. With respect to the stock-taking session, enough time should be allocated to it to allow the IGC to formulate a

recommendation for the GA. The IGC should avoid overburdening the GA by solving the issue at the Committee level, as urged by the Chair of the GA in the context of the extraordinary session of the 2013 GA. Further progress considerably benefitted from the discussion of specific examples of national situations and measures, as well as specific examples of subject matter to be protected and subject matter for the public domain. While the Delegation recognized some progress in the last twelve months, the texts required further work. The Committee should focus its efforts on recommending a reasonable and feasible work program to the GA. Group B remained committed to contribute constructively in order to achieve a mutually acceptable result.

53. The Delegation of the Czech Republic, speaking on behalf of the Group of Central European and Baltic States (“CEBS”), commended the efforts of the Chair to move forward the complex agenda of the IGC. It remained committed to the process and fully supported a balanced approach towards the subjects discussed. It acknowledged the importance of the cross-cutting exercise that had helped the IGC to improve the mutual understanding of several different concepts. At the same time, it was aware that a number of issues still remained open for further discussions. With regard to GRs, several aspects needed to be discussed in detail, and special attention had to be paid to the impact of the disclosure requirement in patent applications, to ensure it did not create legal uncertainty. Concerning TK and TCEs, though the Delegation recognized some parallels identified throughout the cross-cutting exercise, namely regarding definitions of beneficiaries, it believed that the two topics should be dealt with separately. There were a number of important differences between TK and TCEs that had to be taken into account when contemplating instruments for their possible protection. The CEBS reiterated the need of reaching a basic consensus on the principles, objectives and substance of the protection prior to contemplating the legal character of any potential respective international instruments in the area. Until such understanding was reached, its position remained the same as expressed on numerous occasions. It continued to share the view that better evidence of potential economic, social and legal implications should be presented and discussed. Without that clear evidence, one still had little idea how the protection of GRs, TK and TCEs should function. The CEBS stood ready to engage in further discussions of the Committee. It believed that the work of the IGC would be carried out in a pragmatic, efficient and balanced manner.

54. The Delegation of Paraguay, speaking on behalf of the Latin American and Caribbean Group of Countries (“GRULAC”), expressed its satisfaction for the Chair’s stewardship of the three sessions of the Committee held over the year. The leadership of the Chair and the unwavering commitment of Member States had garnered significant progress in the search for an agreement on the text or texts of one or more instruments to ensure effective protection of GRs, TK, and TCEs. The present session had three specific objectives: to examine cross-cutting issues related to GRs, TK and TCEs, to assess the progress made, and to make a recommendation to the GA. Regarding cross-cutting issues, it reiterated its appreciation for the informal issues paper prepared by the Chair, which had been very useful and had facilitated the work of its experts. A fruit of that analysis was the inclusion in the text on TCEs of an article on “Capacity-building and awareness-raising”. GRULAC was interested in the prospect of discussing the cross-cutting aspect of that issue. With regard to the assessment of the progress made during the year, significant progress had been achieved in areas such as the meaning of “traditional”, the beneficiaries of protection and the nature of rights, in addition to dealing with revised text in each of the three areas. The Committee should consider the progress made with a view to making a decision on the convening of a diplomatic conference. As to the recommendation to the GA, it recalled that during IGC 26 there had been a meeting of senior officials to share viewpoints on key policy issues in connection with the negotiations. As established in part (b) of the decision of the 2013 GA, the Committee might decide to hold more such meetings in future sessions with a view to further buttressing the process. GRULAC proposed the inclusion of the high-level

segment in the decision to be adopted at the GA of September 2014. The high-level segment should be held after the last session of the Committee to be held in 2015, thereby benefitting from an additional year of technical work, which would aid further fine-tuning of the texts under negotiation. That would give a solid basis for the work of the IGC in 2015. Relying on the substantive work that would be done in 2015, the senior officials would be able to formulate a recommendation that would lead to an agreement on the text or texts under negotiation. The IGC sessions were of great importance to the group. Among the recommendations to be made, GRULAC considered it highly relevant to allow for the definition of a balanced work program for 2015, so as to ensure further progress in the negotiations in the hope of convening a diplomatic conference in the near future.

55. The Delegation of the EU, speaking on behalf of the EU and its Member States, thanked the Chair for his continued able stewardship of the IGC and reaffirmed its commitment to the process. It fully supported the objective of a balanced approach towards the subjects discussed, and acknowledged the importance of GRs, TK, and TCEs, and the role they played in its cultural and natural heritage. Regarding GRs, the Delegation had demonstrated its engagement and flexibility in the IGC process. It had proposed a mechanism under which it could contemplate agreeing to a requirement to disclose the origin, or source, of GRs in patent applications. That did not mean that it could accept any form of disclosure requirement. To be acceptable, the disclosure requirement would have to contain safeguards as part of an overall agreement to ensure legal certainty, clarity and appropriate flexibility. If that question was resolved, and in accordance with its position expressed in document WIPO/GRTKF/IC/8/11, it could eventually consider a mandatory requirement in that regard. A disclosure requirement which would discourage, or create legal uncertainty in, the use of the patent system would not facilitate the sharing of benefits and would not be in anybody's best interests. However, the crucial issue of sanctions and remedies remained without resolution. It was essential to avoid any outcome that would adversely affect in any way the validity and effective enforcement of patent rights. If the IGC could not establish agreement over that key issue, then its work might be better placed in developing effective defensive measures to prevent the erroneous grant of patents. As regarded TK, it recalled that all components of the IGC were complex issues, with potentially far-reaching ramifications. It was imperative to get things right and that could only be ensured if the IGC's work was guided by solid evidence of the implications, and feasibility, in social, economic and legal terms. Especially in relation to TK, there was an absence of evidence of the effect the instruments under negotiation would have on stakeholders, be they holders, users or society at large. Some Member States would see the IGC work as being to develop *sui generis* IP rights ("IPRs") which afforded economic protection, and the right to exclude others, from knowledge that was deemed "traditional", regardless of whether it was in the public domain. If the IGC built such a system, it would build it on a paucity of national experiences, and little clear view of the potential effects. Evidence that the contemplated measures would encourage innovation and creativity while safeguarding the rights of not just indigenous and local communities, but all of society, should be the foundation upon which the Committee's work proceeded. At the present stage, the Delegation did not see that such evidence had been presented. That was probably one of the reasons why, despite many years of work, the IGC had not yet been able to establish even common objectives for its work. As with the work on TK, the Delegation believed that the TCEs text under discussion was one of considerable complexity. It continued to engage positively on the TCEs work, but there was a broad range of outstanding issues with the text, which still needed to be clarified and refined. With TCEs, there was also no evidence of the possible effects the instrument under negotiation might have on stakeholders, be they holders, users, or society at large. Evidence that the contemplated measures would encourage innovation and creativity while safeguarding the rights of not just indigenous and local communities, but all of society, should be the foundation upon which the work of the Committee proceeded. At the present stage, no such evidence had been presented. Despite all the efforts and

commitment by the delegations in the last few sessions, no real progress had been achieved on a broad range of outstanding issues. Regarding cross-cutting issues, it maintained its position that the TK and TCEs texts should remain separate texts. There were a number of important differences between the two issues. In considering cross-cutting issues, it noted that the IGC dealt with a wide range of subject matter, and pulled together experts on patents, copyright, IPRs in general, human rights, and on natural and cultural heritage. Owing to the high burden in terms of the number of meeting days per year, those experts often dedicated their wisdom and experience to specific IGC sessions. Therefore, in reflecting on cross-cutting issues, the Committee should be careful to preserve the efforts of those experts and the progress that had been made. Consequently, the IGC should proceed with a light touch and be very wary of making changes to those texts already passed to the GA by IGC 26 and IGC 27. In terms of cross-cutting similarities, it recognized that in relation to TK and TCEs there might be some parallels in terms of the beneficiaries to be defined, and that an equivalent approach to any administrative measures could be desirable. The Committee should also strive to have consistency in the use of the terms in the two texts. The Delegation noted that the IGC had yet to establish definitions for both TK and TCEs, and that there were a number of important differences between the two. For example, regarding many TCEs, the content might already be protected via copyright and related rights, while for TK, there might be some aspects which did not currently fall within the existing IP regime. As indicated in the Chair's issues paper presented at IGC 27, much work had already been undertaken at the international level on TCEs, or Expressions of Folklore, including Article 15.4 of the Berne Convention for the Protection of Literary and Artistic Works, the Tunis Model Law on Copyright, and the WIPO-UNESCO Model Provisions of National Laws on the Protection of Expressions of Folklore against Illicit Exploitation and other Forms of Prejudicial Action. The Committee still needed to consider to what extent those instruments already addressed the needs identified by the demanders before considering new steps. The Delegation noted the proposal introduced in IGC 27, describing a granular model for both TK and TCEs which differentiated both TK and TCEs based on their level of diffusion. While such a model represented an interesting development, its workability in terms of legal and practical effects remained unclear. The distinctions between "closely held", "widely diffused" and "publically available" TK and TCEs remained unclear, and it was difficult to see any definitions being developed which would not be subject to perpetual dispute. The legally workable solution appeared to be one which drew a distinction between those TK and TCEs which were known only within a given indigenous and local community and those which had been diffused outside of that group. However, that might be too narrow to fit the wide spectrum of TK and TCEs globally, across different indigenous and local communities. While the Delegation remained open to discussion on the matter, progress might depend on defining the public domain, an exercise which could prove difficult. Against that background, it was becoming increasingly clear that the IGC would not succeed in balancing both a better recognition of TK and TCEs and safeguarding existing freedoms and the public domain, if it chose to work in the context of binding instruments. Throughout the course of the IGC, there had been demands for IP protection to be extended to TK and TCEs, but upon examining the specifics of such proposals, it became clear that one ran the risk of simply helping to protect what might be broadly termed "national characteristics". The consequences of that could be very wide-ranging and deleterious, with the potential to interrupt cultural and technological exchange globally. It was, therefore, not out of lack of ambition that the Delegation proposed that other, non-binding, solutions should be considered. It was a strong commitment to maintaining existing artistic, religious, cultural and other freedoms, in a multicultural world, which informed the position of the Delegation. In concrete terms, from an IP perspective, actions including raising awareness and encouraging use of the existing national legal frameworks, including the patent, trademark, design and copyright systems, and improving access to those frameworks, to safeguard both TK and TCEs, could, in its view, all be explored as a way forward, and have the potential to greatly improve the rights of indigenous populations to their TK and TCEs. That approach could complement existing practices, such

as encouraging the prevention of unauthorized disclosure, preserving use within the traditional context, using TK and TCEs in ways which did not disrespect the cultural norms and practices of holders, and attribution. In conclusion, the Delegation clearly reaffirmed its commitment to the IGC process, and fully supported and committed to continued negotiations in which it would engage constructively and with appropriate representation. However, the work of the Committee should not continue down a blind alley, but must be pragmatic, efficient, guided by economic evidence, clear objectives and a clear picture of the likely effects.

56. The Chair said that the detailed and focused statement by the Delegation of the EU, speaking on behalf of the EU and its Member States, constituted in his view a useful engagement. He encouraged delegations to proceed with similar granularity. He noted that a light touch had been emphasized regarding any attempt to modify the existing texts, and there seemed to be convergence within the Committee on that. He also took careful note of the question of impact assessments. The principle of using impact assessments to underpin negotiating approaches was well settled. In the context of the IGC, the point that the Delegation of the EU had made on the need to be mindful of the impact of any measure taken should be assumed to be part of the preparatory approaches of all parties and, therefore, the burden stood on all sides. The Chair appealed to take that concept as given and deserving full attention. No one would negotiate a bilateral free-trade agreement without doing impact assessments, down to each line. In that context, an evidence-based approach was deemed to be implicit as well. The fact that it had been articulated in a granular way by one delegation was indeed useful and helpful. The IGC needed to consider the foreseeable outcomes, the positive ones and those that might be negative if they were not mitigated. The Chair anticipated that the discussions at the expert group would go with that degree of granularity in the approach of cross-cutting issues.

57. The Delegation of Kenya, speaking on behalf of the African Group, assured the Chair of its full support and thanked him for his useful issues paper. It noted that a lot of progress had been made in the IGC negotiations in all the three texts. The progress made should enable the Committee to recommend to the GA in September 2014 the convening of a diplomatic conference in 2015 to adopt an international legally binding instrument or instruments to effectively protect GRs and associated TK, TK and TCEs. All the three texts before the Committee were mature, and reflected clearly the issues and where Member States stood in regard to the various provisions. The Delegation looked forward to a clear work program that would enable the IGC to deliver on the mandate, including the possibility of convening intersessional meetings. With respect to the work during the present session, the Delegation's expectation was to bring coherence to the documents, especially the draft articles for the protection of TK and TCEs, which had a lot of similarities. It did not expect the reopening of concepts or documents, but rather a simple exercise which resulted in replacing of texts, especially in the TK and TCEs documents with the more advanced text in either of the documents where the concepts and the intended meaning was the same. With respect to the GRs document, it noted that there were no elements which could be applied to the other documents and, therefore, it did not expect the re-opening of any elements in that text. If such a process was adopted, as indicated regarding the TK and TCEs text, the IGC should be able to conclude its work in the most efficient and timely manner. It was of the view that the Committee had to find a mechanism to enable the participation of indigenous peoples and local communities, since they were critical in legitimizing the IGC process. It hoped that a solution could be reached during the session on that important matter.

58. The Delegation of Iran (the Islamic Republic of) appreciated the Chair's tireless efforts in leading the Committee with a high degree of stewardship and wisdom. It was hopeful that the Committee would make progress and achieve success. It associated itself with the statements made by the Delegation of Indonesia on behalf of the LMCs and by the

Delegation of Bangladesh on behalf of the Asia-Pacific Group. At IGC 27, the Committee had concentrated its deliberations on cross-cutting issues and developed a tiered approach to protect TK and TCEs. Under that new approach, the issue of protection would be more flexible, predictable and at the same time reasonable. Due to the great achievements reached, hopes for major progress in the work of the Committee had reasonably increased. With respect to cross-cutting issues on GRs, TK and TCEs, while admitting that the characteristics of TK and TCEs and particularly GRs throughout the world varied greatly, the Delegation said that such exercise in some areas could accelerate the work of the Committee, especially where there were important overlaps among the issues, such as prior informed consent (“PIC”), MATs, defensive protection and its correlation with the issue of database creation and responsibility of IP Offices in the case of misuse, as well as dispute settlement. The IGC should distinguish between the concept of protection, on the one hand, and preservation, safeguarding and promotion of cultural heritage, on the other hand. The latter went beyond the mandate of the Committee and fell within the mandate of UNESCO. The IGC should touch up issues such as sanctions, remedies and exercise of rights, which could be discussed under the umbrella of enforcement. To ensure effective protection, it would be imperative to make sure that enforcement procedures were available to allow for effective action against misappropriation and misuse of TK, TCEs and GRs. These procedures should have such rigorousness as to constitute a deterrent to further infringement of rights. Without meaningful and robust enforcement procedures available, including reasonable compensation in the event of misuse and misappropriation, beneficiaries would not see their rights effectively protected. As a consequence, the validity of any regime of legal and effective protection of TK and TCEs from an IP perspective would be questionable. The Delegation touched upon the issue of the recommendation to the GA regarding the future steps of the negotiations. It said that it was unfortunate that, despite increased efforts by Member States as well as the 2009 GA mandate that instructed the IGC to conduct text-based negotiations with the view to holding a diplomatic conference and adopting an instrument or instruments for protection of GRs, TK and TCEs, the IGC had not reached yet that level of maturity that would enable Member States to hold a diplomatic conference. However, in light of the recent progress that had been made in the Committee, involving notably the tiered approach, as well as the vital necessity of putting in place such legal framework for the benefit of developing countries, the Committee should be invited by the GA to conclude negotiations as soon as possible with the view to holding a diplomatic conference in 2015. It emphasized that strong will and good faith as well as sufficient time, were all prerequisites for progress in the Committee. It was important not to lose the present momentum and accelerate the process, in order to fulfill the GA mandate. The Delegation was committed to engage constructively in the IGC negotiations with the objective of finding expeditious solution to the existing divergences.

59. The representative of InBraPi, speaking on behalf of the Indigenous Caucus, expressed her strong commitment to proceeding towards the adoption of an international legal instrument or instruments that would ensure the effective protection of GRs, TK and TCEs. She urged Member States to safeguard, during the cross-cutting discussions, the progress that had already been made. The Indigenous Caucus invited the Member States to act constructively with the view to finding consensus on a sustainable way to support the full and effective participation of the indigenous peoples and local communities, without which the mandate of the IGC would be prejudiced. In this regard, she reiterated the support granted by the Indigenous Caucus to the Delegations of Australia, Finland, New Zealand and Switzerland for the proposal they had put forward in document WIPO/GRTKF/IC/28/10. She also thanked the Delegations of Peru and Chile for having expressed their support for the proposal. Indigenous peoples’ need of and request for protection of their cultural heritage should be recognized and respected. Such heritage comprised sacred values that stood above and beyond market value and expiry dates. The forthcoming instrument or instruments needed to be consistent with the customs, institutions, traditions and customary

law of indigenous peoples. She stressed that indigenous peoples were the creators, owners, and holders of exclusive and sovereign rights to maintain, control, protect and develop GRs, TK and TCEs as part of their identity and cultural heritage, and as a reflection of their right to self-determination. Access to their cultural heritage required the FPIC of the indigenous peoples as holders of that heritage. The adoption of an international legal instrument for the protection of GRs, TK and TCEs should be fully consistent with the other international instruments which recognized rights to indigenous peoples, such as the UNDRIP and the ILO Convention 169. The Indigenous Caucus reaffirmed that no instrument should be developed at WIPO that diminished or nullified the rights of indigenous peoples that had already been recognized in other international texts. That founding principle should be reflected in an operative paragraph within the three negotiating texts. The representative emphasized that indigenous peoples were contributing importantly to the preservation of cultural wealth and biodiversity. They could also contribute to an inclusive IP system that would recognize a new subject of rights, the indigenous peoples, and a new subject matter of protection, their TK, GRs, and TCEs. The indigenous peoples throughout history had suffered from discrimination. It was the hope of the Indigenous Caucus that the IGC would contribute to correct this big mischief.

60. The representative of the Andean Community General Secretariat expressed his profound satisfaction with the Chair's continued stewardship of the work of the IGC. As emphasized by the Chair in his introductory remarks, the IGC had been burdened with one of the issues at the forefront of the current international agenda. The IGC was seeking the best means to harness human ingenuity in a sustainable way. The representative referred to sustainability from a social, economic and environmental perspective, as well as from a temporal perspective. Any agreement should constitute a commitment *vis-à-vis* the future generations who wished to see their history and traditions preserved. He congratulated Mr. Gurry on his recent re-election as Director General. He had no doubt that the Director General's new mandate would be characterized by an expansion of WIPO's activities and the broadening of its duties, for which the Director General and the highly capable team of professionals of the Organization held all the necessary credentials. The Director General could count on the active participation and full support of the Andean Community. The representative also congratulated the Vice-Chairs and the facilitators as well as the Secretariat, who had assisted the Chair in the difficult and important task of steering the Committee. Very significant progress had been made in the negotiations. The IGC had recognized the intimate relationship between human genius and the environment, culture and knowledge which the peoples and communities had passed down from generation to generation. He noted with satisfaction what had already been achieved in the field of GRs, as reflected in document WIPO/GRTKF/IC/28/4. The text on GRs included crucial concepts such as derivatives, associated TK, disclosure requirements, equitable sharing of benefits, PIC, misappropriation and the erroneous granting of IPRs, which all formed the nexus between the utilization of GRs and the protection that an IP system should afford to their rightful owners. Significant progress had also been made with regard to TK and TCEs. The representative hoped that, as with GRs, the IGC would soon be able to boast of consolidated texts which contained one formulation or very few alternative formulations of each aspect, for which the exercise of analyzing cross-cutting issues was crucial. Some eighteen cross-cutting issues had been identified in the texts before the IGC in the Chair's issues paper. Without attempting any prioritization, since each of those issues was important in its own right, he noted that only about a half dozen of those issues formed the nucleus of the negotiations. To achieve consensus on those issues would give considerable impetus to the process, opening up the prospect of convening, in the current biennium, a diplomatic conference to adopt one or more international instruments to ensure effective protection of GRs, TK and TCEs. Those key cross-cutting issues were in his view: definitions and use of terms, eligibility criteria, beneficiaries, scope, sanctions, remedies and exercise of rights, and disclosure requirements. The list contained as well a series of issues which might soon be

agreed upon by Member States, such as databases, national treatment, capacity-building and trans-boundary cooperation. It might be worth considering those issues during the informal expert group meetings being organized during IGC 28 with a view to securing consensus. The representative was of the view that this would constitute a reasonably achievable objective during the present session. The work of the Committee and its outcomes were of the greatest importance. As one of the eight centers of the origin of civilization, the Andean region had for twelve thousand years maintained a rich and intimate relationship with its biodiversity, which had generated unique, abundant and diverse TK. Its folklore was one of the most diverse and colorful of the world. The Andean Community had always been in the vanguard of protection of TK, access to GRs and the promotion and protection of TCEs, as evidenced by Decisions 486, on industrial property, 391, on GRs, and 760, on protection and promotion of the tangible and intangible cultural heritage of the Andean Community. Those decisions had the force of law in the Member States of the Andean Community, and were immediately and mandatorily incorporated, as well as automatically applied in their legal systems, even prevailing over national laws in case of conflict. As the Andean Community continued the process of meeting the current challenges in the international arena, described in modern terms as its reengineering, its Member States had reaffirmed the importance of those issues and willingness to strengthen and broaden their activities in those areas. For instance, the Andean Community intended to review and update Decision 391 on access to GRs, as it intended to continue adding to the legal arsenal of the Andean Community regarding the protection and promotion of its TK and folklore. The representative stressed the significance of the work of the IGC, as the Committee was addressing issues that went to the very soul of the Andean citizenship. In the past eight years, he had had the privilege of participating in the Committee and in the various groups that had been formed. He could witness the tireless efforts made by Member States and the flexibility that they had displayed on various occasions in seeking the technical, diplomatic and political consensus that was indispensable for the establishment of an international IP system that would protect what were the fundamental rights of all, including the indigenous peoples and local communities. The representative urged the Chair and the Member States not to falter in an effort that would culminate into a revised IP system and a powerful tool for the progress of human genius, economic wellbeing, social inclusion and respect for the environment.

61. The Chair thanked the representative of the Andean Community General Secretariat and drew attention to the references the representative had made to the normative framework of the Andean Community in terms of protecting GRs, TK and TCEs. It was important to consider what normative initiatives and best practices had been put in place in various regions, especially if those normative provisions specifically dealt with issues that were of interest to the IGC. It was also important to consider what experiences followed from the elaboration and adoption of such normative provisions. The Chair encouraged Member States to engage and discuss such experiences. He indicated that both national and regional experiences had to be brought to bear. He recalled that the IGC had had very mixed discussions about evidence and experience, but he believed that evidence was never unhelpful. However, he reminded that while history was important as a context, the IGC was looking at the future, not at the past. While highly sophisticated civilizations had developed long time ago, as the site of Machu Picchu illustrated, the IGC was looking as well at laws to be developed in the present times.

62. The representative of the Tulalip Tribes emphasized that the presentation by Ms. Dalee Sambo Dorough, Chair of the UNPFII, during the Indigenous Panel had to be taken seriously. Indigenous peoples' TK and TCEs were primarily part of their cultural heritage. TK and TCEs had pre-existed, in many cases, much before nation states and IP systems. He noted that TK and TCEs were actually covered by multiple laws and jurisdictions. But it should be kept in mind that the subject matter at hand was very different

from standard secular information, and from the kinds of content that were generally covered by IP laws. The representative proposed therefore that an inter-agency meeting take place among the Secretariats of relevant Organizations to share experiences on how they approached TK and TCEs. It would be very informative to know how they were treated within the human rights system, as well as by the Food and Agriculture Organization, the CBD and potentially even the Nagoya Protocol. He also wished that the various Secretariats share their experiences with the participants of the IGC so that they could be informed and did not impinge or harm the kinds of rights that indigenous peoples had elsewhere when drawing solutions within the IGC. With respect to the balancing test that had been proposed on some of the issues, the representative believed that it had to be made clear against what the balancing test would be balanced. He recalled that the Delegation of the EU, speaking on behalf of the EU and its Member States, had stated it could be economic issues. The representative, however, thought that the balancing test would have to be much wider, broader and deeper, because the issues went beyond just economic balancing. He reminded that human rights were generally not balanced and noted that the exercise of balancing was complicated when there were differences of views regarding value systems. The way that indigenous peoples interpreted the world and the fact that they had a different value system posed a real problem in commensurability. Balancing itself raised issues when there were differences in the kinds of harms involved, for example, cultural or economic ones. Had the rights of the 4600 Tulip Tribes members to be balanced against the desires and interests of 314 million people in the United States of America or even seven billion in the world? The representative referred to "takings legislation" in the United States of America, using this term to refer to situations where, despite the fact that indigenous peoples did not want to give consent in a given situation, it was argued that there should be cases where a substantial public purpose would outweigh that lack of consent. He noted that there were vast amounts of knowledge and information already in the public domain, from industrial property, secular information and so on, and wondered if there was any substantial advance in including the TK of indigenous peoples and local communities, which made up maybe five percent of the world's population? He considered that this question should be taken into account in any balancing exercise. Finally, he indicated that there was a difference between artistic and literary works on the one hand and TK and TCEs on the other. Public domain was an idea stemming from the Berne Convention, an idea that was referred to as the bedrock of the IP system. The representative was not disputing that it was an important principle. But was public domain a bedrock of the cultural heritage system or of the human rights system? The representative was willing to explore these issues, and find some more nuanced resolutions. Finally, the representative insisted that the issue of non-diminishment was a crucial one. He indicated that a non-diminishment provision appeared in all three texts in various forms. He believed that the one found in Article 10 of the TCEs text was probably the best and strongest. It was important that this clause be present in all three texts as a substantial safeguard, and he wished it to be placed in the operational text part and not in the Preamble.

63. The Delegation of Pakistan aligned itself with the statement made by the Delegation of Indonesia on behalf of the LMCs. It commended the Chair for his leadership of the IGC. The current IP regime was not able to provide adequate protection to GRs, TK and TCEs, leaving them open to exploitation. The continued misappropriation of traditional assets required effective redress through the establishment of a mechanism which guaranteed proper access to benefit sharing through FPIC. The Delegation hoped that the negotiations would focus equally on all three issues and that Member States could agree on a legally binding instrument or instruments for the protection of GRs, TK and TCEs. It also attached great importance to the role of the state over ownership rights and endorsed adequate flexibilities for each Member State to implement the agreed provisions as per their national legislation. The Delegation looked forward to working constructively with other delegations for a successful conclusion.

64. The Delegation of South Sudan thanked the Chair for his able leadership and for chairing IGC 28. It also expressed its appreciation to WIPO for its second important invitation to the IGC, and reiterated its commitment towards joining the Organization. The Delegation recalled the statement of Her Excellency, Nadia Arop Dudi Mayom, Minister of Culture, Youth and Sports of the Republic of South at IGC 27 and wished to state the following. It aligned itself with the statement delivered by the Delegation of Kenya on behalf of the African Group. On July 9, 2014, the Republic of South Sudan commemorated its third independence anniversary. The country needed to establish and strengthen various aspects of its nation and its state-building efforts. The cross-cutting review on GRs, TK and TCEs, the stock taking and the making of a recommendation to the General Assembly were very significant. The people of South Sudan believed in GRs, TK and TCEs, which were an integral part of their lives. Therefore, there was an urgent need to protect them at the national level, as well as there was an urgent need for an international legally binding instrument for the protection of TK, TCEs and GRs.

65. The Delegation of Sri Lanka congratulated the Chair for his leadership and thanked him for his comprehensive issues paper which would guide the Committee's discussions. The Delegation highlighted the need for a legally binding international instrument or instruments, which would contribute to the preservation of biodiversity, TK and TCEs in a fair and balanced manner. To this end, it underscored the significance of convening a diplomatic conference in 2015 and of undertaking negotiations in a time bound manner so as to finalize the texts. The Delegation wished to make several proposals to the IGC on TK and TCEs. Firstly, it believed that defining TK and TCEs in a broad and inclusive sense was preferable, while recognizing that such definitions should also provide a certain level of clarity. In order to achieve that, a non-exhaustive list of examples could be used and included within the instrument. Secondly, the issue of criteria of eligibility was a matter which had to be addressed in the section on subject matter of protection. Thirdly, on the issue of beneficiaries, it was imperative to address the role of the state. Such a role was essential, especially in circumstances where TK and TCEs could not be specifically attributed to a particular local and indigenous community. The Delegation thus suggested that the role of each state in identifying the beneficiaries under its jurisdiction be recognized. Finally, on exceptions and limitations, it was essential to ensure that the provisions were not too extensive, so that the scope of protection was not compromised. The Delegation called for a speedy conclusion of the finalization of the three texts, which it hoped would be binding upon all Member States. It hoped that this cross-cutting session would be successful and that consensus could be reached. It reiterated its commitment to engage constructively.

66. The Delegation of Ethiopia thanked the Chair for his issues paper. It aligned itself with the statement of the Delegation of Indonesia, on behalf of the LMCs, and with the statement of the Delegation of Kenya, on behalf of the African Group. It emphasized that Ethiopia was a nation that had a rich biodiversity and diverse culture with long standing traditions and cultural values. The Delegation attached therefore great importance to the protection of TK, TCEs and GRs and recognized the need to protect TK, TCEs and GRs at the international level. This was especially important with respect to the promotion and progress of science, technology and arts, and with the identified needs and interests associated with the development of the country. It also recognized the contribution that the protection of such resources could make to the economic and social development of developing countries. For these reasons, Ethiopia strongly supported the adoption of a legally binding instrument to protect TK, TCEs and GRs to fill the protection gap at the international level. The Delegation urged Member States to expedite the text-based negotiation under the auspices of the IGC and also in an informal context, as indicated by the Delegation of Indonesia, on behalf of the LMCs, with a view to conclude the negotiations and the elaboration of an international and legally binding instrument or instruments, in line with the decision of the 2013 GA. It strongly believed that this session should come up with a strong recommendation to the GA on the

need to convene additional meetings for text-based negotiations and a diplomatic conference with the view to finalizing the process with a clear roadmap and a program of work. The Delegation was committed to engage in a constructive manner.

67. The Delegation of the United States of America thanked the Chair for his strong leadership of the IGC. It had appreciated the Chair's issues paper on certain suggested cross-cutting issues. It believed that the issues paper would be useful in focusing the Committee's discussion during the present session. It welcomed the opportunity to work with other delegations on stock taking and review of cross-cutting issues. Through collaboration between WIPO Member States, the Delegation believed that the IGC would be able to develop a meaningful recommendation to the GA on the IGC's work program for 2015. It did not, however, envision scheduling a diplomatic conference at that time. Much work would be required in order to develop an international legal instrument or instruments, and the Committee clearly needed additional meetings to accomplish this goal. In order to begin the discussion on a recommendation to the GA, the Delegation had formulated a draft work plan for 2015 which had been made available to Member States and to other participants. It welcomed additional perspectives on how to structure the Committee's work over the next year. As work progressed, it would be of critical importance for the Committee to reach a meeting of the minds on objectives. Shared objectives would allow work to advance and would form the basis for any outcomes of the Committee's work. It believed that sharing national experiences would help to identify and refine common objectives. National experiences on subject matter of protection, as well as subject matter that would remain available for all to use, would also directly inform the Committee's work. In this regard, the Delegation together with a group of cross-regional cosponsors had tabled document WIPO/GRTKF/IC/28/INF/10 ("Responses to Questions Regarding National-Level Databases and an International Portal"). This document compiled questions that had been asked outside of and inside of the IGC regarding the creation and use of databases for GRs and TK, as well as replies to those questions based on national experiences. The Delegation welcomed additional contributions to this compilation. It also appreciated the comments on indigenous experiences with national TK and GRs databases that had been shared earlier in the Indigenous Panel, and the recognition of the value of learning from those who had already established such databases. Information about national experiences could also be gleaned through additional studies, such as the study on Member States' implementation of disclosure requirements that the Delegation of the United States of America and a number of co-sponsors had proposed in document WIPO/GRTKF/IC/28/9. As the Committee refined its objectives, with the help of national experiences, it would become clear to all delegations what it was trying to achieve, and the IGC would be able to focus its work. This focused work could require new ideas and new textual contributions. The Delegation referred to the two Joint Recommendations co-sponsored by the United States of America and other delegations that were on the agenda for the present session as documents WIPO/GRTKF/IC/28/7 and WIPO/GRTKF/IC/28/8. These draft instruments sought to capture what the Delegation understood to be shared objectives and to identify practical means of addressing them. It welcomed constructive textual contributions that would help the Committee to achieve targeted outcomes. It looked forward to working with other delegations during the present session.

68. The Delegation of Peru supported the statement made by the Delegation of Paraguay on behalf of GRULAC, and the statement made by the Delegation of Indonesia, on behalf of the LMCs. It strongly believed that the issues before the IGC were very important to understand and efficiently address. The effective protection of GRs, TK and TCEs was closely linked to development, as developing countries were faced with piracy and misappropriation of their GRs and TK, and, as in Peru, bio piracy. An international instrument or instruments that would include PIC, definition of beneficiaries and all the other relevant aspects were badly needed. An international instrument should include disclosure

requirements comprising TK associated with GRs. Such requirement would be beneficial to developing countries, as it was indeed very expensive to actually go through legal processes to try and prove that bio piracy had taken place without such disclosure. The Delegation proposed four particular areas the present session of the IGC should look at. Firstly, the discussion in informal groups of experts should look at non-controversial areas, such as unnecessary duplication of texts, as proposed by the Chair. Secondly, the Delegation suggested identifying topics which were fundamental and needed to be looked at throughout the next year at the IGC, not only from an economic, but also social and cultural perspective. Those issues related to beneficiaries, scope of protection, exceptions and limitations, and capacity-building and awareness. The Delegation intended, alongside the other members of GRULAC, to raise specific points about those issues and submit relevant drafting text. Thirdly, the Delegation mentioned the issue of the participation of representatives of indigenous peoples and local communities that needed to be addressed at the present session. Fourthly, it touched upon the recommendation to be made to the GA. In this regard, the Delegation recalled the proposal made by the Delegation of Paraguay on behalf of GRULAC regarding a high-level segment. This would help the IGC to develop a more mature text or texts. Lastly, the Delegation supported the convening of a diplomatic conference as soon as possible and stated that it wished this to happen before the end of 2015.

69. The Delegation of India supported the statements on cross-cutting issues made by the Delegation of Indonesia on behalf of the LMCs and by the Delegation of Bangladesh on behalf of the Asia-Pacific group. It considered the Chair's issues paper as a good basis for discussion on the cross-cutting issues in the IGC. As correctly identified in the issues paper, the important task during the present session was to improve the text by narrowing down the differences regarding the cross-cutting issues. Considering the number of cross-cutting issues identified in the Chair's issues paper, the Delegation believed that one possible way to move forward was to constructively engage in discussing the feasibility of the new tiered approach and negotiating a more agreeable formulation on the scope of protection in the TK and TCE texts. This was a central issue that required a higher degree of consensus on the way forward. The Delegation characterized the issue of the continued use of the term "public domain" in the text and its suggested definition, as worrisome. It reiterated that the concept of public domain was not the appropriate concept to determine the nature of TK to be protected. It was concerned that the proposed definition would exclude from protection substantial and valuable TK and TCEs that were actually subjected to misappropriation. In this context, the Delegation supported the following quotation from the Chair's issues paper: "Indeed, defining the "public domain" would be a challenging exercise with significant and wide-reaching policy ramifications going beyond the scope of the IGC". The Delegation believed that the new tiered approach adopted in the article dealing with the scope of protection along with the articles on limitations and exceptions accommodated sufficient margin of flexibility to address the likely problems emerging from protecting publically available TK and TCEs. Regarding the GRs text, the Delegation identified disclosure requirement as the most important cross-cutting issue. Finding acceptable solutions regarding the way to address non-compliance would enable the IGC to move forward. The Delegation pointed out that the texts had been discussed for a considerable period of time. It was of the view that the robustness of the documents showed the level of maturity the IGC had reached in moving towards final agreement. It strongly advocated that the IGC recommended the GA to fix a date for the diplomatic conference in 2015, complemented by a sufficient number of IGCs with the view to further finalizing the texts. It assured the Chair of its continued and constructive contribution to the forthcoming discussion with the view to further minimizing divergences in addressing key cross-cutting issues.

70. The Chair suggested with reference to his issues paper, that if there were any specific elements that the delegations felt could be usefully brought forward or prioritized in the

discussion, the delegations should do so by their own election. He advised that quoting from his non-paper risked transforming it into a basis of work to be negotiated as such. He cautioned that it should be used for its original purpose, which was to stimulate reflection and thought.

71. [Note from the Secretariat: The Vice-Chair, Ms. Charikhi, was chairing the session at this point]. The Delegation of Japan noted that the IGC had made good progress under the current work program in reducing the number of options and brackets and in streamlining the texts. Nevertheless, the IGC had to admit, even after its long history of discussion, that a lot of fundamental issues, such as policy objectives, subject matter, beneficiaries, and scope of protection, which all had a cross-cutting nature, still remained to be resolved. The Delegation welcomed the cross-cutting review, which could shed light on the common fundamental issues among GR, TK and TCEs, and hopefully help the IGC to find its common ground on those issues. While recognizing the benefits from this kind of exercise, it was of the view that the three subjects were different in nature and should be dealt with on equal footing. It reserved its right to provide detailed comments and further elaboration at the expert group meeting. But it took the opportunity to briefly touch upon the first cross-cutting issue included in the issues paper prepared by the Chair, namely policy objectives. Taking into account the discussion held so far, there was a commonly shared objective among Member States, that the IGC should take effective measures against misappropriation of GR, TK and TCEs. If the IGC tried to find appropriate IP-like measures, it should bear in mind the importance of promoting innovation and creativity, which was a fundamental principle of the IP system, as well as preserving the public domain, which was essential to social and cultural development. Regarding the issue of compliance with ABS requirements, the Delegation strongly believed that the existing IP system should not be used as a means of enforcement of provisions under the CBD and the Nagoya Protocol. In addition, it strongly felt that the effectiveness of a mandatory disclosure requirement for this issue had not been fully demonstrated. Lastly, the Delegation stated, as already said by the Delegation of Japan on behalf of Group B, that enough time during the present session should be allocated not only to the cross-cutting issues, but also to the discussion on stock-taking and recommendation. In this regard, it thanked the Delegation of the United States of America for its proposal on an IGC work plan for 2015. It believed that this proposed work plan could serve as a good basis for discussion.

72. The representative of CAPAJ was pleased to observe that the session had started with reflections and observations by the Chair regarding the richness, energy and traditions of indigenous peoples. He also noted that the Chair mentioned the site of Machu Picchu in Peru. In this regard, Machu Picchu had been created by pre-existing indigenous peoples in an area presently populated by the Latin American States and the Andean Community. He noted with appreciation that the representative of the Andean Community General Secretariat spoke about the desire of the Andean Community to further develop instruments that would protect human diversity and ingeniousness. But he was of the view that some of the Member States of the Andean Community, through their Ministries of Culture, and despite legal frameworks that had been developed under other Ministries like IP Offices, were creating legal structures that ignored or tried to nullify the indigenous character of countryside or local communities and thereby expropriate those from their own heritage. He reminded that Machu Picchu was not created by Latin American States, but by the Incas, who were indigenous peoples. Despite of that, it was the state and not the indigenous peoples who lived in the region which was benefitting from that heritage. He recalled that a former President of Peru, who was presently in jail, had intended to sell Machu Picchu to an international tourist consortium. The representative stated that appropriate adjustments to the texts were needed therefore in order to ensure that those texts would not be taken as a pretext to consolidate the misappropriation by the states of the rights of the holders and creators of TK, namely the indigenous peoples, and further diminish their rights.

Adjustments should be made in the texts in order to protect the potential of the indigenous peoples to keep contributing to cultural diversity and TK, and protect them from further destruction. The representative urged the IGC to work towards the common goal of creating instruments that would genuinely protect TK and traditional cultures of indigenous peoples.

73. The representative of the Health and Environment Program (HEP) thanked the Chair for his issues paper. She reiterated her hope that WIPO, which had the mandate to work on GRs, TK and TCEs, would achieve that mandate in terms of IP as well. She stated that WIPO had to deal with all of those who were concerned by IP, whether they were indigenous peoples, traditional rights-holders, TK custodians, supporters of indigenous peoples, or those who were helping indigenous peoples to fight against illicit appropriation of their resources. All of those groups had to be included within the group that was called the Indigenous Caucus and an appropriate name be found for it. There should be no discrimination whatsoever in dealing with everyone's rights. The IGC should not give precedence to the rights of some over others. She wished to see the role that could be played by the IP system clearly defined in the drafting texts. The representative acknowledged that the current IP system could encourage those who used their own TK and GRs to innovate. She wanted to ensure though that the IP system be crafted in such a way that patents be granted to those inventors, and that those patent holders benefit from them and from capacity building initiatives, with the help of supportive NGOs. The representative highlighted this as an important objective, if Africa was to continue to develop.

74. The Delegation of Chile supported the statement made by the Delegation of Paraguay on behalf of GRULAC. It wished to underscore the importance of the progress made by the IGC over the recent years, as reflected in the three drafting texts. It recognized that the work of the IGC was very challenging. But the IGC had created a dynamic process, and had been able to coordinate its work. The IGC had looked at national experience and had been able to compare and to share national experiences. This had served to guide the IGC in its progress. The Delegation welcomed the Chair's issues paper submitted by the Chair as very valuable if the IGC was to make progress on issues of substance, before the IGC started addressing anything in the preamble of the texts. The Delegation referred also to the fact that the IGC had also to elaborate a recommendation to be submitted to the GA. It stressed that it saw this as the main task the IGC was supposed to do at this meeting. It noted the specific proposals that had been submitted by other delegations and expressed its readiness to analyze the proposal made by the Delegation of the United States of America in this regard. The Delegation observed that progress had been made in recent years and expressed the wish to see the convening of a successful diplomatic conference. If this was to happen, it was important that the IGC agreed on a work program that would allow it to make headway in all of its aspects. The Delegations reiterated its willingness to work in order to move forward.

75. The representative of the International Chamber of Commerce (ICC) expressed that the ICC had always hoped, and still expected, the IGC to succeed. He appreciated the efforts that so many participants, including the Chair, had put into the negotiations. He stated that any successful outcome would have to be widely accepted as broadly fair and reasonably practicable. The representative highlighted the public domain as an essential area. If rights over TK were to be recognized, they must have appropriate exceptions for information that came into the public domain. The right to use properly acquired information, whether through independent creation, access to publications, or other lawful means, had to be safeguarded if we were to have continued innovation. Any approach involving exclusive rights for TK that was in the public domain would be viewed as unfair, and would be impossible to enforce. He expressed continued support of an instrument that met the needs of holders of TK, while still preserving the opportunity for continued creativity and innovation. The representative agreed with the representative of Tulalip Tribes that rights should take

precedence over interests. He added that rights were not confined to particular groups and should be balanced with other rights. In this regard, he stated that free access to the public domain was not only a commercial interest, but also an important public right. Therefore, a balance had to be struck between the rights of TK holders over knowledge they claimed to own, and the right of the public to free use of information that was publicly known.

76. The Delegation of the Republic of Korea believed in the importance of protecting GR, TK and TCEs, but highlighted that the protection of those subjects should be designed in a way that did not create adverse effects on innovation and creativity. It regarded the definition or scope of TK and TCEs which were publicly available or in the public domain, and the treatment thereof, very important. The definition had to be concise and clear-cut to prevent future ambiguous interpretation in the process of implementation, because it was closely related to the subject-matter, limits and exceptions, and level of protection. The Delegation stated that TK in the public domain and TK used in areas of public health and welfare should be considered under an exception clause. Regarding databases, it believed that building and utilizing databases was a very efficient way to prevent erroneously granted patents and a means of protecting GRs and TK. It further stated that databases in its country contained vast amount of published information and had been used very successfully as prior art documents for patent examinations as well as for other purposes. Further discussion over the scope of information, security measures, access control would provide a better idea to improve the usefulness of databases. With regard to disclosure requirements, it expressed concern for the process of granting rights for inventions, since the legal uncertainties created by such requirements might result in people ultimately avoiding utilizing patent systems, and instead bypassing IP regimes altogether. Since patent holders were granted exclusive rights only in return for full disclosure of new technology, the patent system actively promoted modern technological advances. Disclosure requirements pertaining to the origin of GRs would overburden users of the patent system in a manner never envisaged by its originators. The Delegation noted that securing rights for providing parties and user parties could also be achieved through other means outside of the patent system, such as private contracts, rather than by revoking rights or imposing sanctions through IP Offices. In this context, the Delegation deemed it necessary to take more time for deep discussions and research, giving consideration to users' opinions and the potential ripple effect on industry and other related areas.

77. The Delegation of Malawi associated itself with the statement made by the Delegation of Kenya on behalf of the African Group, as well by the Delegation of Indonesia on behalf of the LMCs. In its view, the IGC process had underlined the tremendous economic and social value of recognizing and protecting GR, TK and TCEs as IP, in particular to least developed countries ("LDCs") such as Malawi. To the extent that LDCs had a competitive advantage in the subject matter under discussion, this process presented an opportunity for these countries to be able to harness and derive economic benefit from this body of knowledge. It believed that the recognition and protection of GRs, TK and TCEs as IP that subsisted among its peoples, who were among the most impoverished in the world, would empower them to commercially exploit their knowledge and encourage them to further experiment and build on this body of knowledge, within their social and cultural settings. This would enhance the value of IP protection regimes in LDCs, and contribute to the much needed economic development. The Delegation echoed the sentiments expressed by the Delegation of Kenya on behalf of the African Group that the IGC had before it three texts that almost reflected and underpinned the aspirations for a possible legally binding international instrument for these subject matters. It was therefore concerned by the proposal made by the Delegation of the United States of America to extend the work of the IGC beyond the 2014 and 2015 biennium. It hoped instead that the session consolidate the progress made so far, and that at the end of the present session, the IGC recommend to the GA to convene a diplomatic conference with

the view to adopting an international instrument on the IP protection of GR, TK and TCEs by 2015.

78. The Delegation of Colombia stressed the importance of the work being undertaken in the Committee. It noted that the Committee was working towards an international framework which would ensure the protection of GRs, TK and TCEs within the area of IP. It welcomed the negotiations within the Committee and was of the view that these should continue throughout 2015. The Delegation aligned itself with the statements made by the Delegation of Paraguay, on behalf of GRULAC, and also by the Delegation of Indonesia, on behalf of the LMCs. It noted that there was a need to recommend to the GA the adoption of a balanced plan of work for 2015 which would enable the Committee advance in its negotiations. It was of the view that the relationship between the Committee's negotiations and existing international treaties should be analyzed and believed that it was important to include a disclosure requirement.

79. The Delegation of Canada supported the statement made by the Delegation of Japan on behalf of Group B. It looked forward to engaging in a constructive discussion on cross-cutting issues among the three texts. It welcomed the extensive issues paper prepared by the Chair and expressed the hope that the issues paper would inspire all delegations to engage in fruitful discussions with a view to finding solutions for the identified cross-cutting issues, as well as other cross-cutting issues which delegations could raise. The Delegation stressed the importance of the cross-cutting exercise, and noted that it was the first time that the Committee was discussing cross-cutting issues across the three texts. It hoped, in particular, that the dialogue would facilitate a shared understanding of the policy objectives and guiding principles which were essential in advancing the IGC's work on the substantive provisions. The Delegation expressed its support for the approach proposed in the Chair's issues paper, by which redundancies within the text would be eliminated, possible solutions identified, IP related concepts addressed, the tiered approach for the protection of TK and TCEs further explored, and the respective texts further examined with a view to assessing implications related to their implementation. It reiterated its belief that measures relating to the prevention of the erroneous grant of patents as well as that of databases could provide practical solutions to address the issues of GRs and TK associated with GRs. It was of the view that these should be a central feature of an instrument on GRs. The Delegation called on other delegations to work in a spirit of international cooperation, so that the Committee could agree, during the session, on a sound balanced work program for its future work, which was built on common objectives. It believed that referring the decision on the work program to the GA, which was not an expert body, would be inefficient, could make compromise more difficult, and could put the progress that had so far been achieved at a needless risk. It welcomed the proposed work plan submitted by the Delegation of the United States of America, and observed that this work plan contained several elements of interest. It reiterated its commitment towards reaching agreement on a work program at the session and was hopeful that a swift introduction of this proposed work plan would help the Committee to develop a recommendation during the present session.

80. The Delegation of Thailand expressed its appreciation to the Chair for his tireless efforts in guiding the process forward. It assured delegations of its full support to the process. The Delegation associated itself with the statement made by the Delegation of Indonesia, on behalf of the LMCs, and the Delegation of Bangladesh, on behalf of the Asia-Pacific Group. It believed that the present IGC texts were mature enough to move forward to the next step. It was of the view that the session was crucial, as it believed that the Committee needed to move closer to finding consensus on the cross-cutting issues as well as fine-tuning of the three texts. In this regard, it welcomed the Chair's issues paper and believed that the issues paper should be used as a basis for further discussion. It agreed, in particular, with the Chair's comments that the policy objective of the text was to remain the

guiding concept which would inform the operative provisions. Consequently, it believed that redundancies and overlapping issues should be avoided in the three texts, and that certain details could be better articulated at the national or regional level, thus leaving the international text with a broad policy framework which served as a statement of guiding principles. The Delegation reserved its right to make further comments on other cross-cutting issues at a later stage. It encouraged other delegations to engage constructively in the spirit of cooperation so as to ensure convergence on important and relevant issues. Regarding the recommendation to the GA, it supported the proposal to include a high-level segment in the 2015 work plan, which would help to offer policy guidance and find consensus on important issues. The Delegation reiterated its support for the efforts being made to address the lack of funds within the Voluntary Fund. It hoped that the proponents of the proposal, contained in document WIPO/GRTKF/IC/28/10, would be able to find ways to accommodate the concerns raised by other delegations, as well as find consensus amongst delegations on this issue. The Delegation reiterated its commitment towards engaging constructively with all delegations, particularly in the formulation of the recommendation to be submitted to the GA.

81. The Delegation of Trinidad and Tobago aligned itself with the statement made by the Delegation of Paraguay, on behalf of GRULAC. The work of the Committee was extremely important and believed that the texts on GRs, TK and TCEs were relatively mature. The Delegation noted that though much progress had been made in the texts at IGC 26 and 27, there was still room to improve and fine tune the texts before a diplomatic conference could be convened. It therefore recommended that discussions be continued on the critical areas, such as, subject matter of protection, beneficiaries, and scope of protection. With respect to the high-level meeting, it aligned itself with the views expressed by the Delegation of Peru. It recalled that idea of the high-level meeting had originated from GRULAC and expressed its full support for this proposal to be included in the 2015 work program once again. It was of the view that the high-level meetings were necessary, as they set the political tone and served to provide a forum for full and frank discussions at the ambassadorial level. With regard to future work, the Delegation recommended that text-based discussions continue during in 2014-2015, so that a diplomatic conference on GRs, TK and TCEs could be convened as soon as possible. It reiterated its willingness to work constructively with other delegations during the course of the session.

82. The Delegation of Brazil associated itself with the statements delivered by the Delegation of Paraguay, on behalf of GRULAC, and the Delegation of Indonesia, on behalf of the LMCs. It supported a work program that would be guided by the mandate and reflect the high-level priority given by the WIPO Member States to the issues discussed in the IGC. The Delegation noted that though the world had changed substantively with the adoption of the CBD in 1992, the IP system had not been updated for the purpose of adapting it to the international framework. It also noted that the 2007 UNDRIP had acknowledged that Indigenous Peoples had the right to maintain, control, protect and develop their IP. Guided by this, the Delegation believed that Member States should continue to engage in text-based negotiations towards international legal instruments that provided effective protection, and empowered indigenous peoples and local communities to exercise their rights. The Delegation noted that though national initiatives to regulate the relationship between IP and biodiversity were important, they were rendered insignificant where foreign countries continued to allow the use of these resources without respecting the principles, such as PIC and ABS, enshrined in the CBD. It emphasized that patent offices would be nothing more than formal checkpoints to collect and transmit information in the mechanism envisaged to preclude the misappropriation of GRs and associated TK. It believed, therefore, that it would not in any way represent an unnecessary burden to the national systems of IP. It further noted that the establishment of a mutually supportive relationship between the IP system and the CBD was important to mega diverse countries like Brazil, and also to all Member States

that were interested in protecting biodiversity and strengthening the IP systems. It was of the view that measures to ensure that patents which involved the misappropriation of resources could not be granted or kept, would be a good way to demonstrate that the system worked for all countries, in the best interests of diverse stakeholders, regardless of their level of development.

83. The Delegation of Zimbabwe aligned itself with the statement delivered by the Delegation of Kenya, on behalf of the African Group, as well as the statement of the Delegation of Indonesia, on behalf of the LMCs. It noted that the IGC had, for years, been negotiating the possibility of having an international instrument on IP and GRs, TK and TCEs. It pointed out that the subject remained an important issue, not only for its country, but also for most developing countries. It reiterated the great interest which Zimbabwe held in this matter and noted that this interest was captured in the constitution of the country. The Delegation was of the view that the absence of a legally binding international instrument or instruments would allow the continued misappropriation of GRs, TK and TCEs. It believed that this lacuna had contributed to the imbalance in the global IP system. The Delegation noted the significant progress that had been made in consolidating the three separate texts on GRs, TK and TCEs. It believed that four critical areas of the text required consensus, namely, subject matter of protection, beneficiaries, scope as well as limitations and exceptions. It was of the view that these critical areas had been dealt with, although not yet fully finalized. It believed that the IGC had reached a critical stage and, therefore, urged Member States to exercise commitment and political will in concluding the negotiations on the drafting of an international instrument for the protection of GRs, TK and TCEs. The Delegation observed that during the Committee's previous deliberations, some developed countries had continued to introduce unnecessary conditions as a way of delaying the process. It believed that the credibility of WIPO would be judged on the balanced treatment of all issues that were before it. The Delegation looked forward to a recommendation which would require the GA to decide on convening a diplomatic conference in 2015, as well as a more constructive and balanced negotiation that would carry forward the IGC work.

84. [Note from the Secretariat: The Chair was chairing the session again at this point]. The Delegation of Zambia expressed its support for the proposal made by the Delegation of Kenya, on behalf of the African Group, for the holding of a diplomatic conference early in 2015. It believed that all delegations would benefit from the adoption of an instrument at this time. It would bring the Committee to the conclusion of a long journey which had started a very long time ago. It was pleased with the contents of the proposed texts and looked forward to working with other delegations to fine-tune the texts, if necessary, including the consideration of cross-cutting issues as mentioned by other delegations. The Delegation noted that Zambia had recently come up with a Bill to protect GRs, TK and TCEs. This Bill was aimed at stopping the rampant bio piracy which was currently taking place in Zambia and which had left the local and indigenous people in abject poverty, without any means to survive. It believed that the finalization of an international instrument by the IGC would result in a coordinated protection of GRs, TK and TCEs, and the eradication, or minimization, of the theft of resources. The convening of a diplomatic conference that it was strongly recommending for 2015, should take place without fail. The Delegation further noted that it attached great importance to the issues of disclosure, PIC and ABS with respect to how the issue of protection should be addressed. It believed that if these mechanisms were not put in place, it would be very difficult to get the consent of the indigenous and local communities. Such gap would deprive them of any benefit from those resources. The Delegation was of the view that GRs, TK and TCEs should be protected as a whole. It believed that a fragmented approach would make the implementation of the proposed instruments difficult.

85. The representative of Tupaj Amaru noted that the Committee was once again engaging in general discussions which he believed were in themselves valid. He noted, however, that an international instrument of a binding nature was of utmost importance to indigenous peoples and pointed out that discussions in this regard had continued for twenty years. He identified three aspects being discussed as; the subject of protection, the beneficiaries of protection and the object of protection. He was of the view that indigenous peoples, and not States, were the holders of TK. He also noted that the object of such an instrument was the protection of TK. He further stressed the need for international standards and international norms. He stated that, despite the discussions, the Committee was yet to reach an agreement on this matter. With regard to the nature of a binding instrument, he noted that the Vienna Convention on the Law of Treaties, approved in 1969, established in Article 2, that a treaty was an international agreement concluded between States in written form and governed by international law. He noted that several States placed their constitutions above international treaties. He cited the Maastricht Treaty of 1992, by which the EU was created, as an example of a Treaty which was above the Constitutions of its Member States. He noted that there were examples of Conventions and Treaties agreed to in the past, which were expressly recognized by Member States as binding. He also pointed out that within the international community there were examples of non-binding instruments such as declarations, resolutions and principles. He was of the view that these did not provide any legal obligations for States. He further noted that the procedure for approval, and entry into force of treaties had three main stages, namely, the negotiation of the text, the approval and signing of the treaty, and the ratification. He noted that the negotiation of the text within the IGC had continued for the past 15 years, and believed that if progress continued at the rate that it had been going, the indigenous peoples would have disappeared from the face of the earth before any agreement was reached. He noted that humanity was gradually shifting into chaos and natural resources were disappearing. He was of the view that the current global wars were being fought to steal the resources which belonged to indigenous peoples. The present global attention that was focusing on biodiversity stemmed from the recognition that it constituted the basis of life on earth.

86. The Chair intervened and reminded the representative of Tupaj Amaru that the Chair requested from participants that they focus their interventions on cross-cutting issues that were relevant to the three drafting texts or on the recommendation to be made to the GA.

87. The representative of Tupaj Amaru referred to the Chair's non-paper on crosscutting issues. He was of the view that it seemed to confuse the three fundamental aspects that he had highlighted earlier. He expressed his pessimism with respect to a way out of the present confusion, and noted that the general issues which had been repeated over the last 10 years were being repeated once again. This, he believed, indicated that progress was not being made and that the three fundamental areas had actually been pushed aside. He was of the view that the discussion within the Committee should rather focus on issues of substance. He noted that bio piracy was the central pillar of illicit appropriation of the GRs and TK of indigenous peoples. He was of the strong feeling that bio piracy constituted the core of the issue.

88. The Chair thanked delegations and observers for their statements. He invited the expert group to meet under his leadership with the support of the Vice-Chairs and the facilitators in the agreed format in order to further discuss the views expressed in plenary on the cross-cutting issues. He invited Mr. Goss, as Friend of the Chair, to keep consulting in parallel with delegations on a draft recommendation to be made to the GA. He would ask Mr. Goss to deliver a progress report at a later stage on this issue. The Chair then suspended the plenary.

89. [Note from the Secretariat: The Vice-Chair, Ms. Charikhi, was chairing the session at this point]. The Vice-Chair reconvened the plenary and invited Mr. Goss, as Friend of the Chair, to report on the progress made in his consultations with delegations on a drafting recommendation to be made to the GA.

90. Mr. Goss said that the IGC participants had all received his latest draft recommendation to be made regarding the 2015 work program. He reminded the Committee that there were two other recommendations that needed to be considered: first, stock-taking and convening a diplomatic conference and, second, a recommendation that would address the financial situation of the Voluntary Fund, on which consultations were occurring separately. With regards to the consultation process, he had used a similar approach to the one used during the negotiations on the renewal of the mandate of the GA at IGC 25, which was essentially a small group consisting of “regional coordinators + 2.” He reminded the IGC that in performing that role he had not acted in his national capacity or had become involved in his own region group’s deliberations. In drafting the text, he had attempted to balance the interest of all Member States so as to give comfort to all. He had established some basic principles: new concepts and ideas could not be introduced that undermined the mandate, and the proposals had to relate directly to the mandate. He had also attempted to keep the text concise. The discussion had focused on the number of sessions, their format, their thematic nature (cross-cutting, stock-taking, etc.), their sequence, including consideration of back-to-back meetings, and the number of days, which unfortunately had been the final issue to be negotiated. Before going through the draft, he made some observations as Friend of the Chair and as a Facilitator over the past few years involved in drafting all three texts. He had heard much commentary in plenary about progress made over the past years and decade. He reminded members that formal text-based negotiations had only commenced in 2010. That was the first time that the IGC had a mandate to start negotiating a legally-binding instrument. He also reminded delegates that negotiations were complex, as reflected in the opening statement of the Delegation of the EU on behalf of the EU and its Member States, a statement that had merit and was worthy of consideration because it contained some key points. Those negotiations covered moral and economic rights with potential impacts across the whole IP system, impacting right holders, users, and the broader general public, and with potential impacts on the public domain and on social policy issues. In other words, the IGC was breaking new ground in many areas and was actually challenging long-established IP norms and mechanisms. That was not surprising, as one moved from the industrial to the knowledge age, and with the increased integration of economies. From his personal perspective, over the past year, the IGC had made significant progress, and that reflected the leadership of the Chair and the sound working practices that had been introduced to ensure the IGC operated efficiently and effectively with a focus on technical and expert discussions, rather than on process, which had bogged the IGC in previous years. While the IGC had not fully addressed that issue, the balance had shifted clearly towards substantive discussions as reflected in the progress made over the past twelve months. As far as GRs were concerned, the IGC had significantly refined the texts with a clearer link between the objectives and the supporting mechanisms. The IGC had also seen a shift on the approach to disclosure with a move from substantive patentability requirements to a more administrative approach. He reminded the IGC that four years ago the GRs text consisted of 500 pages in 25 different documents, proposals and concepts. In relation to TCEs and TK, in the past twelve months the IGC had achieved a significant breakthrough in the texts, which had not changed substantially prior to that in the previous years, and which had enabled the IGC to gain a shared understanding of the different positions and to start to attempt to balance protection against the need for access to support innovation and creativity. That was essentially the tiered approach, which in some ways was not new, it had been looked at in the past, but the IGC was utilizing it in a much more effective way. Notwithstanding that progress, more work was required in his view, as reflected in the comments during plenary and the experts group, which warranted a

well-developed and resourced work plan for 2015, if the IGC was to achieve its mandate, as the Delegation of South Africa had indicated to conclude those negotiations. In considering the work program, he asked that participants reflect on his comments. The work program should represent something that gave comfort to all. However, there remained outstanding issues to be resolved in his draft. The draft program was similar to the one for 2014, but the sequence had been changed, with the first IGC of back-to-back meetings focused on TK and TCEs, with flexibility to focus on cross-cutting issues throughout the sessions, rather than establishing a formally prescribed number of days. That session was followed by a GRs session and then, a third session to discuss cross-cutting issues, take stock and develop a recommendation to the GA, subject to the recommendation from the 2014 GA, obviously. He said he had not put any language in the 2014 GA column, because there was no consensus in that area and without that, he did not want to prejudge the GA's decision unless the IGC could agree on a recommendation. That was the next area the IGC needed to look at in consultations. He noted that there was a broad agreement on the framework proposed relating to such aspects as three thematic sessions and the construct of those sessions. Some concerns had been raised regarding the back-to-back meetings. He said it needed to be ensured that there would be no other WIPO meetings on either side of that session. There were also reservations in terms of maintaining representation at such a long meeting, which was always a challenge, given the concerns about the time the representatives were out of their offices. From his national perspective, he said that was not an issue: it was more efficient, it was cheaper and the Delegation of Australia supported that proposal on a national level. That said, there was a general view that the benefits of a back-to-back meeting outweighed the issues, particularly in the breakthrough changes made in the text. The thematic sessions were simply a guide. They were not agreed, as indicated by the brackets, and reflected as well his conversations with the Facilitators. They were not rules, they were there simply to help shape, rather than direct the negotiations, as in essence, those negotiations within the thematic sessions were in the hands of the IGC. One area still lacking consensus was the Ambassadors/Senior Officials meeting. There had been much discussion about the merits of the previous such meeting and it was felt that, if the IGC were to go ahead, that would be more worth it at the end of the process. It would need to be well planned with clear aims and objectives, rather than simply general statements, which was what had happened at IGC 26. In essence, such a high-level meeting needed to assist in guiding the process and recommendations to the GA. He said that while there was no consensus on that issue, there was flexibility to consider the proposal across all parties and ask the proponents to further develop their proposal and engage with other groups. Another area where there was no consensus was a proposal within the thematic session to include language relating to the introduction of national and regional experiences and consideration of databases when mentioning the text-based negotiations. He recalled that that related to the final paragraph in the mandate. He considered that that issue would be better reflected in a footnote and he had included databases as an area of focus in the TK and the GRs thematic texts. Another issue raised was the intersessional regional meetings. Those meetings had been led and funded by Member States, and the Secretariat had advised that WIPO was not funded to support intersessional meetings. He said he had asked the proponents of that proposal to reconsider it, based on that constraint. At the same time, he recognized the cost and effort that a number of Member States had put into those regional and intersessional meetings, which had resulted in significant contributions to the outcomes. For example, he noted that the tiered approach on TCEs had come out of an intersessional that had taken place in Bali, Indonesia. Lastly, coming to the number of days, he admitted he was disappointed that it was the final issue to be negotiated. As there could not be any agreement on that issue, he had maintained the *status quo* from 2014: 18 days, which was what the Secretariat has budgeted for. He hoped the IGC could come to an agreement on that, for it did not look good if the GA had to spend time discussing the number of days for meetings. The next step was to review the current draft and develop a final proposal later in the day, including considering the recommendation in relation to the GA on stock taking of

the text, progress made and deciding on convening a diplomatic conference and a need for additional meetings. As indicated, he understood that the recommendation on the Voluntary Fund was progressing separately between proponents and other delegations. He hoped to have had accurately represented the views expressed in the consultations. He thanked the IGC for its patience and noted the cooperative and friendly nature of the consultations.

91. The Vice-Chair thanked the Friend of the Chair for a very detailed briefing, for his dedication and understanding of what was at stake. She confirmed that consultations led by the Friend of the Chair were ongoing, as important points still needed to be finalized. She urged delegations to get in touch with their coordinators and respect the format, in the hope of coming up with a recommendation to the GA. She announced that the IGC would in parallel continue its work in the informal expert group on cross-cutting issues. She then suspended Agenda Item 6.

92. [Note from the Secretariat: The Chair was chairing the session again at this point]. The Chair expressed his great appreciation to the Friend of the Chair, Mr. Goss, who had tirelessly conducted consultations during the present session on a recommendation to be made to the GA regarding the IGC work program in 2015 and its future work. After having met with the Friend of the Chair and with Regional Coordinators, the Chair had to conclude that these consultations had been unfortunately unable to achieve consensus. In order to fulfill to the extent possible the mandate to take stock and make a recommendation to the GA, and in line with what had been agreed with the Regional Coordinators, the IGC would proceed to have the proposals submitted for the record in plenary. The Chair expected the proposals to be submitted would be the same as those that had been discussed previously in the consultations. In the interest of time and efficiency, he asked delegations or groups to merely introduce their proposals, noting that the written versions thereof would be entered in to the record as well. In line with what had been agreed with the Regional Coordinators, he would then invite the IGC to decide that those proposals be transmitted to the GA. Those statements could be used for the information and guidance of whomever would undertake the consultations on the future work under the umbrella of the GA. He suspended the plenary for fifteen minutes to allow for consultations on this way forward.

93. The Chair reconvened the plenary for a final discussion on this matter and invited delegations to submit proposals to be recorded and transmitted to the GA for its consideration.

94. The Delegation of Kenya, speaking on behalf of the African Group, noted that substantial progress had been made in all three texts to enable the IGC to make a recommendation to the GA in 2014 to convene a diplomatic conference in 2015. The current mandate called upon the IGC to finalize the text(s) of the international instrument(s) within the biennium. Furthermore, the GA in 2014 would take stock of and consider the texts, progress made and decide on convening a diplomatic conference and would consider the need for additional meetings, taking into account the budgetary process. The Delegation said that it had remained constructive in both the plenary and informal consultations and was committed to concluding the work as per the mandate. It noted that the IGC mandate was not an open one but a closed one, which required renewal every biennium. In that regard, the current mandate would end in August 2015, before the 2015 GA and, therefore, the IGC could not take a decision beyond its mandate. For that reason, it was of the firm view that any decision the IGC would take had to be confined within the ambit of the current mandate. From a logical and sequential perspective therefore, the first issue to be dealt with was to take stock so as to be able to assess the progress achieved in the texts. Stock-taking was a critical exercise as it clearly showed where there was consensus and where there were difficulties. That would help inform future work and also refocus energies and give a clear picture of the work needed to be undertaken, as well as the amount of time necessary to take

the IGC to a logical conclusion. Based on the results of the stock-taking exercise, the IGC would be able to take the steps to conclude the work in an objective, clear and purposeful manner. In that regard, the Delegation was of the view that the texts were mature and made the following recommendation to the GA: Convene a diplomatic conference in 2015 and provide for three sessions, and a possible fourth intersessional meeting, to further refine the texts in advance of the diplomatic conference. The sessions would follow a clearly defined work plan as set out in the program that would be submitted to the Secretariat in writing. It envisaged a diplomatic conference in November 2015 and, therefore, the work program would be geared towards that goal. [Note from the Secretariat: the following was the written statement as received from the Delegation of Kenya on behalf of the African Group]:

African Group Recommendation and Work Program to the WIPO General Assemblies in September 2014 on the Work of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

Mandate of the IGC 2014/2015

Submit to the 2014 General Assembly the text(s) of an international legal instrument(s) which will ensure the effective protections of GRs, TK and TCEs. With a view to finalize the text(s) within the biennium, the General Assembly in 2014 will take stock of and consider the text(s), progress made and decide on convening a Diplomatic conference and will consider the need for additional meetings, taking account of the budgetary process.

In accordance with this IGC Mandate for 2014/2015, the African Group makes the following recommendations to WIPO General Assemblies in September 2014;

African Group Recommendation to the WIPO General Assembly;

Convene a diplomatic conference in 2015, and provide three sessions, and a possible fourth inter-sessional meeting, to further refine the texts in advance of the diplomatic conference. The sessions will follow a clearly defined work plan as set out in the table below, based on sound working methods.

Dates	Activity
September 2014	WIPO General Assemblies Approves the Recommendation to convene a diplomatic conference in November 2015
February 2015	IGC 29 TK followed by TCE. <ul style="list-style-type: none"> • Continue text based negotiations on TK; 5 days. • Continue text based negotiations on TCE; 5 days. Duration 10 Days
April 2015	IGC 30 GR <ul style="list-style-type: none"> • Continue text-based negotiations on GR Duration 5 days

May 2015	IGC 31 Cross Cutting/Stocktaking Session GR/TK/TCE Duration 5 days
November 2015	Diplomatic conference to conclude an International Legal Instrument(s) for Effective Protection of GRs, TK, and TCEs

95. The Delegation of Bangladesh, speaking on behalf of the Asia and Pacific Group, regretted the fact that the IGC could not reach a consensus on recommendations to the GA. However, it proposed the following recommendations: 1. The GA would decide to convene a diplomatic conference as soon as possible after taking stock of the progress. 2. There would be at least 18 days for IGC sessions in 2015. If there was to be a back-to-back session of 10 days, first on TK and then on TCEs, then it recommended three sessions, the first being one of 10 days on TK and TCEs combined, the second one on GRs for five days and the third one for discussing cross-cutting issues and stock-taking for three days. However, if there were several sessions for TK and TCEs, then there would be four sessions, five days for each GRs, TK and TCEs and a three-day session for cross-cutting issues and stock taking. 3. There should be a senior officials' meeting during the last three-day session.

96. The Delegation of Japan, speaking on behalf of Group B, thanked the Friend of the Chair for his hard work on the issue. Although the IGC could unfortunately not reach agreement on the work program for 2015, it had had a good discussion under the guidance of the Friend of the Chair, and had reached a good framework for the work program, although different views still remained on issues of detail. As for an Ambassadorial/Senior Official segment floated by some Member States, the Delegation was not convinced about its usefulness at this stage of the negotiations. The issues before the IGC should be resolved through the technical work by the experts at the IGC. That was the best way to advance the work. With regard to the mandate and a diplomatic conference, the Delegation interpreted the mandate given by the GA in 2012 as an open mandate which allowed the IGC to make a recommendation or decision on convening a diplomatic conference at a time when it was appropriate from the perspective of the maturity of the texts. Therefore, it believed that the texts, in spite of the developments in this session, required further work before such recommendations or decisions. The Delegation remained committed to be engaged in future constructive discussions on the work program and the decision of the GA.

97. The Delegation of Indonesia, speaking on behalf of the Like-Minded Countries (LMCs), thanked the Friend of the Chair. It referred to the decision of the General Assembly in 2013 regarding the IGC mandate for the biennium of 2014/2015 with a view to finalizing the three texts on GRs, TK and TCEs, and which required the General Assembly in 2014 to take stock of and consider the texts, progress made and take a decision on convening a diplomatic conference. Substantive progress had been made during the IGC sessions in 2014 which brought new and constructive approaches to the discussions with a view to resolving some key outstanding issues, including the scope of rights approach. However, this IGC session had not met its expectations to have a decision on the recommendation to the General Assembly in 2014 and to finalize the three texts. For the way forward, it suggested that the General Assembly in 2014 decide on convening a diplomatic conference in 2015. The IGC needed a sound and robust work program consisting of some elements as follows: 1. To convene three IGC sessions in 2015 for text-based negotiations with one session extending to ten days with back-to-back discussions on TK and TCEs. The IGC needed to prioritize the decision on the following: scope of protection, exceptions and limitations, objectives and principles and the disclosure requirement. Once those were resolved, it would be easier to achieve clarity on the remaining pending issues. 2. To convene a high-level Ambassadorial/Senior Officials level meeting during the last session of

the IGC in 2015 to find a solution to the critical issues which could not be resolved at the expert level and provide guidance for the process leading to the diplomatic conference.

3. To convene an intersessional meeting and cross-regional meeting before the General Assembly in 2015. In that regard, it suggested input from other groups and Member States as well as the Secretariat on how to organize such meetings. 4. To request the General Assembly and the PBC to allocate sufficient budget for the implementation of that work program in 2015.

98. The Delegation of Paraguay, speaking on behalf of the Group of Latin American and Caribbean States (GRULAC), said, in conformity with its opening statement, that it had shown its commitment to the work of the IGC both in the expert session and in informal consultations. It had presented a proposed program of work for 2015 which had been distributed and supported by various delegations. That proposal had also been included in the work of the Friend of the Chair, whom it thanked for the documents he had provided. It stated that its proposal would be for four sessions, three thematic sessions and one high-level segment in 2015 at the end of the last session. It thanked the various delegations that had supported the idea of the high-level segment. Likewise, it had put forth specific topics for discussion, which reflected the debates held in the expert session and which had also been considered in the proposals of the Friend of the Chair. The major objective of the Delegation's proposal was to move forward with text-based negotiations towards a diplomatic conference to adopt international instruments which would ensure legal protection for TK, TCEs and GRs. That was the reason for putting forward its proposal to the Secretariat and it wished that it be part of future discussions. It also referred to the proposal by the Delegation of Switzerland and others on the Voluntary Fund, which it had considered and which it would follow up on in the framework of the PBC. It thanked the Secretariat as well as the facilitators for their support. [Note from the Secretariat: the following was the written statement as received from the Delegation of Paraguay on behalf of GRULAC]:

GRULAC PROPOSAL

IGC WORKING PROGRAM 2015

Indicative Dates	Activity
February 2015 (5 days)	<p>IGC 29 GR</p> <p>Undertake text-based negotiations on GR with a focus on considering options for a draft legal text.</p> <p>Duration 5 days.</p>
April 2015 (5 days)	<p>IGC 30 TK</p> <ul style="list-style-type: none"> • Consideration of Cross Cutting TK/TCE Issues – 1 day. • TK - Focus on text-based negotiations: 4 key Articles viz Subject Matter of Protection, Beneficiaries, Scope of Protection and Limitations and Exceptions - Duration 4 days.
May 2015 (5 days)	<p>IGC 31 TCE</p> <ul style="list-style-type: none"> • Consideration of Cross Cutting TK/TCE Issues – 1 day.

	<ul style="list-style-type: none"> TCE - Focus on text-based negotiations: 4 key Articles viz Subject Matter of Protection, Beneficiaries, Scope of Protection and Limitations and Exceptions Duration 4 days.
<p>July 2015 (3 days)</p>	<p>IGC 32 Cross-cutting session/Stocktaking</p> <ul style="list-style-type: none"> Cross Cutting GR/TK/TCE session Ambassadors/Senior Capital-Based Officials meeting to share views on key policy issues relating to the negotiations on GRTKTCE, to further inform/guide the process. Duration – Half day. Take stock of progress and make a recommendation to the General Assembly. <p>Duration 3 days.</p>
<p>September 2015</p>	<p>WIPO General Assembly</p> <p>With a view to finalizing the text(s) within the biennium, the General Assembly in 2015 will take stock of and consider the text(s), progress made and decide on convening a diplomatic conference and will consider the need for additional meetings, taking account of the budgetary process.</p>

99. The Delegation of the Czech Republic, speaking on behalf of the Group of Central European and Baltic States (CEBS), thanked the Chair and Vice-Chairs and the Friend of the Chair for guiding the IGC through the informal process and the plenary proceedings in that session, especially on Agenda Item 6. It said it had engaged in good faith and had made suggestions, concrete or less concrete, during the informal process with a view to finding consensus on recommendations. Regretfully that had not been possible. The Delegation reserved the right to submit proposals, including in the lead-up to and during the proceedings of the GA in 2014.

100. The Delegation of China thanked the Friend of the Chair for his leading role and efforts in guiding the consultations. It attached great importance to the process of discussion and in this session, the IGC had failed to reach any consensus on the recommendations and the future work program. The Delegation was very disappointed. It hoped all parties would show flexibility and make progress on some substantial topics. Regarding the work program and the diplomatic conference, it hoped after that session and before the next General Assembly that there would be discussions and that progress would be made. Lastly, the Delegation reserved its rights to make any comments or further recommendations at the next session.

101. The Delegation of the EU, speaking on behalf of the EU and its Member States, thanked the Friend of the Chair for all the work undertaken under this item. It said it remained committed to take part constructively in the discussions that would take place in the General Assembly and it regretted that, despite its constructive and flexible engagement at this session, the IGC had been unable to agree on a recommendation. It outlined its recommendations on the future program of work and on convening a diplomatic conference. With regards to the program of work, it supported 15 days of meetings in 2015. They would be allocated as follows: IGC 29 - eight days dedicated to TK and TCEs, taking place

back-to-back, with no dedicated cross-cutting sessions. IGC 30 - four days on genetic resources. IGC 31 - three days with two days dedicated to cross-cutting issues and one day reserved for stock taking. The Delegation did not support the concept of a senior officials/high-level meeting. As regards methods of work, the work should continue to use an evidence-based approach drawing on national experiences. Furthermore, the IGC had to avoid an over-prescriptive definition of the agenda in order to reach consensus at the General Assembly. With regards to the mandate, it aligned its position with the statement made by the Delegation of Japan on behalf of Group B. This year's discussions had undoubtedly been fruitful and some good progress had been made. But there remained fundamental issues to be resolved in all texts before reaching a fully stabilized view. Finally, it reserved the right to review or refine its position ahead of the GA.

102. The Delegation of Ghana thanked the Chair and the Secretariat for steering IGC 28. While it regretted the failure to arrive at a consensus on a recommendation to the General Assembly, it was pleased to note that substantial progress had been made and it believed that the current texts on TK, TCEs and GRs were mature enough for expedited consideration prior to the convening of a diplomatic conference in 2015. The Delegation aligned itself with the statement of the Delegation of Kenya, speaking on behalf of the African Group.

103. The Delegation of the United States of America thanked the Chair for his hard work and leadership, not only over the past three days of IGC 28, but also over the past three years. It also appreciated the professionalism and efforts of the facilitators. The Delegation remained committed to the process and hoped that all delegations would continue to actively share experiences and contribute and consider options to bring the IGC closer to a shared understanding of the policy objectives and core principles of its work. These included the erroneous grant of patents. The Delegation had circulated a draft work plan on the first day of IGC 28, which it wished reflected in the report [Note from the Secretariat: the following was the written proposal as received from the Delegation of the United States of America]:

Proposal of the United States of America

IGC Work Plan for 2015

Bearing in mind that the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) was established by the WIPO General Assembly in 2000, with a mandate to discuss Intellectual Property issues that arise in the context of (i) access to genetic resources and benefit sharing; (ii) protection of traditional knowledge, whether or not associated with those resources; and (iii) the protection of expressions of folklore.

Recognizing the role of the intellectual property system in promoting innovation and the transfer and dissemination of technology to the mutual advantage of holders and users of genetic resources and traditional knowledge associated with genetic resources in a manner conducive to social and economic welfare;

Stressing the need to prevent patents from being granted erroneously for inventions or creations that are not novel or inventive with regard to genetic resources and traditional knowledge associated with genetic resources, and acknowledging the existent, inherent capacity of the patent system to achieve that end;

Further stressing the need for patent offices to have available and consider the appropriate prior art on genetic resources and traditional knowledge associated

with genetic resources needed to make proper and informed decisions on patent grant, and further stressing the importance of transparency in the process of granting patents;

Further noting that the mandate of the WIPO IGC was renewed for the 2014/2015 budgetary biennium, without prejudice to the work pursued in other fora, to continue to “expedite its work with open and full engagement, on text-based negotiations with the objective of reaching an agreement on a text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs;”

Bearing in mind the Development Agenda recommendations, and acknowledging the progress made in the IGC since its work began in 2000, the WIPO General Assembly requests that the IGC continue its work, with a view to finding common objectives and principles, developing an understanding of the scope of any protection to be accorded, and determining examples of what should be in the public domain, and finalizing the text(s) within the biennium:

The IGC is requested to submit to the 2015 General Assembly the text(s) related to the protection of GRs, TK and TCEs resulting from such further work, as well as a recommendation as whether or not the objectives, principles and text are sufficiently defined so as to schedule a Diplomatic conference and the need for further work. The 2015 General Assembly will, based upon such recommendation of the IGC, decide whether or not to convene any Diplomatic conference, and make any appropriate recommendations, taking account of the budgetary process. If IGC 31 fails to make a recommendation, the IGC will continue to meet in the next biennium, with the same frequency as other WIPO committees, with an agenda to be decided on a meeting by meeting basis.

In accordance with the mandate of the IGC for 2014/2015, the General Assembly decides that the IGC work plan for 2015 will be as set out below:

Provisional Date	Activity
Feb 2015	IGG 29 – continue text based negotiations on Genetic Resources with a focus on national experiences, addressing in particular the public domain, the definition of misappropriation, and how countries are handling transboundary issues. No indigenous panel, but the Secretariat will encourage such observers to participate during the session, including by giving planned presentations on the subjects to be addressed. (3 days). One day on practical aspects of databases. One day cross cutting session to discuss similarities and differences in the approach for GR and other topics.

<p>May 2015</p>	<p>IGC 30 – continue text based negotiations on Traditional Knowledge with a focus on national experiences, addressing in particular beneficiaries of protection, local, national and regional experiences, including subject matter of protection and material in the public domain, the definition of misappropriation, and sharing local, national and regional experiences, and how countries are handling transboundary issues. No indigenous panel, but the Secretariat will encourage such observers to participate during the session, including by giving planned presentations on the subjects to be addressed. (3 days) One day on practical aspects of databases. One day cross cutting session to discuss similarities and differences in the approach for TK and other topics.</p>
<p>July 2015</p>	<p>IGC 31 – continue text based negotiations on Traditional cultural expressions with a focus on local, national and regional experiences, including subject matter of protection and material in the public domain, the definition of misappropriation, and sharing local, national and regional experiences, as well as beneficiaries and cross border issues. No indigenous panel, but the Secretariat will encourage such observers to participate during the session, including by giving planned presentations on the subjects to be addressed. (3 days) One day cross cutting to discuss similarities and differences in the approach for TCEs and other topics. One day to draft a recommendation for the 2015 WIPO GA and any necessary work plan for the 2016/2017 biennium.</p>
<p>September / October 2015</p>	<p>WIPO General Assembly - Decide whether or not to convene any Diplomatic conference and make any appropriate recommendations, based upon the recommendation from IGC 31. If IGC 31 fails to make a recommendation, the IGC will continue to meet in the next biennium, with the same frequency as other WIPO committees, with an agenda to be decided on a meeting by meeting basis.</p>

104. The Delegation of the Russian Federation thanked the Chair for his work over the week, as well as the Friend of the Chair, Mr. Ian Goss. It also thanked the Secretariat for the documents prepared and for its preparatory work. The IGC would not have been able to be as productive as it had been at that session without all of that work. IGC 28 had looked at a number of very important issues and had laid a robust basis for future discussions. Sadly, however, the IGC had not yet been able to reach consensus on a number of fundamental issues. The IGC needed to continue its discussions on these issues and on the documents relating to TK, TCEs and GRs the following year in order to reach consensus. The Delegation, therefore, believed that it would be appropriate to have three sessions of the IGC in 2015 for that purpose. It reserved its right to come back with further comments on this subject at the GA.

105. The representative of Tupaj Amaru regretted the fact that there was no political consensus on the issues at hand. This was due to a lack of political will to reach consensus

on the part of Member States. The representative agreed that the work of the IGC should continue in order to achieve a general political consensus, but he felt that the Chair should change the working methods and procedures of the IGC, especially given the fact that the IGC had a mandate to study the documents in plenary.

106. The representative of CEM-Aymara, speaking on behalf of the Indigenous Caucus, indicated that the Indigenous Caucus had evaluated the progress of the IGC and recognized the progress made but was concerned with regard to future work. She recalled that Article 18 of the UNDRIP provided that the participation of Indigenous Peoples was of vital importance throughout this process. She welcomed the proposal by the Delegations of Australia, Finland, New Zealand and Switzerland for subsidiary contributions to the Voluntary Fund. This represented creative and innovative options for the Voluntary Fund. The representative emphasized the importance of the participation and contribution of Indigenous Peoples in the IGC process and hoped for continued work on the protection of TK. She noted that Indigenous Peoples were concerned with the appropriation of their resources, and every day there were examples of such. She emphasized that references to the public domain needed to be balanced with prior informed consent and asked for the guaranteed participation of Indigenous Peoples in the diplomatic conference that may be scheduled in 2015.

107. The representative of HEP believed that work should continue in order to ensure the protection of TK, TCEs and GRs. Convening a diplomatic conference as rapidly as possible, and if possible in 2015, would allow the IGC to ultimately protect TK, TCEs and GRs.

108. The Delegation of Peru noted that GRULAC had made a lot of efforts, among other groups, to try and reach agreement and that some proposals had been put forward over the course of the session. It would be helpful if these were made available in the facilitator's document. While there was no agreement on a recommendation to the General Assembly at this stage, the work of the past couple of days would be a useful basis for a possible meeting in September 2014. Important points of view had been reflected, but of course, there were still divergences of opinion. There were still a lot of pending issues for the General Assembly to decide, but the Delegation was hopeful that the report that would be put forward would eventually lead to a favorable outcome for all.

109. The Chair thanked the participants for the statements made during this final discussion. He read out the draft decision on Agenda Item 6 and it was approved. He announced thereby that those statements would be transmitted to the GA taking place in September 2014. The Chair thanked all the delegations who had participated in the three days of consultation. Despite its inability to reach consensus on a recommendation, the Chair found that the Committee had had useful discussions. The fact that an agreement had not been reached on the future work program needed to be put into context. He took at their word delegations that had indicated their intention to constructively engage with a view to having an outcome at the GA, bearing in mind the exhortation from the Director General and experiences in past General Assemblies. He hoped that the IGC would not once again become a millstone around the neck of a GA as it would not be wise to detain delegations' attention in consultations on this matter during the GA. Finally, the Chair indicated as a matter of transparency, that Mr. Ian Goss would report to him on his consultation. The Chair would make any report submitted by the Friend of the Chair available to the Chair of the GA, on his own responsibility, for the facilitation of further discussion on the work program. He made clear that this was without prejudice and that he did not intend to present such communication as the outcome of the IGC deliberations. The Chair then closed Agenda Item 6.

Decision on Agenda Item 6:

110. *The Committee took note of and discussed the cross-cutting elements of the texts contained in the annexes to documents WIPO/GRTKF/IC/28/4, WIPO/GRTKF/IC/28/5 and WIPO/GRTKF/IC/28/6, and confirmed that these texts, as developed during the Twenty-Sixth and Twenty-Seventh sessions of the Committee respectively, be transmitted to the WIPO General Assembly taking place in September 2014, in accordance with the Committee's mandate for 2014-2015 and the work program for 2014, as contained in document WO/GA/43/22.*

111. *The Committee also took note of documents WIPO/GRTKF/IC/28/7, WIPO/GRTKF/IC/28/8, WIPO/GRTKF/IC/28/9, WIPO/GRTKF/IC/28/INF/7, WIPO/GRTKF/IC/28/INF/8, WIPO/GRTKF/IC/28/INF/9 and WIPO/GRTKF/IC/28/INF/10.*

112. *Regarding the requirement to take stock of progress made and make a recommendation to the General Assembly, the Committee decided that statements made on this matter during the final discussion in the Twenty-Eighth session under this agenda item on Wednesday, July 9, 2014, be recorded in the report of the Committee and that those statements be transmitted to the WIPO General Assembly taking place from September 22 to 30, 2014, for its consideration, and be included in the usual report of the session.*

AGENDA ITEM 7: CONTRIBUTION OF THE INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE (IGC) TO THE IMPLEMENTATION OF THE RESPECTIVE DEVELOPMENT AGENDA RECOMMENDATIONS

113. [Note from the Secretariat: The Vice-Chair, Ms. Charikhi, was chairing the session at this point]. Further to the 2010 WIPO General Assembly decision “to instruct the relevant WIPO Bodies to include in their annual report to the Assemblies, a description of their contribution to the implementation of the respective Development Agenda Recommendations”, the Vice-Chair invited delegations and observers to discuss the contribution of the IGC to the implementation of the Development Agenda (DA) Recommendations.

114. The Delegation of Iran (Islamic Republic of) reiterated the importance of an efficient, functional and practical coordination mechanism to realize the contribution of WIPO Committees towards the full and effective implementation of the DA Recommendations and to carry out coordination between Committees. Unfortunately, despite the decision of the 2010 WIPO General Assembly and the establishment of such mechanism, proper functioning of the system currently had turned out to be a challenge in the implementation of the DA, which should be addressed by Member States at the General Assembly and CDIP meetings. It believed that the statements of Member States and their proposals under Agenda Item 7 should properly be addressed in the CDIP through a coordination mechanism so as to contribute to development in all WIPO activities. The fact that Recommendation 18 specifically referred to the IGC and called for the acceleration of its process was a clear demonstration of the importance of the IGC’s negotiations and the ramifications of its outcome for development in the countries. The IGC process was an obvious example of the development-oriented IP norm-setting in WIPO. Success would send a message to developing countries that WIPO, as a UN specialized agency promoting IPRs, also took into account development concerns. By contrast, the failure of the process would not only undermine all ongoing norm-setting in the IP system, but also send a wrong message that WIPO Member States were not determined to strengthen the IP system in its entirety so as to enable developing countries to enjoy the necessary protection. A tiered approach to protection was being discussed. The scope of protection and different categories of rights arising from that could lead to economic and moral rights for the beneficiaries - those who in most cases were living in developing countries. It was their long-pending aspirations to see that their TK, TCEs and GRs were protected against misappropriation, misuse and biopiracy. Doing so would move the IP system in a more balanced direction, increasing the interests of developing countries in the IP system, improving the enabling environment for development, and enhancing the contribution of developing countries to global knowledge and global cultural partnerships. To realize all those objectives, the establishment of international binding instruments to protect TK, TCEs and GRs was essential. Building upon the Nagoya Protocol, the IGC should devise a mechanism which would ultimately bring comfort to the owners of TK, TCEs and GRs, to ensure their legitimate interests, and through that, to promote creativity and innovation. The Delegation invited the Secretariat to provide technical assistance to countries in order to enable them to formulate national protection systems for TK, TCEs and GRs, as well as to explore methods for the commercialization of TK and TCEs for the benefit of their owners.

115. The Delegation of Kenya, speaking on behalf of the African Group, noted that the 45 Recommendations adopted in 2007 had marked a big milestone in terms of balancing the IP system. Recommendation 18 called for “[accelerating] the process on the protection of genetic resources, traditional knowledge and folklore, without prejudice to any outcome, including the possible development of an international instrument or instruments”. The African Group noted that the work undertaken at the IGC had progressed very well. What

the IGC needed to do was, taking into account the needs of developing countries, to make a final decision to complete the work which had been ongoing for 15 years. The IGC could not continue to discuss endlessly without having an end date. In order to implement Recommendation 18, the IGC had to make a decision to convene a diplomatic conference. The African Group highlighted the importance of TK, TCEs and GRs. The work done by the IGC was substantive, substantial and mature. It was time to make a decision to bring the work to a close. With such a decision, the IGC would effectively contribute to the implementation of Recommendation 18. Otherwise, the IGC would fail in terms of the implementation of that particular recommendation.

116. The Delegation of India supported the statements made by the Delegation of Iran (Islamic Republic of) and the Delegation of Kenya on behalf of the African Group. The work of the IGC clearly reflected several DA Recommendations. The Delegation fully supported the view that the Member States needed to reach a common understanding in the IGC and other WIPO committees, as well as the WIPO General Assembly, to implement the DA Recommendations and the DA itself. Developing countries would like to see such an understanding.

117. The Delegation of Indonesia supported the statements made by the Delegations of Iran (Islamic Republic of), Kenya, on behalf of African Group, and India. It believed that Recommendation 18 of the DA should be implemented in an appropriate manner. In that regard, it would like to discuss further how the IGC could accelerate the process in concluding the international instrument or instruments, and how to accelerate and implement Recommendation 18 in a concrete manner. Regarding the texts of GRs, TK and TCEs, it was glad to see some provisions on technical assistance and awareness-raising. It would also like to add "development" in the objectives and principles of the texts, because the objectives of those texts were to develop the local society and indigenous peoples. The Delegation highlighted Articles 55 and 56 of the UN Charter. It was the obligation of WIPO, as a specialized agency of the UN, and each Member State of the UN, to reach agreements.

118. The Delegation of Nigeria supported the statement made by the Delegation of Kenya on behalf of the African Group. It congratulated the work of the IGC, and acknowledged the importance of the IGC coming to a swift and positive conclusion to its work, including its work and deliberations on the question of the Voluntary Fund. The Delegation remained committed to seeing a positive end to the process and, in particular, to seeing Member States come forward with recommendations that were both facilitative and positive. It was particularly looking forward to the recommendations on the work program, the diplomatic conference and the Voluntary Fund, which were the remaining three issues.

119. The Delegation of Brazil supported the statements made by the Delegations of Iran (Islamic Republic of), India, Indonesia and Nigeria, and the intervention made by the Delegation of Kenya on behalf of the African Group. The DA had been an achievement of WIPO and of all its Member States. It was the key to guarantee that the 45 Recommendations of the DA would be mainstreamed in the work of the IGC, as well as all other bodies in WIPO. The Delegation highlighted Recommendation 18. The IGC had made good progress in terms of substance in the past years, but it needed to move forward with the process. In this regard, the work plan to be adopted for 2015 needed to reflect the importance and the high priority attached by Member States to the IGC. It was time to show strong commitment to expedite negotiations and finalize the work. The adoption of effective and binding instruments to protect and to prevent the misappropriation and misuse of GRs, TK and TCEs was what the IGC should be looking for. The full implementation of the DA was incompatible with a lack of interest of Member States in the IGC negotiations. Taking into account the 13 years that had been put into the IGC's work on the three subjects, it should be unacceptable that all the efforts done did not culminate in a positive outcome that

fulfilled the recommendations of the DA and the aspirations of indigenous peoples and local communities.

120. The representative of Tupaj Amaru supported the statement made by the Delegation of Iran (Islamic Republic of) and by the Delegation of Kenya on behalf of the African Group. He stated that the IGC had failed in its task over the last three years. For example, the IGC was trying to define sacred TK. No-one had actually been able to define it. He remembered that 15 years ago the Member States of the UN had wanted to define indigenous peoples and to recognize their rights. It was the same exercise. He believed that the success of the IGC would depend on the political will of Member States to recognize indigenous peoples and local communities. The issues discussed in the IGC were urgent because indigenous peoples were becoming extinct and their natural resources and GRs were being misused by some big multinational companies. Indigenous peoples needed an international instrument(s) to protect their GRs, TK and TCEs. Indigenous peoples did not want development that would destroy their GRs and TK. They wanted development that was equitable and fair, and would enable indigenous peoples to share their wealth. He believed that indigenous peoples needed a binding instrument which could be applied and implemented.

121. The Delegation of Morocco supported the statement made by the Delegation of Kenya on behalf of the African Group. It shared the interest shown by the other delegations as to the vision of the IGC and the implementation of the DA Recommendations to ensure equitable and sustainable development of the Member States, in particular developing countries. It emphasized its desire to see an outcome of the IGC's work, and to be able to make a recommendation to the 2014 WIPO GA on holding a diplomatic conference to adopt an instrument or instruments, which would ensure the effective protection of GRs, TK and TCEs.

122. The Delegation of China supported the statements made by the Delegations of India, Indonesia, Kenya on behalf of the African Group, and Iran (Islamic Republic of). It believed the protection of GRs, TK, and TCE was of great significance for the implementation of the DA and the IGC's work was of utmost importance for the protection of GRs, TK and TCEs. Despite the difficulties, the IGC had made significant progress. It hoped that, when the time was right, agreements could be reached on a legally binding instrument(s) which would contribute to the realization of the legitimate concerns of developing countries and implementation of the DA.

123. The Delegation of Peru believed that the negotiations were approaching the final phase for the adoption of an international legally binding instrument(s) to determine the access to and the use of GRs, TK and TCEs, to avoid misappropriation of GRs, TK and TCEs, and to ensure fair and equitable benefit-sharing arising from the use of GRs, TK and TCEs. Those three elements were closely linked to development. The Delegation supported the work of IGC 28 with the objective of formulating a recommendation to the WIPO GA to ensure to hold a diplomatic conference in 2015.

124. The Delegation of South Africa aligned itself with the statement made by the Delegation of Kenya on behalf of the African Group, and supported the statements made by the Delegations of Brazil, Iran (Islamic Republic of) and other LMCs. The work of the IGC was aligned to Recommendation 18. The IGC had been asked to accelerate the work since 2007, so the ultimate conclusion of the work must be to convene a diplomatic conference to adopt a legally binding instrument(s) on GRs, TK and TCEs. That would realize Recommendation 18. The Delegation believed that it was time to conclude the work of the IGC. The Delegation reminded other delegations that, when discussing the work program

and the recommendation to the WIPO GA, the main aim must be to conclude the work of the IGC.

125. The Delegation of Azerbaijan noted that, although the IGC had not achieved the expected outcome of establishing an international system for protecting GRs, TK and TCEs, WIPO was continuing to focus its steadfast attention on addressing the issue. Convening IGC 28, where the draft texts would be put forward and recommendations for the consideration of the WIPO General Assembly would be prepared, was the next step for WIPO Member States towards adopting an international instrument(s) for protecting TK, TCEs and GRs. It was more important than ever to combine the efforts of all Member States to agree upon the final texts containing the proposals and comments made by all stakeholders. The Delegation believed that IGC 28 would provide significant momentum to resolve many of the contentious issues relating to the final texts. That required, however, that delegations should continue to maintain an atmosphere of mutual understanding, since only through the constructive participation of all sides could the IGC achieve a mutually acceptable agreement. It should be recognized that the texts of the instruments were a significant achievement and were testament to the substantial and important work of Member States towards adopting an international instrument(s). An analysis of the drafts showed that, during their preparation, a flexible and balanced approach had been taken and the best elements had been selected for the final texts. It also noted the particular role of the WIPO Secretariat, which had carried out dedicated work to study, compile and analyze the delegations' proposals. It believed that all delegates would make every effort to achieve the goal of preparing the final texts at IGC 28. The statements made by the delegations at previous sessions and IGC 28 confirmed that WIPO Member States were optimistic and were able to reach consensus on contentious issues where their positions differed somewhat. The Delegation wished to emphasize that the issues under discussion were most timely for Azerbaijan. The Government of Azerbaijan was interested in adopting an international legal instrument(s) which would ensure the effective protection of GRs, TK and TCEs. The Delegation supported the efforts made by WIPO regarding the adoption of an international legal instrument(s) and was ready to make its contribution to fulfilling the recommendations of the DA. That would ensure that work on the drafts advanced in a meaningful manner in order that the 2014 WIPO GA could take stock and decide on convening a diplomatic conference in 2015.

Decision on Agenda Item 7:

126. The Committee held a discussion on this item. The Committee decided that all statements made on this item would be recorded in the report of the Committee and that they would also be transmitted to the WIPO General Assembly taking place from September 22 to 30, 2014, in line with the decision taken by the 2010 WIPO General Assembly related to the Development Agenda Coordination Mechanism.

AGENDA ITEM 8: ANY OTHER BUSINESS

127. [Note from the Secretariat: The Chair was chairing the session again at this point. No statement was made under this Agenda item.]

AGENDA ITEM 9: CLOSING OF THE SESSION

128. The Chair thanked the Vice-Chairs, Ms. Grazioli, Ms. Charikhi and Mr. Jailani, noting their most valuable support during the session. He also expressed his gratitude to the facilitators for the session, Mr. Lesieur, Ms. Bagley, Mr. Sobion and Mr. Sackey (ARIPO) whom had carved a particular role for themselves in the work of the Committee. The Chair further extended his deep appreciation to the Friend of the Chair, Mr. Goss, for his invaluable contributions to the work of the Committee. He thanked the Regional Coordinators, the observers at the session, including the Indigenous Caucus and the indigenous representatives, as well as the representatives of stakeholders, for their commitment to the issues under discussion within the Committee. In closing, the Chair further thanked the WIPO Director General and the Secretariat, the interpreters and all participants at the session. He then closed the session.

Decision on Agenda Item 9:

129. The Committee adopted its decisions on agenda items 2, 3, 4, 5, 6 and 7 on July 9, 2014. 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 by September 19, 2014. 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 next session of the Committee.

[Annex follows]

**LISTE DES PARTICIPANTS/
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