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WORLD INTELLECTUAL PROPERTY ORGANIZATION
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STANDING COMMITTEE ON THE LAW OF TRADEMARKS, INDUSTRIAL DESIGNS AND GEOGRAPHICAL INDICATIONS

Second Special Session on the Report of the Second WIPO Internet Domain Name Process

Geneva, May 21 to 24, 2002

REPORT

adopted by the Special Session of the Standing Committee

Introduction

1. In accordance with the decision of the WIPO General Assembly at its meeting in September 2001 (document WO/GA/27/8) that the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) hold two special sessions on the Report of the Second WIPO Internet Domain Name Process (the "Special Sessions"), the second such Special Session was held in Geneva from May 21 to May 24, 2002.

2. The following 76 States participated: Algeria, Argentina, Australia, Austria, Azerbaijan, Bangladesh, Barbados, Belarus, Bolivia, Brazil, Canada, China, Colombia, Côte d'Ivoire, Croatia, Democratic Republic of the Congo, Denmark, Ecuador, Egypt, France, Germany, Ghana, Greece, Guatemala, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Jamaica, Japan, Jordan, Kenya, Latvia, Lebanon, Lithuania, Luxembourg, Mauritius, Mexico, Morocco, Netherlands, Niger, Nigeria, Norway, Pakistan, Papua New Guinea, Paraguay, Philippines, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Singapore, Slovakia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, The former Yugoslav Republic of Macedonia, Tunisia, Turkey, Ukraine, United Kingdom, United States of America, Uruguay, Venezuela, Yemen, Yugoslavia. The European Community was also represented in its capacity as member of the SCT.

3. The list of participants is contained in the Annex II to this report.

4. The Session was opened by Dr. Francis Gurry, Assistant Director General, who welcomed the participants on behalf of Dr. Kamil Idris, Director General of WIPO.

Election of a Chair and two Vice-Chairs

5. In accordance with the decision of the first Special Session, Mr. S. Tiwari (Singapore) acted as Chair, and Mrs. Valentina Orlova (Russian Federation) and Ms. Ana Paredes Prieto (Spain) as Vice-Chairs. Mr. David Muls (WIPO) acted as Secretary.

Adoption of the Draft Agenda

6. To allow for the presentation by Mr. Corell, Under-Secretary-General for Legal Affairs, The Legal Counsel of the United Nations, to be made on the morning of May 22, 2002, the order of discussion of the topics under item 4 of the Draft Agenda (SCT/S2/1) was modified as follows: (a) international nonproprietary names (INNs) for pharmaceutical substances, (b) trade names, (c) personal names, (d) names and acronyms of international intergovernmental organizations (IGOs), (e) geographical terms (country names) and (f) geographical indications and indications of source.

Accreditation of Certain Organizations

7. As set out in documents SCT/S2/5 and SCT/S2/5 Add., the following nine intergovernmental and non-governmental organizations had expressed to the Secretariat their wish to obtain ad hoc observer status for the Special Sessions: International Organization for Migration (IOM), International Trade Centre (ITC), Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (Preparatory Commission for the CTBTO), Secretariat of the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol, International Committee of the Red Cross (ICRC), Organisation for Economic Co-operation and Development (OECD), Cognac National Interdisciplinary Office (BNIC), Internet Corporation for Assigned Names and Numbers (ICANN) and Research and Academic Computer Network (NASK). The accreditation of the organizations in question as ad hoc observers for the Second Special Session was approved unanimously.

International Nonproprietary Names (INNs) for Pharmaceutical Substances

8. After the Secretariat's summary of the findings of the Report of the Second WIPO Internet Domain Names Process (the "Second WIPO Process Report") on the issue of INNs, the Chair recalled the conclusions reached on this topic at the first Special Session, as reflected in its Report (document SCT/S1/6).

9. The Delegation of Germany inquired whether the World Health Organization (WHO) had the opportunity to raise the question of the protection of INNs in the Domain Name System (DNS) directly with the Internet Corporation for Assigned Names and Numbers (ICANN).

10. The Delegation of Japan expressed the view that no serious problems had been encountered with respect to INNs in the DNS and that there was no urgent need to take any action in the generic Top-Level Domains (gTLDs) or in the country code Top-Level Domains (ccTLDs) with regard to this issue.

11. The Representative of WHO offered an extensive explanation of the background to and purpose of the protection of INNs. The Representative explained that INNs were unique, globally available names, free from proprietary rights and available for use by all, for the sole purpose of identifying pharmaceutical substances (mostly active pharmaceutical ingredients, used in medicines or for scientific research). A pharmaceutical substance was called an active pharmaceutical ingredient when it was responsible for therapeutic effects in man (or animal, in the case of veterinary drugs). Thus, INNs were widely used to identify medicines containing a specific active pharmaceutical ingredient, regardless of whether the medicine was protected by patents or generic. This system was mainly established to provide health professionals with a clear global identification mechanism for the safe prescription and dispensing of medicines to patients. There were more than 7,000 INNs; 100-150 new INNs per year were issued. INNs were used for communication amongst health professionals so as to avoid confusion about the active ingredients in medicines, which could endanger the safety of patients. They were also used in the marketing authorization process of medicines, as a generic name for each medicine containing the pharmaceutical substance in question (i.e., on labels and package inserts of medicines), in prescription and dispensing of medicines to patients, and in scientific publications. World Health Assembly resolutions (e.g., WHA46.19 of 1993) endorsed the development by WHO Member States of policy guidelines on the use and protection of INNs, and the adoption of measures to discourage the use of trademarks derived from INNs, as well as common stems in trademarks. The Representative reminded that WHO had proposed to exclude INNs (in all official UN languages) from registration as domain names, including INNs used as an element of the domain name (e.g."*ampicillin plus*"). WHO was of the opinion that INNs were unique identifiers for pharmaceutical substances only, aimed at patient safety, and should thus, in the interest of public health, only be used for their intended purpose. Registration and use of INNs in the DNS created rights akin to proprietary rights, which was contrary to the free availability of INNs and constituted a use of INNs beyond their intended purpose. Such use could, in WHO's opinion, easily result in a disruption in the consistent association of an INN with scientifically established characteristics and properties, and misinformation as well as miscommunication world-wide, including in the prescription and dispensing of medicines. The Representative further stated that WHO noted, but remained concerned about, the conclusion reached by the SCT in its Report of the first Special Session (document SCT/1/6). The Representative also stated that WHO had provided a list of examples of INNs registered as domain names and intended to continue its consultations with all major stakeholders in the INN process: member associations of pharmaceutical industries of the International Federation of Pharmaceutical Manufacturers Association (IFPMA), the Pharmaceutical Research and Manufacturers of America Association (PhRMA), the European Federation of Pharmaceutical Industries and Associations (EFPIA) and the Japan Pharmaceutical Manufacturers Association (JPMA), major national and regional pharmacopoeias, all national regulatory authorities, as well as professional (World Medical Association (WMA), International Pharmaceutical Federation (FIP)) and consumer associations. The aim of these consultations was to collect additional evidence of abusive registrations of INNs as domain names and their potential harmful effect on public health. The detailed report of these consultations would be made available to WIPO as soon as possible. In light of the above, the Representative urged that the issue of the protection of INNs on the Internet be retained for further monitoring and be revisited in the near future.

12. The Delegation of the United States of America expressed support for the position of Japan. The Delegation was of the view that INNs were generic terms and that they therefore, by definition, could not be the subject of abuse. The Delegation stated that any domain name registration created *de facto* exclusivity in the domain name concerned and that therefore, in the case of generic terms (such as, for instance, food.com), no persuasive argument in favor of establishing protection could be based on such exclusivity. The Delegation further stated that, if any website associated with an INN contained fraudulent information, this could be dealt with by relying on national laws aimed at curbing such practices. In particular, the Delegation opposed the creation of any prospective protection in these circumstances.

13. The Delegation of Mexico expressed the need to protect INNs in the DNS in so far as the denomination in question could not be the subject of exclusive rights. It emphasized that proof of the harm caused by the registration of the INN as a domain name should be provided. It noted, however, that this issue should not necessarily be discussed immediately. The Delegation also noted that, having adopted World Health Assembly Resolution 46.19 on Nonproprietary Names for Pharmaceutical Substances, all WHO Member States that were also members of WIPO were bound to comply with this Resolution and therefore to protect INNs.

14. The Delegation of the European Community expressed support for the position of Mexico and favored the establishment of protection for INNs in the DNS. According to the Delegation, the public policy reasons for the existing protection of INNs in the real world also applied in the virtual world.

15. The Delegation of Australia noted the conclusions reached on INNs at the first Special Session and observed that no evidence had been submitted which would warrant departing from those conclusions at this stage. The Delegation proposed to continue monitoring the situation, but, in the face of the lack of evidence of real problems, urged that no action be taken presently. The Delegation furthermore stated that the protection afforded to INNs through the WHO system was against their registration as trademarks. The Delegation stressed that the DNS was not a trademark system and that a domain name registration, as such, did not provide any trademark rights.

16. The Delegation of Germany reminded that INNs should be used exclusively for the purposes for which they had been created and therefore cautioned against a general finding that no action would be required in relation to them, based on a perceived lack of evidence of their abuse in the DNS. The Delegation proposed that any decision by the Special Session that no action be taken with respect to INNs be crafted narrowly, so as not to prejudice any future consideration of the issue.

17. The Delegation of Spain approved the statements made by the Delegations of the European Community, Germany and Mexico, and emphasized that a degree of protection for INNs in the DNS might be necessary and that the mere fact of no infringement of INNs having been noted in the DNS could not justify the complete lack of protection measures. The Delegation proposed that this question should be re-examined at future meetings.

18. The Delegation of Uruguay expressed its support for the statement made by the Delegation of Mexico and said that lack of evidence of infringement of INNs in the DNS did not mean, however, that there was no potential damage. In conclusion, it emphasized its willingness to protect INNs in the DNS.

19. The Representative of the European Federation of Pharmaceutical Industries and Associations (EFPIA) explained that EFPIA was the representative voice of the pharmaceutical industry in Europe, representing the common views and interests of over 3,350 companies undertaking R&D and manufacturing of medicinal products in Europe. The Representative stated that EFPIA agreed in general with the Second WIPO Process Report. The Representative indicated however that the "notice and take down" mechanism would only be helpful if the blocking mechanism was not available. It was recalled that EFPIA favored an exclusion/blocking mechanism for the registration of any domain name identical to an INN with any registration body. The Representative stated that the Cumulative List of INNs should be excluded automatically from registration as domain names in the open gTLDs. The Representative indicated that this mechanism should apply to all past and future registrations. The Representative stated that before any efficient blocking mechanism is implemented, pharmaceutical industries should have the option to register identical INNs as domain names. The Representative proposed that a blocking mechanism be implemented, incorporating periodically new approved INNs by WHO notified directly to ICANN, to block future registrations, and that this mechanism be combined with the "notice and take down" procedure for the existing registered names. The Representative also suggested that WHO in conjunction with WIPO ask companies to withdraw voluntarily their registrations within a given time, and registrars who have registered INNs to contact the owners of these registrations and not to accept requests for renewals when they become due.
The Representative emphasized that not all INNs (in all about 10,000 as mentioned by WHO) were registered as domain names, but only a few hundred. Finally, the Representative observed that the notice and take down procedure would only function when an interested party notified WIPO. The Representative expressed EFPIA's concern about the risk underlined by WHO (paragraph 115 of Second WIPO Process Report) of re-registration of the INN as domain name following cancellation when the INN name becomes available again. The Representative indicated that it would be therefore difficult to prevent the large number of burdensome complaints and procedures.

20. The Delegation of Mexico clarified that rather than concluding that no action should be taken regarding the protection of INNs in the DNS, it should be said that the action to be taken was to continue to examine this issue.

21. Raising a procedural issue, the Delegation of the United Kingdom inquired whether there would be an opportunity for the Special Session to review any draft conclusions, as its work progressed through the various topics on the Agenda.

22. In reply to the inquiry by the Delegation of the United Kingdom, the Secretariat proposed that the Chair summarize the discussions on each separate topic and that it commit those findings to paper, so that they could be considered by delegates prior to the adoption of the Report.

23. The Delegation of Australia expressed appreciation for the proposal of the Delegation of Mexico and noted with approval the suggestion made by the Secretariat on the procedural question raised by the United Kingdom. The Delegation subsequently inquired to which body any findings resulting from the continued monitoring of the position of INNs in the DNS could be submitted, considering that only two Special Sessions of the SCT have been scheduled and that their work is to finish after the present Session.

24. In response to the inquiry from the Delegation of Australia, the Secretariat proposed that it, jointly with the WHO, could monitor the position of INNs in the DNS and that it could report on the evolving situation to either the WIPO General Assembly or the ordinary sessions of the SCT,

depending on when the issue might be deemed ripe for further consideration by the WIPO Member States.

25. The Delegation of the European Community expressed support for the proposal made by the Delegation of Mexico and the procedural suggestion made by the Secretariat.

26. The Chair concluded that many delegations favored the protection of INNs in the Domain Name System against registration as domain names in order to protect the integrity of the INN system. While it was decided not to recommend a specific form of protection at this stage, it was agreed that the Secretariat should, in cooperation with the World Health Organization continue to monitor the situation and, if necessary, bring to the attention of the Member States any material change in the situation.

Trade Names

27. After the Secretariat's summary of the findings of the Second WIPO Process Report on the issue of trade names, the Chair recalled the conclusions reached on this topic at the first Special Session, as reflected in its Report (document SCT/S1/6).

28. The Delegation of Japan stated its view that there was no urgent need to protect trade names in the DNS, at gTLD or ccTLD level. The Delegation supported paragraph 319 of the Second WIPO Process Report, against the modification or extension of the Uniform Dispute Resolution Policy (UDRP) to cover trade names.

29. The Delegation of Germany supported the views of the Delegation of Japan, and the recommendation in paragraph 319 of the Second WIPO Process Report against overstretching the capacity of the UDRP, by including trade names within this administrative dispute resolution system.

30. The Representative of the International Association for the Protection of Intellectual Property (AIPPI), speaking also from his experience as a panelist under the UDRP, noted that the UDRP currently covered both registered and unregistered trademarks, in those countries where unregistered marks were recognized by law and that, as many of the same considerations apply, it was artificial to exclude trade names from the UDRP while including unregistered trademarks. The Representative noted that, in reality, the real issue in many UDRP cases was the protection of an often famous trade name, whether through registration as a trademark or as an unregistered trademark. It was also noted that the European Community Trademark system allowed opposition proceedings based on trade names, and that trade names were specifically protected under the Paris Convention.

31. The Delegation of Norway stated that trade names were an important and established part of the intellectual property system, by virtue of the Paris Convention. It was noted that in Norway, trade names also can be used for similar purposes as trademarks, for the identification of the source of goods and services, and that there appeared no reason to treat the two identifiers differently. The Delegation remarked that trade names were of particular importance for small and medium sized enterprises, who may only choose to protect their identifiers as registered trade names. For these reasons, the Delegation supported the extension of the UDRP to trade names.

32. The Delegation of the United States of America supported the Secretariat's recommendations in the Second WIPO Process Report, and opposed the extension of the UDRP to include trade names. The Delegation noted that the application of the UDRP to unregistered

trademarks did not require the application of different standards to those that apply to registered trademarks, in contrast to the situation as applies to trade names. The Delegation also remarked upon the lack of an internationally agreed definition of trade names, with many conflicting positions under national laws, with the result that panelists would be required to make determinations without the benefit of such uniform standards, with the result that findings could be made of bad faith registration of trade names as domain names where such identifiers were not recognized as trade names in the country of the registrant's origin. In this circumstance, the Delegation expressed its view that the national courts were the better forum to decide such disputes, in the small number of cases where trade names did not also function as trademarks. The Delegation supported the monitoring of possible cases of abusive registrations of trade names in future.

33. The Delegation of Sweden supported the protection of trade names against abusive registration in the DNS, and supported the views of the Delegation of Norway and the Representative of AIPPI. The Delegation noted that trade names functioned as trademarks in the marketplace and that many enterprises only used trade names in the conduct of their business.

34. The Delegation of Germany noted that trade names were protected within the intellectual property framework by virtue of the Paris Convention, Articles 8 and 9. However, the Delegation cautioned against requiring ICANN to act as a *de facto* trademark office, and recommended careful progress in this area. The Delegation noted that any recommendation made to ICANN would need to be acceptable to the Internet community. The Delegation observed that the UDRP had been utilized by the Government of Germany, including by the Ministry of Justice, to defend its names on the basis of the argument that they qualified as trademarks. In this way, the procedure had been shown to be flexible as a mechanism for protecting various identifiers. The Delegation therefore noted that there was no pressing need to extend the UDRP, and supported the recommendations made in this context in the Second WIPO Process Report.

35. The Delegation of France underlined its support for the Delegations of Norway, Sweden and the International Association for the Protection of Intellectual Property (AIPPI), and stated that, despite the diversity of the national legislation of different countries, it was still important to protect trade names against their abusive use in the DNS.

36. The Delegation of Switzerland, responding to the intervention of the Delegation of Germany, noted that the availability of the UDRP to resolve conflicts by characterization of the identifier as an unregistered trademark depended on where the entity was located, as many countries did not protect unregistered trademarks. The Delegation supported the extension of the UDRP to protection of trade names.

37. The Delegation of the United Kingdom expressed its support for the extension of the UDRP to include trade names, as a logical and practical means to solve this problem and possibly also progress consideration of the protection of personal names.

38. The Representative of the American Intellectual Property Law Association (AIPLA) concurred with the intervention of the Representative of the AIPPI. The Representative noted that trade names were already to some degree protected under the UDRP as unregistered trademarks and supported the explicit recognition of this protection, reflecting the established protection under intellectual property law. The Representative noted that, as with unregistered trademarks, complainants would need to demonstrate that their trade name was distinctive as an indication of source and that, while there did exist differences in national treatment of trade names, the UDRP panelists have been able to handle such issues.

39. The Delegation of Denmark supported the extension of the UDRP to protection of trade names.

40. The Delegation of Mexico said that it currently had difficulty in accepting the broadening of the protection provided by the UDRP to trade names. It emphasized that in Mexico trade names were used by commercial institutions. It cited as an example the trade name "Michoacana" which belonged to a large number of institutions that sold exactly the same product. In that regard, it would be difficult to determine who would have priority over a trade name registered as a domain name.

41. The Delegation of Canada stated that the UDRP should not be extended to protection of trade names, in light of the lack of international consensus on the manner of their protection and the availability of other existing remedies, including protection as registered or unregistered trademarks and technical measures, such as shared web pages or portals, to accommodate the existence of coinciding trade names in the DNS.

42. The Delegation of the European Community reiterated the stance it had taken at the first Special Session, according to which the UDRP should not be extended to trade names. It underlined, however, that the question of abusive use of domain names should be examined, and referred to the example cited by the Delegation of Mexico. The Delegation stated that in such a case the rule of "first come, first served" applied even without there being any abuse. In conclusion, the Delegation noted that it would be worth continuing to examine this issue so that trade names were protected within the DNS.

43. The Delegation of Australia strongly endorsed the first half of the comments made by the Delegation of the European Community, and stated that it was critical to focus on the abusive registration of names in the DNS. On the issue of trade names, the Delegation emphasized the guiding principle of mirroring the existing consensus in international law within the DNS, and avoidance of the creation of new international law or discontinuity between the state of law in the real and virtual worlds. The Delegation noted that in many countries trade names function as trademarks, acting as indications of source of origin and, as such, may already be covered by the UDRP. Where such protection was not granted under national law, as in Scandinavia, the Delegation noted that it was unclear what could be protected under the UDRP. The Delegation referred to the Second WIPO Process Report and noted that the differences in national law would raise complex questions of applicable law, which could lead to a lack of coherence in decisions under the UDRP. The Delegation also noted that many disputes concerning trade names would likely involve two legitimately interested holders and, in accordance with the intervention of the Delegation of the European Community, it would be unwise to allow the UDRP to be weighed down by decisions involving such complex questions. In this respect, the Delegation noted that the success of the current UDRP was due to its limited application to questions of clear abuse. In the absence of clear evidence of abusive registration of trade names in the DNS, extension of protection to other identifiers such as trade names could inhibit the development of international trade and, therefore, the Delegation supported the recommendation made in paragraph 319 of the Second WIPO Process Report, against protection of trade names in the DNS.

44. The Representative of the International Association for the Protection of Intellectual Property (AIPPI) noted that all delegations that had spoken against protection of trade names under the UDRP did not have a problem in this respect, because such identifiers could be protected as unregistered trademarks in their respective jurisdictions, and therefore qualify for protection under the UDRP. The Representative noted that in many civil law countries, including the Nordic

countries, Switzerland and France (with the notable exception of Germany, which had recently enacted a law protecting unregistered trademarks), unregistered trademarks were not protected, and therefore trade name owners within these countries were at a disadvantage in terms of resort to the UDRP. The Representative distinguished trade names, which were protected without requirement of registration by virtue of Article 8 of the Paris Convention, from registered company names, which were sometimes totally descriptive. It was noted that, whereas trademarks functioned to distinguish the origin of goods and services, trade names performed the different function of distinguishing enterprises. Both trademarks and trade names were distinctive as to origin, which was not necessarily the case for registered company names. The Representative noted that the term "business identifier", which includes trade names has been used in the Joint Recommendation concerning provisions on the protection of well known marks and that this concept thus had been accepted without dissent at the international level to be applied in relation to the Internet.

45. The Representative of the International Federation of Industrial Property Attorneys (FICPI) expressed its support for the recommendation made in the Second WIPO Process Report, and the intervention of the European Community. It was noted that the discussions on this issue within FICPI had demonstrated a dichotomy of views for and against protection of trade names in the DNS along the lines of respective legal traditions and various jurisdictions and that, since it is essential to prevent abusive use of trade names, further discussion on this area was needed.

46. The Representative of the Internet Corporation for Assigned Names and Numbers (ICANN) noted that on issues of international law, ICANN can only rely on existing international law and, in this respect, takes guidance from the international community, including WIPO. Earlier made observations are correct. ICANN cannot function as a *de facto* trademark office. The Representative noted that developments in the DNS, and specifically applications above the DNS, were rapid and not possible to predict, and that it was important to take account only of accepted international law and not risk the creation of new law, with possibly unforeseen results in the future.

47. The Delegation of Australia emphasized that no new international law should be created in the DNS, by establishing *de facto* rights that apply only to the DNS. However, the Delegation noted the views expressed by certain delegations and representatives, notably Switzerland and AIPPI, that countries where unregistered trademark rights were not recognized had a different perspective on the need for protection. The Delegation noted that no evidence had yet been presented as to the scale of the problem as concerns abuse of trade names, and invited those delegations which supported the extension of protection in this regard to provide such further evidence.

48. The Representative of the International Association for the Protection of Intellectual Property (AIPPI) stated that it was difficult to give concrete cases of abuse of trade names but that, in his capacity as a UDRP panelist, he had seen many instances where cases were brought for the protection of trade names, relying upon incidental protection as trademarks.

49. The Delegation of Switzerland, in response to the remarks by the Delegation of Australia and the Representative of ICANN, noted that the concerns against the creation of new law should take account of the fact that the approaches taken to resolving cases under the UDRP in reality was more often based on an unfair competition analysis, rather than a classic trademark law analysis. The Delegation remarked that trade names were already protected under the Paris Convention, that the international community should not accept the bad faith registration of trade names in the DNS, and that this would not amount to the creation of new law.

50. The Secretariat sought to clarify certain remarks concerning the role of ICANN acting as a *de facto* trademark office. It was noted that in these discussions, it was not necessarily sought to establish a treaty, only to discuss the possible modification of a dispute resolution mechanism to implement more efficiently existing international law. The Secretariat noted that disputes relating to the Internet raised the prospect of multijurisdictional litigation, whereas an administrative system such as the UDRP had been shown to resolve disputes involving trademarks more efficiently and cost-effectively. The recommendations were not aimed at causing ICANN to act in the manner of a trademark office but, to the contrary, were aimed at removing such legal considerations from the ambit of the domain name registration system. The Secretariat, noting the comments of the Delegation of the European Community, remarked that the UDRP applies only to egregious cases of abuse, which can be resolved simply in such an administrative dispute resolution system. The real question, it was stated, was whether national and international law was sufficiently clear as pertains to trade names to enable the UDRP to be utilized to solve the problem of law enforcement through this medium.

51. The Delegation of the United Kingdom expressed its lack of a strong position for or against protection of trade names in the DNS, and noted that most small and medium sized enterprises relied upon trade names in their business, without wishing to utilize the trademark system.

52. The Delegation of Germany expressed its flexibility on the issue of protection of trade names in the DNS, and was open to joining a consensus on this issue, provided that its scope was limited in the manner described by the Secretariat and some delegations.

53. The Delegation of the Republic of Korea recognized the logic in various delegations' positions for and against protection of trade names in the DNS, depending upon their national legal situation, and remarked that in this absence of consensus, now was not the proper time to extend protection to trade names under the UDRP. The Delegation described the protection of trade names under the Korean national law through three means: first, protection through registration as a trademark or service mark; second, famous unregistered trademarks or trade names may be protected under unfair competition law against misappropriation, and; third, protection locally under the Trade Name Law.

54. The Chair noted that views were divided as to whether the UDRP should be modified to accommodate trade names. One group of countries wished to treat trade names in the same manner as trademarks; others felt that there was no internationally accepted legal basis to underpin the extension.

55. It was decided that Member States should keep the matter under review and raise the matter for further discussion if the situation so demanded.

Personal Names

56. After the Secretariat's summary of the findings of the Second WIPO Process Report on the issue of personal names, the Chair recalled the conclusions reached on this topic at the first Special Session, as reflected in its Report (document SCT/S1/6).

57. The Delegation of Japan stated that there was insufficient need for protection of personal names in the DNS either at the gTLD or ccTLD level, and expressed its support for paragraph 202 of the Second WIPO Process Report, against modification of the UDRP to encompass personal names.

58. The Delegation of Germany highlighted the fact that protection of personal names is linked to consideration of trade names, and noted that there was no international consensus on this issue. The Delegation noted that in Germany, a local court decision had been handed down that involved a dispute between two legitimate claimants to registration of the Krupp name in the DNS, and that found in favor of the large trademark holder on the basis that its reputation gave it a priority of use for the name in the DNS, given that most Internet users would have the expectation that the Krupp domain name would link to the well-known manufacturer, rather than to another less well-known person. The Delegation supported the recommendation of the Second WIPO Process Report against the protection of personal names in the DNS.

59. The Chair noted that the Special Session's decision was that no action is recommended in this area.

Names and Acronyms of International Intergovernmental Organizations (IGOs)

60. The Secretariat summarized the findings of the Second WIPO Process Report on the issue of the names and acronyms of international organizations (IGOs). The Secretariat referred to four documents relevant to this discussion – namely, SCT/S2/2, SCT/S2/INF/2, SCT/S2/INF/3 and SCT/S2/INF/4.

61. The Chair summarized the position on the issue of IGOs at the conclusion of the first Special Session, as reflected in its Report (document SCT/S1/6).

62. Mr. Hans Corell, Under-Secretary-General for Legal Affairs, The Legal Counsel of the United Nations made a statement on behalf of the Legal Advisers of the United Nations System ('Statement of UN Legal Advisers') which is reproduced in Annex I.

63. The Representative of the American Intellectual Property Law Association (AIPLA) thanked the United Nations Legal Advisers for their comments, and requested that the meeting focus on clarification of the meaning of certain words used to characterize domain name registrations, such as 'bad faith', 'unauthorized', 'misleading' and, 'abusive'. Referring to the Annex to the Legal Adviser's Paper on the Report of the Second WIPO Internet Domain Name Process (SCT/S2/INF/4), the Representative gave the example of the Food and Agriculture Organization (FAO), and the registrations of domain names <fao.com> (registered by the toy company, FAO Schwartz, which had used the name "FAO" since 1862, well before the establishment of the United Nations Organization), <fao.kiev.ua> (registered by the Fiscal Analysis Office of the Ukraine) and <fao.mil> (registered by a constituent body of the United States Military). The Representative asked why such domain name registrations should be characterized as unauthorized, when the registrants were using them for legitimate purposes.

64. The Secretariat noted that two questions were raised in this context: first, whether a domain name registrant was authorized to register the name that referred to an IGO; and second, whether such registration was misleading. The Secretariat noted that the Annex referred to by the Representative of the AIPLA referred to both the above cases, that not all such registrations were illegitimate, and that this illustrated the complexity of the questions raised by such registrations

and use of the names and acronyms of IGOs in the DNS. The Secretariat further noted that the Paris Convention, Article 6*ter*, establishes guidelines as to what constituted misleading use of such names and acronyms of IGOs, and indicated that the protection to be granted to them was qualified in two ways, namely that States were not required to protect such identifiers if their use did not suggest to the public a connection or authorization by the concerned organization, or if such use was probably not of such a nature to mislead the public as to such a connection.

65. The Delegation of Australia agreed with the remarks of the Representative of the AIPLA, and expressed its gratitude to the Legal Counsel of the United Nations for his advice. The Delegation noted that it withdrew its earlier reservations, expressed at the first Special Session of the SCT, to the provision of protection for names and acronyms of IGOs in the DNS. The Delegation stated its strong support for such protection, and explained that its earlier reservations had related to the question of how real was the problem confronting IGOs in protecting their names and acronyms in the DNS, and the issue of how the privileges and immunities enjoyed by the IGOs could be preserved in any such system. The Delegation noted that Australia retained some reservations about the question of immunity, but recognized that the scale of the problem confronting IGOs was sufficient to warrant a system of protection being established in relation to the registration of domain names that incorporated or were identical to the names of IGOs, that was based on a finding of bad faith or abusive use, and that was modeled on the UDRP, with a mechanism for appeal to a special tribunal that would preserve the immunity of the IGOs.

66. The Delegation of Egypt expressed its appreciation to the Legal Counsel of the United Nations, and noted its support in principle for the protection of the names and acronyms of IGOs in the DNS. The Delegation stated that the specific nature of such organizations required protection against misuse in the DNS, and that a special system should be established in order to preserve their privileges and immunities. The Delegation noted the question of governance of the DNS, as raised by the Legal Counsel of the United Nations, and agreed that these issues needed to be discussed in a precise manner and framework.

67. The Delegation of the United States of America expressed its appreciation to the Secretariat for its work on framing the issues related to IGOs, but stated that the Special Session of the SCT should not force any solution on the DNS, which is primarly regulated by private contractual agreements between ICANN, the registry operators, registrars and registrants. The Delegation noted that any additional obligations or liabilities must be agreed upon by ICANN and contractual in nature in order to be effective. The Delegation noted that the outcome of this Special Session would be a recommendation to ICANN and that it remained for the ICANN Board to decide upon any action after consultation with its consituent bodies. The Delegation stated that the Special Session of the SCT should not act as a government for the Internet, but that issues of governance should be handled by each government for its own community, applying national laws and policies and enforcing rights specific to each country. While noting the jurisdictional issues raised by the Internet, the Delegation stated that this did not obviate the role of national systems in regulating conduct in this context. The Delegation expressed its view that the solution could not be found in creating new systems to apply to each interest group involved in the Internet, but through resort to the ICANN processes and in reliance upon contractual agreement, or through the ccTLDs which are subject to national law. The Delegation noted that the creation of a new dispute resolution procedure for IGOs would create new rights and obligations beyond those established by Article 6*ter* of the Paris Convention. It was noted that, in the United States of America, IGOs already have protection through the opportunity to challenge in court the unauthorized use of their names and acronyms, or to oppose the registration of such identifiers on trademarks where such registration would amount to misuse. The Delegation stated that a *sui generis* system of protection for IGOs would establish a right not offered to other entities, and that the absence of a right to

appeal to the courts would not meet domestic due process requirements, which are not satisfied by the proposed system of appeal to an appeal panel. In this respect, the Delegation noted that the availability of a *de novo* appeal to the courts provided the only real check on the power of UDRP panelists and safeguard against abuse of the system, and should not be removed in function of the type of entity that brought the complaint. The Delegation remarked that certain sovereign States had waived their immunity to bring UDRP challenges, and stated that IGOs should not receive better treatment than such States.

68. The Delegation of Algeria thanked the Legal Counsel of the United Nations for his statement on the names and acronyms of international organizations. The Delegation said that this issue was of particular interest since, in the case of unlawful registrations, it could generate negative effects, not only for international organizations but also for their member States. The Delegation underlined that the question of the management of domain names by the private sector was also worthy of interest. Noting the absence of international legislation and given the transnational character of information technologies, the Delegation cited the need to consider a universal legislative instrument. The Delegation stated that it intended to support the establishment of an agreement on this matter, designed to provide appropriate protection against the unlawful registration of domain names. In conclusion, it said that the efforts of member States at the Special Session could prove to be important in view of the forthcoming World Information Summit in 2003.

69. The Delegation of Mexico expressed its support for the protection of the names and acronyms of international intergovernmental organizations and welcomed the statement made by the Legal Counsel of the United Nations. The Delegation requested that members should be given more time to study the proposals relating to this matter.

70. The Delegation of Canada thanked the Legal Counsel of the United Nations for his statement and highlighted the first principles of the organization of the Internet, namely that measures needed to be efficient, cost effective and administratively non-burdensome. The Delegation raised the question whether the creation of a separate administrative dispute resolution procedure for IGOs would lead to the creation of similar system with respect to all identifiers, consequently not respecting the first principles mentioned.

71. The Secretariat noted two special features of the proposed new administrative dispute resolution procedure, namely: it would apply only to 'abusive registrations' defined, not by trademark law, but by reference to Article 6*ter* of the Paris Convention, and further, it would include an appeal mechanism taking the form of arbitration that would respect due process and enable efficient enforcement under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958). It was noted that such an arbitral procedure and system of enforcement was a widely respected alternative to litigation. Apart from these two special features, the Secretariat noted that the proposed procedure followed the lines of the UDRP.

72. The Delegation of Japan recognized the need for discussion or review of adequate protection for the name or acronym of IGOs in the DNS. At the same time, the Delegation stressed the importance of the need for discussion or analysis as to the legal basis or nature of the protection, especially the relation to the existing international rules such as Paris Convention before discussions on how the name or acronyms in connection with internet domain names should be treated. The delegation recalled that in the first Special Session of the SCT, it had pointed out that the use or registration of the name of IGOs would constitute infringement of Article 6ter of Paris Convention and TRIPS Agreement. The Delegation concluded saying that legal ground or nature

of protection of names of IGOs was essentially important even in the case of public law rather than private law.

73. The Delegation of Denmark expressed its support for the protection in the DNS of the names and acronyms of IGOs and other organizations identified in international treaties. The Delegation stated that its preferred method for such protection was a modification of the UDRP.

74. The Delegation of Sweden stated that there was a clear need for protection of the names and acronyms of IGOs in the DNS, and supported a recommendation to establish a mechanism to protect at least the names and acronyms recognized by Article 6*ter* of the Paris Convention. The Delegation emphasized that any mechanism for this protection should resemble the UDRP so far as possible, taking into account the privileges and immunities of such organizations by way of a special panel of appeal. The Delegation requested further discussions on this issue.

75. The Delegation of the European Community expressed its support for the remarks of the Delegation of Denmark, in favor of extending protection in the DNS to the names and acronyms of organizations covered by Article 6*ter* of the Paris Convention or by other given treaties. In this respect, the Delegation requested the Secretariat to provide the Special Session with a list of such names and relevant treaties which it was proposed to include in any such mechanism of protection.

76. The Delegation of Germany thanked the Legal Counsel of the United Nations for his statement on behalf of the United Nations Legal Advisers. The Delegation noted in particular the issues relating to Internet governance raised in the second portion of the statement. The Delegation did not consider these were appropriate issues to be discussed in this forum, but were rather issues for discussion in the Governmental Advisory Committee of ICANN. The Delegation expressed its support for a procedure based on the UDRP to protect the names and acronyms of IGOs in the DNS, and emphasized that the details of such procedure would require careful consideration. Noting the need to preserve the privileges and immunities of IGOs, the Delegation supported the implementation of an arbitral appeal procedure with ensuing awards enforceable under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958). Finally, the Delegation noted that the immunity of IGOs should not be regulated by the alternative dispute resolution procedure itself but should be grounded on existing principles of public international law.

77. The Secretariat noted that the UDRP included a requirement that complainants agree to submit to the jurisdiction of either the location of the registrar or the location of the respondent, as a means to overcome the uncertainty raised for respondents by the distributed nature of the Internet and the locale of potential complaints. The Secretariat observed that this requirement was the cause of the problem of immunities for IGOs.

78. The Delegation of Norway expressed its support for the remarks of the Delegation of Denmark.

79. The Representative of the International Federation of Red Cross and Red Crescent Societies (IFRC) expressed its appreciation for the accreditation of representatives of the International Red Cross and Red Crescent Movement as observers to both Special Sessions of the SCT. The Representative referred to its paper submitted to this Special Session (SCT/S2/INF/3), and noted that the International Federation of Red Cross and Red Crescent Societies was the international organization which groups together a world-wide membership of, currently, 178 National Red Cross and Red Crescent Societies. The Representative noted that these National Societies derived their status from the 1949 Geneva Conventions and owed their existence to legislation in most

countries. The Representative emphasized the importance of the existing obligation accepted by all States party to the Geneva Conventions, to protect the name and the emblem of the Red Cross and the Red Crescent from any misuse by any unauthorised person, including any imitation of these. The Representative noted, for example, that it was prohibited to use a shape and a colour close to a red cross or even using an acronym which raised an association for a viewer that this person belonged to the Red Cross/Red Crescent Movement. The Representative stressed that this was a critical point in Internet usage, as misuses of emblems, designs and names could easily distract or mislead people all around the world. Consequently, the Representative stated that adequate methodology for the protection of emblems and names should be accessible to National Red Cross and Red Crescent Societies, as well as to the Movement's international organizations, so as to enable them to effectively fulfil their responsibilities as "guardians of the names and emblems" in their respective areas of competence. The Representative expressed its support for the Special Session to establish a mechanism for the protection of the names and acronyms of international organizations enjoying protection under Article 6*ter* of the Paris Convention and to those other names and acronyms that were subject of specific protection under identified treaties such as the Geneva Conventions. The Representative stated its view that the first alternative offered in paragraph 11 of the Secretariat's paper (document SCT/S2/2), which would limit the scope of the mechanism to only those international organizationss protected under Article 6*ter* of the Paris Convention would provide insufficient protection to the components of the International Red Cross and Red Crescent Movement. Instead, the Representative noted that such organizations fitted into the wider categorization in the second alternative, which also had the effect of helping States to fulfil their obligations under the Geneva Conventions by providing an additional effective and quick procedure for the misuses in the DNS. In this respect, the Representative noted that the protection of the Red Cross and Red Crescent name and emblem was distinguished in the Second WIPO Process Report (Chapter 4, footnote 2). The Representative requested that, in this context, the Special Session agree to extend protection under the UDRP to enable the International Federation of the Red Cross and their member National Red Cross and Red Crescent Societies, in accordance with Article 53 of the First Geneva Convention, to protect their names and emblems and enable them to discharge their humanitarian missions without hindrance or abuse.

80. The Representative of the Organisation for Economic Cooperation and Development (OECD) noted that, in the pursuit of protection of its own names and acronyms, the OECD had considered to institute legal proceedings in the United States of America under the United States Anticybersquatting Consumer Protection Act. The Representative noted that the OECD would welcome the implementation of a modified UDRP to clarify the protection granted to the names and acronyms of IGOs in the DNS. The Representative noted that its paper submitted to the Special Session (document SCT/S2/INF/2), gave examples of some but not all cases of abuse of OECD names registered in bad faith in various top level domains, remarking that where such registrations were passive they were not pursued. Citing one such example, the Representative noted that the Italian acronym for the OECD had been abused in connection with the Organisation's activities in Italy, and had been fraudulently used to mislead users by emulating the look and feel of the OECD's official site. In that case, the domain name was retrieved ex-judicially by means of pressure on the Internet service provider. The Representative stated the need to adjust the dispute resolution system to accommodate IGOs, who represented a special case for protection because they were conducting activities on behalf of governments, were universal and were special targets for abusive practices because of their high level public policy functions. The Representative stated that it did not share some Members' concerns regarding arbitral appeal procedures, and noted that the OECD regularly used such procedures in its investment activities and had found them to be well accepted and in conformity with due process requirements. The Representative stressed that consideration of protection in this context should extend beyond organizations covered by Article 6*ter* of the Paris Convention, and include other international

organizations. The Representative noted that it was in the interest of governments to implement a system of protection for the names and acronyms of IGOs in the DNS, as well as to ensure that the present system based on contractual agreements under ICANN auspices also worked well. In this respect, the Representative endorsed the comments of the Delegation of the United States of America, stating that abusive registrations should also be addressed by ICANN being encouraged to enforce registrants' contractual obligation to provide accurate and up-to-date contact details to the Whois databases, as well as by insisting on registration authorities contractual duty to investigate and require the provision of such information. The Representative noted that, while the question of an appeal mechanism in any dispute resolution procedure was important, it was rendered less important by the fact that most bad faith domain name registrants would not avail themselves of such appeals, but would prefer to remain unknown. The Representative stated that IGOs should be protected by the rule of law, but that any system should not be burdensome in operation. Once such regulation of the DNS was implemented, the Representative noted that national systems would be better able to protect their consumers and other interested parties. Finally, the Representative stated its support for a system of protection of names and acronyms of IGOs in the DNS, but noted that such a system could not cover all circumstances of abuse and would not replace the need to ensure the proper functioning of the contractual system of agreements currently in place in the DNS.

81. The Representative of the International Committee of the Red Cross (ICRC) thanked the Committee for its accreditation as an observer to the meeting, and referred to its previously submitted joint ICRC/IFRC report outlining its experience with abuse of its names in the DNS, acronyms and designations (document SCT/S2/INF/3). The Representative noted that the ICRC is mandated by the international community to protect and assist the victims of armed conflict, under a mandate conferred by the Geneva Conventions of 1949, their Additional Protocols of 1977 and the Statutes of the Red Cross and Red Crescent Movement, which were promulgated, in part, by the States party to the Geneva Conventions, and noted that the Conventions, with 189 States party, were among the most widely ratified of international treaties. The Representative stated that the ICRC had a unique status in international law and, while not a non-governmental organization, enjoyed international legal personality, as evidenced by the jurisprudence and rules of international tribunals and by the international treaties it had negotiated with nearly 80 States. These treaties recognized the ICRC's status, and privileges and immunities as being akin to those enjoyed by intergovernmental organizations, including Permanent Observer Status in the United Nations General Assembly, as well as in numerous other intergovernmental organizations. The Representative clarified, however, that the ICRC was not an intergovernmental organization, as it was not comprised of government members, but was based on a guiding principle of independence from States. The Representative reiterated that the mandate, the international legal status and the independence of the ICRC were all essential to the performance of its function. It was also noted that another essential attribute was the right of the Red Cross and Red Crescent Movement to the exclusive use of its names, designations and emblems, which were among the most widely recognized brands in the world, and connotated protection and assistance, neutrality and independence. The Representative stated that misuse of its name, whether or not in good faith, breeded dilution of respect for these intended meanings which, because the ICRC's activities were often performed in the crossfire between warring parties, may have life and death consequences for the ICRC's staff, as well as for the population it seeks to protect and assist. It was noted that it was for these reasons that the Geneva Conventions and their Additional Protocols prohibited unauthorized use of the Red Cross names and designations and they, along with the Statute of the International Criminal Court which enters into force on July 1 of this year, rendered such use a war crime under certain conditions in times of conflict. The Representative noted, therefore, that the basis for the protection sought was well established in international law and that the practical need for such protection was compelling. The Representative also respectfully reminded the Special

Session that States were obliged not only to respect, but to ensure respect for the provisions of the Geneva Conventions, including provisions concerning the protection of the emblems and designations of the Red Cross. The Representative stated its position that this obligation of States may best be fulfilled by working toward the creation of a new administrative procedure to remedy the misuse of names and designations that were the subject of international treaties, but that did not already enjoy protection under UDRP. In this context, the Representative requested that any new remedy not be limited to rights already protected under Article 6*ter* of the Paris Convention, where the Red Cross was arguably not covered, and further, that it not be limited to bad faith misuse. The Representative also agreed with the recommendation of the Legal Counsel of the United Nations that the UDRP should be modified to provide protection in a manner that respects the immunity of the organizations making use of the procedure. Finally, the Representative requested, given the unique international legal status of the ICRC, that any new regime should not be limited to intergovernmental organizations, but should also include the components of the Red Cross and Red Crescent Movement by name, or alternatively, should include any entity that enjoys relevant protections in international law.

82. The Representative of the American Intellectual Property Law Association (AIPLA) expressed its affinity with colleagues in the OECD, ICRC and IFRC, stating that the AIPLA and its members had faced similar problems. The Representative thanked the Secretariat for clarifying the meaning of 'abusive registrations' in the current discussions, and confirmed that the AIPLA is opposed to the registration and use of the names and distinctive acronyms of IGOs in the DNS where such activity is abusive. The Delegation noted that it was not briefed to address the issue raised by the Representative of the ICRC, concerning the harmful effects of registration of the names and acronyms of the Red Cross and Red Crescent Movements in the absence of bad faith.

83. The Representative of the International Federation of Industrial Property Attorneys (FICPI), expressed its support for the remarks of the Delegation of Australia, noting its concern with the proposal that an arbitral forum would replace recourse to appeal to the national courts, and establish a framework that would override sovereign national law. The Representative remarked that any system which removed the right to challenge or defend in a national court was better dealt with through the treaty process. The Representative also referred to the intervention of the Representative of the OECD suggesting it was no answer to suggest that reticence on the part of domain name holders to appear in legal proceedings, meant no recourse to national courts was necessary. The Representative noted that due process must be ensured.

84. The Delegation of Australia made a number of remarks regarding the general issue of the Internet's governance. First, the Delegation stated that the governance of the Internet was not an appropriate subject for consideration by the SCT and that WIPO, in general, had no mandate for Internet governance issues, except if such issues impacted on intellectual property. Second, the Delegation noted that a reform of ICANN was underway and encouraged countries to contribute to such reform through ICANN's Governmental Advisory Committee. Thirdly, the Delegation noted that intellectual property administrations generally had not sufficiently established links with other entities whose sphere of authority impacted upon intellectual property. The Delegation appreciated the Statement of the UN Legal Advisers and encouraged that it be brought to the attention of the appropriate entities in countries. The Delegation reiterated that it withdrew its opposition to the creation of protection for the names and acronyms of IGOs in the DNS and noted that there was an overwhelming majority in favor of such protection. The Delegation believed that the mechanism for protection should be based on the UDRP, which is most suited to deal with abusive behavior in the context of domain name registration and use. The Delegation stated that it would be abusive for such mechanism to cover cases where respondents had legitimate interests in the contested domain names, such as would be the case of a domain name corresponding to a

trademark. The Delegation noted that, apart from the two modifications to the UDRP set forth by the Secretariat, a third modification might be required, namely the incorporation of eligibility criteria (either in the form of a list or of a more general standard) to determine which organizations would have standing to file a complaint under the system. While the Delegation did not oppose to dealing with the question of the immunities of IGOs by not requiring them to waive such immunities when utilizing the procedure, but, instead, by requiring them to submit to an appeal mechanism in the form of arbitration, it nonetheless continued to have reservations regarding this proposal. First, it would place IGOs in a better position than States, as the latter were required to waive their immunities for purposes of filing a complaint under the UDRP. The Delegation, however, recognized the observations made by other delegations to the effect that IGOs were in a unique situation, as they could potentially be subjected to the jurisdiction of multiple countries in light of the international nature of their activities and that various international instruments involving IGOs routinely incorporated arbitration procedures for the purpose of dispute settlement. At the same time, the Delegation remarked that the concerns expressed by the Delegation of the United States of America regarding due process exigencies applicable within its jurisdiction should be weighed carefully, as the entities (ICANN, and the domain name registries and registrars) which would be tasked with enforcing any mechanism that might be proposed would be subject to the law of the United States of America. The Delegation opined that ultimately this may be a question that would need to be addressed by the organizations in question, although there was a risk that such bodies might not accept the recommendations for this reason. The Delegation also proposed that, whatever recommendation might result from the discussions, it include a specific recommendation that ICANN work toward ensuring compliance with the contractual provisions which were already in place within its system and which bear on intellectual property protection.

85. The Delegation of the United States of America strongly supported the Delegation of Australia's comment on the need for closer cooperation between intellectual property bodies and entities responsible for matters of telecommunication, as well as other relevant bodies. The Delegation reiterated its position that creating a protection mechanism for the names and acronyms of IGOs without recourse to national courts would constitute the creation of a new right. The Delegation reaffirmed that ensuring compliance with provisions currently incorporated in domain name registration agreements would go a very long way in solving the problems that exist, as the experience of the OECD has demonstrated.

86. The Secretariat clarified that, in accordance with the decision of the WIPO General Assembly at its meeting in September 2001 (document WO/GA/27/8), the Special Session of the SCT was to report to the WIPO General Assembly and to no other body. The Secretariat added that it would be to the General Assembly to decide how to deal with the recommendations of the Special Session. The Secretariat recalled in this connection that the letter of request submitted to it by twenty WIPO Member States (and later endorsed by the WIPO General Assembly) to initiate the Second WIPO Process had indicated that "the findings and the recommendations [of the Process] should be submitted to the Members of WIPO and for consideration by the Internet Community (including the Internet Corporation for Assigned Names and Numbers)." The Secretariat further explained that the purpose of the UDRP was to provide an efficient means for enforcing existing international norms. The Secretariat remarked that the UDRP was created to avoid the costs usually associated with litigation before national courts and the jurisdictional problems that would have arisen if only court systems had been relied upon to resolve disputes that arose on a global medium, such as the Internet. According to the Secretariat, the UDRP's ability to achieve its goal was depended on two factors, tied to the ICANN contractual system, namely (1) respect for the existing norms and (2) the agreement of domain name registrars to implement UDRP decisions within the DNS. The Secretariat observed that the core issue that was to be addressed by the Special Session was whether this procedure, which currently operates to enforce

existing international norms in the trademark area, should not also be relied upon to enforce other existing international norms concerning the names and acronyms of IGOs.

87. The Legal Counsel of the United Nations stated that it was not intended to oversimplify what was clearly a complex issue, which also involved questions concening non-Latin scripts. The essential question was how to deal with situations where users, relying on domain names, expected to reach websites of IGOs, but in fact reached unrelated websites, sometimes containing pornography. The Legal Counsel believed that this question should be considered by the most learned body in the subject matter, which in the case of intellectual property, is WIPO. The Legal Counsel urged the Delegation of the United States of America to consider the issue from a broader perspective than just trademark law. If users were mislead because they connected to different sites than those which they expected, this was a serious issue and it should be resolved before greater problems arise from it. The Legal Counsel further remarked that, in his view, it would not be burdensome to create the protection sought, as the United Nations routinely incorporates arbitration clauses in many of its contracts with private parties, as a means of settling disputes in a manner that is consistent with the immunities of IGOs. The Legal Counsel also stated that the United Nations was often implicated in litigation in certain jurisdictions, but that those cases were dismissed, in light of the immunities from which the Organization benefits under international law. The Legal Counsel remarked that such practice was consistent with an Advisory Opinion of the International Court of Justice to the effect that the United Nations cannot be brought before a national judicial system. It was further observed by the Legal Counsel that any dispute settlement mechanism ultimately relied on national law for its enforcement and legitimacy. Finally, the Legal Counsel stated that it was clear that WIPO's mandate would not allow it to deal with all aspects of Internet governance, but that the observations in question were made to the Special Session, because its members were well placed to bring the matter to the attention of appropriate instances at the national level.

88. Noting, in particular, Article 6ter of the Paris Convention, to which 163 States are party,

1. The Special Session recommends that the UDRP be modified to provide for complaints to be filed by an international intergovernmental organization (IGO)

A. on the ground that the registration or use, as a domain name, of the name or abbreviation of the IGO that has been communicated under Article 6ter of the Paris Convention is of a nature

(i) to suggest to the public that a connection exists between the domain name holder and the IGO; or

(ii) to mislead the public as to the existence of a connection between the domain name holder and the IGO; or

B. on the ground that the registration or use, as a domain name, of a name or abbreviation protected under an international treaty violates the terms of that treaty.

2. The Special Session further recommends that the UDRP should also be modified, for the purposes of complaints mentioned in paragraph 1, to take account of and respect the privileges and immunities of IGOs in international law. In this respect, IGOs should not be required, in using the UDRP, to submit to the jurisdiction of national courts. However, it should be provided that decisions given in a complaint

filed under the modified UDRP by an IGO should be subject, at the request of either party to the dispute, to de novo review through binding arbitration.

3. The Delegation of the United States of America dissociated itself from this recommendation.

Country Names

89. After the Secretariat's summary of the findings of the Second WIPO Process Report on the issue of country names, the Chair recalled the conclusions reached on this topic at the first Special Session, as reflected in its Report (document SCT/S1/6).

90. After the Chair recalled the questions regarding the protection of country names on which the Secretariat had sought comments by delegations, the Secretariat summarised the comments which it had received on such questions, as reflected in the document SCT/S2/3.

91. The Chair proposed that delegations recall their position on the principle of protection for country names in the DNS, after which a discussion could start on the specific questions on which submissions were sought by the Secretariat.

The Principle of Protection of Country Names

92. The Delegation of Germany expressed its support for the position taken in the first Special Session, in favor of protection of country names, such as deutschland.com, in the DNS. The Delegation referred to the protection granted through the .INFO exclusion scheme, and noted its preference for an exclusion mechanism over a UDRP-type challenge procedure, provided the list of country names to be protected was not too extensive.

93. The Delegation of the United States of America stated that it was not in favor of protection of country names in the DNS. The Delegation thanked the Secretariat for its work on the suggested challenge mechanism, but emphasized that any such system of protection should be based on a preexisting property right and, as in the current system country names may be freely used, any such dispute resolution mechanism would be overreaching. The Delegation noted that any forceful taking of domain names from existing owners was neither desirable nor necessary in the absence of evidence of harm caused by the registration of country names as domain names that could outweigh the potential harm which could result from implementation of a dispute resolution system in this context. The Delegation noted that country names could legitimately be used on the basis of fair use and trademark rights, and could therefore be registered in good faith as domain names in accordance with national law. In the absence of an illegal act, the Delegation noted that any remedy of cancellation or transfer of such domain names would amount to an expropriation. Further, the Delegation stated that any transfer of such domain names to a government could create a *de facto* property right in the country name, suggesting that any use of the country name could be prohibited without government consent. The Delegation noted that, despite the lack of international consensus on whether a property right existed in a country name, a dispute resolution mechanism such as that proposed could create an absolute right in the country name. The Delegation expressed the view that any misleading use of country names in the DNS would in any event fall within the ambit of national laws regulating fraud, and noted that countries could safeguard their national interests through the ccTLDs. The Delegation noted the existence of alternate solutions for the protection of country names in the DNS, in particular the protection of

such names in .INFO recently established at ICANN, and the possibility of the creation of a new top level domain devoted to official use by governments. In this context, the Delegation noted that Whois databases could be used to discover incidence of bad faith registrations of country names as domain names, and that such bad faith activities could be regulated via action based on each registrant's contractual agreement to provide accurate and up to date contact information upon registration of each domain name. Finally, the Delegation noted that reliance upon such contractual obligations could overcome the difficulty posed by the absence of international standards for the protection of country names under international law.

94. The Delegation of the European Community referred to its written submission on the topic of country names and requested that it be added to the list of commentators which were in agreement on the principle of protecting country names in the DNS, as reflected in the first footnote of document SCT/S2/3.

95. The Delegation of Germany shared the view expressed by the Delegation of the United States of America according to which country names were not intellectual property and stated that such terms had no commercial purpose, but were grounded on public international law. The Delegation specified that the cases which its Government had brought under the UDRP in relation to the names of certain of its ministries, to which it had referred earlier during the Session, concerned nazi web sites operated by persons located in the United States of America. The Delegation explained that it had been necessary for its Government to revert to trademark law in an attempt to redress this egregious situation through the UDRP. The Delegation stated that it would be very doubtful if its Government were ever to claim unregistered trademark rights in the name of its country. Consequently, its Government would not be able to rely on the UDRP for the purpose of combatting abusive conduct in relation to the name of its country. The Delegation noted that it would be preferable to dispose of a straightforward avenue for redress, similar to the UDRP, in such cases of abuse, rather than having to revert to the traditional judicial mechanisms.

96. The Representative of the European Community Trademark Association (ECTA) expressed a lack of conviction that the time was ripe for the introduction of an international dispute resolution process with regard to geographical indications and terms. Noting that a similar situation existed at the time of the first Special Session, the Representative stated that the problem was a lack of international consensus on the scope of protection to be granted, and that therefore the implementation of a dispute resolution mechanism for such identifiers was premature. The Representative noted, if it was decided that protection should be granted to a restricted list of country names, it would be important to ensure that this would not open the door to protection for other geographical terms.

97. The Representative of the American Intellectual Property Law Association (AIPLA) raised the question of bad faith with reference to the examples listed in Annex 12 of the Second WIPO Process Report, and noted that clarification was required as to what constitutes 'misuse' of such country names in the DNS. The Representative informed the meeting of the results of a search that had been conducted for registrations corresponding to the names included in the International Standard ISO 3166-1 on Country Codes (the "ISO Standard") names in English that had already been registered as domain names, and noted that 459,896 such domain names already existed. The Representative posed the question whether all such registrations were in 'bad faith', by virtue of their mere existence. The Representative noted that exceptions may be made for prior rights existing in relation to country names registered as domain names, but that if protection was granted against registration of names beyond identical country names, then this may inhibit the future development of trademarks and affect the intellectual property system in a manner that was

not warranted under trademark law, which currently permits the incorporation of country names in trademarks and domain names.

98. The Delegation of South Africa made a comprehensive presentation of its position in favor of the protection of country names in the DNS, which position is reflected in document SCT/S2/6.

99. The Delegation of China stated that country names were part of the sovereign attributes of States and that each country should decide whether it wished to protect its country name. The Delegation explained that, in its view, there should be a list of country names to be protected and that names which did not appear on such list, should not benefit from protection. The Delegation noted that the United Nations Terminology Bulletin No. 347/Rev. 1 (the "UN Bulletin") or the ISO Standard could be relied upon for this purpose. The Delegation observed that no problems would arise with regard to the UN Bulletin and the ISO Standard, but according to the ISO Standard, the territories of Hong Kong and Macao should be followed by "SAR" respectively.

100. The Delegation of Sweden stated that, consistent with its position at the first Special Session, in remained in favor of the principle of protection for country names in the DNS.

101. The Secretariat noted that a further written submission had been received from the Delegation of Mauritius expressing support for the principle of protection for country names in the DNS and stated that such submission would be made available to the Special Session as document SCT/S2/7.

102. The Delegation of Canada reaffirmed its position that it did not favor the creation of protection for country names in the DNS and that this matter should be left for governments to decide at the international level. The Delegation added that this did not imply that it opposed all forms of such protection. It referred in this connection to the measures taken in .INFO and the possibility of a new official gTLD for governments, as examples of alternative forms of protection, which merit further attention.

103. The Delegation of Japan expressed the view that it did not support an expansion of the scope of the UDRP in order to protect country names in the DNS and stated that other forms of protection, such as those adopted in relation to .INFO, should be further considered. The Delegation further stated that the names of the ISO Standard should be protected in the official languages of the relevant countries, based on a declaration by the government of the country, or authority of the territory concerned.

104. The Delegation of Mexico reiterated the position it had adopted at the first Special Session, whereby country names should be protected against use in bad faith within the DNS.

Discussions Regarding Secretariat Questionnaire

Question 1: How should the name of a country be identified (for example, by reference to the United Nations Terminology Bulletin, ISO Standard 3166, or by some other method) and should both the long and short names of countries be protected?

105. The Delegation of Germany expressed agreement with the proposition advanced by the Delegation of South Africa to the effect that the issue of country name protection in the DNS was not purely a commercial matter, but also implicated questions of state sovereignty. The Delegation noted that territories such as Guadeloupe and Martinique appeared on the ISO

Standard, but that other territories such as Bavaria did not. Reliance on the ISO Standard would therefore favor certain countries in comparison to others, which result would be hard to accept. That being the case, the Delegation expressed a tentative preference for relying on the UN Bulletin or the creation of a new list, although it would be hoped that the latter could be avoided. The Delegation generally favored a limited list and proposed that protection be granted only in relation to identical domain names and in the official language(s) of the country concerned.

106. The Secretariat clarified that a distinction should be made between two questions. First, which territorial entities should be protected (country names, or also other territorial entities, such as provinces, etc…)? Second, once the first question was answered, how does one proceed to identify the term denoting the territorial entity whose name was decided to merit protection? Consequently, it would be possible to decide that the names of all countries which are Members of the United Nations should be protected (answer to the first question) and that such names should be identified by reference to the UN Bulletin (answer to the second question). Alternatively, it could be decided that the names of the countries that are WIPO Member States should be protected, but this would lead to a lesser number of countries benefitting from the protection envisaged, as there are more members of the United Nations, than there are of WIPO.

107. The Delegation of Mexico said that country names should be identified by referring to the UN Bulletin, and emphasized that the names of a number of independent States which were not United Nations members should also enjoy protection. The Delegation therefore proposed that a new list, based on the UN Bulletin and protecting the long and short forms of the country names, should be drawn up so as to apply also to the countries that were not members of the United Nations.

108. The Delegation of the Netherlands expressed the view that protection should be based on the UN Bulletin as well as the ISO Standard and that countries should be allowed to add a limited number of names which are not on those lists, but by which the country was commonly known (such as “Holland” for the Netherlands).

109. The Delegation of the European Community stated that the ISO Standard should primarily be relied upon (perhaps with certain modifications as suggested by the Delegation of the Netherlands) for historical reasons and because the Internet community is more familiar with this instrument. The same approach could be taken in respect of the UN Bulletin in order to construct an ad hoc list.

110. The Delegation of South Africa expressed support for the position of the Delegation of the Netherlands. It remarked that protection should be based on the UN Bulletin, as well as the ISO Standard, that protection should be granted to both the long and short names, and that variations of country names also should receive protection.

111. The Delegation of the United Kingdom expressed unease with the idea of adding names to the UN Bulletin or the ISO Standard, as those lists are clearly agreed upon and any proposed changes to them might be controversial.

112. The Delegation of Uruguay said that it was in favor of identifying country names by referring to the ISO Standard. In the same way as the Delegation of the European Community, the Delegation also stressed that this list could be complemented by the UN Bulletin so as to benefit from the advantages indicated by the Secretariat on page nine of document SCT/S2/3.

113. The Delegation of Egypt preferred to rely on the UN Bulletin, as this is the most authoritative document on the subject matter, and therefore would avoid to the maximum extent any controversy.

114. The Delegation of Sri Lanka agreed that the UN Bulletin would be an appropriate starting basis, but noted that, in certain instances, countries were commonly known by names that did not appear on this list, as was the case for the name of its country which was in use during the colonial era. The Delegation therefore suggested an open, rather than a closed approach to the issue.

115. The Delegation of Australia reiterated that, in principle, it did not favor protection for country names, but recognized that there seemed to be consensus on the question, except among a few delegations. The Delegation repeated its view that the central issue appeared to be against what type of conduct any protective measures might be aimed. In the Delegation's view, if the focus would be on combatting abusive registrations, a finite list of country names probably would not be effective, because abuse likely would take the form of variations of the names appearing on the list in question.

116. The Delegation of Spain said that, even though the UN Bulletin or the ISO Standard both constituted appropriate means of identifying country names, it would prefer to refer to the ISO Standard for both the long and the short forms of country names.

117. The Delegation of the Russian Federation was of the view that country names should be protected against their registration by persons unconnected to the official authorities of the countries in question. The Delegation stated that the UN Bulletin and/or the ISO Standard could be used as the starting basis for providing the protection in question, but that such lists could be supplemented, as long as any supplementation would be communicated to all States and an organ, possibly WIPO itself, would function as the custodian of the new list.

118. The Delegation of China expressed agreement with the Delegation of the Federation of Russia. It stated that protection should preferably be based on the UN Bulletin and be granted to both the full and short names of countries. The Delegation observed that, if names were to be added to the list, this should occur with the confirmation of all countries and that an appropriate organ should administer the new list.

119. The Delegation of Honduras said that it wished to identify country names by referring to the UN Bulletin.

120. The Delegation of the Republic of Korea requested clarification as to the difference between the ISO Standard and the UN Bulletin, as to the difference between long and short country names, and asked whether such lists included the names of parts of countries, such as England and Scotland, as well as the United Kingdom.

121. The Secretariat noted that the UN Bulletin contained both long and short names of countries (for example, it listed both the French Republic and France, and both the People's Republic of China and China), based on the official position adopted by each country, so as to avoid confusion. The Secretariat clarified that the ISO Standard also contained both short and long country names.

122. The Delegation of Denmark expressed its support for creating a new list of country names incorporating both the UN Bulletin and the ISO Standard and, in support of the positions of the Delegations of the Netherlands and South Africa, granting countries an opportunity to add terms to

the list as they saw fit. However, the Delegation expressed its concern, shared with the Delegation of Germany, that problems could arise if regions within a country requested such protection.

Question 2: In what languages should country names be protected?

123. The Delegations of China, France, Morocco, the Republic of Korea, South Africa and Uruguay expressed the view that country names should be protected in the official language(s) of the country in question, as well as in the six official languages of the United Nations.

124. The Delegation of Germany supported protection in the official language(s) of the country concerned, but was also open to the suggestion of establishing additional protection in the six official languages of the United Nations.

125. The Delegations of Germany and Morocco emphasized that transliteration issues likely would arise in respect of non-Latin scripts.

126. The Representative of ICANN noted that the identification of country names is a complex matter which had been dealt with also by the ICANN .INFO Country Names Discussion Group, as reported in document SCT/S2/4. The matter was complicated, according to the Representative, because one had to be mindful not to create new rights in names and because there is an infinite variety of country names. The Representative further observed that the same Discussion Group noted that the solution has limited utility and therefore recommended that the Board refer to the GAC, which WIPO is a member of, whether there was an interest on the part of governments in exploring the potential utility of a new Top Level Domain (TLD) specifically for use by governments of countries and distinct economies.

127. The Delegation of Japan noted that, with respect to the question of language, each country's name should be protected in that country's language and script (based on a declaration of the country) plus English, based on the ISO Standard. The Delegation cautioned that protection in the six official languages of the United Nations would amount to over-regulation of the Internet which would prevent and distort future developments of the medium.

128. The Delegation of Australia reiterated that, as a basic proposition, Australia did not support a system of protection for country names in the DNS, but that its comments were offered in recognition of the widespread support for such a system. The Delegation noted that the questions posed in document SCT/S2/3 were interrelated, such that the question as to in which languages names should be protected would depend in part upon which mechanism was chosen for protection, and whether protection was given absolutely or only against bad faith registrations. The Delegation noted that, if an exclusion mechanism were recommended, then the list of country names to be excluded should be very tight, whereas if an administrative dispute resolution procedure were recommended, based on a finding of bad faith, then the question as to languages was of less significance and could be addressed by the panelist in the course of the dispute procedure.

Question 3: To what domains should any protection be extended (for example, to all, both existing and future, gTLDs, only to future gTLDs, also to ccTLDs, etc.)?

129. The Delegation of South Africa expressed its support for protection in all gTLDs, new and existing.

130. In view of the limited interventions on this question, the Chair assumed that the summary of views contained in SCT/S2/3 in favor of protection of country names in all existing and future domains reflected accurately the positions of delegations.

Question 4: How should any alleged acquired rights be treated?

131. The Delegation of Morocco said that attention should be focused initially on question 5, i.e. what mechanism should be used to protect country names within the DNS, before determining how the rights that had been acquired should be dealt with.

132. The Delegation of Japan stated that any registrant of a country name already registered should be permitted to maintain such registration. With respect to Question 3, the Delegation noted that protection should apply only to future gTLDs.

Question 5: What mechanism should be used to implement protection (for example, the UDRP or some other mechanism)?

133. The Delegation of the European Community stated that protection should extend to future as well as present domains, applying a system of exclusions in relation to future gTLDs and an administrative dispute resolution system for existing gTLDs. With respect to any system of exclusions, the Delegation noted that either the ISO Standard or the UN Bulletin could be used, but that only exact country names should be excluded from registration.

134. The Delegation of South Africa, addressing Questions 4 and 5, noted that registration of any country name as a second level domain name is *per se* bad faith, because no other person had the right to appropriate such names, which are valuable national assets of sovereign nation States. The Delegation emphasized that this was an issue of particular importance to developing countries, whose names had often been abusively registered by entities with no connection to the State, where the registration was misleading as to source and a false designation of origin. The Delegation stated that it was indisputable that such registrations were intended to trade on the economic value of nations and to profit from diversion of Internet traffic. The Delegation therefore supported the cancellation of all such existing domain names. With respect to Question 5, the Delegation supported the modification of the UDRP to enable States to bring proceedings before an ICANN-accredited dispute resolution service provider in cases where the domain name was identical to the official or commonly known name of the State, to result in a binding arbitral award which was enforceable in court. In cases where the domain name was identical to the country name and was not used for bona fide purposes, the Delegation stated that such name should be transferred to the State. However, in cases where the domain name was used for the bona fide provision of significant information about the country, the Delegation recommended that the panelist be given discretion to award first, a small and reasonable monetary payment, and second, to require the State to provide a link on its site to the new site of the registrant, provided that site was used for appropriate purposes. Finally, the Delegation stated that Article 6*ter* of the Paris Convention should be clarified or amended to explicitly protect country names for use only with the authorization of the State.

135. The Delegation of Japan stated that country names should be restricted for use in accordance with the registration policy of each registry operator.

136. In response to question 5, the Delegation of Morocco proposed that use should be made of the UDRP so as to allow countries, on the basis of the UN Bulletin, to recover their names which had been registered as domain names.

137. The Delegation of South Africa emphasized the distinction in treatment of registrants who were bona fide providers of information, and those who were bad faith misleading registrants of country names.

138. The Delegation of Australia expressed concern at the language used by some delegations implying that a 'name belongs to a country', and emphasized that a State had no right to its name under international law. Referring to the intervention of the Delegation of the Republic of South Africa, the Delegation of Australia noted that amendment of Article 6*ter* of the Paris Convention was not currently under consideration by the Special Session, and noted that any change to confer protection on country names would require a substantive amendment to the Convention, and not simply a clarification. The Delegation noted that in the substantial debates during the drafting of Article 6*ter*, the international community had deliberately not conferred rights to a country name on each country. While acknowledging the general consensus of the Special Session towards protection of country names, the Delegation did not recognize a country's right in its name and therefore opposed the reservation of identical country names as domain names for use only by the authorized representative of the State. For the same reasons, the Delegation opposed the transfer of a domain name reflecting a country name to the State, or its reservation, because this remedy would confer an automatic right in the name upon the State. The Delegation was not in favor of exclusion of country names, because this mechanism was not effective to prevent the worst forms of abuse in the DNS, and stated that the only effective system of protection is a modified UDRP process.

139. The Delegation of the European Community expressed its agreement with the intervention of the Delegation of Australia, insofar as there was no explicit right of a country to its name under international law. Following this logic, the Delegation noted that a domain name registrant also acquired no rights in the domain name, but merely a capacity to use or license the name by virtue of first use, in the same manner as a telephone number.

140. The Delegation of the United States of America expressed support for the intervention of the Delegation of Australia, and stated that it did not support the protection of country names in the DNS either via an exclusion mechanism or a dispute resolution procedure. The Delegation raised two issues of concern, namely: the treatment of trademarks incorporating country names and the treatment of generic terms including country names, for example the use of 'Turkey' for carpets and 'Japan' for lacquer. The Delegation noted that any system of protection which would restrict industries from using generic terms would have harmful effects.

141. The Delegation of Canada expressed its support for the comments of the Delegations of Australia and the United States of America and, in view of the need for consistency with Canada's domestic trademark law, did not support protection for country names in the whole DNS. The Delegation of Canada does support protection of country names in the .INFO Top Level Domain.

142. The Delegation of the United Kingdom noted that the use of an exclusion list to protect country names was impractical and that the most effective system appeared to be a modified UDRP.

143. The Delegation of South Africa emphasized the importance of the protection of country names in the DNS to developing countries, noting that the digital divide existed both between the first and third worlds, but also within the first world countries. The Delegation reiterated that where country names were permitted to be registered as second level domain names on a first-come, first-served basis, this resulted in a gold rush primarily by western private entities seeking to appropriate developing countries' sovereign assets. The Delegation expressed

disagreement with the interventions of the Delegations of Australia and the European Community and stated that, even if not explicit in international law, States had an implied right in their names.

144. The Delegation of Algeria said that it supported the protection of country names within the DNS for different reasons. It put forward reasons linked to sovereignty and also observed that international law was not static and that SCT members were able to develop international standards so as to protect country names within the DNS. Finally, the Delegation put forward commercial reasons and explained that in Algeria, since the registration of a country name as a trademark could give rise to unlawful practices, it was prohibited.

145. The Delegation of Germany stated that domain names were merely alphanumeric addresses that had gained value as assets, but could not be possessed by right. The Delegation noted that, although originally in favor of an exclusion mechanism, it now supported a modified UDRP for protection of country names in the DNS in order to fight abuse of such identifiers.

146. The Delegation of the Netherlands supported the position of the Delegation of the European Community and stated that an appropriate way forward would be the establishment of an exclusion mechanism (possibly effectuated through a sunrise registration system) in relation to new gTLDs with a public character. In relation to existing gTLDs, the Delegation believed that a challenge procedure based on the UDRP would be sufficient.

147. The Delegation of China stated that the name of a country was an expression of its sovereignty and that, consequently, nobody other than the country should be allowed to register such name, irrespective of which system might be used to achieve this goal. The Delegation remarked that the identification of the name should be based on the UN Bulletin and the ISO Standard.

148. The Representative of the American Intellectual Property Law Association (AIPLA) stated that it did not approve of the abusive registration of country names as domain names. However, the Representative observed that an exclusion mechanism would not be an appropriate form of protection. The Representative explained that it had performed a search on the Internet which revealed that more than 450,000 domain names incorporate country names, as those appear on the ISO Standard. The Representative remarked that most of these registrations are probably not in use and that the overall majority took the form of variations of country names. According to the Representative, an exclusion mechanism would be doubly flawed, in the sense that it could not offer protection in relation to variations of country names that are clearly abusive and that it would not permit registrants with legitimate interests in the names to obtain or maintain good faith domain name registrations corresponding to country names.

149. The Delegation of the Russian Federation considered that the mechanism for protecting country names against their registration as domain names could consist of two parts: (1) a modified UDRP and (2) an exclusion procedure. In that regard, the Delegation stated that the UDRP could be used in relation to all registered domain names which resemble country names. A request within the UDRP to cancel or to transfer domain names could be submitted on behalf of a national government. The list of country names should not be used for the purpose of this modified UDRP. A request should contain evidence that a domain name is similar to a country name, and also that the domain name registrant is not acting on behalf of a national government. As regards the exclusion mechanism, it should be used to prevent the registration of an exact country name. In this case, the mechanism would be based on the application of a list of countries, which would be compiled according to the UN Bulletin (using, where necessary, the ISO

Standard). Thus, the work of the Special Session on the list of countries would not be in vain and would be utilized when describing the exclusion mechanism."

150. The Delegation of Sweden supported the protection of country names in the DNS, but expressed concerns about the creation of different protection systems for different identifiers, as this would complicate matters. The Delegation believed that it would be preferable to rely as far as possible on the UDRP framework with a view to uniformity. The Delegation concluded that broadening the scope of the UDRP to cover country names was the most appropriate way forward.

Question 6 and 7: Should any protection extend to the exact country name only or also to misleading variations?/ Should protection be absolute or should it be dependent upon a showing of bad faith?

151. The Delegation of Japan expressed the view that only exact country names should be protected in the new gTLDs, because otherwise too many names would benefit from protection. The Delegation stated that protection should be absolute and not dependent on a showing of bad faith.

152. The Delegation of China supported the position of the Delegation of Japan on both issues.

153. The Delegation of Australia was of the view that an exclusion system would be either unworkable or ineffective. If the system were to apply also to variations of country names, it would be unworkable, because registration authorities would not be capable of putting it into effect. If it were to apply only to exact country names, it would be ineffective, because most abusive practices concern variations of country names.

154. The Delegation of Germany expressed agreement with the Delegation of Australia and modified its earlier position on the question of the most appropriate means of establishing protection for country names in the DNS. The Delegation reiterated that, after considering the interventions by other delegations and further reflection on the matter, it had concluded that a challenge procedure based on the UDRP would be the most appropriate way forward. The Delegation reviewed the definition of what might be deemed an abusive registration of a country name, as proposed in paragraph 35 of document SCT/S2/3, and expressed the view that this standard was perhaps too narrowly crafted, as it would seem to permit certain conduct which would normally be deemed abusive. The Delegation referred in this connection to the case it had previously mentioned concerning the nazi websites. The Delegation, however, recognized that it would not be simple to devise a broader standard.

155. The Delegation of the United Kingdom expressed support for the points of view of the Delegations of Australia and Germany. The Delegation stated that a challenge procedure would be more appropriate than an exclusion mechanism.

156. The Delegation of South Africa took the view that misleading variations of country names should be covered and that protection should be absolute.

157. The Delegation of the Russian Federation observed that its country was well known by the name Russia, although this name did not appear in the UN Bulletin or the ISO Standard. The Delegation believed that the name Russia nonetheless also should receive protection. The Delegation expressed the view that there should not be a requirement of bad faith, as only a government should be allowed to register the name of a country.

158. The Secretariat clarified that, in considering the number of abusive registrations as referred to by the Representative of the AIPLA, a distinction should be borne in mind between, on the one hand, a right and, on the other, the exercise of such right. The Secretariat remarked that also in the trademark arena, not all domain names that corresponded to trademarks were challenged under the UDRP by rights owners. Furthermore, practices differed from one country to another and, in certain countries, the use of a name corresponding to a mark might be permitted (for instance, the mark "Canada Dry"). The Secretariat considered that this needed to be borne in mind when anticipating the total number of potential disputes.

159. The Representative of the American Intellectual Property Law Association (AIPLA) clarified that the some 450,000 domain names which it had discovered to incorporate the names of countries included domain names where figures or letters were placed before or after the term corresponding to the country name. For instance, the domain name ottoman.com was part of the list, because the country name "Oman" was embedded in the string, although the domain name ostensibly bears no relationship with the country in question. Furthermore, the list contained domain names corresponding to country names, which were also generic in the English language, such as, for instance, the word "china" for baked and glazed fine white clay.

160. The Delegation of Australia noted that the standard proposed in paragraph 35 of document SCT/S2/3 finds its origin in the avoidance of consumer confusion, but that discussions were more centered on sovereignty. However, the Delegation nonetheless recognized that no other viable alternative might be available and therefore considered the proposal as adequate. The Delegation further illustrated the practical difficulties that would be encountered in applying an exclusion mechanism to variations of country names by reference to a number of examples appearing on the list of 450,000 domain names presented by the Representative of the AIPLA.

161. The Secretariat clarified that the term "consumer confusion" contained in paragraph 34 of document SCT/S2/3 should be read to mean "user confusion" and that it was not aimed specifically at the economic consumer in the market.

162. The Delegation of Australia remarked that it would be useful to consider whether any abusive registration of a country name could be imagined which would not be covered by the standard proposed in paragraph 35 of document SCT/S2/3.

163. The Delegation of the European Communities Trade Mark Association reiterated its scepticism regarding the wisdom of creating protection in the DNS for geographical terms, including country names. However, the Delegation stated that, if such protection were decided to be created, it could support the standard proposed in paragraph 35 of document SCT/S2/3.

Further Discussions on Modalities of Protection

164. The Chair drew attention to the fact that the Secretariat had distributed three informal documents for consideration of the Special Session: (a) the relevant pages of the UN Bulletin, (b) the relevant pages of the ISO Standard, and (c) a table listing differences between the UN Bulletin and the ISO Standard. With a view to advancing the debate, the Chair suggested that Delegations focus their comments on the following three principal questions: Should the protection apply only in relation to domain names that are identical to country names, or also to those that are misleadingly similar? Should protection be based on the UN Bulletin, the ISO Standard or both? Would the wording proposed in paragraph 35 of document SCT/S2/3 be an appropriate means of defining domain name abuse of country names?

165. The Secretariat provided further explanations regarding the various lists of country names that had been informally made available to the Special Session. The Secretariat stated that, if it were decided that both the UN Bulletin and the ISO Standard should be used as a basis for protection, it would be important to clarify whether that would imply that territories and entities contained in the ISO Standard that would not be considered to be "countries" also should be taken into consideration, or that the combination of the UN Bulletin and the ISO Standard would only apply to countries that are members of the United Nations or WIPO.

166. The Delegation of Denmark made a distinction between the objective of achieving protection for exact matches of country names and for variations. The Delegation of Denmark was of the view that the goal was not to create rights, but to grant access to domain names usually associated with countries to the appropriate instances. In cases of domain names which were identical to country names, the Delegation proposed that there be an assumption of bad faith for purposes of the challenge procedure. In cases of variations of country names, the Delegation believed the standard proposed in paragraph 35 of document SCT/S2/3 could be applied. With regard to which list of country names would be preferable, the Delegation opted for the ISO Standard.

167. The Delegation of Germany queried whether an exclusion mechanism for country names would prevent governments themselves from registering the names in question.

168. The Delegation of the United States of America expressed serious concerns about creating a new list of names, based on a combination of the UN Bulletin and the ISO Standard, as this would amount to trade negotiations and could have the unintended consequence of elevating a geographical place or entity to "State" status.

169. The Delegation of Spain underlined that if the ISO Standard and the UN Bulletin were used, it might be useful to specify the difference between territories and countries. The Delegation said that taking into account the explanations given by the President, it might be appropriate to use the UN Bulletin.

170. The Secretariat pointed out that the question of the Delegation of Germany illustrated the difficulties associated with an exclusion mechanism.

171. The Delegation of the United Kingdom supported the statement made by the Secretariat concerning an exclusion mechanism. It also remarked that it would be required to consider more carefully the proper meaning of the concept of bad faith in relation to country names.

172. The Delegation of South Africa expressed the view that domain name registrars had no right to grant second-level domain name registrations corresponding to country names to private parties, without the agreement of the relevant government. It proposed that registrars exercise reasonable care during the registration process to ensure that country names were not granted to inappropriate parties.

173. The Delegation of Australia explained that in its country the domain name registration process was entirely automatic and that it would oppose any recommendation to the effect that registrars would be obliged to verify applications for domain names, as this would cause significant delays and additional costs in the registration process. Furthermore, the Delegation believed such recommendation would have a negative effect on the intellectual property community's ability to influence the DNS.

174. The Secretariat explained that one of the goals of the UDRP was to remove the burden of verification prior to registration from registrars, by creating a flexible dispute resolution procedure to deal with any problems that may arise as a result of the lack of such verification. The Secretariat stated that introducing verification of country names in advance of registration would be a radical departure from that approach. Furthermore, the Secretariat believed that it might be impossible for registrars to perform the verification in relation to country names in scripts with which they are not familiar.

175. The Delegation of South Africa reiterated that registrars should have a duty of care and that the problems were created because there currently was no such duty. The Delegation believed that if this situation would not be improved upon in the future, at one point the entire DNS risked falling into disrepute. The Delegation submitted that only a few hundred names were at stake and that it could not be imagined how verification of such a limited number of names prior to registration could be deemed unreasonable or overly burdensome.

176. The Delegation of Morocco reiterated its position on the need to settle the question of the mechanism to be set up, i.e. either a mechanism *a priori* or a mechanism *a posteriori*. In that regard, the Delegation said that it considered a mechanism *a posteriori*, based on the UDRP, to constitute a satisfactory mechanism.

177. The Delegation of the United States of America, in response to the intervention made by the Delegation of Denmark, stated that ICANN could not force domain name registrars to adopt a procedure which had no clear legal basis, as there would be a serious risk that the organizations in question might be sued in court for taking such action.

178. The Delegation of ICANN stated that any solution should have a firm basis in international law and that other tangential problems, such as increased operating costs, also should be considered. The Delegation reminded that suggestions had been made to create a new gTLD for official use by governments, which may be an attractive and realistic alternative. The Chair of the Names Council of the Domain Name Supporting Organization (DNSO) of ICANN, the body responsible for advising the Board on policy issues relating to the Domain Name System, added that an appropriate balance would need to be found between functionality and protection, and that it would be more likely that a challenge procedure succeeds in meeting that balance, rather than requiring registrars to verify in advance domain name applications, particularly in light of increasingly automated registration processes.

179. With regard to the proposal for a new gTLD for official use by governments, the Secretariat noted that such proposal had also been made in the past for trademarks, but that it had not been found satisfactory, because it did not address abuse in other domains. The Secretariat added that the Second WIPO Internet Domain Name Process had reached the same conclusions in relation to the .INT domain.

180. The Delegation of the United Kingdom noted that its Government used second and third level domains to avoid user confusion in reaching its web sites, for example, patent.gov.uk, in the .UK ccTLD. The Delegation stated that action was only taken with regard to particularly egregious conduct.

181. The Delegation of Sweden remarked upon the issue of prevention of misleading conduct as regards registration of country name domain names, raised in paragraph 35 of document SCT/S2/3, and noted that this activity may be characterized as giving such registrants unfair

advantage over their competitors, which could be classed, in terms of legal basis, as unfair competition, as defined by Article 10*bis* of the Paris Convention.

182. The Delegation of the Republic of Korea referred to the statement of the Delegation of Germany and stated that the establishment of a new top level domain exclusively for government use was not an acceptable solution, as it would not prevent abusive registration of country names in other domains. The Delegation noted that the commonly known name for its country, Korea, was neither on the ISO Standard or the UN Bulletin, and queried how the essential parts of each countries' names such as Korea of the Republic of Korea and America of the United States of America could be protected. In addition, the Delegation asked whether States confederations and their acronyms such as CIS would be included. The Delegation stated that the commonly known acronym for the Republic of Korea was not KOR nor KR as in the ISO Standard or the UN Bulletin but ROK, and inquired whether it would be included in the scope of protection. Finally, the Delegation stated that Korean script called Hangul which is a phonetic symbol could describe any country's name, and questioned whether the abusive uses of other country's names in the DNS in Korean script would not be problematic.

183. The Secretariat clarified that any system that gave protection to misleading variations of names would cover the essential part of any name.

184. The Representative of the American Intellectual Property Law Association (AIPLA) stated its position as against abusive practices, and noted that there was agreement in the Special Session as to what constitutes 'abusive' use. The Representative noted that with regard to a possible exclusion list, those Members in favor had intended that this list should be applied to protect only against registration of domain names identical to country names, and not misleadingly similar versions, and noted the question that had been raised whether such an exclusion list may preclude even governments from registering their country's name. The Representative stated that a top level domain reserved exclusively for government use would solve the problem of enabling the presence of such entities in the DNS. The Representative noted, however, that the use of an exclusion list was not favored, because it was overbroad, given that some countries did not oppose the registration of their country's name in the DNS. The Representative, noting the research that had revealed more than 450,000 domain names containing letter strings of country names, stated that any exclusion of names would only be practical if it operated only on identical names which as previously noted is not effective to prevent abusive practices. The Representative stated that, in any event, the initial predatory landrush of registrations by speculators was slowing down, and that many such registrations were not renewed. The Representative stated that a system for preventing all country name domain name registrations was perhaps not required, and that efforts should focus on use, depending on where such use fell on a scale of less to more abusive conduct, including pornography and fraud on one end of the scale, to unauthorized or improper association and consumer confusion in the middle, to use of intellectual property or other legal use at the other end. The Representative noted that each country may hold differing views on what conduct rose to the level of abuse, depending on their national policies, for example towards free speech, and that therefore any automatic exclusion would be improper. The Representative stressed that in this context, an expedited efficient dispute resolution procedure might be helpful to deal with clear cases of abuse, possibly with an adjusted fee structure. It was asked whether some norm or international agreement against such abuse, for example pornography, would provide the legal basis for action. The Representative informed the meeting of the efficient 'notice and takedown' procedure that operated under United States law, to enable copyright owners whose rights were infringed to notify the service provider and have the site taken offline, thereby also protecting the service provider from legal liability for the infringing content. The Representative asked how it might be possible to enable States to act against abusive use of their name, without creating a legal

right in the name which AIPLA does not support, and put forward the option of relying on the concept of "standing", rather than rights, to enable States to bring dispute resolution proceedings against abusive uses of their country names. The Representative noted that discourse about 'rights' was problematic because of the ease with which language and terminology can shift to suggest that rights exist, such as by characterizing unopposed use of a country name in a domain name as being like a licence by the country to permit such use.

185. The Delegation of the United States of America thanked the Delegation of Sweden for its intervention concerning Article 10*bis* of the Paris Convention, and noted that in its own consideration of this approach, it had found that there were wide variations in the manner in which States recognized the principle of unfair competition and therefore this was a question best left for consideration of national courts. For this reason, the Delegation noted that any international framework based on principles of unfair competition would be in effect creating new international law by decisions of the UDRP panelists, contrary to the principles of the Second WIPO Process.

186. The Chair presented a proposal for a recommendation on country names, as reflected in paragraph 209, and delegations made a number of observations regarding such proposal.

187. The Delegation of South Africa expressed its support for the Chair's proposal.

188. The Delegation of Australia noted that the Chair's summary provided a useful way forward for views expressed at the Meeting, however the Delegation noted that it did not support the Chair's proposal.

189. The Delegation of the United States of America concurred that the Chair's proposal summarized the view of the Meeting, but noted that it did not support the Chair's proposal.

190. The Delegation of Canada concurred with the Delegations of Australia and the United States of America, and noted that it did not support the Chair's proposal.

191. The Secretariat clarified that with regard to the list of country names that would be based on both the ISO Standard and the UN Bulletin, any State that wished to include on such list additional names by which countries are commonly known should notify the Secretariat of such names before the end of June 2002.

192. The Delegation of the Republic of Korea noted its support for the Chair's proposal. The Delegation stated that it had also raised a query as to protection of country names in different scripts, and sought clarification of the concept of 'misleading variation' of a country name.

193. The Delegation of the United Kingdom sought clarification on whether Members could also comment upon the draft Chair's report by the end of June.

194. The Secretariat confirmed that Members would be able to comment on the draft during the second Special Session, and then prepare their further comments for the WIPO General Assembly in September.

195. The Delegation of Indonesia noted its support for the Chair's proposal, and for the protection of variations of country names.

196. The Delegation of China sought clarification that it could give suggestions on its country name(s) by the end of June, and upon confirmation by the Secretariat, noted that the list of country

names prepared should, with respect to Hong Kong and Macao, be amended to add 'SAR' (Special Administrative Region) to both.

197. The Delegation of Australia clarified its understanding that after the second Special Session, the only part of the Chair's report open to submissions were names by which countries are commonly known.

198. The Delegation of the Netherlands queried whether the Chair's proposal referred to a dispute resolution process based on the UDRP, and the Secretariat clarified that this reference was made in paragraph 35 of document SCT/S2/3, which formed part of the Chair's proposal.

199. The Delegation of Mexico said that, as regards the recommendation on country names, it wanted only the States to be included in the list.

200. The Delegation of Argentina questioned the recommendation on country names and pointed out that the proposed list lacked clarity. The Delegation wondered whether SCT members should examine the list and, if so, within what framework. In conclusion, the Delegation stated that it wished to reserve its country's position on the recommendation in question.

201. The Chair clarified that Members had been requested to submit any names by which countries were commonly known to the Secretariat by June 30, 2002, for inclusion in a new list of country names recommended to be protected in the DNS, and that it was foreseen that this would be a limited additional list, including names such as Ceylon, Myanmar, Holland, and Russia.

202. The Delegation of Morocco confirmed that it wanted country names to be protected within the DNS. It pointed out, however, that the proposed recommendation did not contain any clarification as regards the protection mechanism referred to. The Delegation added that country names should be identified by means of the UN Bulletin, given that the list in question had already been accepted by the national authorities of the member States of WIPO, which was itself a specialized agency of the UN system. The Delegation said that it if proved useful to amend the UN Bulletin, this could be done following adoption by the appropriate body.

203. The Delegation of Germany noted that the Special Session had favored reference to both the ISO Standard and the UN Bulletin, but asked whether this reference was intended to mean that all the names in both lists would be included in the new list of countries to be protected, including those entities that were not States, or whether the new list would include only States.

204. The Secretariat noted that the term 'country' had been chosen to reflect the Internet's historical use of the term, such as, for instance, in country-code top level domains. It was noted that there were only six minor variations in the names of States between the ISO Standard and the UN Bulletin, and that these variations would be protected by means of the 'misleading variation' provision foreseen in contemplated dispute resolution mechanism. The Secretariat noted that the Special Session had not decided specifically whether entities that were not States, but were included on the ISO Standard, should receive protection as 'country names' under such procedure.

205. The Delegation of Germany stated that it favored use only of the UN Bulletin to compile the list of country names for protection in the DNS, such that only States would be included.

206. The Delegation of Australia favored compilation of a list that would only protect names of States in the DNS, but did not hold a strong view on this issue, and noted that misleading variations of such names would in any event be protected under the recommendation. The

Delegation considered that Members may wish to inform the Secretariat of the names which should apply to themselves.

207. The Delegation of Denmark stressed that it favored use of both the ISO Standard and the UN Terminology Bulletin, including names of entities that were not States, because it was considered important that the names of two self-governing geographic regions within Denmark, namely Greenland and the Faroe Islands, which only appeared on the ISO Standard but were not States, should receive protection of their names in the DNS.

208. In view of the discussions held during the meeting, as well as the statements made by various delegations and, contrary to what was stated in previous paragraphs of this report, the Delegation of Spain said that, in principle, it would support the use only of the UN Bulletin so as to compile the list of country names protected within the DNS; it emphasized that only sovereign States could obtain such protection. Whatever the case may be, the Delegation of Spain noted the possibility of submitting comments on this report, prior to submission to the next session of the Assembly of Member States.

209. The Delegation of the Republic of Korea emphasized the importance it placed on inclusion of the essential parts of country names, such as Korea, in the list of names to be protected in the DNS, and noted that incidental protection by characterization as a misleading variation was insufficient. The Delegation remarked that, in its view, the sentence in paragraph 209, 2, (ii) did not accurately reflect the balance of opinions among delegations on the issue concerned. That being the case, the Delegation believed it would be appropriate to either delete item (ii) or replace the terms “misleading variations” by the terms “essential parts”.

210. The Chair concluded that:

1. Most delegations favored some form of protection for country names against registration or use by persons unconnected with the constitutional authorities of the country in question.

2. As regards the details of the protection, delegations supported the following:

(i) A new list of the names of countries should be drawn up using the UN Bulletin and, as necessary, the ISO Standard (it being noted that the latter list includes the names of territories and entities that are not considered to be States in international law and practice). Both the long or formal names and the short names of countries should be included, as well as any additional names by which countries are commonly known and which they notify to the Secretariat before June 30, 2002.

(ii) Protection should cover both the exact names and misleading variations thereof.

(iii) Each country name should be protected in the official language(s) of the country concerned and in the six official languages of the United Nations.

(iv) The protection should be extended to all top-level domains, both gTLDs and ccTLDs.

(v) The protection should be operative against the registration or use of a domain name which is identical or misleadingly similar to a country name, where the domain name holder has no right or legitimate interest in the name and the domain name is of a nature that is likely to mislead users into believing that there is an association between the domain name holder and the constitutional authorities of the country in question.

3. The Delegations of Australia, Canada and the United States of America dissociated themselves from this recommendation.

Geographical Indications

211. After the Secretariat's summary of the findings of the Report of the Second WIPO Process Report on the issue of geographical indications (GIs), the Chair recalled the conclusions reached on this topic at the first Special Session, as reflected in its Report (document SCT/S1/6).

212. The Delegation of France said that the first Special Session had demonstrated the need to discuss geographical indications, and regretted that little time was devoted to this issue during the second Session. The Delegation said that the UDRP should, as a matter of urgency, be extended to geographical indications given the harm caused and which was still unresolved. In conclusion, the Delegation noted that it was desirable to devote the necessary time to protecting geographical indications within the DNS.

213. The Delegation of Japan noted that the question of protection of GIs in the DNS was a complex one and, as distinct from consideration of country names which could rely upon the ISO Standard and the UN Bulletin, no such list of agreed names was available for GIs. The Delegation noted that this issue was closely related to questions raised in other fora, including the WTO TRIPS Council and urged caution and attention to these other discussions.

214. The Delegation of the European Community noted its disagreement with the recommendations made in the Second WIPO Process Report and stated that, as GIs were as important an intellectual property right as trademarks, and of significant economic importance to some Members, this should be reflected in their protection using the UDRP in the DNS. The Delegation concluded that the Special Session should recommend continued debate on the issue of inclusion of GIs in the UDRP. Finally, the Delegation noted that future meetings should commence with discussion of GIs as the time allotted in this Special Session was too short, and requested that the Secretariat compile a list of questions for future discussion on this issue. The Delegation further clarified that it was for the WIPO General Assembly to decide on the appropriate body for the continued discussion of this topic.

215. The Delegation of Australia reiterated the concerns it had raised in the first Special Session and emphasized that it was premature to include GIs under the UDRP. While it was considered that further discussions would be unlikely to reach a conclusion on this issue, the Delegation stated that it would participate in such discussions. The Delegation noted that this Special Session had been constituted for two meetings only, and put forward its view that further discussions would be most appropriately held in the SCT, where the issue of GIs was already on the standing agenda. The Delegation stated that it was for the WIPO General Assembly to decide in which forum further discussions should be held and, while it supported the preparation by the Secretariat of a discussion paper, noted that Members could also submit papers on this issue.

216. The Delegation of Mexico stressed that the question of protection for geographical indications within the DNS should be broached but that it did not consider this to be the right moment to deal with the issue. The Delegation noted, however, that given the uncertainty which persisted as regards the definition of geographical indications, it could not currently express an opinion as to the need to protect geographical indications within the DNS.

217. The Delegation of Uruguay also underlined the importance of geographical indications and said in particular that in Uruguayan legislation on marks a chapter was devoted to geographical indications. Notwithstanding, the Delegation observed that it was premature to examine the issue of protection for geographical indications within the DNS, taking into account the diversity observed in the various forms of national legislation as regards the concept in question.

218. Joining the Delegations of Australia, Japan, Mexico and Uruguay, the Delegation of Argentina said that the UDRP should not be extended to cover geographical indications, taking into account the lack of relevant specific international standards. The Delegation emphasized, however, that it was necessary to move ahead in the debate on geographical indications and that said debate could be conducted within the regular sessions of the SCT.

219. The Delegation of the Republic of Korea concurred with the interventions of Mexico, Uruguay and Australia and noted that, though the issue of GIs in the DNS was an important one, there was not yet sufficient international agreement on the relevant questions and the time was not yet appropriate for decision. The Delegation noted that discussions were ongoing in the WTO, and left open the question of future discussions in WIPO.

220. The Delegation of the United States of America stated that the regular SCT was engaged in discussions towards international norm setting on the issue of GIs and that no common understanding had yet been reached on many issues including definition, terms, ownership, use, creation, cancellation and other relevant fundamental issues. The Delegation emphasized that both the SCT and the TRIPS Council of WTO should address such questions relating to GIs before consideration could be given to adding such protection to the UDRP.

221. Associating itself with the comments made by the Delegations of Argentina, Japan, Republic of Korea, United States of America and Uruguay, the Delegation of Guatemala stated that it was premature to tackle the subject of protection for geographical indications as part of the Special Session of the SCT. The Delegation said that it intended to continue the debate on this issue as part of the regular sessions of the SCT.

222. The Chair put forward a proposal for discussion, stating that it was not timely to take a decision on this issue, that the Special Session recommended that discussion on the issue of protection of GIs in the DNS should continue in a forum and time frame to be decided by the WIPO General Assembly, that delegates were invited to submit proposals to the WIPO General Assembly and that the Secretariat should prepare a brief paper on these issues as discussed to date.

223. The Delegation of Argentina reiterated its point of view as regards examining the issue of protection for geographical indications within the regular sessions of the SCT and emphasized that it was premature to consider the protection of geographical indications within the DNS, taking into account the fact that various fundamental issues relating to geographical indications were still to be discussed at the sessions in question.

224. The Delegation of Australia, referring to the Chair's proposal, stated that there could be no meaningful discussion on GIs in the context of the DNS before progress was made in discussions on GIs in the SCT, and noted that questions specific to GIs in the DNS could always be addressed within the SCT's standing mandate. The Delegation further noted that it did not support the inclusion of wording implying that future discussions were recommended to take place. The Delegation emphasized that a clearer understanding was required of the issue of GIs in the physical world, before any agreement in international law on this issue could be reflected in the DNS.

225. The Delegation of the European Community expressed its support for the Chair's proposal, and stated its view that the aim should not be to harmonize the international position on GIs before any discussion could take place on protection of GIs in the DNS. The Delegation noted that divergent views still existed with regard to other forms of intellectual property, such as patents, but that discussions could still continue on them. The Delegation remarked that GIs were already defined in the TRIPS Agreement, and this could form the basis for further discussion, which it was emphasized should take place in the appropriate body to be decided by the WIPO General Assembly.

226. The Delegation of Uruguay observed that existing national legislation on geographical indications should be studied before its protection at the international level was debated. The Delegation emphasized that this study should be conducted within the regular sessions of the SCT.

227. The Delegation of the United States of America expressed its support for the interventions of Argentina and Australia, and agreed that it was premature to recommend to the WIPO General Assembly that additional meetings or discussion should be held on the issue of GIs in the DNS. The Delegation noted that the norm-setting discussions taking place in the SCT must continue before productive discussions could take place on the question of inclusion of GIs in the UDRP. In this respect, it was stated that the Paris Convention dealing with trademarks and patent law had been drafted in 1880, such that Members had enjoyed more than 100 years of time to develop international consensus on the issues it raised. The Delegation noted that GIs had been incorporated in the TRIPS Agreement for less than 10 years, and that more time was therefore required before discussion on them in relation to the DNS could sensibly take place.

228. The Delegation of France said that the issue of geographical indications was better understood than was to be believed, and highlighted the urgency of dealing with the matter. The Delegation said that there were numerous cases of registration of appellations of origin and geographical indications as domain names. In that regard, the Delegation referred to a recent example concerning a domain name relating to an appellation of origin from the Bordeaux region, which was based on a site with no connection to said appellation and whose owner resided outside French territory. The Delegation pointed out that, following the statement made by the Delegation of the United States of America, the 1883 Paris Union Convention already referred to appellations of origin and that it would be surprising, more than one hundred years later, if such appellations which formed part of the intellectual property system were still not the subject of protection on the Internet, as was the case for marks. In conclusion, the Delegation said that, in line with the European Community, France supported the proposal made by the President.

229. The Special Session:

(i) Decided that it was not timely to take definitive decisions with respect to the protection of geographical indications in the Domain Name System.

(ii) Noted that some delegations considered that the issue needed urgent attention, while others considered that a number of fundamental questions concerning the protection of geographical indications needed to be resolved before the question of their protection in the Domain Name System could be discussed.

(iii) Recommends that the WIPO General Assembly revert this issue to the regular session of the SCT to decide how the issue of the protection of geographical indications in the Domain Name System be dealt with.

Other Matters

230. With respect to other available means of addressing abusive domain name registrations, the Meeting supported the remarks made by the OECD in paragraph 22 and subsequent paragraphs of document SCT/S2/INF/2, and made by other delegations, in relation to the accuracy and integrity of WHOIS databases.

231. This Report was adopted by the Second Special Session of the Standing Committee on May 24, 2002.

[Annex I follows]

ANNEX I

STATEMENT

by Mr. Hans Corell
Under-Secretary-General for Legal Affairs
The Legal Counsel of the United Nations

on behalf of the Legal Advisers
of the United Nations System

WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications

Second Special Session on the Report of the
Second WIPO Internet Domain Name Process

Geneva, May 21 to 24, 2002

Distinguished members of the Standing Committee, it is a great pleasure for me to be here to address you on behalf of the Legal Advisers of the United Nations System. Thank you also for agreeing to receive the paper that I submitted on behalf of the Legal Advisers concerning domain name registrations using the names or abbreviations of international intergovernmental organizations without authorization. Our paper summarizes the problem and provides the Standing Committee with examples of such abusive registrations, including some of the more egregious cases.

In presenting the views of the Legal Advisers of the United Nations System today, I would like to emphasize that the expertise of the Legal Advisers covers a diversity of fields. Among those I could mention are: peace-keeping, development, trade, the environment, refugees, food security, civil aviation, culture, labor relations, maritime transportation, health, banking, atomic energy, meteorology, the prohibition of chemical weapons and the comprehensive nuclear test ban. The development of international cooperation in each of these disparate areas has shown that principled legal solutions developed by States have provided the most secure, fair and coherent outcomes to international problems and issues.

Pursuant to the First and, now, the Second WIPO Internet Domain Name Process, your organization has been called upon to lend its perspective and expertise to ICANN with regard to proposals concerning governance of the Domain Name System. To that extent, States are in a limited position through your organization to contribute solutions to a myriad of problems regarding Internet governance. We believe that the diversity of perspectives of the Legal Advisers of the United Nations System can assist WIPO in making such a contribution.

The Legal Advisers recognize that international intergovernmental organizations are not alone in facing the problem of abusive domain name registrations. Nevertheless, we are concerned that the Uniform Dispute Resolution Procedure, the UDRP ["the OO-DRUP"], does not provide an effective means for such organizations to resolve disputes regarding such abusive registrations. Of course, international intergovernmental organizations, including those within the United Nations System, are accorded privileges and immunities that prevent national courts throughout the world from subjecting the organizations to their jurisdiction. The purpose of such privileges and immunities is to ensure that international intergovernmental organizations can effectively and efficiently carry out their important functions. It is important to stress that enjoying immunity from the jurisdiction of national courts does not mean that such organizations are above the law. Indeed, many regimes imparting such immunity, such as the Convention on the Privileges and Immunities of the United Nations, provide that whenever international intergovernmental organizations maintain their immunity from suit in respect of a private law claim, such organizations shall provide an appropriate mode of settlement for the claim. Thus, the immunities of international intergovernmental organizations are jurisdictional in nature.

With respect to UDRP proceedings, as you know, any party who might be dissatisfied with either the process or the outcome of such proceedings may file suit in a court of competent jurisdiction for a *de novo* review of the dispute. Consequently, the United Nations and other international intergovernmental organizations are concerned that their submission to an UDRP proceeding could subject them to the jurisdiction of national courts. Accordingly, such organizations have been unwilling to submit their disputes concerning abusive domain name registrations to an UDRP proceeding.

The Legal Advisers of the United Nations System recognize that the UDRP provides a necessary means for efficiently resolving domain name disputes. All we seek is an appropriate procedure that would supplement the UDRP in a manner that would respect the status and privileges and immunities of international intergovernmental organizations while at the same time providing effective redress for dealing with abusive domain name registrations. We are concerned that this problem will only grow worse with the proliferation of additional generic top-level domain names. We also certainly recognize that any procedure that would provide effective redress to international intergovernmental organizations should also respect the equally important international norms regarding fairness and due process for any other party involved.

Through the report on the Second WIPO Internet Domain Name Process, your organization is now preparing to make its recommendations to ICANN regarding proposals to improve the Domain Name System. The recommendations will, among other things, include proposals for protecting the names of international intergovernmental organizations. The Legal Advisers of the United Nations System respectfully request that your recommendations include both a proposal for a procedure for fast-tracking disputes involving domain name registrations incorporating the names or abbreviations of international intergovernmental organizations without authorization and for an appropriate amendment to the UDRP providing for an independent and impartial arbitral tribunal that would respect the status and privileges and immunities of international intergovernmental organizations that are parties to UDRP arbitral proceedings. The purpose of such a tribunal would be to provide final and binding rulings following a *de novo* review of decisions of UDRP arbitral tribunals in cases in which a party to such UDRP proceeding is an international intergovernmental organization.

On a more general note, I would like to share with you a concern raised by many of the Legal Advisers of the United Nations System – based on our limited discussions thus far on this matter –

that the Internet, which has evolved into a global forum for the exchange of ideas, information, and commerce, operates on a basis that is not regulated by treaty. Yet, as you more than anyone else are aware, international legal regimes and norms cannot be ignored in the operation of the Internet. Thus, the operation of the Domain Name System – which, at least for generic top-level domains, is governed by a California not-for-profit corporation under contract with the United States Department of Commerce – has already come up against the interests of trademark holders, who have traditionally relied, at least in part, on international legal regimes and international bodies, such as WIPO, to regulate and protect such interests.

We find it remarkable that the governing of the Domain Name System, an essential element of the Internet, should be entrusted solely to a private entity operating on a private-law basis rather than under the authority of an international representative body operating on the basis of public law. Surely, in the past this would not have been considered an appropriate means of regulating phenomena with such international impact. Some have argued that the pace and dynamics of the evolution of the Internet preclude its being governed and operated by one or more international intergovernmental organizations. But the fact that WIPO, including this Committee, has been called upon to gather views on and provide recommendations regarding a range of complicated and multifaceted questions confronting the Domain Name System undermines that contention. And yet, the Domain Name System is only one of many aspects of the Internet requiring regulation and standardization.

As a global forum that is evolving and that promises to play an increasingly important role in the Information Age, the Internet will continue to require international cooperation for both its operation and its regulation. International bodies, such as WIPO, that are representative of the international community are uniquely suited to foster such cooperation. As recent events have reminded us, international cooperation is an inescapable requirement in today's world; it need not – and it should not – be viewed as posing obstacles to progress.

We are fully aware that WIPO may not feel that it is within its mandate to deal with this overriding issue. However, the Members of WIPO, and, in particular, of this Committee, are better placed than most to understand the problems and the need for proper regulations for the future. We, therefore, urge you to raise these questions with your Governments: What is the appropriate forum for Internet governance including, in particular, the operation of the Domain Name System? Should such matters really continue to be entrusted to private-law regulation by a non-governmental body operating under the auspices of one State? Should it not, rather, be entrusted to the international community based on a proper treaty mechanism? This does not mean that the practical work of managing the Domain Name System, including as it is currently managed by ICANN, or other aspects of the Internet, including current processes for resolving technical issues, would differ much. Such activities, as has been the case with the public and private cooperation through the International Telecommunication Union, can continue to be overseen by private bodies or processes under principles established by the international community.

We realize that the solution to these complex questions will require time and careful reflection. Meanwhile, the current system of Internet governance must address the problem of abusive registrations of domain names using the names or abbreviations of international intergovernmental organizations. I again thank you for providing the Legal Advisers of the United Nations System with the opportunity to share our concerns and to present you with our views and proposals on this matter. In providing input to ICANN regarding the Second WIPO Internet

Domain Name Process, we strongly urge you to include a proposal for preventing abusive domain name registrations using the names or abbreviations of international intergovernmental organizations. In addition, we respectfully request that such organizations be given an effective means of redress when such abusive registrations occur.

Thank you.

[Annex II follows]

ANNEXE II/ANNEX II/ANEXO II

LISTE DES PARTICIPANTS /LIST OF PARTICIPANTS

I. MEMBRES/MEMBERS

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

AFRIQUE DU SUD/SOUTH AFRICA

Enver DANIELS, Chief State Law Advisor, Department of Justice and Constitutional Development, Cape Town

Jody FORTUIN (Ms.), Assistant State Attorney, Department of Justice and Constitutional Development, Cape Town

Fiyola HOOSEN (Ms.), Second Secretary, Permanent Mission, Geneva

ALGÉRIE/ALGERIA

Nabila KADRI (Mme), directrice de la Division des marques, des dessins et modèles industriels et appellations d'origine, Institut national algérien de la propriété industrielle (INAPI), Alger

Nor-Eddine BENFREHA, conseiller, Mission permanente, Genève

ALLEMAGNE/GERMANY

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* Sur une décision du Comité permanent, les Communautés européennes ont obtenu le statut de membre sans droit de vote.

* Based on a decision of the Standing Committee, the European Communities were accorded Member status without a right to vote.

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