

22 July 2005 ~ Geneva
IIM/3 For a Development Agenda at WIPO

Notes for Day 3 – Robin Gross, IP Justice

CHAIRMAN RIGOBERTO GAUTO VIELMAN OF PARAGUAY:

All countries agree that some form of discussion must continue.

However, consensus could not be reached regarding how to continue the discussion.

There are two proposals:

1. Renew the IIM process and continue existing discussions.
2. Continue all work regarding a Development Agenda in the PCIPD.

The majority of countries prefer to continue work within the IIM framework, however some delegations refuse to accept that proposal. So perhaps a compromise solution is to let General Assembly decide how to work in future.

There are also proposals to make a factual report on what took place in the meetings, reflecting the work we would like to do without stating where that work would take place.

Now, we should allow formal concluding remarks and decide the format for our report to the General Assembly. I open the floor to Member States.

ARGENTINA:

On behalf of the Group of Friends of Development (FoD), we are sorry that although the majority were agreed, there will be no positive outcome because of a few delegations against the proposal. Most delegations agree that the IIM process should be renewed. The IIM has not finished examining all proposals submitted and new proposals are to be submitted. Forwarding work to PCIP is not acceptable because it is just one of proposals on the table and there is no agreement on that proposal. So this proposal should continue to be looked at with other proposals in the spirit of maximum flexibility.

The FoD proposal is that the IIM recommends that the WIPO General Assembly should renew the process of IIM with a view to addressing effectively the existing and any new proposals to establish a Development Agenda for WIPO. We propose 3 new IIMs, ending in July 2006 and a report back to 2006 General Assembly on these proposals.

This is minimum proposal to express to General Assembly.

INDIA:

We are far from concluding our process. No single proposal has received much discussion. The logical thing would be to continue our discussions. It is customary in the past to continue our discussions. We are surprised about the objection. Since no substantive issue is involved, there should be no difficulty. We are surprised that 1 or 2

delegations had reached a point where a substantive outcome could be reached – the remittance of development issues to PCIPD, which is one of the substantive proposals. This is a substantive decision and we had not yet reached any substantive proposals. It is baffling to change horses mid-stream. Rather, we are changing from a horse to a mule mid-stream. We should roll over the IIM process for 1 year.

SRI LANKA:

Sad to hear even when large majority of views converging to continue IIM process, full consensus was not achieved. These are historic meetings – the 1st time developing countries stimulate a debate on development at WIPO. Development is being negotiated by colleagues in NY. We thank the African Group for reminding us the recent Doha Agreement for WIPO to adopt a Development Agenda.

We fully support the Brazilian proposal. WERO is in line with recent trends in many UN and international organizations (IMF). Public-interest NGOs should participate. Concern for software patents – there are many views on harmonization. WIPO should organize panels on IPR on development and free and open source software.

PAKISTAN:

We wish to put a few things in perspective: this organization (through a General Assembly decision) gave a mandate for IIMs to consider FoD proposal and others that may emerge – to examine them and then to come up with recommendations. First half of IIM process was a procedural discussion on how to proceed – it wasted time. Only mid-way through of 2nd IIM, we embarked on substantive discussion. List of proposals has grown, even at this IIM. Only held a preliminary exchange of views, which can in no way be viewed as an examination as mandated. The work has not been done and now we are asked to dismantle our work. This demonstrates a lack of seriousness with regard to issue of development – sad. Conspicuously important is the lack of seriousness. Even at this late stage of deliberations – our delegation still has hope that work is in progress. Our work has not been discharged properly –we must let it continue. A recommendation has to be passed on to the General Assembly. Only logical recommendation is to continue our work. We have a consensus minus a few situation. This work should be allowed to continue. Pakistan is speaking on behalf of southern countries. We support continuing the IIM process – at a minimum, it is only logical. The African proposal has not even been considered yet.

UNITED STATES OF AMERICA:

There is a positive broad agreement to continue development discussions. But these discussions should be structured within PCIPD – there is no limit on its mandate and a new mandate could be provided. IIM process has been useful for preliminary exchange – not in depth examination of all proposals. IIM was a compromise. FoD called for working Group to establish a Development Agenda. Many agreed that PCIPD should be the forum. IIM was a compromise. Our report should be factual and General Assembly should decide how to go forward. IIM discussions could continue for 20 years – IIM is not the best way to continue. The US proposal was only proposal not to have prejudice on outcome. We should keep the good will going.

We propose the report should recall the decision to initiate the IIM, list all proposals and note that others may come, and note our full agreement to continue discussions some where.

WIPO is demand driven and not limited to technical assistance.

The key proponents of the Development Agenda have received 456 development cooperation activities in a report by WIPO International Bureau. We are trying to show that WIPO has not ignored development concerns. The development debate has profound misunderstandings.

MOROCCO:

We represent the African Group position – support the renew mandate of IIM. All proposals should be dealt with in the same way. Any other proposal that would not be along those lines is not treating all proposals with equal footing.

CHILE:

We support the FoD proposal made by Argentina. It is similar to the African Group proposal and also to what the European Community proposed – to go on with this IIM process. We want our proposal treated in the same way as others. We have had a fruitful discussion and it should not be stopped. PCIPD is not the right forum. Some delegations that originally wanted PCIPD are flexible and want IIM to continue.

JAPAN:

The 3 IIM sessions were useful, fruitful, and significant. We should continue our debates. However IIM is process of compromise of General Assembly 2004. IIM's main function is to make report by end of 30 July. Such report should be factual. It is not appropriate for IIM to decide to continue its extension – that should be General Assembly decision [IPJ note: it is only a recommendation to General Assemble to continue, not a decision to continue, so Japan's statement makes no sense]. Bahrain and African proposals were not discussed. These proposals should be treated properly – we can decide at next General Assembly. We are concerned about the extension of IIM is related to process, not substance.

BRAZIL:

It was not possible to achieve consensus in informal consultations. We should build upon the majority view of members. There is ample agreement to extend IIM for 1 year to enable all proposals consideration adequately and on same footing. FoD presented substantive document on Development Agenda, it was not fully considered, up until now. Even proposals put forth by developed countries were not discussed and there is no agreement on those proposals. There has been no negotiation on anything yet. Important thing is to work on the basis of an outcome – which is not reached yet – it is essential to continue. To shift our forum in mid-course as a few Members have insisted, diminishes development concerns. Concerns should be further developed in all of WIPO's activities – and not prejudging the forum in which Development Agenda should continue to be

discussed; the only way for proposals to have the same footing is in IIM forum. IIM is not permanent body. PCIPD is only one of many proposals put forward. It is not appropriate to adopt one among many proposals submitted. There is no agreement on what PCIPD should or should not do. We do not want to pick and choose particular outcomes for early harvest. The report should go forward with IIMs and majority favors IIMs in current process for 1 more year.

MEXICO:

It is difficult to reach conclusion, and better to establish factual report, state various proposals and intention of other proposals to be submitted.

ARGENTINA:

Not sure we understood what is meant by factual report. Summary of three meetings held so far sent to General Assembly? Talking about new type of report? What do you mean?

We need to correct inconsistencies: last year annex presented to General Assembly including series of decisions to be adopted. One decision was for working group to review all remaining issues – deal with proposals, but not decide on. Working group is not supposed to be a permanent body. The claim that we said “20 more years of discussions”, is taken out of context. We need to limit the process in time – that is why we made that comment – we need to focus on process and its implementation. Developing countries do not want process to continue for many years.

CHINA:

Continuing the IIM format is preferred.

1. IIMs were decided by general assembly. This meeting has not accomplished its mandate yet.
2. PCIPD is one of the contents of the proposals at this meeting. IIM has not discussed substantive matters. Before this, we cannot make a decision of this proposal.

SOUTH AFRICA:

Need clarification of working group – deal with implementation mechanism of principles and action points as Argentina has just pointed out. Some delegation expressed concern that it would go on indefinitely and hence proposed the Development Agenda work be dealt with in PCIPD. But an indefinite continuation is not in the interest of developing countries – we need outcomes that benefit developing countries. Discussions will continue indefinitely if sent to PCIPD, for example, discussions there that have no benefit for developing countries deal with genetic and bio resources. The African Group proposal needs to be discussed within a renewed IIM.

BOTSWANA:

We endorse the Moroccan proposal. We took the floor to register our disappointment that a crucial element of development seems to have attracted vagueness as to where the organization is heading. It is only logical to take the matter to General Assembly for guidance. The factual report should say we are not happy with injustice and treatment to the African proposal. The African Group proposal should be discussed as others should

be discussed. And it should be discussed in same manner and structure as others. We do not want to get into PCIPD, for the same reasons why others do want the PCIPD. All countries and all proposals should be treated with equality. There should be same privileges for all proposals. This IIM body should continue to discuss the issue of development.

ALGERIA:

We support the Moroccan proposal made on behalf of the African Group. All proposals should be discussed in an open way. Our intention is not to make IIM a standing committee. Developing countries do not have an interest in prolonging these discussions. There is at least one proposal that has not benefited by the right to be before General Assembly as other proposals. Our group is deprived of the right to discuss our proposal.

COLOMBIA:

Need thorough discussion of each proposal – this justifies continuing IIM format, which is the appropriate forum for achieving the progress we hope for. A new mandate for a meeting should concentrate on consensus building on the proposals. Then in one year we can take to General Assembly a real agreement that the 2006 Assembly could adopt and approve. We support Argentina's recent proposal on behalf of FoD. The USA proposal is one in a package of proposals. There is no consensus to give the responsibility of Development Agenda to PCIPD.

SENEGAL:

We support the Moroccan proposal on behalf of the African Group – it sums up the discussion. The mandate of this inter-governmental body is in favor of its renewal. On principle, we want all proposals dealt with on equal footing. Anything else would mean no equal treatment. It is practical to continue our discussion in this forum. Vast majority is in favor of renewing IIM's mandate. Our duty to advise General Assembly of what actually happened. There are proposals which have not been given appropriate treatment. Only just and fair for General Assembly to see them as well in factual report. The list of all proposals in annex to Chairman's Summary of IIM2 – does not contain African group's proposals submitted yesterday. Our duty to make this known to General Assembly.

BOLIVIA:

We support Argentina's proposal on behalf of the FoD. Clarify issue of PCIPD – Traditional Knowledge, Genetic Resources & Folklore Committee – there was discussion for 8 sessions and no outcome – no concrete solution. Developing countries are frustrated at those meetings (to put it mildly). We don't want to run in same situation with PCIPD. Here, only 1 or 2 delegations are exception. Sending to PCIPD would favor only some of proposals. WIPO's credibility would be reduced if discussions were sent to PCIPD. Millennium development goals should be supported.

EGYPT:

[IPJ note: Gives long list of Member States in support of FoD's proposal to recommend renewing IIM]. This reflects frustration of inability to unanimously agree on how to

continue process which has not fulfilled its mandate. Very few delegations favor not continuing in IIM. In response to Japan's point – what we are discussing is our recommendation to General Assembly – not deciding on behalf of General Assembly. It would be up to General Assembly to adopt recommendation or decide otherwise. IIM has been established as an interim session. IIM is not and should not be a permanent body – that would undermine our objectives to establish Development Agenda for WIPO.

CANADA:

All proposals need to be explored on equal footing. We have been frustrated on important matter of process. Consensus can be reached at 2005 General Assembly on relationship of development and Intellectual property.

IRAN:

Compromise of IIM has not finished work. Process is all that has been discussed.

NIGERIA:

We support the African Group – and should continue IIM process to logical end. Development matters are crucial. We are very strongly in favor of continuing IIM process. In reference to US delegation – there is merit in 1 or 2 things they say. List all proposals and new ones for full discussion by committee. Important to have structured discussion. No result after 3 meetings because we focus on process and had no substantive discussions.

INDIA:

Chair, one remark you made alarmed us at prospect of having to be here until tomorrow. Before we had to spend 3 days working on a summary. Optimistic at prospect and not necessary. We have record of all 3 discussions. We ask if the 2 delegations opposed to continuing IIM process would object to having their names mentioned as those opposing IIM in the report? [IPJ Note: This is the USA and Japan that are opposed].

ARGENTINA:

We support India's proposal. A consensus is based on a majority. The majority here is quite obvious among members. This method has already been used in the past when delegations experience difficulties. We need more precise numbering of proposals – provide an updated list.

UNITED KINGDOM:

I speak on behalf of the European Community and 25 Member States. There is no full consensus on the way forward. These are historic set of discussions at WIPO. It is late. We are tired. Our time spent in IIMs has not been wasted. Situation is ripe to allow time for further reflection leading up to General Assembly. We should return to the question at the General Assembly. The best way forward is for you to provide a factual report along the lines of previous IIMs and leave it up to General Assembly on how to proceed.

UNITED STATES OF AMERICA:

We thank India for bringing up the report. The report should be a short factual summary or the full minutes of IIM/3 to go forward. Not just two countries that want to leave it up to General Assembly.

SWITZERLAND:

A recommendation should be after the General Assembly. It is unclear where our work will continue. This forum should leave choice of where to go forward up to General Assembly. You should draft a factual report.

SENEGAL:

Include 16 pts.

BRAZIL:

Wanted to include transfer of technologies. Report must be approved by members of IIM.

INDIA:

How can UK's proposal amount to a report of IIM? How is that linked to what the delegate of Brazil said? How could the General Assembly take a decision on forum that would not amount to a decision of this IIM? When Switzerland says 'we leave it to the General Assembly', if that decision is not the IIM, then let us leave the option of PCIPD to General Assembly. When we leave the decision open, we say PCIPD should continue to be option for General Assembly – that is not what reflects the view of the Member States.

JORDAN:

IIM option was supported by Member States. PCIPD was also supported. We had mandate for one year only of IIM.

CHAIR:

I am going to have to think about an objective way to present something to General Assembly. We need a few minutes to think of something.