

WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

ASSEMBLIES OF THE MEMBER STATES OF WIPO

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PROPOSAL FOR THE AMENDMENT OF ARTICLE 9(3) OF THE CONVENTION ESTABLISHING THE WORLD INTELLECTUAL PROPERTY ORGANIZATION

Memorandum of the Director General

1. In its ordinary session of September-October 1997, the WIPO General Assembly adopted a resolution requesting the WIPO Coordination Committee to make recommendations to the General Assembly at its session in September 1998 on policies and practices for the nomination and appointment of Directors General of WIPO, and for this purpose invited the Coordination Committee to establish a Working Group (see document WO/GA/XXI/13, paragraph 236).
2. Pursuant to the request in the resolution mentioned in the preceding paragraph, the WIPO Coordination Committee, in its extraordinary session of March 25 to 27, 1998, established a Working Group on Policies and Practices for the Nomination and Appointment of Directors General (the Working Group) (see document WO/CC/40/2, paragraph 7). The Working Group held its first session from May 6 to 8, 1998, and its second and final session on July 2 and 3, 1998.
3. At its second session, the Working Group decided to recommend to the WIPO Coordination Committee the adoption of a policy limiting the number of mandates that may be served by Directors General of WIPO to two mandates of six years each. The Working

Group decided further to recommend that this policy be reflected in an amendment to the Convention Establishing the World Intellectual Property Organization (the WIPO Convention), it being recalled that Article 9(3) of the WIPO Convention¹ contains provisions dealing with the appointment of Directors General (see document WO/CC/WG-DG/2/3, paragraph 22).

4. The recommendations of the Working Group were considered and adopted by the WIPO Coordination Committee at its forty-second (29th ordinary) session in September 1998 and, in turn, transmitted to the WIPO General Assembly for consideration by that body during its September 1998 session (see document WO/CC/42/3, paragraph 8).

5. At its twenty-third (10th extraordinary) session from September 7 to 15, 1998, the WIPO General Assembly, acting upon the recommendation of the WIPO Coordination Committee, considered and adopted the following text:

“1. The WIPO General Assembly

(i) adopts a policy fixing a limitation to the number of mandates that a Director General may serve;

(ii) decides that that policy should limit the number of mandates to two fixed terms of six years each;

(iii) decides that the Convention Establishing the World Intellectual Property Organization (the WIPO Convention) should be amended as soon as possible to reflect the policy set out in the preceding two sub-paragraphs.

“2. The WIPO General Assembly adopts the Procedures for the Nomination and Appointment of Directors General of WIPO set out in paragraph 5 of document WO/GA/23/6.”

(See document WO/GA/23/7, paragraph 22.)

Procedure for Amending the WIPO Convention

6. Any provision of the WIPO Convention may be amended, in accordance with Article 17 of the WIPO Convention, by the WIPO Conference. Article 17 of the WIPO Convention provides as follows:

“Article 17

Amendments

“(1) Proposals for the amendment of this Convention may be initiated by any Member State, by the Coordination Committee, or by the Director General. Such

¹ Article 9(3) of the WIPO Convention provides as follows:

“(3) The Director General shall be appointed for a fixed term, which shall be not less than six years. He shall be eligible for reappointment for fixed terms. The periods of the initial appointment and possible subsequent appointments, as well as all other conditions of the appointment, shall be fixed by the General Assembly.”

proposals shall be communicated by the Director General to the Member States at least six months in advance of their consideration by the Conference.

- “(2) Amendments shall be adopted by the Conference. Whenever amendments would affect the rights and obligations of States party to this Convention not members of any of the Unions, such States shall also vote. On all other amendments proposed, only States party to this Convention members of any Union shall vote. Amendments shall be adopted by a simple majority of the votes cast, provided that the Conference shall vote only on such proposals for amendments as have previously been adopted by the Assembly of the Paris Union and the Assembly of the Berne Union according to the rules applicable in each of them regarding the adoption of amendments to the administrative provisions of their respective Conventions.
- “(3) Any amendment shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the States Members of the Organization, entitled to vote on the proposal for amendment pursuant to paragraph (2), at the time the Conference adopted the amendment. Any amendments thus accepted shall bind all the States which are Members of the Organization at the time the amendment enters into force or which become Members at a subsequent date, provided that any amendment increasing the financial obligations of Member States shall bind only those States which have notified their acceptance of such amendment.”

7. It is observed that the following requirements must be satisfied in order for an amendment to be made to Article 9(3) of the WIPO Convention in accordance with the procedure set out in Article 17 of the WIPO Convention:

(i) The proposal for amendment must be initiated by a Member State, by the Coordination Committee, or by the Director General (Article 17(1), WIPO Convention). In the present case, the proposal for the amendment of Article 9(3) of the WIPO Convention was initiated by the WIPO Coordination Committee (document WO/CC/42/3, paragraph 8) and confirmed by the Member States of WIPO acting through the WIPO General Assembly (document WO/GA/23/7, paragraph 22).

(ii) The proposal for amendment must be communicated by the Director General to the Member States at least six months in advance of its consideration by the WIPO Conference (Article 17(1), WIPO Convention). The present document constitutes the communication by the Director General of the proposal for amendment of Article 9(3) within the statutory time limit.

(iii) Before the WIPO Conference may vote on the adoption of the proposal for amendment, the proposal must first be adopted by the Assembly of the Paris Union and the Assembly of the Berne Union according to the rules applicable in each of them regarding the adoption of amendments to the administrative provisions of their respective Conventions

(Article 17(2), WIPO Convention).² The amendment of the administrative provisions of the Paris Convention and the Berne Convention are governed by Article 17 of the Paris Convention and Article 26 of the Berne Convention, respectively, which are substantially identical.³ Those provisions require that proposals for amendment be adopted by a three-fourths majority in each respective Assembly.

² See the commentary to the draft of Article 17 that was submitted to the Stockholm Diplomatic Conference of 1967:

“Paragraphs (1) and (2) deal with the adoption of amendments. The procedure consists of three steps. First, the proposal must be communicated by the Director General to the Member States with a minimum of six months’ advance notice. Then, the proposal is put to a vote in the Assemblies of the Paris and Berne Unions. If the proposal for amendment is not approved in any of these Assemblies, it cannot be voted upon in the Conference. It is noted that in the Assemblies of the Paris and Berne Unions even those countries which are not Members of the Organization may vote on proposals for amending the Convention which has established the Organization. Finally, the proposal for amendment, if passed by the Assemblies of the two Unions, is voted upon by the Conference of the Organization.” (Records of the Intellectual Property Conference of Stockholm (1967), Vol. I, p. 526, paragraph 96).

See, also, the *Report of Main Committee V*:

“113. The adoption of amendments is governed by Article 17(2). Before being discussed by the Conference, the proposed amendments must be adopted by the Assemblies of the Paris and Berne Unions by a three-fourths majority. In the Conference, the decision is taken by a simple majority of the Member States. Non-Union countries take part in the vote only if the amendments are likely to affect their rights or obligations. It will be for the Conference to determine, in each case, whether this condition is fulfilled.” (*Records of the Intellectual Property Conference of Stockholm (1967), Vol. II, p. 1242, paragraph 113*).

³ Article 17 of the Paris Convention provides as follows:

“(1) Proposals for the amendment of Articles 13, 14, 15, 16, and the present Article, may be initiated by any country member of the Assembly, by the Executive Committee, or by the Director General. Such proposals shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.

“(2) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided that any amendment to Article 13, and to the present paragraph, shall require four-fifths of the votes cast.

“(3) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the countries members of the Assembly at the time it adopted the amendment. Any amendment to the said Articles thus accepted shall bind all the countries which are members of the Assembly at the time the amendment enters into force, or which become members thereof at a subsequent date, provided that any amendment increasing the financial obligations of countries of the Union shall bind only those countries which have notified their acceptance of such amendment.”

Article 26 of the Berne Convention provides as follows:

“(1) Proposals for the amendment of Articles 22, 23, 24, 25, and the present Article, may be initiated by any country member of the Assembly, by the Executive Committee, or by the Director General. Such proposals shall be communicated by the

(iv) If the proposal for amendment is adopted with the required majorities in the Assemblies of the Paris and Berne Unions, it may then be considered and voted upon in the WIPO Conference. In the WIPO Conference, a simple majority of the votes cast is required for adoption (Article 17(2), WIPO Convention). If the amendment would affect the rights and obligations of States party to the WIPO Convention that are not members of any of the Unions, such States are entitled to vote, whereas, on all other amendments, only States party to the WIPO Convention and members of a Union may vote (Article 17(2), WIPO Convention). While it is for the WIPO Conference to decide whether the proposed amendment of Article 9(3) affects the rights and obligations of States party to the WIPO Convention that are not members of any of the Unions,⁴ it is believed that the proposed amendment in the present case is of such a character, so that all States party to the WIPO Convention would be entitled to vote.

(v) An amendment adopted in accordance with the foregoing procedure enters into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the States members of the Organization that were entitled to vote on the proposal for amendment in the WIPO Conference (Article 17(3), WIPO Convention). Since the proposed amendment does not increase the financial obligations of Member States, the amendment binds all States which are members of the Organization at the time that it enters into force or which subsequently become members (Article 17(3), WIPO Convention).

The Proposal for Amendment of Article 9(3) of the WIPO Convention

8. Following the adoption of the agreed text on a policy on the limitation of mandates of Directors General by the WIPO General Assembly in September 1998 and the decision of that body that the WIPO Convention should be amended as soon as possible to reflect that policy (paragraph 5, above), the International Bureau sent out a circular dated October 13, 1998, to

[Footnote continued from previous page]

Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.

“(2) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided that any amendment of Article 22, and of the present paragraph, shall require four-fifths of the votes cast.

“(3) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the countries members of the Assembly at the time it adopted the amendment. Any amendment to the said Articles thus accepted shall bind all the countries which are members of the Assembly at the time the amendment enters into force, or which become members thereof at a subsequent date, provided that any amendment increasing the financial obligations of countries of the Union shall bind only those countries which have notified their acceptance of such amendment.”

⁴ See the passage from the Report of Main Committee V at the Stockholm Diplomatic Conference of 1967 quoted in footnote 2, above.

all Member States. The circular enclosed, and invited comments upon, a proposed draft of a new text to amend and replace Article 9(3) of the WIPO Convention (see C.174, attached as Annex I). The circular further stated that, in accordance with Article 17(1) of the WIPO Convention, the Director General would send a final draft text to Member States of WIPO before March 1999, as a proposal for the amendment of the WIPO Convention for consideration by the WIPO Conference at its meeting in September 1999.

9. Replies to the circular were received from the following States: Armenia, Côte d'Ivoire, Dominica, Ecuador, Jordan, Kyrgyzstan, Madagascar, Mexico, Niger, Peru, Republic of Moldova, Spain, The former Yugoslav Republic of Macedonia, Uganda and Yugoslavia.

10. Each of the States mentioned in the preceding paragraph approved both the principle and the drafting of the proposed amendment to Article 9(3), with the exception of Madagascar, Peru and Spain. These three States, while approving the principle of the proposed amendment, proposed alternative draft texts of the proposed amendment to Article 9(3) of the WIPO Convention. Those alternative drafts are reproduced in Annexes II, III and IV, as well as below.

Proposed Text of Amendment to Article 9(3) of the WIPO Convention

11. The present text of Article 9(3) of the WIPO Convention provides as follows:

“(3) The Director General shall be appointed for a fixed term, which shall be not less than six years. He shall be eligible for reappointment for fixed terms. The periods of the initial appointment and possible subsequent appointments, as well as all other conditions of the appointment, shall be fixed by the General Assembly.”

12. The proposed amended text of Article 9(3) of the WIPO Convention is as follows:

“(3) The Director General shall be appointed for a fixed term of six years. He shall be eligible for reappointment only for one further fixed term of six years. All other conditions of the appointment shall be fixed by the General Assembly.”

13. The alternative amended text of Article 9(3) of the WIPO Convention proposed by Peru is as follows:

“(3) The Director General shall be appointed for a term of six years. He shall be eligible for reappointment only for one further term of six years. All other conditions of the appointment shall be fixed by the General Assembly.”

14. The alternative amended text of Article 9(3) of the WIPO Convention proposed by Madagascar is as follows:

“(3) The Director General shall be appointed for a term of six years, renewable once. The other conditions of the appointment shall be fixed by the General Assembly.”

15. The alternative amended text of Article 9(3) of the WIPO Convention proposed by Spain is as follows:

“(3) The Director General shall be appointed for a term of six years. He shall be eligible for reappointment only for another term of six years. All the other conditions of the appointment shall be fixed by the General Assembly.”

16. The Assembly of the Paris Union is invited to adopt the proposed amendment to Article 9(3) of the WIPO Convention set out in paragraph 12, above.

17. The Assembly of the Berne Union is invited to adopt the proposed amendment to Article 9(3) of the WIPO Convention set out in paragraph 12, above.

18. The WIPO Conference is invited to adopt the proposed amendment to Article 9(3) of the WIPO Convention set out in paragraph 12, above.

[Annexes follow]

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ANNEX I

C. 174
CO-01

The International Bureau of the World Intellectual Property Organization (WIPO) presents its compliments to the Ministry of Foreign Affairs and, with reference to the decision of the WIPO General Assembly concerning policies and practices for the nomination and appointment of Directors General of WIPO, adopted at its meeting from September 7 to 15, 1998 (see WIPO document ./. WO/GA/23/7, paragraph 22), has the honor to enclose, and to invite comments upon, a proposed draft of a new text to amend and replace Article 9(3) of the Convention Establishing the World Intellectual Property Organization (“the WIPO Convention”). It would be appreciated if any comments concerning the proposed draft text could be transmitted to the International Bureau of WIPO before *December 15, 1998*.

It is intended that, in accordance with Article 17(1) of the WIPO Convention, a final draft text be communicated to the Member States of WIPO by March 1999, as a proposal for the amendment of the WIPO Convention for consideration by the WIPO Conference at its meeting in September 1999.

October 13, 1998

Enclosure: Proposed Amendment to Article 9(3) of the Convention Establishing the World Intellectual Property Organization

Proposed Amendment to Article 9(3) of the
Convention Establishing the World Intellectual Property Organization

Present Text

(3) The Director General shall be appointed for a fixed term, which shall be not less than six years. He shall be eligible for reappointment for fixed terms. The periods of the initial appointment and possible subsequent appointments, as well as all other conditions of the appointment, shall be fixed by the General Assembly.

Draft Proposal for New Text

Text indicating Modifications

(3) The Director General shall be appointed for a fixed term **of six years**, ~~which shall be not less than six years.~~ He shall be eligible for reappointment **only for one further** fixed terms **of six years**. ~~The periods of the initial appointment and possible subsequent appointments, as well as a~~All other conditions of the appointment, shall be fixed by the General Assembly.

Clean Text

(3) The Director General shall be appointed for a fixed term of six years. He shall be eligible for reappointment only for one further fixed term of six years. All other conditions of the appointment shall be fixed by the General Assembly.

[End of text]

[Annex II follows]

ANNEX II

ALTERNATIVE PROPOSAL BY PERU

Permanent Representation of Peru to the International
Organizations with Headquarters in Geneva

The Permanent Representation of Peru to the Office of the United Nations and Other International Organizations with Headquarters in Geneva presents its compliments to the International Bureau of the World Intellectual Property Organization (WIPO) and has the honor to inform it that the Government of Peru would in principle be in agreement with the proposed amendments to Article 9(3) of the Convention establishing WIPO. It does however wish to propose that if possible the following drafting changes be made: the word "fixed" could be removed from the phrases "fixed term of six years" and "further fixed term of six years." The text could as a result read as follows:

"The Director General shall be appointed for a term of six years. He shall be eligible for reappointment only for one further term of six years. All other conditions of the appointment shall be fixed by the General Assembly."

The Permanent Representation of Peru takes this opportunity to renew to the World Intellectual Property Organization (WIPO) the assurances of its highest consideration.

Geneva, October 29, 1998

[Annex III follows]

ANNEX III

ALTERNATIVE PROPOSAL BY MADAGASCAR

Ministry of Industrialization and Handicraft

PRELIMINARY DRAFT FROM THE GOVERNMENT OF THE REPUBLIC OF
MADAGASCAR CONCERNING THE AMENDMENT OF ARTICLE 9(3) OF THE
CONVENTION ESTABLISHING THE WORLD INTELLECTUAL PROPERTY
ORGANIZATION (WIPO)

Reference: WIPO Circular No. C174/CO.01 of October 13, 1998

(a) Text with amendments shown

(3) The Director General shall be appointed for a ~~fixed~~ term of six years, **renewable once**. ~~He shall be eligible for reappointment only for one further fixed term of six years.~~ **All The** other conditions of the appointment shall be fixed by the General Assembly.

(b) Clean text

(3) The Director General shall be appointed for a term of six years, renewable once. The other conditions of the appointment shall be fixed by the General Assembly.

[Annex IV follows]

ANNEX IV

ALTERNATIVE PROPOSAL BY SPAIN

Ministry of Industry and Energy
Spanish Patent and Trademark Office

Madrid, November 6, 1998

Dear Mr. Gurry,

In your letter of October 13 you enclose Circular C.174 on a proposal for the amendment and replacement of Article 9(3) of the Convention establishing the World Intellectual Property Organization. In it there is a request for comments on the proposed text. The proposed amendment contains two expressions that are redundant in Spanish.

The wording of the first sentence, namely "The Director General shall be appointed for a *fixed* term of six years" contains the word "fixed" relating to a period of time; the mention of "six years" itself fixes that term, however, which makes the word "fixed" unnecessary.

In the second sentence, which reads "he shall be eligible for reappointment only for *one further fixed* term of six years," it would be advisable to replace the word "one" with "another" and to delete the words "further fixed." The reason for doing so is the same as that given in the foregoing paragraph, and also the fact that reappointment implies continuation, which is by definition "further," making the adjective superfluous.

Sincerely yours,

(Signed)

Diego A. Carrasco Pradas

[End of Annex IV and of document]