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WORLD INTELLECTUAL PROPERTY ORGANIZATION

COORDINATION COMMITTEE

Thirty-Third Session (25th Ordinary)
Geneva, September 26 to October 4, 1994

REPORT

adopted by the Coordination Committee

INTRODUCTION

1. The Coordination Committee was concerned with the following items of the Consolidated Agenda (document AB/XXV/1 Rev.): 1, 2, 3, 4, 5, 11, 12, 13, 14 and 15.
2. The report on the said items, with the exception of items 5 and 12 is contained in the General Report (document AB/XXV/6).
3. The report on items 5 and 12 is contained in the present document.
4. Mr. Roland Grossenbacher (Switzerland) was elected Chairman of the Coordination Committee.

ITEM 5 OF THE CONSOLIDATED AGENDA:

NOMINATION TO THE POST OF DIRECTOR GENERAL

5. Discussions were based on documents WO/CC/XXXIII/1 and 3 and took place in a meeting in which only the Delegations of the States represented at the twenty-fifth series of meetings of the Governing Bodies participated, and at which the Director General was not present.

6. The Chairman of the Coordination Committee recalled that on May 30, 1994, the Chairman of the WIPO General Assembly, in a note addressed to the member States of WIPO, had drawn their attention to the fact that the current term of the incumbent of the post of Director General, Dr. Arpad Bogisch, expired on November 30, 1995, and had invited the Government of each such State to propose the name of a national of its State as a candidate for that post. The Chairman stated that it was incumbent upon the Coordination Committee during its current session to propose the name of one candidate to be appointed by the General Assembly at its 1995 session to the post of Director General. The relevant rules of procedure concerning this matter were set forth in paragraph 1 of document WO/CC/XXXIII/1, which included the requirement that the decision of the Coordination Committee be by a simple majority whereas the appointment by the General Assembly be by a majority of two thirds of the votes cast. The Chairman also stated that, to date, two candidates had been proposed, namely, Dr. Arpad Bogisch, the present Director General of WIPO, presented by the Government of the United States of America, in the note of its Permanent Mission of May 19, 1994, reproduced as Annex II of document WO/CC/XXXIII/1, and that of Mr. Jean-Loup Tournier, presented by the Government of France, in the note of its Permanent Mission of July 13, 1994, annexed to document WO/CC/XXXIII/3. The Chairman of the Coordination Committee thereupon invited the Delegation of the United States of America and, thereafter, the Delegation of France to take the floor.

7. The Permanent Representative of the United States of America, Ambassador Daniel L. Spiegel, made the following statement:

"The Delegation of the United States of America is honored to nominate Dr. Arpad Bogisch for a two-year term as Director General of the World Intellectual Property Organization. Dr. Bogisch has held the post of Director General since 1973, and continues to provide strong leadership to this Organization. It is clear to my Delegation that the success of the World Intellectual Property Organization is due largely to the leadership and commitment of Dr. Bogisch. Indeed, the legal, technical, and organizational skills that Dr. Bogisch has demonstrated during his 21 years' service as Director General, and his more than 10 years' service to the Organization before that, make him uniquely qualified to continue to lead WIPO, the preeminent international organization for intellectual property.

"Dr. Bogisch began working here in 1963. Throughout his distinguished career, he has demonstrated tremendous commitment and loyalty to the Organization and to all its many member States. Whether working to revise a treaty, providing legal and technical assistance to developing countries, or simply increasing awareness of intellectual

property issues in the international context, Dr. Bogsch's vast knowledge, energy, and vision have helped to make the World Intellectual Property Organization the leading authority on international intellectual property standards.

"During his service as Director General, he has witnessed first-hand the challenges of increased international interdependence with respect to intellectual property. By understanding and fostering this interdependence, yet maintaining a clear understanding for the individual needs of the member countries of the World Intellectual Property Organization, Dr. Bogsch has laid a solid foundation upon which the Organization can continue to build in the years ahead. With the future holding so many more challenges in all areas of intellectual property, the Organization, now more than ever, needs the insight and guidance of Dr. Bogsch to insure that these challenges are met.

"Among the World Intellectual Property Organization's current efforts are proposed treaties for patent law harmonization, trademark law harmonization, trademark registration, and international copyright. With so many endeavors proceeding, and with the multiplicity of interests that prevail, the World Intellectual Property Organization needs a leader who can bring all countries together. That candidate is Dr. Arpad Bogsch.

"Dr. Bogsch's foresight in recognizing the key role of developing countries in the future economic prosperity of this planet is exemplary in the United Nations system, as is his service on behalf of these countries. Under his leadership, the Organization has moved its expertise into the field to help those who can best use it.

"As we all know, the World Intellectual Property Organization will establish a formal relationship with the World Trade Organization through the "TRIPS Council." This is a tremendous opportunity for WIPO to help bring intellectual property to the forefront of international cooperation. Because it has worked with so many countries on intellectual property, the World Intellectual Property Organization is uniquely positioned to facilitate consensus in the WTO.

"However, in order to navigate this new terrain, the World Intellectual Property Organization requires the strong leadership, sense of proportion, and foresight that Dr. Bogsch has consistently provided during his continued service.

"The success of the World Intellectual Property Organization is a tribute to Dr. Bogsch's commitment. His credibility in the international intellectual property community is unparalleled, and his enthusiasm unmatched. In short, if the World Intellectual Property Organization is to continue in its leadership role, it needs the proven combination of qualities and skills that only Dr. Arpad Bogsch can provide."

8. The Permanent Representative of France, Ambassador Michel de Bonnecorse, made the following statement:

"I should like to focus my intervention on two main ideas. First, I shall tell you why France is putting forward a candidate, and then I shall draw your attention to the fact that we find ourselves in an exceptional legal situation which should prompt reflection that is itself exceptional.

"Why is France presenting a candidate? It is doing so, Mr. Chairman, for three reasons.

"First, it is because we are aware that there is a deadline to be respected. Secondly, it is because we consider that there is a need for a new plan for the Organization, and finally because Mr. Tournier seems to us to be the best-placed candidate for that new plan. The deadline in question has to be respected for a number of reasons.

"First, because we have all known for three years, because it was so decided by us all, that the post of Director General of WIPO will fall vacant in December 1995. We took the decision twice, in the Coordination Committee and in the General Assembly. We also agreed, as an exceptional measure, to reduce to four years what should normally be a six-year term of office, that having been an element of the consensus that led to the withdrawal of the second candidate put forward by another Member State. Finally, the Director General had himself proposed remaining for those last four years, in other words for a term of office that still has 15 months to run until November 1995.

"Now we consider that a consensus is a consensus, and that when one's word is given it has to be kept. What we are saying therefore is that, when Mr. Tournier made his first informal, unofficial contacts last spring with a view to declaring himself a candidate, he thought he was applying for a vacant post and not running against the Director General. It is for that reason, moreover, that we were surprised by the abrupt, unexpected reaction in the form of the official declaration of Dr. Bogsch's candidacy, with the support of a Member State. In a word, we consider that a door has been closed to us that in fact we had all decided should remain open in 1994 and 1995.

"The second reason for our nomination of a candidate, however, is that we have a plan for WIPO.

"Yesterday and the day before yesterday, I was surprised at the number of speakers who pointed out that WIPO was at a turning point, that WIPO was facing new challenges, that the Marrakesh agreements were an entirely exceptional new deal and a dangerous environment for WIPO, which of course is true: it is precisely the conclusion that we ourselves have come to. We are indeed in a totally new context; we have to respond not only to the institutional challenge but also to the challenge of new technology.

"With regard to the institutional challenge, I mentioned yesterday that we considered it necessary to be extremely watchful, and that WIPO would have to be directed in an extremely authoritarian, firm and careful manner for many years in order to avoid any encroachments from the WTO, a young organization which, like any young organization, is prone to expansionist aspirations at a time when it is mapping out its frontiers and areas of competence.

"Then there is the challenge of new technology. I shall not overstress this point, as everyone has grasped the importance of the stakes to all the beneficiaries, and especially to the owners of neighboring rights. I shall merely say that the information superhighways of the years leading us to the next millennium, will require a driver's license different from that which was sufficient for the quiet roads of the nineteen-sixties.

"Finally, we consider that Mr. Tournier seems to us the best candidate for the new plan, for this new thrust, and for three reasons.

"First, he is a candidate with experience. His life has been entirely devoted to intellectual property; he has 30 years' experience and also great skill in management, the management of large organizations and the management of human resources. I will remind you that he has for many years been President of SACEM, an organization that he himself built up, employs three times the staff of WIPO and has been held up as a model by a great many countries that have also wanted to provide themselves with a representative body in the field concerned.

Second, he is the candidate of alternation, being a candidate from a new continent and also from the literary and artistic property sector. It is a good thing, in my opinion, that there should be some alternation, in the functional as well as in the geographical sense. Industrial property is undoubtedly of the utmost importance within the various fields of competence of WIPO, but everything connected with copyright and with the protection of authors is not only equally important but, in terms of value, will take on more and more importance in the years to come.

"Finally, Mr. Tournier is the candidate of renewal. He has very extensive international experience. He has taken part in a great many missions and cooperative ventures not only in European countries but also in many developing countries, and he is determined to devote his efforts to the establishment of the new plan for WIPO for a period which, to our way of thinking, is an ideal one affording both time and stability, that is, a period of six years.

"I have reached the second part of my intervention, Mr. Chairman, at which point I wish to draw the attention of all delegates and all Member States to the fact that we find ourselves in an exceptional legal situation, calling for the exercise of exceptional care.

"For one thing, for the first time in the history of the Coordination Committee, you within that Committee have to choose not just between two candidates but between two different terms of office.

"First we have Dr. Bogsch, who is the sole candidate for a two-year term. Then we have Mr. Tournier, himself the sole candidate for a six-year term. We are thus in a situation where we are prevented from deciding between the two candidates by the fact that they are not candidates for the same thing, namely the same term of office. We are in a situation, which in my opinion is unique, of both variable geometry and space-time relativity. I ask you to reflect on this intellectually challenging question.

"The second observation that I will make is that, if we want to abide by the constitution of WIPO, and we are after all its custodians, we have first to decide what term of office we want the next Director General to be given, and so we have, as a matter of priority, to submit this question of the length of the term of office to our General Assembly.

"Article 8(3) of the Convention, which provides for the competence of the Coordination Committee, specifies that the Committee shall nominate a candidate for appointment to the position by the General Assembly. At no point is it mentioned, among the attributes of the Committee, that it has to propose a term of office--which is quite normal, because the same constitution expressly provides in Article 9(3) that the term of office shall be fixed by the General Assembly. Both texts are thus extremely clear. The Coordination Committee has the power to propose the name of the candidate, and the General Assembly has the power to set the duration of the term of office. These rules would have no effect on the nominations if, as in the past, including in 1990, both candidates had at the outset declared themselves candidates for the normal term of six years. However, in the texts that we have before us concerning item 5, the statement by the Member State that supports the proposed nomination of Dr. Bogsch clearly mentions that his candidature is for a term of office of two years. I also wish to draw your attention to the fact that, if we adopted the principle of a two-year term of office, we would find ourselves in a situation as inequitable as it was special, inasmuch as the constitution makes it clear that only a Director General who has already had a six-year term of office may be accorded a term of office of shorter duration at the discretion of the General Assembly. What that would mean is that, should the General Assembly decide that a two-year term of office was the right one, no candidate could then be put up against the outgoing Director General.

"So, Mr. Chairman, I ask that we consider this question carefully, because there is already, both in the international institutions generally and in particular at WIPO, an enormous premium on outgoing Directors General, but in this case you have to agree that this premium is an extraordinary one as, if the Assembly decides that the term of office will be a shorter one, no one can stand against the present Director General. That is no longer a premium but a monopoly; and that is why, before any decision is taken on the proposed nomination of a candidate by the Coordination Committee, France considers that there has to be an interlocutory ruling on the matter of the length of the term of office to be given to the next Director General, and that the matter should be placed before the General Assembly. There, Mr. Chairman, I should like to put an end to a statement that has already gone on for too long, but I do wish to say, in two sentences, that what we have to

do is give the Organization new impetus. We are indeed at a turning point; I am not going to go back over that. I have however observed that, for a number of years, even though the machine is still running well, even though the Organization's staff are competent and industrious, we have been noticing that the activities of WIPO, including among others those of normative character, are not what they should be. In particular, since 1989, in other words for the last five years, there have been no new normative texts; no international treaty has been adopted under WIPO auspices. We also note that the areas of competence of WIPO and the specific attributes of creators have not been sufficiently taken into account, have not been sufficiently defended by the Organization in everything that we have this year called the Uruguay Round, and that some of the jurisdiction now written into the agreements signed at Marrakesh would not normally have been written into them if WIPO had been more watchful at the frontiers of its jurisdictional area. Mr. Chairman, I shall stop there, but I wish to remind you that we formally request that the preliminary question should first be put before the General Assembly."

9. The Chairman drew attention to the legal aspects that had been developed by the Delegation of France and proposed that Delegations take the floor on the procedural questions raised by that Delegation, in particular whether it was necessary before pronouncing on the names of the candidates to determine the period of the term for one or the other of the candidates. The Chairman stated that since the decision to present to the General Assembly one or the other of the candidates as well as all procedural questions relating thereto, belong to the Coordination Committee, he would give the floor first to the members of that Committee and thereafter to the other Delegations which might wish to speak in their capacity as observers.

10. The Delegation of India stated that it had on the previous day of the meetings recapitulated the close cooperation between WIPO and India which had developed over the years under the leadership of Dr. Arpad Bogisch. That Delegation remarked that the Director General had taken a personal interest in this direction and he and the leaders in India had maintained and continued to maintain strong links. The Delegation of India stated that its Government felt that the continued leadership of Dr. Arpad Bogisch would be good for the Organization and endorsed the proposal for his reelection for the term of two years.

11. The Delegation of Italy stated that the Coordination Committee was called upon to nominate a candidate for the post of Director General and that, in accordance with the rules set forth in Article 8(3)(v) of the WIPO Convention, the Coordination Committee could only propose one candidate, but to do so, it was necessary to first decide on the length of the term of appointment. In the view of that Delegation, there was a difference between the two candidatures in that the candidate of France, being presented for the first time, was obliged to present himself for a period of at least six years whereas the incumbent had not asked to be reappointed for a period longer than two years; that being said, it was necessary to put beforehand to the General Assembly the question of the period of the appointment, and, in the light of the decision of the General Assembly, the Coordination Committee could make its proposal in regard to the persons who had presented their candidature; otherwise, if the Coordination Committee were to now propose one of the two candidates, it would be directly fixing the period of the

appointment, but that would be contrary to Article 9(3) of the WIPO Convention, as that was a matter which was the prerogative of only the General Assembly. The Delegation of Italy added that the Delegation of France had correctly described the problem.

12. The Delegation of the Central African Republic stated that, during the discussions on the report on the activities of the Organization, it had expressed itself on the role of the Director General and on the important changes that should be brought to bear to meet the numerous challenges presented. That Delegation added that the leadership of the Director General of those activities was not in question, but it was necessary to recognize that taking into account the circumstances and the new thrust that must be given to the Organization, a period of two years did not appear to be sufficient to meet those challenges. In the view of that Delegation, Article 9(3) of the WIPO Convention set a minimum of six years for the term of appointment of the Director General since, quite rightly, in any period less than that nothing could be seriously undertaken either in the medium or long term. That Delegation further stated that the Coordination Committee would be exceeding its prerogatives if its nomination of a candidate to the General Assembly were accompanied by even an implicit proposal on the duration of his mandate; it was for the General Assembly only to decide on the term of appointment of the Director General and that term could not be fixed at less than six years, whether for an initial appointment or for a reappointment.

13. The Delegation of Hungary stated that the question before the Coordination Committee was whether it could take a decision on the period of the reappointment of a candidate for the post of Director General or only had the competence to nominate a candidate for appointment to that post. In the view of that Delegation, the text of the WIPO Convention was clear: the Coordination Committee was directed to nominate a candidate when the term of office of the Director General was about to expire; furthermore, Article 9(3) stated that the periods of both the initial appointment and subsequent appointments, as well as other conditions, should be fixed by the General Assembly; there was only one restriction on the General Assembly in fixing the period, namely, that the initial appointment could not be less than six years, but once that appointment had occurred, it was up to the General Assembly to fix the period of reappointment. That Delegation noted that the Government of the United States of America had addressed its suggestion to the Chairman of the General Assembly and it was to the General Assembly that the suggestion was made to reappoint the incumbent to the post of Director General for a two-year term. That Delegation added that there was nothing extraordinary in dealing with a shorter period in the case of a reappointment; there was nothing in the WIPO Convention which stated the length of the term of reappointment. What was extraordinary was the previous reappointment for four years. Initially, the Government of the United States of America had proposed for that reappointment six years, the customary period that had become established practice not only for an initial appointment but also for reappointments. That Delegation recalled that it was the Director General himself who, for personal reasons, had wanted to accept reappointment for four years and the General Assembly had so decided. The Delegation of Hungary added that the proposal of the Government of the United States of America contained a suggestion for a two-year period; that was an element of information for the Coordination Committee and it was also of informational value to note that no request for the customary six-year

period had been made. That Delegation further stated that, from a procedural point of view, the Coordination Committee should concentrate on the nomination of a candidate for an initial appointment or on the reappointment of the incumbent, and it should take a decision now on one single nominee without taking any decision as regards the term of his reappointment or appointment.

14. The Delegation of Slovenia stated that it endorsed the views expressed by the Delegation of Hungary. That Delegation said that it also understood that the term of two years mentioned in the proposal of the United States of America as being a kind of information or advice for the General Assembly which would decide on the appointment. In this connection, the Delegation of Slovenia drew attention to Article 8(3)(i) of the WIPO Convention which stated that the Coordination Committee could give advice to the General Assembly but it was up to that body to decide upon the term. That Delegation said that it supported the candidacy of the incumbent, Dr. Arpad Bogsch.

15. The Delegation of Sudan stated that the Coordination Committee had before it two choices, either to select Dr. Arpad Bogsch or to put forward the French candidate. In its view, the choice of Dr. Arpad Bogsch would constitute a continuation and a benefit to the Organization and it was appropriate to put his name forward for reappointment for a two-year term as that would, with the four years that he will have served, constitute six years. Furthermore, that Delegation added that only one candidate for the post should be transmitted to the General Assembly.

16. The Delegation of Finland expressed its support for the legal analysis made by the Delegation of Hungary and recalled that the issue had already been raised in the General Assembly four years ago, but that no vote had been taken on it; instead, the General Assembly had decided to agree to a period of four years.

17. The Delegation of Cameroon stated that, after having heard the statement of the Delegation of France on the particular situation in which the two candidates presented had been placed and, after having heard the statements made by the Delegations of Italy and the Central African Republic, which it supported, it had concluded that the Coordination Committee was competent to pronounce on the period of two or six years but that the ultimate solution to this problem lay with the General Assembly.

18. The Delegation of Sweden expressed its appreciation to the Delegation of France for shedding light on the formalities that would ensure that correct and proper decisions were taken but said that it drew different conclusions from the articles cited by the Delegation of France. The Delegation of Sweden stated that the WIPO Convention was quite clear, as had been pointed out by the Delegation of Hungary, and that it was for the Coordination Committee to nominate a candidate on which the General Assembly could take a stand and it was not constitutionally necessary for the Coordination Committee to express itself on the term of office, which was the prerogative of the General Assembly to decide upon, but that did not stop the Coordination Committee from performing its task of putting forth a candidate. That Delegation was of the view that the General Assembly could then take a decision on the term of office. That Delegation had, therefore, come to the same conclusion as the Delegation of Hungary and some other Delegations.

19. The Delegation of Kenya said that it supported the explanations given by the Delegations of Hungary and Sweden that the first step was to choose a candidate and, secondly, the General Assembly could fix the period, and thus, in this case, it saw no conflict in the procedure.

20. The Delegation of Sri Lanka stated that it had noted that there were two candidates, one presented by the Government of the United States of America and the other by the Government of France, both being developed countries, and that the incumbent had served three six-year terms, and had been reappointed for a four-year term in 1991. During those 21 years, he had given strong and widely acknowledged leadership to the Organization and now sought a two-year term of office. The other candidate was well equipped to lead the Organization as he had wide experience on intellectual property rights. That Delegation stated that it had followed with great interest the legal arguments put forward by the various Delegations. Given the qualifications and experience of each candidate, the Coordination Committee had the difficult task of selecting one candidate over the other. In doing so, several factors had to be taken into consideration. First, and foremost, were the qualifications and experience of the candidates concerned. Equally important factors governing the election to senior executive posts in the organizations of the United Nations system were the well-established fundamental conventions, such as equitable regional distribution of posts of this nature and their periodical geographical rotation. The Delegation of Sri Lanka added that its Government had consistently applied those conventions and for that reason alone, it would support of the two equally suitable candidates the candidacy of Mr. Jean-Loup Tournier and hoped that the legal problem referred to by several Delegations and contained in Article 9(3) of the WIPO Convention could be resolved during the course of the present session.

21. The Delegation of Malawi stated that it concurred with the views expressed by the Delegation of Hungary and stated that the Coordination Committee can only nominate one candidate and that it was for the General Assembly to decide on the period of the appointment; therefore, that Delegation wished the Coordination Committee to make its nomination and then let the General Assembly decide on the period. Should that be the case, the Delegation of Malawi, which so far had deliberately not made comments on either candidates, would like to indicate its support for the candidature of Dr. Arpad Bogsch.

22. The Delegation of Brazil stated that the issue had been very clearly stated by the Delegation of Hungary. The Coordination Committee had a mandate to nominate one of the two candidates whereas the question of the period of the appointment was attributed to the General Assembly. The Delegation added that, while the Coordination Committee and the General Assembly had members in common, the latter had a broader composition. That Delegation stated that the issues raised by the Delegation of France were very interesting and that that Delegation was quite right in explaining the imbalance in the presentation of both candidatures. Nevertheless, the Delegation shared the view expressed by the Delegation of Hungary that the Coordination Committee had a mandate to indicate a candidate and, depending on that indication, the General Assembly might take one direction or another as concerns the duration of the appointment of the Director General.

23. The Delegation of Denmark said that, as concerns the procedural point raised by the Delegation of France, it fully agreed with the interpretation of the legal aspects that had been given by the Delegation of Hungary and which had been supported by the Delegations of Sweden and Brazil.

24. The Delegation of Chile said that there was no problem of procedure or of the interpretation of the WIPO Convention: the duty of the Coordination Committee was to decide on a candidate. In the view of that Delegation, given the different characteristics of the two candidates, they were prepared to serve for different periods, but that was for the General Assembly to decide on the matter when it was seized with it.

25. The Delegation of Mexico stated that the Coordination Committee was competent to choose the candidate that would be appointed by the General Assembly but that the preference of each Delegation for one candidate or the other carried with it an implicit acceptance of the period for which the candidate was willing to serve. In the view of that Delegation, there was no reason why the Coordination Committee should pronounce on the term of office, as that was a matter for the General Assembly. That Delegation stated that the Coordination Committee could vote on the candidature of one or the other of those presented but it would be for the General Assembly to decide on whether to accept that candidate or not.

26. The Delegation of Morocco stated that the Coordination Committee was not competent to decide on the matter of the term of office as that was for the General Assembly to decide upon. That Delegation said that it supported the proposal of the Delegation of France to refer the matter to the General Assembly as that would enable the Coordination Committee to extricate itself from a very difficult situation.

27. The Delegation of the Russian Federation stated that it supported the views expressed by the Delegations of Hungary and Sweden and said that it was for the Coordination Committee to decide on only one candidate and it was for the General Assembly to decide on the length of the term of his appointment.

28. The Delegation of Peru stated that it was for the Coordination Committee to nominate a candidate and it was up to the General Assembly to approve or not that candidate. In the view of that Delegation, if the General Assembly felt that the conditions of service were unacceptable, the General Assembly could reject the candidate and then the Coordination Committee would have to return to the matter and make another nomination. That Delegation added that it was not a good idea to discuss the term of office first and, consequently, it shared the views expressed by the Delegation of Hungary.

29. The Delegation of Cuba stated that the Coordination Committee must choose between the two candidates, that it should not delay its work and that the General Assembly was exclusively competent to decide on the term of the appointment.

30. The Delegation of the Czech Republic stated that it supported the views expressed by the Delegations of Hungary and Sweden and that it supported the candidacy of the current Director General, Dr. Arpad Bogsch.

31. The Delegation of Pakistan stated that, after hearing the various arguments and interpretations given by the Delegation of Hungary, the Coordination Committee should nominate a candidate and that the term of office could be decided later by the General Assembly. That Delegation stated further that the Coordination Committee should proceed with the nomination of a candidate as soon as possible.
32. The Delegation of China said that it agreed with the interpretation of the Delegation of Hungary which had been supported also by the Delegation of Sweden and by other Delegations. With respect to the candidature for the post of Director General, that Delegation expressed its support for Dr. Arpad Bogsch for a further period of two years.
33. The Delegation of Paraguay stated that the Coordination Committee was not faced with a procedural matter that required preliminary clarification and that the Coordination Committee should now nominate a candidate and leave it to the Assembly to consider the matter of the term of office and also to determine whether or not the candidate was suitable for that term of office.
34. The Delegation of Panama stated that it supported what had been said by the Delegations of Mexico and Hungary and that, therefore, the Coordination Committee should recommend a candidate for the post of Director General.
35. The Delegation of Argentina said that it supported the position expressed by the Delegation of Hungary, according to which it was the task of the Coordination Committee to decide on the nomination for the post of Director General and it was for the General Assembly to decide on the term of office.
36. The Delegation of the Democratic People's Republic of Korea suggested that the Coordination Committee should concentrate its consideration of the matter of the nomination of the Director General and that the General Assembly should decide on the term of his appointment.
37. The Delegation of the Ukraine stated that it supported the proposal made by the Delegations of Hungary, Sweden and of the other States, that it considered that, as stated in the WIPO Convention, the choice of a candidate for the post of Director General was a prerogative of the Coordination Committee and not of the General Assembly, and that if the question of the term of office were to be raised, it should be for the General Assembly to decide upon it.
38. The Delegation of Colombia stated that the Coordination Committee should present to the General Assembly the name of but one candidate and the period of his appointment should, in principle, be that indicated in the proposal presenting the candidate.
39. The Delegation of El Salvador said that the Coordination Committee should proceed to recommend to the General Assembly a candidate and leave it to the General Assembly to decide on the term of office.
40. The Delegation of Romania said that it supported the statement made by the Delegation of France.

41. The Delegation of Togo said that the question had been put whether the General Assembly should settle the problem of the period of the term before a designation was made of the candidate for the post of Director General. That Delegation felt that the Coordination Committee should adhere to the text of the WIPO Convention and, taking into account the various interventions, it would appear to be interesting to put the question to a vote. That Delegation added that it was aware that certain Delegations supported dodging the procedural question put forth by the Delegation of France, whereas others were in agreement that that question should be resolved first. In the view of the Delegation, it would be interesting if the majority would express itself by the normal means, that is, by proceeding to a vote.

42. The Delegation of Nigeria said that the questions before the Coordination Committee were rather clear: it was within the competence of the Coordination Committee to nominate one of the two candidates and it was the sovereign right of the General Assembly to decide on who is chosen and the term of his appointment. The Delegation of Nigeria said that it supported the view of many Delegations, which represent a majority, that the Coordination Committee was competent to make a decision; however, that Delegation said it was troubled by the fact that there were two polarized opinions, each of which was clear, but that proceeding to a vote would be a waste of time and a formality since all could count the number of States that supported the view expressed by its Delegation and by other Delegations.

43. The Chairman stated that the list of States members of the Coordination Committee had been exhausted and, therefore, he would give the floor to those Delegations which wished to express themselves in their capacity as observers.

44. The Delegation of Ghana said that it associated itself with the views put forth on the issue by the Delegation of Hungary and that it pledged its support to the candidacy of Dr. Arpad Bogsch.

45. The Delegation of Qatar said that it was the wish of its Government that but one, single candidate be supported and that it supported Mr. Jean-Loup Tournier, the French candidate. That Delegation stated that, nonetheless, it would like to achieve a consensus on the matter so as to respect the status of the Organization.

46. The Delegation of Burkina Faso said that on the question of procedure, it did not feel that a legal problem was posed since the interpretation to be given to Article 9(3) of the WIPO Convention was clear, as had been explained by the Delegation of Hungary.

47. The Delegation of Germany, on behalf of the Delegations of the States members of the European Union, requested a short suspension of the meeting in order to enable those Delegations to hold consultations on the procedural questions that had been raised.

48. The Delegation of Egypt stated that it could agree to the suspension of the meeting as proposed by the Delegation of Germany if that would allow the member States of the European Union to have time to reflect and consult. As far as its Delegation was concerned, the procedure proposed in respect of Article 8 of the WIPO Convention raised a very interesting legal question and, in the light of the debate that had occurred, it would be opportune to take legal advice on that question.

49. The Delegation of Cameroon said that given the lateness of the hour, there would not be sufficient time before lunch to allow for consultations to take place and to resume the discussions and, therefore, that Delegation proposed that further discussions be deferred until the afternoon session.

50. The Delegation of Iraq said that there was no doubt that the Director General had given much during his tenure at the helm of the Organization and that it had listened carefully to the statements made during the morning session. In its view, the Delegation of France had presented very important procedural aspects upon which a decision had to be taken and that taking into account the justification of the Delegation of France in support of a six-year term for the Director General, it wished to endorse the candidate presented by the Government of France.

51. The Delegation of Jordan stated that it endorsed what had been said by the Delegation of Hungary.

52. The Delegation of Israel stated that, in principle, it endorsed the position put forward by the Delegation of Hungary but that it wished to draw attention to an additional point that bore on the imbalance referred to by the Delegation of France. In the view of that Delegation, the idea that there might be two candidates, one who is proposed for the first time and who must be appointed for at least six years and an incumbent who might be reappointed for less than six years, the supposed imbalance is already included and foreseen by the text of the WIPO Convention itself. For that reason, the Delegation of Israel was of the opinion that the Coordination Committee was empowered to recommend to the General Assembly any candidate, taking into account his qualifications, which might be that he is a candidate for just two years while the other is a candidate for six years, and that it was entirely within the power of the Coordination Committee to decide on that issue at this stage and for the General Assembly to eventually decide on the election. On the merits, the Delegation of Israel stated that, as it had said earlier in the course of the session, the great achievement of Dr. Bogsch in all areas of intellectual property and his highly respected leadership in the important role played by WIPO in the protection of intellectual property are widely known and acclaimed throughout the world and, therefore, there could be no doubt whatsoever that also in the future the guidance of Dr. Bogsch would be of the greatest importance.

53. The Delegation of Luxembourg stated that, after having heard the arguments of the Delegations members of the Coordination Committee and of the observer Delegations, it was obliged to say that it was persuaded by the arguments put forth by the Delegation of France: on the procedural level, the arguments concerning the imbalance between the terms of office appeared to be completely justified and, on the merits, it appeared that WIPO found itself before a series of major challenges and that it was necessary to have a new vision and a new plan with a candidate who was ready to rise to those challenges in the next six years. The Delegation of Luxembourg stated that its Government supported the European candidate in the person of Mr. Tournier.

54. The Delegation of Slovakia stated that it supported the statement of the Delegation of Hungary. It appreciated the extraordinary merits of Dr. Arpad Bogsch in the field of intellectual property and his personal approach in the development of WIPO and it would support his nomination.

55. The Delegation of Monaco stated that its Government wished that a balance could be arrived at between the two candidates, perhaps by a compromise. In the case at hand, the Delegation wondered why the Director General had not, as had Mr. Tournier, sought a term of six years; furthermore, it would have been neater to elect a Director General for a six-year period even if that mandate were to come to an end earlier because of personal reasons. Finally, the Delegation stated that it regretted that the two candidates had not made presentations to the General Assembly, outlining their long-term plans for WIPO.

56. The Delegation of Germany, rising to a point of order, requested a short suspension of the meeting in order to enable the Delegations of the member States of the European Union to have consultations.

57. The Chairman noted that but one Delegation remained on the list of speakers and thereupon asked the Delegation of Japan if it wished to take the floor before or after the suspension of the meeting that had been requested.

58. The Delegation of Japan recalled that it had already expressed its opinion in favor of the candidature of the Director General and, stated that as to the legal questions raised by the Delegation of France, the Coordination Committee had a mandate to nominate but one candidate; and that the General Assembly could decide to accept that nomination or not and, if it did, to fix the term of office of that candidate. Accordingly, it shared the view expressed by the Delegation of Hungary and supported by the Delegation of Sweden.

59. The Chairman declared the meeting suspended for ten minutes.

[The meeting was resumed after an interruption of some 30 minutes.]

60. The Delegation of Germany thanked the Chairman and the Coordination Committee for their understanding and stated that it hoped the ensuing events would demonstrate that the member States of the European Union were really determined to contribute to a constructive continuation of the proceedings.

61. The Delegation of France thanked the Chairman for having acceded to the request of the Delegation of Germany, which held the presidency of the European Union, and thus to have permitted the Delegation of the States members of the European Union to hold a meeting.

62. The Delegation of France stated that it had listened attentively to the statements of the various Delegations and had concluded that a consensus existed that it was for the General Assembly, and not for the Coordination Committee, to fix the term of office of the next Director General nor to make a recommendation on that matter. That Delegation was of the view, therefore, that when the decision should be taken to recommend to the General Assembly the name of Mr. Tournier or Dr. Bogsch, the Coordination Committee should make that determination solely on the basis of the identity of the two

candidates and not on the basis of the term that they contemplated. The Delegation of France added that it believed that, until the present moment, many Delegations had made their determination on the basis of the duration of the term proposed rather than on the basis of the merits of the candidates. The Delegation of France further stated that it was for that reason that it believed that the General Assembly should now decide on the issue which was within its competence, that is, on the question of the duration of the term and, therefore, requested that the following motion be put to a vote:

"The Committee requests the General Assembly to place on the agenda of its present session the question of the duration that the term of office of the next Director General should have, as that question was closely connected with that of the choice of Director General."

63. The Chairman asked if any Delegation wished to support the proposal made by the Delegation of France.

64. The Delegation of Namibia stated that in the hope that the Coordination Committee could move ahead on the matter, it supported the proposal made by the Delegation of France.

65. The Chairman declared that the proposal of the Delegation of France, having received the support of one Delegation, the Coordination Committee could proceed to a vote.

66. The Delegation of Brazil stated that since the General Assembly already had the mandate to determine the term of office of the Director General, subject to the restriction that the first appointment be not less than six years asked whether, if the proposal of the Delegation of France were to be adopted, that would mean that the Coordination Committee would thereby be requesting the General Assembly to reconsider or revise at this stage the rules to be followed in fixing the term of appointment. The Delegation of Brazil added that it was its understanding that even if the Coordination Committee did not adopt the proposal of the Delegation of France, it was nevertheless incumbent upon the General Assembly to take a decision on the matter. The Delegation of Brazil asked for clarification of the issue at hand.

67. The Chairman declared that his understanding of the proposal of the Delegation of France was that the Coordination Committee should refer the question of duration to the General Assembly; in that case, the Coordination Committee would not pronounce itself beforehand on the candidate, that is to say, further discussion by the Coordination Committee on this item of the agenda would be suspended.

68. The Delegation of Chile stated that the Coordination Committee had an obligation to make a decision on the two candidates and that it was for the General Assembly to fix the period of the appointment and that had been clearly determined in the discussions that had just taken place; consequently, that Delegation was of the view that to suspend the deliberations of the Coordination Committee and proceed to discussions in another body that had a different competence from that of the Coordination Committee would not be in conformity with legal procedures. That Delegation also asked for clarification of the issue at hand.

69. The Delegation of France stated that it was not its intention to prevent the Coordination Committee from deciding on a name to recommend; it wished to draw attention to the paradoxical situation at hand in which the matter of appointment of a new Director General was inscribed on the agenda of the Coordination Committee, whereas it was not inscribed on the agenda of the General Assembly. That Delegation further stated that it felt that there was no desire within the Coordination Committee to have a confrontation between those who favored the one candidate and those who favored the other candidate. That Delegation added that it had put forth a procedural motion in order to put an end to an anomalous situation and it did not think that on such a motion one should regard it as a matter of counting those who favored Mr. Tournier and those who favored Dr. Bogsch, as that was a totally different question.

70. The Delegation of the United States of America drew attention to the fact that Annex I of document AB/XXV/4, which set forth the agenda for the 1995 session of the General Assembly, included an item entitled "Appointment of the Director General" and stated that it was in that context that the issue of the term of the Director General should be addressed. That Delegation also drew attention to Rule 5 of the WIPO General Rules of Procedure and stated that Rule implied that the Coordination Committee could not place an item on the agenda of the General Assembly for the session currently in progress; consequently, it asked for clarification of the relationship of that Rule to the motion that had been asked to be put to vote.

71. The Chairman stated that his understanding of the situation at hand was that the Coordination Committee was being asked to propose to the General Assembly that it add to the agenda of its current session an item on what would be the period for which the Director General would be appointed. The Chairman added that proceeding in that way would leave open the question of what would happen if the Coordination Committee adopted the motion made by the Delegation of France and if the General Assembly in turn approved and fixed a period for the term of the next Director General. In the view of the Chairman, that would raise the question whether the Coordination Committee would or would not make a nomination at its current session. The Chairman further stated that the discussions had brought forth indications as to how, in a vote on the procedural motion made by the Delegation of France, the votes would be distributed and added that it should be noted that, if that motion were to be adopted, the General Assembly would have to decide by a two-thirds of the votes cast to modify the agenda of its current session.

72. The Delegation of Chile stated that it appeared that almost all Delegations that had spoken had agreed that it was for the General Assembly to fix the period of appointment of the Director General and that it would be simpler if the Coordination Committee were first to decide on which of the two candidates should be nominated and, once that was done, the matter could be passed to the General Assembly which, as had been recalled by the Delegation of the United States of America, already had the item on its agenda for its session in 1995 but which, if a majority in the Committee so decided, could be asked to put it on the agenda of its current session. The Delegation of Chile added that it would not have any objection to the current session of the General Assembly dealing with the election of the Director General, provided that the Coordination Committee had already decided which of the candidates should be the next Director General.

73. The Chairman stated that the preceding discussion had clearly raised the difference between the point of view of the Delegation of Chile and that of the Delegation of France, namely, that the latter wished that the General Assembly express itself first on the period of the term and then, in the light of that, the Coordination Committee should present a candidate, whereas the inverse was proposed by the Delegation of Chile. The Chairman wondered whether the best way to proceed would be to view a vote on the procedural motion made by the Delegation of France as a vote on the question of which of the two bodies should be seized of the matter first.

74. The Delegation of Peru stated that it supported the view expressed by the Delegation of Chile as regards the order in which the two bodies should take decisions on the matter.

75. The Delegation of Portugal expressed the view that the Coordination Committee could start by moving to place the item on the agenda of the General Assembly and then, immediately thereafter, the Coordination Committee should proceed with its work, namely, to indicate a name to the General Assembly, since the latter could not begin its discussion on the item in a vacuum, but would have to discuss a matter which, as the procedural motion stated, was linked to the nomination and could not be discussed without an indication of the name to be chosen.

76. The Delegation of Germany stated that its Delegation would abstain when it came to a final vote on the procedural motion made by the Delegation of France.

77. The Delegation of the Ukraine stated that, before proceeding to the vote, it would like to have the following clarification: if the General Assembly decided that the term of office should be two years and the Coordination Committee decided to propose Mr. Tournier, would that not be in contradiction to the WIPO Convention?

78. The Delegation of the Sudan stated that it saw no need to proceed with a vote but, should the Coordination Committee do so, the Delegation would wish to put forth a counterproposal, namely, that the Coordination Committee should proceed with the nomination and that, thereafter, the General Assembly should decide on the period of the appointment. That Delegation added that it thus supported what had been said by the Delegation of Chile.

79. The Chairman, noting that the Delegation of France had asked for the floor, stated that perhaps its intervention would clarify a crucial question, namely, if the procedural motion of the Delegation of France were to be adopted and the item concerning the period of the appointment were to be placed on the agenda of the General Assembly, would the Coordination Committee immediately continue with its work with a view to proposing a name to the General Assembly or would the Coordination Committee suspend its work until the General Assembly had fixed the period.

80. The Delegation of France stated that there was nothing hidden behind its procedural motion and that the Coordination Committee was completely free, after having voted on that motion, to resume its debate on item 5 of the agenda and to propose a name. That Delegation added that it regarded it abnormal that while the mandate of the Director General continued to run and would do so for some 15 months, the Coordination Committee was being

requested at this session to pronounce on a name but at the same time the question of the appointment of the Director General and the period of his appointment had not been put on the agenda of the current session of the General Assembly, which was no doubt an oversight on the part of the International Bureau. The Delegation of France again reaffirmed that there was nothing hidden behind its procedural motion and noted that when a procedural motion has been made and supported by at least another Delegation, in principle, no debate was allowed on such a motion, but its Delegation was of the view that the more the debate the greater the democracy and under the circumstances it did not understand why the Delegation of the Sudan wished to oppose the right of a sovereign State to put forth a procedural motion.

81. The Chairman thanked the Delegation of France for its clarification and stated that it was now clear that, in the case where the proposal of the Delegation were to be adopted, an item on the period of the appointment would be placed on the agenda of the current session of the General Assembly, and the Coordination Committee could resume its work, even during the current session, and choose a name to be proposed to the General Assembly.

82. The Delegation of Chile stated that all Delegations favored democracy and transparency and that it was in the interest of all that the procedure for electing the Director General of the Organization was as clear as possible because a great deal of trust was being placed in the Director General, whichever candidate became the depositary of that confidence. In its view, there was no problem in putting the item on the 1994 session of the General Assembly if the Coordination Committee wished to proceed in that way, but that it would be better for the Coordination Committee to first decide on the item on its agenda and then, at the session of the General Assembly, the term and other conditions could be examined. For that reason, the Delegation of Chile made a formal proposal that the Coordination Committee first vote on the name of the candidate and after that, if that Committee so decided, the item on the term of office and other conditions of the appointment could be placed on the agenda of the General Assembly for either its current session or its 1995 session, whichever the Coordination Committee decided.

83. The Chairman remarked that the Coordination Committee appeared to be in full debate on two procedural motions, one made by the Delegation of France, which was being clarified and had not yet been decided upon, followed by a second procedural motion which requested that the Coordination Committee complete immediately its discussion on item 5 of its agenda, and that it was incumbent upon him to rule first on the first procedural motion and then on the second procedural motion.

84. The Delegation of France stated that, while under the rules of procedure, it could have requested that its procedural motion be put to the vote immediately, in which event no Delegation would have had the right to intervene, it had not done so and would wish to still hear from other Delegations, but that, on the basis of the rules of procedure, this was not a case of two procedural motions but of one only.

85. The Chairman stated that after having reflected on the question, he had concluded that neither the proposal of the Delegation of France nor the other proposals that had been made so far were procedural motions in the proper sense of the term but were proposals of a substantive nature. It was in that sense that the Coordination Committee should consider the proposal of the Delegation of France, which had the support of other Delegations and could be put to the vote.

86. The Delegation of Chile proposed an amendment to the proposal of the Delegation of France so that it would read as follows:

"The Coordination Committee, after having pronounced on the name of the candidate designated for the post of Director General, asks the General Assembly to place on the agenda of the present session the question of the duration that the term of office of the next Director General should have, as that question was closely connected with that of the choice of Director General."

The Delegation of Chile added that since its proposal constituted an amendment to the proposal of the Delegation of France, under Rule 32 of the WIPO Rules of Procedure, the amended proposal should be put to the vote first.

87. The Delegation of the Sudan supported the proposal made by the Delegation of Chile.

88. The Chairman stated that two proposals had now been put forward, that of the Delegation of France and that of the Delegation of Chile which constituted an amendment to the former, and declared that under Rule 32 of the WIPO Rules of Procedure that amendment would be put to the vote first; thereafter, the former proposal as modified or not depending on the first vote would be put to the vote.

89. The Delegation of France stated that it was somewhat confused in that it had been declared that the Coordination Committee would proceed to a vote on the text proposed by the Delegation of Chile and thereafter on the text proposed by the Delegation of France, yet the Delegation of France had not even been asked if it could accept that amendment. In its view, the usual rules would require that a vote be taken first on the first text that had been proposed. The Delegation of France thereupon requested that the debate be suspended so as to permit that Delegation to meet with the Delegation of Chile and determine whether its proposed amendment could be accepted.

90. The Chairman referred to Rule 32 of the WIPO General Rules of Procedure which stated that when an amendment to a proposal is moved, the amendment shall be voted on first, and it was on that basis that he had announced that he planned to put to the vote first the amendment proposed by the Delegation of Chile but that he was agreeable to suspending the meeting to allow the Delegation of France and the Delegation of Chile to contact each other with a view to seeing whether it might eventually be possible to have a single proposal as that would certainly facilitate the procedure for a vote.

91. The Chairman declared the meeting suspended for ten minutes.

[The meeting was interrupted for 30 minutes.]

92. Upon the resumption of the meeting, the Delegation of France stated that, as requested, contact had been made with the Delegation of Chile but it had not been possible to merge the two texts. The Delegation of France posed the question whether the order of voting was not governed by Rule 32(2) of the WIPO General Rules of Procedure, which stated that if the adoption of any amendment necessarily implied the rejection of another amendment or of the original proposal, the amendment shall not be put to the vote.

93. The Chairman ruled that Rule 32(2) of the WIPO Rules of Procedure applied.

94. The Delegation of Chile stated that in the interest of harmony, it was prepared to accept the interpretation of the Chairman and that the proposal of the Delegation of France should be put to the vote.

95. The Delegation of the United States of America stated that it agreed with the interpretation of the Chairman, was pleased to note a meeting of the minds and stated that it supported proceeding to a vote first on the proposal of the Delegation of France. That Delegation added that when the vote occurred, it was its intention to vote "no" on the proposal of the Delegation of France.

96. The Delegation of France expressed its thanks to the Delegation of Chile for having accepted the order in which the vote should proceed, repeated its statement that there was nothing hidden behind its proposal and said that once the vote was determined, it was completely ready to resume the discussion and have the Coordination Committee complete its examination of item 5 of its agenda, that is, to propose a name as the next Director General, in line with the amendment that had been proposed by the Delegation of Chile.

97. The Chairman stated that, after having heard the Delegations of France, Chile and the United States of America, the Coordination Committee could proceed to a vote on the proposal made by the Delegation of France, the text of which he read and is set forth in paragraph 62, above. The Chairman then referred to Article 11(5) of the WIPO Convention, and stated that, in accordance with the traditional practice of the Organization, the States that were in arrears in their contributions should, in the absence of an objection, nevertheless be allowed to vote, it being understood that exceptional and inevitable circumstances had led to those arrears. There being no objection, the Chairman also pointed out that, in accordance with the applicable rules, ad hoc members and associate members of the Coordination Committee would not be called upon to vote and that only the ordinary members of the Coordination Committee would be called upon to vote.

98. The Chairman thereupon proceeded to read out the names of the States, ordinary members of the Coordination Committee: Argentina, Australia, Austria, Belgium, Brazil, Cameroon, Canada, Central African Republic, Chile, China, Colombia, Cuba, Czech Republic, Democratic People's Republic of Korea, Denmark, Egypt, Finland, France, Germany, Greece, Hungary, India, Indonesia, Ireland, Italy, Japan, Kenya, Malawi, Mexico, Morocco, Namibia, Netherlands, Nigeria, Pakistan, Paraguay, Peru, Portugal, Republic of Korea, Romania, Russian Federation, Slovenia, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Togo, Ukraine, United Kingdom, United States of America, Uruguay and Venezuela.

99. The Chairman thereupon proceeded to the vote: he first requested those Delegations in favor of the proposal of France to raise their name plates, thereafter he requested those Delegations which opposed that proposal to do so, and then he requested those Delegations that abstained to raise their name plates.

100. The Chairman announced the result of the vote as follows: in favor: 11; opposed: 27; abstentions: 13.

101. The Chairman thereupon declared that the proposal of France had been rejected and that the Coordination Committee could resume its work on item 5 of the agenda and try to agree on a name to be proposed to the General Assembly with a view to the appointment of the Director General.

102. The Delegation of Brazil asked whether the Coordination Committee would proceed to consider the proposal of the Delegation of Chile concerning the same issue or whether that proposal had been withdrawn, in which latter event, it wished to have the floor to explain its vote on the proposal made by the Delegation of France.

103. The Delegation of Chile said that its proposal was an amendment to the proposal of the Delegation of France; since the latter proposal had been defeated, and the Chairman had declared that the Coordination Committee would resume its work and attempt to choose a name that it could put forward for the post of Director General, which was in essence the proposal that had been made by the Delegation of Chile, that Delegation said there was no reason to maintain or to submit again a proposal in this regard and agreed that the debate could be resumed in the manner stated by the Chairman.

104. In explanation of its vote, the Delegation of Brazil stated that it had voted against the proposal put forward by the Delegation of France not because it had any substantive problem with that proposal but because the vote was related to a different issue. Although it felt that Rule 32(2) of the WIPO Rules of Procedure did not apply, it did not raise the procedural point since it did not wish to block a solution that was developing. That Delegation stated that it wished to put into the record its belief that the substantive point put forward by the Delegation of France was a relevant one, that it saw no reason why the question of the term of the election of the Director General should not be considered during the present session once the Coordination Committee had indicated to the General Assembly its preference for one candidate or the other and that to consider this issue as far apart as was now the case was not in the best interest of the Organization.

105. The Chairman declared that the meeting would resume its deliberations on item 5 of the agenda and proceed to indicate a preference for one of the two candidates which had been presented to the Coordination Committee.

106. The Delegation of France made the following statement:

"France has presented a candidate for the reasons that I gave this morning. I shall not return to those reasons. We consider that it was also necessary for the procedures to be clarified and for it to be quite clear in the mind of every delegate that it was for the General Assembly to pronounce on the duration of the term of office. In our opinion the vote that has just taken place on the French text is one that gives a sufficiently clear indication of relative strengths. On this point, we take cognizance of the wish thus expressed, which in fact means that Dr. Bogsch is now going to be recommended for a two-year term of office because, both in the note in which WIPO announces his candidature and in the note verbale in which the Embassy of the United States of America supports it, it is clearly stated that a two-year term of office is

involved. We therefore consider that there is no further possibility for the French candidate to stand because, as it would be a first term of office, he can only stand for a six-year term. It will of course, in accordance with the constitution of WIPO, once again fall to the General Assembly next year to uphold or not that recommendation. You wish to give yourselves some time, which is not what we had in mind.

Mr. Tournier, who intended to campaign for a new plan for WIPO, and therefore to engage in a personal campaign against Dr. Bogsch, is bound to draw the necessary conclusions. He does not, under such circumstances, wish to have his candidature considered further by the Coordination Committee. He does of course remain at the Organization's disposal should it decide, at one time or another in the years to come, to seek the benefit of his experience."

107. The Chairman said that he would first like to thank all the Delegations present for the very high degree of understanding and the spirit of compromise that they had shown during the discussions that had taken place. He addressed special thanks to the Delegation of France for its cooperativeness and flexibility.

108. The Chairman stated that the Coordination Committee had by consensus decided to submit the name of Dr. Arpad Bogsch to the WIPO General Assembly with a view to his appointment for the continuation of his term of office at the head of the World Intellectual Property Organization, it being understood that the duration of the term of office starting on December 1, 1995, and any other conditions of the appointment would be fixed by the General Assembly.

109. The Chairman thereupon declared that the meeting would be suspended briefly to permit him to inform the Director General of the Coordination Committee's decision and to invite him to join the meeting.

110. Thereafter, the Chairman of the Coordination Committee, Mr. Roland Grossenbacher, escorted Dr. Arpad Bogsch to the rostrum. The Chairman of the Coordination Committee then announced to Dr. Arpad Bogsch the Coordination Committee's decision.

111. In accepting the nomination, the Director General expressed his thanks to all the delegates, without exception, for the decision, expressed his thanks to all the delegates who had favored his candidacy and expressed his thanks for the elegance with which the Delegation of France and the Delegations of the countries which supported the candidate of the Government of France had agreed to a consensus. The Director General added that it was a great encouragement for him and his colleagues that this decision was taken by consensus. Finally, the Director General said that the confidence placed in him by the member States was, in his opinion and to a considerable extent, the result of the excellent work, and dedication to the objectives of WIPO, of the staff of the International Bureau. He was grateful to the staff for their work and their dedication.

ITEM 12 OF THE CONSOLIDATED AGENDA:

STAFF MATTERS

WIPO Staff Association

112. At the invitation of the Chairman of the Coordination Committee, the President of the WIPO Staff Association made a statement. On behalf of the staff, he expressed gratitude for the opportunity to address the Coordination Committee. He related that over the past few years, under the guidance of the Director General, the International Bureau of WIPO had been radically transformed, in line with important developments in the areas of industrial property and copyright, developments which were continuing. Computerization also now featured prominently in all sectors of the Organization.

113. The number of member States of WIPO and of the treaties administered by WIPO continues to grow. With ever increasing demands on its services, the International Bureau of WIPO had more than ever the need for highly qualified staff. However, at the same time conditions of employment in the Professional and higher categories had stagnated, if not deteriorated, since several years, while those of the General Service category were now similarly at risk.

114. Since several years, the actions, and inactions, of the International Civil Service Commission (ICSC) had lead to a serious deterioration in the conditions of employment of staff with the result that the organizations of the United Nations common system were no longer able to recruit the extremely well qualified staff needed for them to fulfill their mandates. Arbitrary decisions by the ICSC had resulted in, and would continue to have, a negative impact on conditions of service, such that salary levels were now uncompetitive with those of the private sector as well as those of other intergovernmental organizations. While at the beginning of the 1970s the establishment of the ICSC had been welcomed by staff generally for its independent and impartial role, unfortunately the Commission's actions subsequently had been based largely on political consideration resulting in decisions lacking in technical objectivity. Representations by staff have been ignored. Their frustration is high as is that of Executive Heads, as expressed very recently at the meeting, on September 19 and 20, 1994, of the Administrative Committee on Coordination (ACC). The ICSC having declined to review the methodology imposed on staff for determining the salaries and conditions of employment of staff in the General Service category, staff representatives of all the Geneva-based organizations have decided not to participate in the forthcoming General Service salary survey in Geneva.

115. With the background of the ICSC's dictatorial attitude in mind, the staff appeals to the Coordination Committee to cease giving both finance and credence to the ICSC, a body which in the view of staff has not only failed in its mission but has installed a permanent situation of conflict within the common system. The Commission needs to be restructured as a technically competent independent body, or replaced by another body able to play this role and adapt to modern labor market practices, including negotiation of conditions of employment between administrations and staff representatives. The President of the WIPO Staff Association emphasized that the staff was very concerned and requested that the Coordination Committee do its utmost to ensure that the work of the International Bureau be allowed to continue with all the efficiency and serenity required.

116. The WIPO Coordination Committee took note of the statement by the President of the WIPO Staff Association.

Amendments to the Staff Regulations and Rules

117. Discussions were based on document WO/CC/XXXIII/2, paragraphs 1 to 8.

118. The WIPO Coordination Committee approved the amendments to the Staff Regulations provisionally decreed and applied by the Director General as referred to in paragraphs 1 to 8 of document WO/CC/XXXIII/2.

Language Incentive for Professional and Special Categories - Regulation 3.4

119. Discussions were based on document WO/CC/XXXIII/2, paragraphs 9 to 13.

120. The Delegation of the United States of America, speaking on behalf of Group B, recalled that, in its Resolution 48/224, the General Assembly of the United Nations decided that the organizations that already had a language incentive scheme, should ensure that the scheme was in line with the parameters set out in the report of the International Civil Service Commission. Noting that language abilities were inherent to functions assigned to language posts, there was no justification for including linguistic staff in the language incentive scheme. The Delegation of the United States of America proposed therefore to amend the text suggested by the International Bureau in Annex VI of document WO/CC/XXXIII/2, in order to exclude from that scheme all staff members occupying language posts. However, in order to ease the transition between the present WIPO scheme, which included linguistic staff, and the system recommended by the ICSC and approved by the General Assembly of the United Nations, the Delegation proposed that staff members in language posts who have been receiving accelerated step increases, would be allowed one final accelerated step.

121. The Delegations of Australia, the Russian Federation and the United Kingdom supported the proposal of the Delegation of the United States of America.

122. The WIPO Coordination Committee approved the following provision as Staff Regulation 3.4(b):

"(b) The interval shall be reduced to ten months instead of one year, or 20 months instead of two years, in the case of staff members in the Professional and Special categories, except staff in language posts, who have an adequate and confirmed knowledge of two of the following languages: Arabic, Chinese, English, French, Russian and Spanish."

123. However, it was agreed that the exception provided in the above amendment (i.e., Staff Regulation 3.4(b)) would apply to any staff member presently in a language post only after the granting of one future accelerated step increase.

International Civil Service Commission and United Nations Joint Staff Pension Fund

124. The WIPO Coordination Committee noted without discussion the information contained in document WO/CC/XXXIII/2, paragraphs 15 and 17.

Amendment to Staff Rule under Staff Regulation 12.2

125. Discussions were based on document WO/CC/XXXIII/4, paragraphs 1 to 3.

126. The WIPO Coordination Committee noted the suppression of Staff Rule 3.9.3(c) reported in paragraphs 1 to 3 of document WO/CC/XXXIII/4.

Advice on an Appointment to a Post of Grade D.1

127. Discussions were based on document WO/CC/XXXIII/4, paragraphs 5 and 6.

128. The Delegation of the United States of America stated that it did not agree with the Director General's intention and wished to have additional information justifying the promotion in question. That Delegation added that, if more than five years had elapsed since the last comprehensive classification review, such review should be conducted within the existing budgetary resources.

129. The Delegation of Mexico said that, in strengthening the Organization's structure and personnel resources, priority should be given to the dynamic and expanding program sectors rather than the administrative sectors.

130. The Director General informed the Committee that this appointment did not entail the creation of a new position, but was an upgrade of an existing position involving modest additional funds within the existing budget.

131. Other Delegations supported the intention of the Director General.

132. The Delegation of the United States of America thanked the Director General for the additional information concerning the appointment and stated that it would not oppose a decision by consensus.

133. The WIPO Coordination Committee gave a favorable advice on the intent of the Director General to promote Mr. Giovanni Tagnani to grade D.1.

Advice on Separation from Service of a Staff Member holding a Fixed-term Appointment

134. Discussions were based on document WO/CC/XXXIII/4, paragraphs 8 to 19.

135. In introducing paragraphs 8 to 19 of document WO/CC/XXXIII/4, the Director General stated that the decision of the ILO Administrative Tribunal was clearly contrary to the WIPO Staff Regulations which provided that an employment for a fixed term did not carry with it an expectation for

prolongation. Furthermore, the decision had the curious result that there was no difference between an employment for a fixed term and a permanent employment since in either kind of employment the employment can be discontinued only for reasons that the Tribunal accepts. The Director General also underlined the extraordinary amount of the damages (135,000 Swiss francs already paid and some further 193,000 Swiss francs still to be paid, plus, possibly, 10,000 Swiss francs per month without any time limit). In the practice of the Administrative Tribunal of the United Nations, there was a ceiling in such cases (two years of salary). Finally, the Director General said that he was studying the question--and might revert to it in 1995--whether he should not propose to the Coordination Committee that WIPO go under the jurisdiction of the UN Administrative Tribunal which is the competent tribunal for the United Nations itself and several specialized agencies.

136. The Chairman said that, in addition to the question of what line to follow in the case under examination, there was a much more fundamental question mentioned by the Director General, namely, whether one day WIPO should not replace the competence of the ILO Administrative Tribunal with that of the UN Administrative Tribunal.

137. The Delegation of Argentina stated that to adopt the proposal made in paragraph 19 of document WO/CC/XXXIII/4 implied disregarding the decision of a tribunal whose judgments bore legal force for WIPO which had recognized its competence and could only be suspended by an appeal to the International Court of Justice. Concerning the events in the matter, the Delegation recalled that the staff member concerned had been given a fixed-term appointment of two years, that he was notified that his contract would expire, in keeping with Regulation 9.9(a), and that the staff member concerned appealed to the Appeal Board which concluded that the reasons given to the Appellant were not enough to justify the discretionary decision not to renew his contract and recommended offering him an extension of appointment or paying him proper compensation. The Delegation also stated that, in accordance with the international civil service principles, a valid reason must be made known to the staff member concerned, a principle which was not respected in the case at hand. The Delegation pointed out that the ILO Administrative Tribunal had decided that the complainant should be reinstated by renewing his appointment, and only if that proved impossible should the Organization pay him damages, but that the Organization had immediately chosen the second course of action, and that the Tribunal in its second judgment had found that the Organization had not carried out the conditions of the first judgment and that the Tribunal had awarded the complainant damages because of that non-compliance. The Delegation said that it could not support the statement of the Organization that there were no posts suitable for the complainant, whose professional qualifications had been evaluated and found appropriate when he was appointed and could not be disregarded a short time afterwards; to do so, had consequences for the legal security of all the staff. The Delegation also said that it could not agree to the characterization of the exercise by the complainant of a right of defense as a belligerent attitude. The Delegation of Argentina concluded by stating that it could not support the course of action proposed since it would mean disregarding the judgments of the ILO Administrative Tribunal and would undermine the legal security of the international civil service.

138. The Delegation of Chile stated that it regretted that a problem of this nature between a staff member and the Organization had been put before the Coordination Committee and that member States were being called upon to adopt a position; it was of the view that the matter should be settled by the Director General himself as he had the responsibility for the administration of the Organization. The Delegation said that, nevertheless, since the Coordination Committee had been called upon to make a decision, it would comment on the matter: according to a universally recognized principle, every employee who felt that his rights were being impinged upon should be able to have recourse to an independent mechanism for a decision on his claims; in this regard, the Organization had recognized the competence of the ILO Administrative Tribunal, a body composed of seven highly qualified members, whose decisions deserved the greatest respect, and in accordance with the Statute and Rules of that Tribunal were final and without appeal. The Delegation said that this important point should be taken into account by the Coordination Committee in making its decision. The Delegation added that whoever submits to a legal process should accept the resulting decision, whether it be favorable or adverse. The Delegation of Chile stated that, for the foregoing reasons, it was not in a position to support the proposal made by the Director General in paragraph 18 of document WO/CC/XXXIII/4, and that the Organization should comply with the judgment rendered by the ILO Administrative Tribunal independently of the personal opinions that each delegate might have on this particular case.

139. The Delegation of Peru stated that it did not wish to comment on the substance of the matter outlined in paragraphs 8 to 18 of document WO/CC/XXXIII/4 because the information submitted therein was insufficient. The Delegation said that, in its view, the matter was one that should be resolved by the Administration of the Organization and that it was the prerogative of the Director General to decide on the issues raised. The Delegation added, however, that it agreed with the statement made by the Delegation of Chile that it was not possible for the Coordination Committee to decide that the judgments of a tribunal which the Organization has an obligation to comply with should not be followed and, therefore, the Delegation of Peru said it could not agree with the proposal referred to in paragraph 19 of the said document.

140. The Director General said that, having heard the Delegations which had stated that the matter should be settled by the Director General rather than in a meeting of States, he asked the Chairman to remove the matter from the agenda of the Coordination Committee. He would try to take care of the matter himself.

141. The Chairman said that, in view of the request of the Director General, one could close this item.

142. The Delegation of Mexico stated that the matter before the Coordination Committee was difficult and delicate and it took note of the request of the Director General, but it could not remain silent on the matter. The Delegation said it was convinced and agreed that the Director General should find a solution but, in its view, any solution arrived at by the Director General would have consequences for the member States of the Organization because, in order for the Organization to comply with the judgment of the ILO

Administrative Tribunal in the direction which he would like to pursue, a decision of the International Court of Justice might be involved. The Delegation of Mexico said that if the Coordination Committee approved of asking the Director General to find a solution, that Delegation hoped that the Director General would proceed with caution since questions might arise which afterwards might require the decision of the member States.

143. The Delegation of the United States of America stated that it took note of the request made by the Director General yet it wished to express certain concerns. The Delegation said that it sympathized with the International Bureau over the difficulties it had experienced in the matter and that it believed that the matter should be resolved as soon as possible, but the Director General had not indicated in what manner he might resolve it. The Delegation added that, while it appreciated that the matter was brought to the attention of the member States, given that the sums of money involved were quite large, it did not intend to comment on the substance of the arguments in the case. That Delegation said that the Organization had a legal obligation to comply with the decisions of the ILO Administrative Tribunal; that obligation arose from the fact that in its Headquarters Agreement the Organization had agreed that an external body could exercise jurisdiction over certain employee complaints and to that end the Organization had accepted the jurisdiction of the ILO Administrative Tribunal; moreover, the International Court of Justice had ruled that judgments of review bodies such as of that tribunal were legally binding on organizations that had accepted the jurisdiction of the tribunal and must be implemented. The Delegation of the United States of America said that, given the circumstances, it could not support the proposal that nothing more be done and urged the International Bureau to take steps to ensure that the Organization complied with the decision of the ILO Administrative Tribunal. As concerns the Director General's possible proposal to change from that Tribunal to another, the Delegation of the United States of America said that it would fully consider such a proposal in due course.

144. The Director General stated that, since the discussion continued, he wanted to call, once again, attention to the fact that the ILO Administrative Tribunal's last decision might have the consequence that that Tribunal would once again--for the fifth time--examine whether the reasons for not prolonging the expired fixed-term employment, and whether the non-re-instatement, were justified and if the Tribunal found that they were not justified, WIPO could be required to pay 10,000 Swiss francs per month for the rest of the life of the complainant. In other words, the Tribunal's decision might not be final; it seemed to be a conditional decision with which it was difficult to comply. The Director General added that, nevertheless, he recognized, in principle, that the Tribunal's decisions should be complied with and he would do his best to promptly settle the concrete matter. He would be ready to pay the above-mentioned additional 193,000 Swiss francs to the plaintiff if the plaintiff declared that, with that payment, and with the already effected payment of 135,000 Swiss francs, all his claims were satisfied.

145. In summarizing the discussions that had transpired, the Chairman said that it was not the wish of the delegations to simply remove the matter from the agenda without it being disposed of in a concrete manner. The Chairman proposed, therefore, that the Coordination Committee take note of the

information presented by the Director General, including the amounts involved and the Director General's evaluation of the circumstances and situation the Organization found itself in. The Chairman further proposed that, since several delegations had said that the Coordination Committee was competent neither to take a decision on the substance of the matter nor to depart from the judgment of the Tribunal, the Coordination Committee decide not to take a position in respect of approving the course of action proposed by the Director General in the last sentence of paragraph 18 of document WO/CC/XXXIII/4. He also proposed that the Coordination Committee take note of the statements of the Director General that he would not put into question the obligation of the Organization to comply with the judgment of the ILO Administrative Tribunal in the case at hand, that he would do his best to settle the matter quickly and that he would study the possibility of changing from the Administrative Tribunal of the ILO to that of the United Nations.

146. The Director General repeated his declaration on the course of action he envisaged.

147. The Chairman said that it was in the interest of everybody that the matter be settled rapidly and definitively which evidently presupposed that the complainant renounce any possible future claims. He repeated the proposal he made before the last intervention of the Director General.

148. The Delegation of Mexico stated that it was its understanding that the Director General had withdrawn the matter from the agenda; it was concerned, however, by the fact that the decision proposed by the Chairman was framed in such a way as to give the impression that the Coordination Committee was saying it was not competent in the matter, which was not discussed, and, therefore, might lead to more problems. The Delegation said that, consequently, it appeared to be easier if the Coordination Committee were to simply note that the matter had been withdrawn by the Director General and to note his statement that he would try to find a solution.

149. The Delegation of Chile, as well as the Delegation of Argentina, stated that they shared the view expressed by the Delegation of Mexico and expressed the wish that the report should include the statements that their delegations had made on the matter.

150. The Chairman stated that, having heard the interventions that had just been made by the Delegations of Mexico, Chile and Argentina, the Coordination Committee could revert to the proposal initially made, namely, to simply note that the Director General withdrew paragraph 19 of document WO/CC/XXXIII/4, which in turn referred to paragraphs 8 to 18 of that document.

151. In response to a question from the Delegation of Peru, the Chairman said that the withdrawal of paragraph 19 of document WO/CC/XXXIII/4, which referred to paragraphs 8 to 18 of that document, implied the withdrawal of those paragraphs as well.

152. The Director General confirmed that when he proposed that the item be withdrawn from the agenda, he meant the withdrawal of everything in paragraphs 8 to 19 of document WO/CC/XXXIII/4; further, the Director General said that he supposed that the report would thus only mention this fact.

153. In conclusion, the Chairman stated that, with these clarifications, the decision of the Coordination Committee would be to note the withdrawal by the Director General of paragraphs 8 to 19 of document WO/CC/XXXIII/4.

154. The WIPO Coordination Committee noted the withdrawal referred to in the preceding paragraph.

Difference of Working Hours of Professional Staff between Geneva and the Base City of the Common System (New York)

155. The WIPO Coordination Committee, without discussion, noted the contents of document WO/CC/XXXIII/5.

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