

WIPO



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WIPO GENERAL ASSEMBLY

**Twenty-Seventh (15th Ordinary) Session
Geneva, September 24 to October 3, 2001**

WIPO ARBITRATION AND MEDIATION COUNCIL

Memorandum of the Secretariat

Introduction

1. The expiry, on August 31, 2001, of the mandate of all members of the WIPO Arbitration and Mediation Council presents an occasion to review the benefits of maintaining this advisory body. It is suggested that the evolving areas of activity of the WIPO Arbitration and Mediation Center make it appropriate to discontinue the Council in favor of consultation mechanisms that can operate in a more flexible and task-specific manner.

Establishment of the Council

2. On September 23, 1993, the WIPO General Assembly approved the establishment of WIPO arbitration services (WO/GA/XIV/4, paragraph 31). As part of this decision, the Assembly approved the creation of a WIPO Supervisory Board on Arbitration, now called the WIPO Arbitration and Mediation Council. The proposal so approved read as follows:

“In order to provide advice and to supervise the activities of the International Bureau in this area, it is proposed that a WIPO Supervisory Board on Arbitration (hereinafter referred to as “the Board”) be established. It is proposed that the Board be composed of six persons, appointed by the Director General of WIPO. Two of them would be government officials of Member States of WIPO and their appointment would be preceded by the Director General’s consulting with the WIPO Coordination

Committee. The other four would be selected from among leading international specialists in arbitration in the non-government sector after consultation between the Director General and representatives of the most prestigious non-governmental organizations in the field of intellectual property and/or international arbitration. It is proposed that appointments be made for terms of three years, renewable, and that the Board meet one to three times a year to review past activities and to provide advice on future activities.” (WO/GA/XIV/1, paragraph 13).

Appointments to the Council

3. After the WIPO Coordination Committee, in its July 1994 Session, had expressed its approval (WO/CC/XXXII/5, paragraph 15), the Director General appointed two persons from the government sector.¹ After consultation with representatives of non-governmental organizations in the fields of intellectual property and international arbitration, the Director General in 1994 appointed a further four members from the non-government sector.²

4. After the WIPO Coordination Committee, in its September 1997 Session, had expressed its approval (WO/CC/XXXIX/5, paragraph 34), the Director General renewed the appointment of the two members from the government sector. Also in 1997, the Director General renewed the appointment of the four members from the non-government sector. After the Coordination Committee, in its September 1997 Session, had expressed its approval of the Director General’s intention to enlarge the geographical representation on the Council by making an additional appointment (WO/CC/XXXIX/5, paragraph 34), the Director General in 1997 appointed a fifth member from the non-government section.³

5. After the September 1997 Session of the Coordination Committee had noted the absence on the Council of a member from a country of the Latin American and the Caribbean Group (WO/CC/XXXIX/5, paragraph 32), the Director General in 1998 appointed a further member from the non-government section.⁴ Thus, as of that year, the Council includes two persons from the government sector and six persons from the non-government sector.

6. Following informal consultations, the Director General in 2000 extended the appointment of the seven members whose mandate expired that year by one further year. As a result, the mandate of each of the eight Council members is due to expire on August 31, 2001.

Council Meetings

7. Since its inception in 1994, the Council has met once every year. The meetings were held at WIPO in Geneva and, in recent years, have had a duration of up to half a day. The

¹ Mr. Jürgen Schmid-Dwertmann, Ministry of Justice, Germany; Professor Tang Houzhi, China International Trade and Economic Arbitration Commission, China.

² Dr. Marc Blessing, Swiss Arbitration Association; Mr. Michael Hoellering, American Arbitration Association; Sir Michael Kerr, London Court of International Arbitration; and Professor Zentaro Kitagawa, Kyoto Comparative Law Center.

³ Dr. Mohamed Aboul-Enein, Cairo Regional Centre for International Commercial Arbitration.

⁴ Professor Guido Soares, University of São Paulo.

format of the meetings generally consisted of the presentation by representatives from the International Bureau of an update on the activities of the Center, followed by an exchange between and among the members of the Council and the International Bureau on issues of policy, law and practice concerning commercial dispute resolution in the field of intellectual property.⁵

Role of the Council

8. As noted, the Council has its origins in the preparatory steps that the International Bureau in 1993 proposed to be undertaken for the establishment of WIPO arbitration services. The Memorandum on which the General Assembly based its approval of WIPO's making available such services specifically envisaged a role for the Council in the establishment of rules for WIPO procedures, namely arbitration and mediation, and in the preparation of a list of specialized arbitrators and mediators from which appointments could be made in disputes that would be submitted to the Center (WO/GA/XIV/1, paragraphs 15 and 16.) Having been invited with a specific view to their extensive experience in these areas, the members of the Council were able to make an invaluable contribution to the introduction of this WIPO activity.

9. Since the establishment of the WIPO Rules and of the list of WIPO arbitrators and mediators, the Center's role has expanded considerably, to that of a provider of a dynamic range of dispute resolution services. With the benefit of experience and in response to market developments, the Center has significantly increased its scope of activity. It has become a resource center offering workshops for arbitrators, mediators, and other types of 'neutrals,' organizing conferences, assisting other Centers in the development of their services, developing online dispute resolution systems, and making other contributions to the efficiency of the dispute resolution process. Building on its traditional arbitration foundation, the Center also has become involved in the creation and administration of tailor-made procedures for the prevention and resolution of specific categories of disputes. A prominent example are WIPO's services for the resolution of Internet domain name disputes, of which the Center received some 1900 in the year 2000.

10. The Center discusses such developments with the Council at its annual meeting, enabling the Center to benefit from the views of the esteemed members of the Council. However, as a formal body composed of a small number of mostly arbitration experts meeting infrequently, the Council can only to a limited extent be expected to fulfil a satisfactory role in the guidance of the diverse activities presently claiming the Center's attention. Time-sensitive and often covering new areas, such activities appear to be better suited to ad hoc consultations between the Center and experts and authorities in the specific fields at issue. Indeed, the Center collaborates with an expanding network, such as visiting representatives from various institutions in Member States, national and international domain name registration authorities, officials from national and regional dispute resolution centers, industry associations active in the area of intellectual property, experts in legal rules drafting, and leading instructors in the broad area of dispute resolution. In addition, since the Center has become fully operational, with revenue generated from its services, the supervisory

⁵ As to the costs of such meetings, in addition to funding each member's air ticket, daily subsistence allowance, terminal expenses, and hotel accommodation, WIPO pays a small honorarium to cover each member's participation.

functions concerning the Center are more easily exercised within the context of the biennial program and budget operation and of the bodies and reporting mechanisms (such as the program performance review) established for that purpose.

11. It therefore seems timely for the Member States to consider effecting an economy in the operations of the Center by discontinuing the WIPO Arbitration and Mediation Council. It is noted that the Council has been instrumental in the international establishment of WIPO's services. Also, this recommendation is neither intended nor expected to reduce the transparency of and accountability for this activity. As mentioned, the work of the International Bureau in this regard forms part of the program and budget, the periodical program performance reports, and the annual report, as well as consultations with representatives of the Member States as and when desired. Among other elements of the relationship with the Member States, mention may be made of the invitations to attend Center conferences, the publication and distribution of reports by the Center, and the Center's collaboration with national authorities and organizations on specific projects at the request of Member States, all of which serve the important objectives of guiding the International Bureau in the exercise of its work and of keeping the Member States apprised of relevant developments.

12. The WIPO General Assembly is invited to consider and approve the proposal contained in paragraph 11, above.

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