

WIPO



WO/GA/WG-CR/3/5

ORIGINAL: English

DATE: February 12, 2001

WORLD INTELLECTUAL PROPERTY ORGANIZATION

GENEVA

WIPO GENERAL ASSEMBLY WORKING GROUP ON CONSTITUTIONAL REFORM

**Third Session
Geneva, March 6 to 9, 2001**

UNITARY ASSEMBLY

Document prepared by the Secretariat

1. For reasons related to its historical development,¹ WIPO is in the unusual constitutional situation of being a single organization, which has a single secretariat and a single Member State contribution system, but a constellation of governing bodies. The constellation comprises the Assemblies of Member States of each of the Unions constituted by the various treaties administered by the single organization (WIPO) and its single secretariat (the International Bureau). There are, at present, 13 such Assemblies, namely

- (i) WIPO General Assembly
- (ii) Paris Union Assembly
- (iii) Berne Union Assembly
- (iv) Madrid Union (Marks) Assembly
- (v) Hague Union Assembly
- (vi) Nice Union Assembly
- (vii) Lisbon Union Assembly
- (viii) Locarno Union Assembly
- (ix) PCT Union Assembly
- (x) Strasbourg (IPC) Union Assembly

¹ See "The Governance Structure of WIPO" (document A/32/INF/2), and "Constitutional Reform" (document A/33/3).

- (xi) Vienna Union Assembly
- (xii) Budapest Union Assembly
- (xiii) Film Register Treaty (FRT) Union Assembly.

2. The Working Group on Constitutional Reform (the Working Group) has considered the possibility of moving a step closer to an integrated constitutional structure for WIPO by recommending that the WIPO General Assembly be transformed into the single or unitary Assembly which would be the competent governing body for all the treaties administered by WIPO.² The present document explores the advantages and implications of such an approach, as well as the steps involved in implementing it.

Advantages and Implications of a Unitary Assembly

3. The advantages of having the WIPO General Assembly serve as the competent governing body for all WIPO treaties are:

(i) The constitutional structure of the Organization would be simple and easily comprehended and would correspond to the integrated structure of other international organizations.

(ii) The administration of the governance structure of the Organization would be made much more efficient and effective. At present, separate officers need to be elected for each of the 13 Assemblies and separate series of documents and reports need to be produced for the meetings of the Assemblies. With a unitary Assembly, only a single set of officers, documents and reports would be needed.

(iii) A single Assembly would reflect the existing practice of the meetings of Member States of WIPO and of the various Unions administered by WIPO. In practice, the various governing bodies of WIPO meet (at least in ordinary session) simultaneously and consider a single consolidated agenda containing items which are variously of relevance to all, some or one only of the governing bodies. The seating arrangements of delegations do not change, even though the capacity in which such delegations participate (whether as member or observer) and, consequently, their voting rights change according to the item under consideration in the consolidated agenda.

(iv) A single Assembly would avoid the future proliferation of governing bodies as new treaties are concluded under the auspices of WIPO. The need to avoid such a proliferation was recognized at the Diplomatic Conference on the Protection of Audiovisual Performances in December 2000 where provisional agreement was reached on the desirability of not creating a new Assembly for any new instrument that might be concluded on this subject, but conferring competence for the new instrument on the Assembly competent for the WIPO Performances and Phonograms Treaty.

4. As stressed in previous documents,³ the issue raised by making the WIPO General Assembly competent for all WIPO treaties that would require attention in order to avoid

² See document WO/GA/WG-CR/3, paragraph 46.

³ See A/33/3, paragraph 96; WO/GA/WG-CR/2/5, paragraph 12; WO/GA/WG-CR/2/8, paragraphs 44 to 49; and A/35/3, paragraph 9.

adverse consequences is voting rights. The WIPO General Assembly is composed of all States members of WIPO (at present, 175). Not all such States are party to each of the treaties for which the WIPO General Assembly would, under the proposal for it to constitute a unitary Assembly, assume competence. Thus, some States that are members of WIPO but not, for example, party to the Paris Convention for the Protection of Industrial Property or the Berne Convention for the Protection of Literary and Artistic Works, would be members of an Assembly which would be competent to decide matters with respect to the Paris and Berne Conventions by which those States would not be bound. Clearly, it is inappropriate that a State should have a vote with respect to a treaty whose substantive obligations the State does not assume.

5. In order to avoid such a disadvantageous consequence of a unitary Assembly, it is suggested that the same approach be adopted as that proposed with respect to the assumption by the WIPO General Assembly of the competence of the WIPO Conference⁴ and with respect to the proposed competence of the Assembly for the WIPO Performances and Phonograms Treaty (WPPT) for both the WPPT and any new instrument on the protection of audiovisual performances.⁵ Under that approach, each member of the WIPO General Assembly would be expressly prohibited from voting on any matter relating to a treaty for which the General Assembly was competent if the member was not party to that treaty. The member would thus, in effect, participate in the deliberations of the General Assembly on matters concerning treaties to which it was not party as an observer. It may be noted that this situation would correspond to existing practice under which any State member of WIPO may participate as an observer in the meetings of the Assemblies constituted under any of the WIPO treaties.⁶

Steps Involved in Establishing the WIPO General Assembly as the Common Assembly for WIPO Treaties

6. Each of the WIPO treaties under which an Assembly of contracting parties is established contains standard form provisions on the establishment and functioning of the Assembly. The provisions of the Paris Convention concerning the Assembly of the Paris Union (Article 13), which are, in all material respects, the same as corresponding provisions in other WIPO treaties establishing an Assembly, are reproduced in the left hand column of the Annex to this document.

7. In order to constitute the WIPO General Assembly as the competent Assembly for all WIPO treaties, two amendments would need to be envisaged to the existing provisions concerning Assemblies in WIPO treaties.

⁴ See document WO/GA/WG-CR/3/3.

⁵ See “Basic Proposal for Administrative and Final Provisions of the International Instrument on the Protection of Audiovisual Performances” to be considered by the Diplomatic Conference (document IAVP/DC/4), Article 100 and accompanying Notes.

⁶ See Article 6(5) of the Convention Establishing the World Intellectual Property Organization (the WIPO Convention).

8. First, the constituting provision at the commencement of the standard provisions on Assemblies would need to be amended to refer specifically to the WIPO General Assembly. In the Paris Convention, for example, this constituting provision is in the following form:

“Article 13

“(1)(a) The Union shall have an Assembly consisting of those countries of the Union which are bound by Articles 13 to 17.”

The provision could be amended to read as follows:

“Article 13

“(1)(a) The WIPO General Assembly shall be the competent Assembly for the Union. Each country bound by Articles 13 to 17 shall be a member of the Assembly.”

A similar amendment would need to be introduced in each WIPO treaty under which an Assembly is established.

9. The second amendment that would need to be envisaged is the express prohibition on voting in respect of treaties for which the WIPO General Assembly is competent but by which a State member of WIPO is not bound. It is suggested that this prohibition need only be expressed in the provisions relating to the WIPO General Assembly in the Convention Establishing the World Intellectual Property Organization (the WIPO Convention). In this respect, it is recalled that the insertion of such a provision has already been proposed in order to deal with the assumption of competence by the WIPO General Assembly for the WIPO Conference in the following terms:

“No State may vote in the General Assembly on any question relating to a treaty for which the General Assembly is competent and by which the State is not bound.”

(see document WO/GA/WG-CR/3/3, paragraph 6 and Annex)

It is submitted that it would not be necessary to repeat the foregoing provision in each of the WIPO treaties establishing an Assembly since each such treaty is capable of conferring rights on a contracting State only with respect to matters relating to that treaty itself (and not, therefore, capable of conferring rights to vote in respect of matters to other treaties). It would thus not be necessary to express the prohibition in each of these other treaties.

10. The Annex sets out, in the left hand column, the existing provisions concerning the Assembly that are contained in the Paris Convention and, in the right hand column, the proposed amendments (in *bold italics*) to those provisions which it is suggested be made in order to confer competence for the Paris Convention on the WIPO General Assembly.

11. The Working Group is invited to pronounce itself on the concept of a unitary Assembly.

[Annex follows]

ANNEX

Article 13 [Assembly of the Union]	Article 13 [Competent Assembly]
<p>(1) (a) The Union shall have an Assembly consisting of those countries of the Union which are bound by Articles 13 to 17.</p> <p>(b) The Government of each country shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.</p> <p>(c) The expenses of each delegation shall be borne by the Government which has appointed it.</p> <p>(2) (a) The Assembly shall:</p> <p>(i) deal with all matters concerning the maintenance and development of the Union and the implementation of this Convention;</p> <p>(ii) give directions concerning the preparation for conferences of revision to the International Bureau of Intellectual Property (hereinafter designated as "the International Bureau") referred to in the Convention establishing the World Intellectual Property Organization (hereinafter designated as "the Organization"), due account being taken of any comments made by those countries of the Union which are not bound by Articles 13 to 17;</p> <p>(iii) review and approve the reports and activities of the Director General of the Organization concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union;</p> <p>(iv) elect the members of the Executive Committee of the Assembly;</p> <p>(v) review and approve the reports and activities of its Executive Committee, and give instructions to such Committee;</p>	<p>(1) (a) <i>The WIPO General Assembly shall be the competent Assembly for the Union. Each country bound by Articles 13 to 17 shall be a member of the Assembly.</i></p> <p>(b) The Government of each country shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.</p> <p>(c) The expenses of each delegation shall be borne by the Government which has appointed it.</p> <p>(2) (a) The Assembly shall:</p> <p>(i) deal with all matters concerning the maintenance and development of the Union and the implementation of this Convention;</p> <p>(ii) give directions concerning the preparation for conferences of revision to the International Bureau of Intellectual Property (hereinafter designated as "the International Bureau") referred to in the Convention establishing the World Intellectual Property Organization (hereinafter designated as "the Organization"), due account being taken of any comments made by those countries of the Union which are not bound by Articles 13 to 17;</p> <p>(iii) review and approve the reports and activities of the Director General of the Organization concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union;</p> <p>(iv) elect the members of the Executive Committee of the Assembly;</p> <p>(v) review and approve the reports and activities of its Executive Committee, and give instructions to such Committee;</p>

<p>(vi) determine the program and adopt the biennial budget of the Union, and approve its final accounts;</p> <p>(vii) adopt the financial regulations of the Union;</p> <p>(viii) establish such committees of experts and working groups as it deems appropriate to achieve the objectives of the Union;</p> <p>(ix) determine which countries not members of the Union and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;</p> <p>(x) adopt amendments to Articles 13 to 17;</p> <p>(xi) take any other appropriate action designed to further the objectives of the Union;</p> <p>(xii) perform such other functions as are appropriate under this Convention;</p> <p>(xiii) subject to its acceptance, exercise such rights as are given to it in the Convention establishing the Organization.</p> <p>(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.</p> <p>(3) (a) Subject to the provisions of subparagraph (b), a delegate may represent one country only.</p> <p>(b) Countries of the Union grouped under the terms of a special agreement in a common office possessing for each of them the character of a special national service of industrial property as referred to in Article 12 may be jointly represented during discussions by one of their number.</p> <p>(4) (a) Each country member of the Assembly shall have one vote.</p> <p>(b) One-half of the countries members of the Assembly shall constitute a quorum.</p>	<p>(vi) determine the program and adopt the biennial budget of the Union, and approve its final accounts;</p> <p>(vii) adopt the financial regulations of the Union;</p> <p>(viii) establish such committees of experts and working groups as it deems appropriate to achieve the objectives of the Union;</p> <p>(ix) determine which countries not members of the Union and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;</p> <p>(x) adopt amendments to Articles 13 to 17;</p> <p>(xi) take any other appropriate action designed to further the objectives of the Union;</p> <p>(xii) perform such other functions as are appropriate under this Convention;</p> <p>(xiii) subject to its acceptance, exercise such rights as are given to it in the Convention establishing the Organization.</p> <p>(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.</p> <p>(3) (a) Subject to the provisions of subparagraph (b), a delegate may represent one country only.</p> <p>(b) Countries of the Union grouped under the terms of a special agreement in a common office possessing for each of them the character of a special national service of industrial property as referred to in Article 12 may be jointly represented during discussions by one of their number.</p> <p>(4) (a) Each country member of the Assembly shall have one vote.</p> <p>(b) One-half of the countries members of the Assembly shall constitute a quorum.</p>
---	---

(c) Notwithstanding the provisions of subparagraph (b), if, in any session, the number of countries represented is less than one-half but equal to or more than one-third of the countries members of the Assembly, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the countries members of the Assembly which were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of countries having thus expressed their vote or abstention attains the number of countries which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(d) Subject to the provisions of Article 17(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(e) Abstentions shall not be considered as votes.

(5) (a) Subject to the provisions of subparagraph (b), a delegate may vote in the name of one country only.

(b) The countries of the Union referred to in paragraph (3)(b) shall, as a general rule, endeavor to send their own delegations to the sessions of the Assembly. If, however, for exceptional reasons, any such country cannot send its own delegation, it may give to the delegation of another such country the power to vote in its name, provided that each delegation may vote by proxy for one country only. Such power to vote shall be granted in a document signed by the Head of State or the competent Minister.

(6) Countries of the Union not members of the Assembly shall be admitted to the meetings of the latter as observers.

(c) Notwithstanding the provisions of subparagraph (b), if, in any session, the number of countries represented is less than one-half but equal to or more than one-third of the countries members of the Assembly, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the countries members of the Assembly which were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of countries having thus expressed their vote or abstention attains the number of countries which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(d) Subject to the provisions of Article 17(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(e) Abstentions shall not be considered as votes.

(5) (a) Subject to the provisions of subparagraph (b), a delegate may vote in the name of one country only.

(b) The countries of the Union referred to in paragraph (3)(b) shall, as a general rule, endeavor to send their own delegations to the sessions of the Assembly. If, however, for exceptional reasons, any such country cannot send its own delegation, it may give to the delegation of another such country the power to vote in its name, provided that each delegation may vote by proxy for one country only. Such power to vote shall be granted in a document signed by the Head of State or the competent Minister.

(6) Countries of the Union not members of the Assembly shall be admitted to the meetings of the latter as observers.

<p>(7) (a) The Assembly shall meet once in every second calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.</p> <p>(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of the Executive Committee or at the request of one-fourth of the countries members of the Assembly.</p> <p>(8) The Assembly shall adopt its own rules of procedure.</p>	<p>(7) (a) The Assembly shall meet once in every second calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.</p> <p>(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of the Executive Committee or at the request of one-fourth of the countries members of the Assembly.</p> <p>(8) The Assembly shall adopt its own rules of procedure.</p>
--	--

[End of Annex and of document]