

# WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION  
GENEVA

## WIPO GENERAL ASSEMBLY WORKING GROUP ON CONSTITUTIONAL REFORM

**Fifth Session**  
**Geneva, February 18 to 21, 2002**

REPORT

*adopted by the Working Group*

### Introduction

1. Established by the WIPO General Assembly at its meeting in September 1999, the Working Group on Constitutional Reform (“the Working Group”) held its fifth session at the Headquarters of WIPO from February 18 to 21, 2002.
2. The following 70 States participated: Algeria, Argentina, Austria, Belarus, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Canada, Chile, China, Colombia, Costa Rica, Côte d’Ivoire, Cuba, Democratic People’s Republic of Korea, Denmark, Dominican Republic, Egypt, El Salvador, France, Germany, Ghana, Greece, Guatemala, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Japan, Kenya, Latvia, Lithuania, Luxembourg, Madagascar, Malaysia, Mauritius, Mexico, Morocco, Netherlands, Nigeria, Panama, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Slovakia, Slovenia, South Africa, Spain, Switzerland, Thailand, The former Yugoslav Republic of Macedonia, Tunisia, Turkey, United Kingdom, United States of America, Ukraine, Venezuela, Viet Nam and Yugoslavia.
3. The list of participants is contained in the Annex to this report.

4. The Working Group at its fifth session unanimously elected Mr. Marino Porzio (Chile) as Chair, and Ms. Michèle Weil -Guthmann (France) and Mr. Jānis Kārklīšs (Latvia) as Vice-Chairs. Mr. Edward Kwakwa (WIPO) acted as Secretary to the Working Group.
5. Discussions were based on documents WO/GA/WG-CR/5/2 (“Convention Establishing the World Intellectual Property Organization – Draft Texts of Amendments Agreed in Principle”) and WO/GA/WG -CR/5/3 (“Paris Convention for the Protection of Industrial Property – Draft Texts of Amendments to Administrative and Financial Provisions Agreed in Principle”).

#### The WIPO Coordination Committee

6. While some delegations preferred retaining the Coordination Committee in one form or another, several delegations reiterated their preference for the abolition of the Coordination Committee. The delegations that favored the abolition of the Coordination Committee stated, however, that in a spirit of compromise, they were willing to engage in a discussion aimed at exploring how best to determine the size and composition of a coordination committee, should there be consensus on maintaining the Coordination Committee.

7. In the ensuing discussion, some delegations opined that the size and composition of the Coordination Committee should be discussed after the functions of such a committee had been agreed upon. Various views were expressed as to the functions of the Coordination Committee. A few delegations were of the view that the Coordination Committee’s current functions were adequate. A few other delegations expressed the view that the Committee should be given additional functions and a revised mandate. Some delegations suggested that in addition to certain constitutional functions, the provisions relating to the Committee should contain a flexibility clause under which the General Assembly could delegate to the Coordination Committee, on a permanent or temporary basis, certain additional functions.

8. One delegation suggested that the functions of the Program and Budget Committee should be transferred to the Coordination Committee. In that delegation’s view, this was consistent with Article 8(3)(i) of the WIPO Convention, which provides, among other things, that the Coordination Committee shall give advice on financial and other matters of common interest to the Union of WIPO. Another delegation proposed that an additional function of the Coordination Committee be explored, namely that of proposing strategic directions to the Assemblies.

9. Some other delegations were of the view that some of the present functions of the Coordination Committee could be better performed by the General Assembly. In the view of those delegations, the Coordination Committee’s function of nominating a candidate for appointment to the position of Director General should be transferred to the more representative General Assembly, and other incidental tasks currently performed by the Coordination Committee should also be transferred to the General Assembly. One regional group expressed its view that the Coordination Committee could perform administrative and policy functions and not go into operational matters.

10. The Working Group also discussed the issue of the size of the Coordination Committee. A few of the delegations that expressed a view on the issue agreed that the present figure of 79 was large and unwieldy. Several delegations preferred to limit the size of the Coordination Committee to anywhere between one-fifth and one-third of the number of States party to the

WIPO Convention (i.e. between 36 and 59, on the basis of the present number of Member States of WIPO). One delegation strongly favored the *status quo* but expressed interest in considering any creative solutions to questions concerning the Coordination Committee.

11. In terms of criteria for determining the composition of the Coordination Committee, various views were expressed, ranging from the maintenance of the *status quo* to varying modifications of the criteria stated in *Alternative B*, as provided in draft Article 8(1) of the WIPO Convention in document WO/GA/WG-CR/5/2. Some regional groups stated that, in their view, the only acceptable criterion in determining the composition of the Coordination Committee was the principle of equitable geographical representation. This was a principle that was practiced in and accepted by all intergovernmental organizations. Other delegations took the view that other important criteria also merited consideration, including the extent of participation of States in the various WIPO treaties, and the extent of use by States or their nationals of the systems and services established under the WIPO treaties. One delegation recalled that Article 14 of the Paris Convention already included not only the principle of equitable geographical representation, but also that of participation of States in the various intellectual property agreements in determining the composition of the Executive Committee of the Paris Union.

12. The Chair noted that the Working Group had made significant progress on the issue of the Coordination Committee. The majority of delegations were in favor of keeping the Coordination Committee provided it remained a coordination body. In the view of the Chair, there seemed to be consensus on recommending the abolition of the Executive Committees of the Paris and Berne Unions, subject to finding a satisfactory means of determining the composition of the Coordination Committee. The Chair also concluded that a large number of delegations appeared to be in favor of retaining the present functions of the Coordination Committee. Some delegations had expressed a wish that the members of the Committee should be elected to serve two-year terms. One delegation had proposed that, as for other bodies, the Executive Committees of the Paris and Berne Unions could decide to no longer meet or be convened, while continuing to serve as the basis for determining the composition of the Coordination Committee.

13. With respect to the size of the Coordination Committee, the Chair observed that different opinions had been expressed. Some delegations were in favor of a smaller size ranging between one-fifth and one-third of the number of States party to the WIPO Convention. Some delegations proposed that even though a smaller number of States would be designated as members with voting rights, the Coordination Committee should remain an open-ended body in which all other WIPO Member States could participate without the right to vote. The Chair recalled that some members of the Working Group had suggested that the task of designating the members of the Coordination Committee or the criteria for selecting the members of the Committee should be handed over to the WIPO General Assembly. Some delegations had suggested that the Working Group provide the General Assembly with a recommendation in the form of a proposal for criteria to determine the composition of the Coordination Committee. Other delegations proposed that, in order to ensure transparency and full participation, a future committee should be open to all WIPO Member States.

#### Unitary Assembly

14. Several delegations expressed a preference for the establishment of a unitary Assembly that would be the competent body for all WIPO-administered treaties. Those delegations

were of the view that the creation of a unitary Assembly would result in a simplification of the constitutional structure and a more efficient and effective administration of the governance structure of WIPO.

15. A few delegations stated their preference for the *status quo*, rather than the establishment of a unitary Assembly. One of those delegations was, however, willing to explore the possibility of having only five Assemblies: the first would be the WIPO General Assembly, responsible for the organizational, strategic and budgetary issues of the Organization. The second Assembly would be responsible for matters relating to the substantive provisions of all the WIPO-administered treaties. And the third, fourth and fifth Assemblies would be the Assemblies of the PCT, Madrid and Hague Systems respectively.

16. Some delegations expressed reservations about the proposal relating to five Assemblies. In the view of those delegations, having only five Assemblies would not solve the problem of voting rights; indeed, some delegations argued, there did not seem to be any difference between the proposal to retain five Assemblies and the *status quo* of 13 Assemblies.

17. One delegation reiterated its opposition to the creation of a unitary Assembly. In the view of that delegation, with a unitary Assembly, transparency in source and expenditure of funds would suffer. The delegation expressed interest in considering the notion of a reduced number of separate Assemblies, and particularly for maintaining separate Assemblies for the fee-based Unions. The delegation expressed its opposition to extending to intergovernmental organizations the same voting rights as Member States, except in any Assembly where this arrangement had already been agreed upon.

18. A few delegations observed that the idea of a unitary Assembly had superficial attraction but was of limited value. The establishment of a unitary Assembly, in the view of some delegations, would not necessarily simplify the governance structure of WIPO. One delegation expressed its view that complex structures can sometimes be more manageable, insofar as they allow for certain problems to be solved in a particular manner. In the view of that delegation, the complex governance structure of WIPO had worked fairly well to date, and there was no pressing need to tamper with the structures simply for the sake of simplification.

19. One delegation mooted the idea of seeking assistance from a group of eminent persons who are relatively independent but well-versed in the constitutional structure of WIPO and who could provide a "constitutional vision" for the Organization.

20. The Chair concluded that not much progress had been made on the issue of the unitary Assembly, and the Working Group was still far from consensus on the matter. There were different ideas as to the viability of a unitary Assembly, and there was no consensus to recommend the creation of a unitary Assembly at this time. Regarding the idea of seeking external help to solve outstanding issues, the Chair expressed his view that this was the work of the General Assembly, and further noted that providing a global vision for the Organization and reforming its constitutional structure were two different exercises.

20bis. In reply to a question by one delegation, the Secretariat explained that should the Working Group decide to recommend that certain constitutional changes sought to be made, the process of implementing those decisions would entail a lot of work. Six months before the Assemblies meet to approve the draft modifications, the Secretariat must send out the draft texts of the proposed modifications or changes to the WIPO-administered treaties. In effect,

the final draft text would need to be sent out in January 2003, if the Assemblies were to approve that text in September 2003. If the Working Group intend to recommend any changes, then a meeting of the Group in June would be necessary in order to decide exactly which changes, if any, should be effected, and whether those changes are significant enough to bother all the WIPO Member State parliaments or legislatures to adopt them through their respective domestic constitutional processes, and therefore whether to recommend to the Assemblies that this course of action be taken.

21. It was agreed that the Working Group would meet in one final session in June 2002 with a view towards completing its tasks and finalizing its recommendations to be submitted to the General Assembly in September 2002.

22. *The report was unanimously adopted by the Working Group on February 21, 2002.*

[Annex follows]

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

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(dans l'ordre alphabétique des noms français des États)  
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