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WIPO GENERAL ASSEMBLY WORKING GROUP ON CONSTITUTIONAL REFORM

Sixth Session
Geneva, June 24 to 28, 2002

STATUS OF WORK

Document prepared by the Secretariat

1. The present document recalls the current status of the work of the Working Group on Constitutional Reform (the Working Group) for the information of the Working Group and for its consideration in formulating its recommendations to the WIPO General Assembly at the latter's meeting from September 23 to October 1, 2002.

Meetings to Date

2. Following the recommendation of the WIPO General Assembly in September 1999, the Working Group was convened by the Director General and has held five sessions: the first from March 22 to 24, 2000, the second from July 4 to 6, 2000, the third from March 6 to 9, 2001, the fourth from September 11 to 14, 2001, and the fifth from February 18 to 21, 2002. The reports of these sessions are available as documents WO/GA/WG -CR/3, WO/GA/WG-CR/2/8, WO/GA/WG -CR/3/6, WO/GA/WG -CR/4/4 and WO/GA/WG -CR/5/4.

3. The Working Group has transmitted one report, contained in document A/36/10, to the WIPO General Assembly for consideration at the General Assembly's meeting in September 2001. The General Assembly noted the contents of the Report of the Working Group, decided to renew the mandate of the Working Group and requested the Working Group to report on its progress to the General Assembly in 2002.

Completed Work

4. One recommendation of the Working Group has already been implemented. This recommendation involved the discontinuation of five historical bodies whose membership was extremely limited and which had long ceased to serve any functional purpose, namely, the Paris Union Conference of Representatives, the Berne Union Conference of Representatives, the Hague Union Conference of Representatives, the Nice Union Conference of Representatives and the Lisbon Union Council. The adoption in practice of the recommendation did not require treaty revision, and the recommendation was implemented by the concerned bodies in September 2000 (see document A/35/15, paragraphs 134 to 136).

Proposals Adopted in Principle by the Working Group

5. During its various sessions, the Working Group has agreed upon three proposed reforms, each of which is discrete, in the sense that it does not entail any consequential changes to other parts of the constitutional structure of WIPO or the Unions administered by WIPO. Those three reforms are described briefly in the following paragraphs.

6. Periodicity of Ordinary Sessions of the Assemblies. The Working Group has agreed to recommend that amendments be introduced to the treaties administered by WIPO to provide for the ordinary sessions of the WIPO General Assembly and the Assemblies of the Unions administered by WIPO to take place annually, rather than once every two years (see documents WO/GA/WG-CR/3, paragraph 51 and WO/GA/WG-CR/8, paragraph 22). In making the recommendation, the Working Group agreed, however, that the budgetary period of two years should be maintained.

7. Abolition of the WIPO Conference. The Working Group has also agreed to recommend the abolition of the WIPO Conference (document WO/GA/WG-CR/3/6, paragraph 12). It has examined draft texts for implementing the abolition of the WIPO Conference. The main consequence of such abolition would be the inclusion of States party to the WIPO Convention, but not members of one or more of the Unions administered by WIPO, as members of the WIPO General Assembly, without the right to vote on any matter relating to a treaty to which the State was not party (see document WO/GA/WG-CR/4/2).

8. Formalization of the Unitary Contribution System and Changes in Contribution Classes. In 1993, the Assemblies of WIPO and the relevant Unions administered by WIPO adopted, on a provisional basis, a unitary contributions system in respect of contributions by Member States under the Convention Establishing the World Intellectual Property Organization (WIPO) and the six other treaties administered by WIPO which provide for contributions to be paid by contracting States (namely, the Paris Convention for the Protection of Industrial Property (the Paris Convention), the Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention), the Strasbourg Agreement Concerning the International Patent Classification (the Strasbourg Agreement), the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (the Nice Agreement), the Locarno Agreement Establishing an International Classification for Industrial Designs (the Locarno Agreement) and the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (the Vienna Agreement)) (see documents AB/XXIV/5, paragraphs 35, 38, 39, 49 and 50; AB/XXIV/18, paragraph 180; and, for a general explanation, A/33/3, paragraphs 16 to 25).

9. In 1989, 1991 and 1993, the Assemblies of WIPO and the relevant Unions administered by WIPO adopted, again on a provisional basis, changes to the classes for contributions by States under the WIPO Convention and the six other treaties administered by WIPO that provide for contributions to be paid by contracting States (see, for a general explanation citing the relevant decisions, document A/33/3, paragraphs 26 to 45).

10. The unitary contributions system and the list of contribution classes adopted in 1993 have been in operation since 1994. The implementation of these two reforms, however, has been a practical one. The corresponding provisions in the WIPO Convention and the six other treaties administered by WIPO that provide for contributions by contracting States have never been modified to reflect the new practices.

11. The Working Group has agreed to recommend that the unitary contributions system and the new list of contribution classes be formalized by the amendment of the corresponding treaties to reflect the new practices accurately (see document WO/GA/WG -CR/3, paragraphs 36 to 38).

12. Draft texts have been submitted to the Working Group to illustrate the changes that would be required to the WIPO Convention and the six other treaties administered by WIPO that provide for contributions by contracting States. As far as the WIPO Convention is concerned, the unitary contributions system and the new contribution classes are expressed in draft of Article 11 (Finances) of the WIPO Convention, contained in document WO/GA/WG-CR/4/2. For the six other treaties administered by WIPO that provide for contributions by contracting States an illustrative text reflecting the unitary contribution system and the new contribution classes is contained in a draft of Article 16 of the Paris Convention, contained in document WO/GA/WG -CR/4/3. The Paris Convention, in this regard, is similar in all material respects to the five other treaties administered by WIPO that provide for contributions. The draft revised text of Article 16 of the Paris Convention can thus be considered as a model for the changes that would be required to those other treaties.

Proposal Adopted in Principle but Dependent on Agreement on Outstanding Consequential Changes

13. The Working Group has agreed in principle that the Executive Committees of the Paris, Berne and PCT Unions served no useful function and should be abolished (see document WO/GA/WG-CR/2/8, paragraph 43). The Working Group recognized, however, that a recommendation to abolish the Executive Committees of the Paris and Berne Unions could not be made unless and until an alternative means were agreed for constituting the Coordination Committee, since those Executive Committees provide the primary means by which the Coordination Committee is constituted. The fate of the proposal to abolish the Executive Committees of the Paris and Berne Unions thus depends on the outcome of the Working Group's discussions concerning the role and composition of the Coordination Committee, to which reference is made in the next section of this document.

Outstanding Items

14. There are two items on which the Working Group has not been able to reach agreement.

15. Role and Composition of the Coordination Committee. Provoked in part by the need to consider a new means of constituting the Coordination Committee should the Executive Committees of the Paris and Berne Conventions be abolished, the Working Group has held extensive discussions on the role, functions and size of the Coordination Committee, as well as on the means of constituting that Committee. Those discussions have, however, been inconclusive. Their present status is summarized in the Report of the last session of the Working Group as follows:

“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 small 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.”

(document WO/GA/WG -CR/5/4, paragraphs 12 and 13)

16. Unitary Assembly. The Working Group has also had extensive discussions on the possibility of establishing the WIPO General Assembly as a unitary Assembly that would be the competent Assembly for the WIPO Convention and for all WIPO-administered treaties. These discussions have not, however, produced any agreed position. Following the discussions on this question at the last session of the Working Group, 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 not a consensus to recommend the creation of a unitary Assembly at this time” (document WO/GA/WG -CR/5/4, paragraph 20).

Future Decisions

17. As the sixth session of the Working Group is planned to be the last session before the final recommendations of the Working Group are transmitted to the WIPO General Assembly in September 2003, two main decisions confront the Working Group.

18. The first such decision is the determination of the items on which recommendations for reform would be made by the WIPO General Assembly. As indicated in the preceding sections of this document, following the fifth session of the Working Group, there were three items on which an agreed position to recommend reforms had been reached (periodicity of the ordinary sessions of Assemblies; abolition of the WIPO Conference; and formalization of the unitary contributions system and the new contribution classes). The Working Group will need to decide whether these three items exhaust the list of recommended reforms or whether an agreed position in favor of recommendations for reform can also be reached on the outstanding items (the Executive Committees of the Paris, Berne and PCT Unions; the Coordination Committee; and the unitary Assembly).

19. The second decision confronting the Working Group is whether the nature of the items on which there is an agreed position to recommend reforms is sufficiently important to justify the considerable effort that would be required on the part of Member States to obtain the necessary constitutional approval for treaty amendments reflecting the reforms.

20. The procedures that would need to be followed to effect treaty amendments to implement any recommended reforms have been described in detail in paragraphs 9 to 15 of document A/33/3. It is recalled that those procedures would, generally, require the following steps (assuming that amendments were to be effected by the competent Assemblies, rather than through a diplomatic conference):

- the communication by the Director General of the proposed amendments six months in advance of the consideration of the proposals by the competent Assemblies;
- the adoption of the amendments by a special majority (usually three-fourths) of the competent Assemblies; and
- the communication of written notifications of acceptance of the adopted amendments, effected in accordance with their respective constitutional processes, by three-fourths of the States that are members of the competent Assemblies at the time the amendment is adopted.

21. Assuming that the Working Group decided to recommend reforms to the WIPO General Assembly in September 2003, and assuming that the WIPO General Assembly decided to direct the Director General to initiate the procedure for treaty amendment to implement these reforms, the procedures described in the preceding paragraph would necessitate the following actions, taking the WIPO Convention as an example:

- communication in January 2003 by the Director General of the proposed amendments (see article 17(1) of the WIPO Convention);

- adoption of the amendments in September 2003 by three-fourths of the members of the Assemblies of the Paris Union and of the Berne Union and by a simple majority of the members of the WIPO Conference (see Article 17(2) of the WIPO Convention); and
- communication of written notifications of acceptance thereafter by three-fourths of the State members of WIPO (at present, 179 States, meaning that written notifications would be required from 134 States) (see Article 17(3) of the WIPO Convention).

22. It is thus necessary for the Working Group to decide whether the final list of agreed items of reform is sufficiently important to justify the considerable effort, for member States, that the procedures described in the last two paragraphs would involve.

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