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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

ASSEMBLIES OF THE MEMBER STATES OF WIPO

**Thirty-Sixth Series of Meetings
Geneva, September 24 to October 3, 2001**

REPORT OF THE WORKING GROUP ON CONSTITUTIONAL REFORM

prepared by the Secretariat

1. At its meeting in September 1999, the WIPO General Assembly recommended that the Director General establish a working group to consider and study proposals concerning constitutional reform and to report on its progress to the Assemblies of Member States in 2000 (document A/34/16, paragraph 159).
2. The Working Group on Constitutional Reform (the Working Group) was duly convened by the Director General and held four 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 and the fourth from September 11 to 14, 2001. It unanimously elected Mr. Marino Porzio (Chile), Chair of the WIPO General Assembly, as Chair, and Ms. Michèle Weil-Guthmann (France) and Mr. Vladimír Banský (Slovakia) as Vice-Chairs. Mr. Porzio presided over all four sessions of the Working Group. The reports of those sessions are available as documents WO/GA/WG-CR/3, WO/GA/WG-CR/2/8, WO/GA/WG-CR/3/6 and WO/GA/WG-CR/4/4.
3. The Secretariat presented a report to the Assemblies of Member States at their Thirty-Fifth Series of Meetings on the progress of the Working Group (document A/35/3). That report summarized the progress of the discussions of the Working Group, as recorded in the reports of its first and second sessions.

4. The present report summarizes the progress of the discussions of the Working Group, as recorded in the reports of its four sessions. The report is divided into two parts. The first part reports on those items on which the Working Group has reached agreement, in principle, and the second part of the document reports on outstanding items on which discussions in the Working Group are incomplete. The report of the fourth session of the Working Group is attached as an Annex to this document.

5. It is to be noted that, at its last (fourth) session, the Working Group considered draft texts for implementing in treaty language both the items on which agreement has been reached in principle and alternatives for the various items on which agreement has yet to be reached. Those drafts are available in the form of draft provisions for the Convention Establishing the World Intellectual Property Organization (the WIPO Convention) (document WO/GA/WG-CR/4/2) and draft provisions for the administrative and final clauses of the Paris Convention for the Protection of Industrial Property (the Paris Convention) (document WO/GA/WG-CR/4/3). The latter draft provisions were presented as representative of the provisions that would need to be implemented in all WIPO-administered treaties, should the reforms in question be adopted.

ITEMS ON WHICH PROVISIONAL AGREEMENT HAS BEEN REACHED

6. Discontinuation of the Conferences of Representatives. The Working Group had unanimously agreed earlier to recommend the discontinuation of 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 (document WO/GA/WG-CR/3, paragraph 39). That recommendation has already been implemented by the concerned bodies in September 2000 (document A/35/15, paragraphs 134 to 136).

7. Abolition of the WIPO Conference. The Working Group unanimously agreed to recommend the abolition of the WIPO Conference (document WO/GA/WG-CR/3/6, paragraph 12). It also 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. Executive Committees of the Paris and Berne Unions and the Coordination Committee. The Working Group had agreed earlier that the Executive Committees of the Paris and Berne Unions served no useful function and should be abolished (document WO/GA/WG-CR/2/8, paragraph 43). The Working Group had, however, also recognized that the abolition of the Executive Committees of the Paris and Berne Unions would have profound implications in so far as those Executive Committees provided the primary means by which the Coordination Committee was constituted.

9. At its fourth meeting, the Working Group's discussion of the Coordination Committee and, in consequence, the Executive Committees of the Paris and Berne Unions focused on three alternatives provided by the Secretariat in working document WO/GA/WG-CR/4/2 ("Convention Establishing the World Intellectual Property Organization-Draft Texts of Amendments Agreed in Principle").

10. A great majority of delegations expressed a preference for retaining the Coordination Committee, with a different method for determining its composition. Several of those delegations had also made it clear that further discussion was needed on the criteria for determining the composition of the Coordination Committee. Other delegations expressed a clear preference for eliminating the Coordination Committee. All those delegations seemed willing, however, to accept retention of the Coordination Committee if a satisfactory agreement could be reached on the method of determining the composition of the Coordination Committee. The only delegation that had supported retention of the *status quo* had also stated its willingness to examine the possibility of retaining the Coordination Committee if a satisfactory solution to the question of membership and criteria for the composition of the Coordination Committee could be obtained. The Working Group therefore agreed to recommend to the General Assembly the proposal to retain the Coordination Committee, subject to reaching agreement on the size and the criteria for determining the composition of the new Coordination Committee.

11. Formalization of the Unitary Contribution System and Changes in Contribution Classes. The Working Group agreed to recommend the formalization of the unitary contribution system and the changes in contribution classes that had been operative in practice since 1994 (document WO/GA/WG-CR/3, paragraphs 36 to 38).

12. Draft Texts of Modifications Agreed in Principle-The WIPO Convention. The Working Group also examined draft texts of modifications agreed in principle (documents WO/GA/WG-CR/4/2 and WO/GA/WG-CR/4/3) in order to consider how the recommendations of the Working Group would be implemented through the various WIPO treaties. The expression of the unitary contribution system and the new contribution classes in draft Article 11 (Finances) of the WIPO Convention (as provided by the Secretariat in document WO/GA/WG-CR/4/2) was examined. In respect of the systems of classes and the units assigned to each class, the majority of delegations expressed a preference for the draft text which provided that the number of classes and the units assigned to each class would be established by the competent Assembly or Assemblies (depending on whether the proposal for a unitary Assembly proceeded). One delegation was unable to support this text because, as pointed out below, it was not in favor of the proposal to create a unitary Assembly.

13. Periodicity of Ordinary Sessions of the Assemblies. The Working Group 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 (documents WO/GA/WG-CR/3, paragraph 51 and WO/GA/WG-CR/8, paragraph 22). In so doing, the Working Group agreed that the budgetary period of two years should, however, be maintained.

OUTSTANDING ITEMS

14. Unitary Assembly. A majority of delegations expressed a preference for the establishment of the WIPO General Assembly as a unitary Assembly that would be the competent body for all WIPO-administered treaties. The Working Group did not, however, reach consensus on recommending the creation of a unitary Assembly at this time (document WO/GA/WG-CR/4/4, paragraphs 8 to 10).

15. Draft Texts of Modifications Agreed in Principle–The Paris Convention. As mentioned above, the Working Group examined document WO/GA/WG-CR/4/3 as an example of almost identical changes that would need to be made to the other WIPO-administered treaties. The Working Group was unable to complete its discussion of the draft text of modifications agreed in principle, as some delegations expressed the wish to have more time to study the draft texts.

16. The WIPO General Assembly is invited to note the contents of this Report and to decide on the future work, if any, of the Working Group on Constitutional Reform.

[Annex follows]

[FORMER HEADER

WO/GA/WG-CR/4/4

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**WIPO GENERAL ASSEMBLY WORKING GROUP ON
CONSTITUTIONAL REFORM**

Fourth Session

Geneva, September 11 to 14, 2001]

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 fourth session at the Headquarters of WIPO from September 11 to 14, 2001.
2. The following 60 States participated: Algeria, Argentina, Austria, Bahrain, Belarus, Belgium, Bulgaria, Burkina Faso, Chile, China, Colombia, Costa Rica, Democratic People’s Republic of Korea, Denmark, Dominican Republic, Ecuador, Egypt, Finland, France, Germany, Ghana, Greece, Guatemala, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Japan, Latvia, Lithuania, Malta, Mauritius, Mexico, Morocco, Netherlands, Nicaragua, Nigeria, Panama, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Slovakia, South Africa, Spain, Switzerland, Thailand, Tunisia, Turkey, Ukraine, United Kingdom, United States of America, Venezuela.
- [3. The list of participants is contained in the Annex to this report.]
4. The Working Group at its first session had unanimously elected the Chair of the WIPO General Assembly, Mr. Marino Porzio (Chile), as Chair, and Ms. Michèle Weil-Guthmann (France) and Mr. Vladimír Banský (Slovakia) as Vice-Chairs. Mr. Francis Gurry (WIPO) acted as Secretary to the Working Group.

General Discussion

5. Discussions were based on documents WO/GA/WG-CR/4/INF/1 (“Executive Organs of Certain Intergovernmental Organizations”), WO/GA/WG-CR/4/2 (“Convention Establishing the World Intellectual Property Organization – Draft Texts of Amendments Agreed in Principle”), and WO/GA/WG-CR/4/3 (“Paris Convention for the Protection of Industrial Property – Draft Texts of Amendments to Administrative and Financial Provisions Agreed in Principle”).

6. The Secretariat explained that there were four matters on which the Working Group had reached agreement in principle, namely: (i) the discontinuation of 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, which recommendation had been implemented by the concerned bodies in September 2000; (ii) the recommendation 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 biennially; (iii) the abolition of the WIPO Conference; and (iv) the formalization in the provisions of the various treaties of the unitary contribution system and the changes in contribution classes that had been operative in practice since 1994.

7. The Secretariat explained that the outstanding issues that had been discussed in the Working Group, and on which full agreement in principle had not yet been reached, were: (i) the possibility that the WIPO General Assembly act as a unitary Assembly competent for all WIPO-administered treaties; (ii) whether to abolish or retain the Coordination Committee and, in the event of retention, the method of constituting the Coordination Committee. In this connection, there was already agreement in principle that, if a satisfactory alternative method for constituting the Coordination Committee could be found, the Executive Committees of the Paris and Berne Unions could be abolished, as should the Executive Committee of the PCT Union; and (iii) the question of coordination of the entry into force of the various amendments to the various treaties, if those amendments were to be adopted.

The Unitary Assembly

8. A majority of 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 more efficient and effective administration of the governance structure and a simplification of the constitutional structure of WIPO. In the words of one delegation, the creation of a unitary Assembly would be conducive to upgrading and modernizing the Organization, and should therefore be seen as the ultimate goal of the exercise in constitutional reform.

9. Two delegations expressed the view that the proposal to create a unitary Assembly deserved further study and analysis before a decision could be taken by the Working Group. One delegation expressed 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; States not party to one or more treaties might exercise undue influence on that or those treaties, given the usual practice of seeking consensus; and the repercussions of such a major restructuring of the governance structure of WIPO may not yet have been fully identified. There was a need for caution. In respect of Article 6 of the WIPO Convention

providing for the General Assembly, the delegation supported the *status quo*, in which membership consists only of States party to the WIPO Convention which are members of any of the Unions. Some delegations however expressed doubts as to the argument that membership should be restricted only to States.

10. The Chair concluded that, while there was great support for the creation of a unitary Assembly, there was not a consensus to recommend the creation of a unitary Assembly at this time.

The Coordination Committee

11. The discussion on this item focused on three alternatives provided in working document WO/GA/WG-CR/4/2 (“Convention Establishing the World Intellectual Property Organization – Draft Texts of Amendments Agreed in Principle”).

12. *Alternative A* reflected the *status quo*, as currently provided in Article 8(1)(a) of the WIPO Convention, under which the Executive Committees of the Paris and Berne Unions provide the formal means by which the composition of the Coordination Committee is determined.

13. *Alternative B* provided as follows:

“There shall be a Coordination Committee consisting of one-fifth of the States party to this Convention. The General Assembly shall, at each of its ordinary sessions, designate those States taking into account the extent of participation of States in the various international agreements administered by the Organization, the extent of use by States or their nationals of the systems and services established under such agreements and the need for equitable geographical representation among the members of the Coordination Committee.”

14. *Alternative C* provided for the deletion of Article 8 of the WIPO Convention, meaning the abolition of the Coordination Committee.

15. While one delegation supported the *status quo*, that delegation expressed a willingness to explore the possibility of accepting *Alternative B*, on the understanding that acceptable criteria for determining the composition of the Coordination Committee could be determined. The delegation made explicit that this did not constitute acceptance of the proposal of a unitary Assembly. No other delegations expressed a preference for the *status quo*, as currently provided in Article 8 of the WIPO Convention.

16. Some delegations supported *Alternative C*, providing for the abolition of the Coordination Committee. In the view of those delegations, the coordinating function of the body would not be needed if the General Assembly were to act as a unitary Assembly. In other words, the current tasks of the Coordination Committee could be easily accommodated by the General Assembly or other existing organs within WIPO, such as the Program and Budget Committee. Some of the delegations that favored the elimination of the Coordination Committee argued that tasks such as the nomination of the Director General should, in any event, be the responsibility of the General Assembly, which was a more representative body. One delegation opined that the politicization of the process and the difficulties faced in trying to elect members to the Coordination Committee served as proof of the need to abolish the

Coordination Committee. The delegations that supported the abolition of the Coordination Committee also stated their willingness to accept *Alternative B* if a satisfactory solution could be found to the method of determining the composition of the Coordination Committee.

17. The majority of delegations supported the retention of the Coordination Committee, with a modified method for determining its composition, thus supporting elements of *Alternative B*. Some delegations expressed their preference for a new executive body with a new name and a revised mandate. Such an executive body could meet not just once a year, as is the case of the Coordination Committee, but as often as needed in the course of the year.

18. A few delegations expressed a preference for abolishing the Executive Committees of the Paris and Berne Unions, while retaining the Coordination Committee. A few other delegations recalled that the Working Group had taken a decision earlier on to abolish the Executive Committees of the Paris and Berne Unions only if a satisfactory solution were found to the composition of the Coordination Committee.

19. Extensive discussion took place on the criteria for determining the composition of the Coordination Committee or the executive body that would replace the Coordination Committee. A significant number of delegations argued that the only criterion that should be taken into account in determining the composition of the Coordination Committee was that of equitable geographical representation. In the view of those delegations, the two other criteria provided in *Alternative B* (namely, the extent of participation of States in the various international agreements administered by the Organization and the extent of use by States or their nationals of the systems and services established under such agreements) were not equitable and belied the status of WIPO as an intergovernmental organization whose membership was restricted to States. A few of those delegations also observed that the users of the Organization's systems and services were paying fees for services provided to them, so there was no need to further reward those States or their nationals, through their States, with membership on the Coordination Committee.

20. The Delegation of Venezuela, speaking on behalf of the Group of Latin American and Caribbean States (GRULAC), made the following statement: "The Group of Latin American and Caribbean States (GRULAC) requests that due note be taken of its observation that, with the exception of the principle of equitable geographical representation, none of the criteria listed in proposed *Alternative B* for paragraph (1) of Article 8 of the WIPO Convention is acceptable to the Member States of GRULAC. The principle of equitable geographical representation must be the only one that prevails, as practiced in and accepted by all intergovernmental organizations."

21. One delegation observed that the criteria for the composition of the Coordination Committee, as proposed in *Alternative B*, were vague and would therefore be difficult to implement. In the view of that delegation, greater precision was needed in identifying the criteria for the composition of the Coordination Committee.

22. Other delegations expressed a different view. In the view of those other delegations, while the question of equitable geographical representation was an important criterion, other criteria also merited consideration. Indeed, one delegation pointed out that the principles of equitable geographical representation and the participation of States in the various international agreements were already required to be taken into account under the Paris and Berne Conventions in determining the composition of the Executive Committees of the Paris and Berne Unions and, thus, of the Coordination Committee. The only new element was the

extent of use by States or their nationals of the systems and services of the Organization. To the extent that the Organization obtained some 90 % of its income from user fees, it made sense to ensure that the interests of States whose nationals were the principal users of WIPO services should also be represented.

23. The Working Group also discussed the issue of the size of the Coordination Committee. Most of the delegations that expressed a view on the issue agreed that the present figure of 72 was large and unwieldy. While 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 35 and 59, on the basis of the present number of Member States of WIPO), a few delegations cautioned against a drastic or immediate reduction in the present size of the Coordination Committee.

24. The Chair concluded that a great majority of delegations had expressed a preference for *Alternative B* (i.e. retaining the Coordination Committee with a different method for determining its composition). Several of those delegations had also made it clear that further discussion was needed on the criteria for determining the composition of the Coordination Committee. Some delegations had also expressed a clear preference for *Alternative C* (i.e. eliminating the Coordination Committee). All those delegations seemed willing, however, to accept *Alternative B* if a satisfactory agreement could be reached on the method of determining the composition of the Coordination Committee. The only delegation that had supported *Alternative A* (retention of the *status quo*) had also stated its willingness to examine *Alternative B* in order to seek a satisfactory solution to the question of membership and criteria for the composition of the Coordination Committee. The Chair therefore concluded that the Working Group could recommend *Alternative B* to the General Assembly (i.e. retaining the Coordination Committee, subject to reaching agreement on the size of, and the criteria for determining the composition of, the new Coordination Committee).

Finances

25. The formalization of the unitary contribution system and the changes in contribution classes are issues on which the Working Group had already agreed in principle.

26. The expression of the unitary contribution system and the new contribution classes in draft Article 11 of the WIPO Convention (as provided in document WO/GA/WG-CR/4/2) was examined. In respect of the systems of classes and the units assigned to each class, the majority of delegations expressed a preference for *Alternative B* to Article 11(4)(b) of the WIPO Convention that was provided in document WO/GA/WG-CR/4/2. That alternative provided that the number of classes and the units assigned to each class would be established by the General Assembly or by the General Assembly meeting in joint session with the Assemblies of the concerned Unions. Delegations that supported this alternative based their decision on the greater simplification that it provided. Consistent with their support for the unitary Assembly, those delegations also expressed a preference that the General Assembly, acting as a unitary Assembly, should have the competence to establish the number of classes and the units assigned to each class.

27. One delegation expressed a preference for *Alternative A*, under which there would be two systems of classes, one applicable to States party to the WIPO Convention but not members of any of the Unions, and the other applicable to States members of one or more of

the Unions. The delegation's preference for this option stemmed from its opposition to the creation of a unitary Assembly.

28. A few other delegations took the view that they needed more time to study the implications of both alternatives.

29. Article 11(6) of the WIPO Convention currently provides as follows: "The amount of the fees and charges due for services rendered by the International Bureau in the field of legal-technical assistance shall be established and shall be reported to the Coordination Committee, by the Director General." Some delegations expressed a preference for retaining this provision. In the view of those delegations, it established an important function for the Coordination Committee. No delegation seemed to have any strong desire to delete the provision.

30. The Chair concluded that there did not seem to be any difficult or outstanding issues in respect of the provisions on finances. The various views that had been expressed by delegations could be reconciled in a revised text.

Paris Convention for the Protection of Industrial Property

31. The Working Group examined document WO/GA/WG-CR/4/3 ("Paris Convention for the Protection of Industrial Property – Draft Texts of Amendments to Administrative and Financial Provisions Agreed in Principle") as an example of almost identical changes that would need to be made to the other WIPO-administered treaties.

32. Certain delegations expressed the wish to have more time to study the working document, especially as the translations of the document were not received until a few days before the meeting. In this respect, one delegation noted its observation in earlier WIPO meetings that translations of documents prepared by the Secretariat frequently appeared long after the appearance of the documents in their original language. The delegation recalled that it had previously requested that further resources be allocated to the Secretariat for translation services. It regretted to note, however, that the draft Program and Budget for 2002-2003 did not provide for any increase in resources for the translation services of WIPO. The delegation stated that it intended to repeat its request for an increase in resources for translation services at the next meeting of the Program and Budget Committee.

33. Another delegation expressed its support for the inclusion of Article 16*bis* in document WO/GA/WG-CR/4/3, which provided as follows: "The amendments to Articles 13, 14, 15, 16 and 17 approved in [2002] shall not enter into force until the conditions of Article 17 with respect to amendments have been satisfied and the amendments to the Convention Establishing the World Intellectual Property Organization approved in [2002] enter into force." There was no objection to the inclusion of this provision.

34. One delegation stressed that the administrative and final clauses needed for the entry into force of the amendments could be complicated, and that the Working Group would need to address those issues comprehensively at its next meeting.

35. In respect of the transitional provisions in document WO/GA/WG-CR/4/2 ("Convention Establishing the World Intellectual Property Organization – Draft Texts of Amendments Agreed in Principle"), two alternatives were provided. *Alternative A* provided for the

retention of the present text of Article 21 of the WIPO Convention, while *Alternative B* had deleted the provisions of that Article that were of mere historical significance. One delegation expressed a preference for retaining *Alternative A*. Another delegation stated that it was open to either alternative, as one ensured the preservation of history while the other ensured simplification of the text. Other delegations preferred *Alternative B* because it was much simpler and did not include text that was no longer relevant.

Future Work

36. One delegation stated its view that the Working Group had finished four successful meetings to date and had made specific recommendations to reform structures which were over 30 years old. In the view of that delegation, agreement had been reached on issues where it was possible, and it was unlikely that much further progress would be made within the Working Group. The time was therefore ripe to submit a final report to the General Assembly.

37. A number of delegations, however, were of the view that the Working Group had already made significant progress and had a lot more work to do. In the view of this group of delegations, the most important part of the Working Group's work was yet to be done. It would therefore be appropriate to submit a comprehensive report to the General Assembly on work done to date, with a view towards continuing the work of the Working Group in the near future.

38. The Chair concluded that he would report to the General Assembly in his capacity as Chair of the Working Group on the work carried out by the Working Group during its four meetings to date. The decision on any future work for the Working Group would be left to the General Assembly to decide.

[End of Annex and of document]