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GENEVA

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WIPO GENERAL ASSEMBLY WORKING GROUP ON CONSTITUTIONAL REFORM

Sixth Session
Geneva, June 24 to 28, 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 sixth session at the Headquarters of WIPO from June 24 to 26, 2002.
2. The following 52 States participated: Algeria, Austria, Bangladesh, Belarus, Burkina Faso, Cameroon, Chile, China, Costa Rica, Côte d'Ivoire, Denmark, Egypt, Equatorial Guinea, France, Germany, Greece, Guatemala, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Israel, Italy, Japan, Kenya, Latvia, Lithuania, Madagascar, Mexico, Morocco, Netherlands, Nigeria, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Senegal, Spain, Sri Lanka, Switzerland, Thailand, The former Yugoslav Republic of Macedonia, Tunisia, Ukraine, United Kingdom, United States of America and Viet Nam.
3. The list of participants is contained in Annex II to this report.

4. The Working Group at its fifth session had unanimously elected Mr. Marino Porzio (Chile) as Chair, and Ms. Michèle Weil -Guthmann (France) and Mr. Jānis Kārklīņš (Latvia) as Vice-Chairs for the fifth and sixth sessions. Mr. Edward Kwakwa (WIPO) acted as Secretary to the Working Group.

5. Discussions were based on documents WO/GA/WG-CR/6/2 ("Status of Work"), 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").

Discussion on Outstanding Items (Role and Composition of the Coordination Committee, and Unitary Assembly)

6. The Chair recalled that there had already been an agreement to discontinue five historical bodies, as indicated in paragraph 4 of document WO/GA/WG -CR/6/2 ("Status of Work"). The Working Group had also taken certain decisions in principle, namely to recommend: (i) annual ordinary sessions of the Assemblies and other bodies; (ii) abolition of the WIPO Conference; and (iii) the formalization of the unitary contributions system and changes in contribution classes. There were still two pending issues, namely: the status of the Coordination Committee and the creation of a unitary Assembly. On those two issues, various views had been expressed in the Working Group. The Chair urged the Working Group to find a solution concerning those issues, and to decide clearly whether to accept, reject or defer the adoption of the outstanding issues.

7. The Delegation of the United States of America recalled that it had been prepared, in earlier meetings, to participate in the Working Group's exploration of the question of revising the composition of the Coordination Committee. The instructions subsequently received by the Delegation of the United States of America no longer permitted that flexibility. The United States was firmly in favor of the *status quo*. The Delegation of the United States of America took exception with the Chairman's conclusion in paragraph 13 of working document WO/GA/WG -CR/6/2 ("Status of Work") that "the Working Group has agreed in principle that the Executive Committees of the Paris, Berne and PCT Unions served a useful function and should be abolished." The Delegation of the United States of America wished to state that it did not agree with the conclusion that the Executive Committees served a useful function. In the Delegation's view, the Executive Committees of Paris and Berne served a useful function inasmuch as they served as a means for constituting the executive or Coordination Committee of WIPO. The Delegation of the United States of America also expressed its belief that the list of reforms upon which an agreement had been reached did not exhaust the list of recommended reforms that was possible at this time. The three reasons which an agreement had been reached (i.e. (i) annual ordinary sessions of the WIPO General Assembly and other Assemblies, (ii) abolition of the WIPO Conference and (iii) formalization of the unitary contributions system and changes in contribution classes), were important and substantive enough for the Working Group to propose a formalization of the relevant texts in accordance with the laid-down amendment procedures in the relevant WIPO treaties.

8. The Delegation of the Netherlands stated its readiness to go ahead with a formalization of the list of agreed items of reform, as specified in paragraphs 6, 7 and 8 of document

WO/GA/WG-CR/6/2 (“Statu sof Work”). With regard to the role and composition of the Coordination Committee, the Delegation of the Netherlands disagreed with the view that the Executive Committees of the Paris and Berne Unions served a useful purpose. The Delegation would have liked to see a different method or means of determining the composition of the Coordination Committee. The Delegation of the Netherlands agreed, however, that given the amount of time that had already been devoted to the issue, there was no need to spend more time at this stage on the issue of the Coordination Committee. The Delegation expressed its disappointment that the Working Group had been unable to make more far-reaching and fundamental recommendations on constitutional reform of the Organization.

9. The Delegation of Mexico recalled that it had stated in earlier meetings its support for the list of reforms proposed in paragraphs 6, 7 and 8 of the working document, among others. The Delegation was disappointed that the Working Group was unable to agree on the establishment of a unitary Assembly and the elimination of the Coordination Committee. In the Delegation’s view, there was one additional topic that could be dispensed with in this session, namely the immediate abolition of the Executive Committee of the PCT Union. That Executive Committee had no impact on the composition of the Coordination Committee, and could therefore be separated from the Paris and Berne Union Executive Committees.

10. The Delegation of Algeria, speaking on behalf of the African Group, wished to reiterate its position on the issue of constitutional reform. The Group was of the view that any discussion on constitutional reforms should be based on or guided by two important principles, namely, that of sovereign equality of Member States, and that of equitable geographical distribution. These two principles would ensure full participation of Member States with respect to the maintenance of equality, and would also enable a favorable development of the concept of intellectual property. The African Group also wished to reiterate its position on previous occasions on points of consensus – it was in favor of annual ordinary sessions of the Assemblies, formalization of the unitary contributions system and change in contribution classes, and the abolition of the WIPO Conference. The African Group also maintained its preference for the creation of a unitary Assembly. The abolition of the Conference, in the view of the African Group, would also reduce the number of functions of the Coordination Committee. A more detailed consideration of the actual role of the Coordination Committee would therefore be needed in future. The Delegation of Algeria, speaking on behalf of the African Group, also advocated that the Coordination Committee should evolve into an administration and proposal body, as is the case in other intergovernmental organizations. The African Group considered that the Coordination Committee should function according to the same principles of sovereign equality of States and equitable geographical distribution, in order to enable full representation of all Member States. The criteria for composition of the Committee needed further reflection. The Delegation further drew the Secretariat’s attention to the fact that meetings at WIPO and at WTO were taking place simultaneously, and that adequate measures should be taken in the future to avoid such overlapping, particularly when the WTO meetings involved the TRIPS Council. Such overlap had more adverse effects on delegations that had smaller missions and had to cover both WIPO and WTO.

11. The Delegation of Germany also stated its support for the list of three recommended reforms. In particular, the Delegation was of the view that the unitary contributions system should be formalized. The Delegation would have liked to see more ambitious and far-reaching recommendations emanate from the Working Group. The Delegation expressed its support for the proposal by the Delegation of Mexico on the need to abolish the PCT

Executive Committee. The Delegation of Germany stated that it had also been in favor of abolishing the Executive Committees of the Paris and Berne Unions, but recognized that there was no consensus on the issue at this time.

12. In response to a question from the Delegations of Germany and Mexico, the Secretariat explained that the PCT Assembly had already taken actions similar to that taken by the conferences of representatives. When the time came to form the Executive Committee of the PCT Union, the PCT Assembly decided not to proceed to that practical formation. The Secretariat recalled that there was an ongoing exercise for the reform of the PCT. While that exercise had to date been limited to amendment of the PCT Regulations only, it was possible that the PCT reform process would, in the future, also examine the reform of the treaty itself. In light of that, the Working Group might wish to consider recommending to the PCT Assembly that, if and when it undertakes a process of reform or revision of the treaty, it should also review the question of formally abolishing the Executive Committee of the PCT Union.

13. The Delegation of Switzerland expressed its support for the proposal to recommend formal treaty amendment in respect of the list of three items on which an agreement had been reached in principle. The Delegation also endorsed the proposal to recommend to the PCT Assembly that it consider a formal dissolution of the Executive Committee of the PCT Union. In respect of the two pending matters, the Delegation of Switzerland also cautioned that they were not ripe for decision, so it was better to maintain the *status quo*.

14. The Delegation of the Islamic Republic of Iran considered that in view of the importance of the reform proposals, the items on which there was an agreement should be submitted to the General Assembly in September for its approval. In the Delegation's view, there was no need for a diplomatic conference.

15. The Delegation of France endorsed what had been said by the other delegations. In particular, it noted that when the constitutional reform exercise began three years ago, there was consensus on the fact that the system was too complex and needed simplification. The Delegation of France noted that there were reasons to rejoice over the considerable progress made to date. The Delegation admitted, however, that on the periodicity issue, the Assemblies had practically met each year, even if these sessions were not referred to as ordinary annual sessions; on the abolition of the Conference, that was almost automatic, in so far as there were very few WIPO Members that were not also members of one or the other Union; and on the unitary contributions system and changes in contribution classes, that had been in practice since 1994. The Delegation of France expressed its disappointment that some delegations professed a desire to simplify things, but at the same time were hostile to the idea of having a unitary Assembly and a unitary budget. In the Delegation's view, when the WIPO Member States agreed to the unitary contributions system and the changes in contribution classes, they were implicitly accepting a unitary or single budget. The Delegation of France stressed the fact that the criteria for the composition of the Coordination Committee still had to be decided, and it did not think that doors should be closed in relation to the discussion of outstanding imperative issues.

16. The Delegation of Egypt recalled that the mandate of the Working Group was to simplify the governance structure of the Organization. It was of the view that the three items on which there was consensus for reform would help simplify the governance structure of the Organization. While the Working Group had been unable to make any recommendations in

respect of a unitary Assembly or the Coordination Committee, the Group's discussions in previous sessions had been very comprehensive and informative and should serve as the basis for any future work on reform of the Organization. The Delegation of Egypt endorsed the statement made by the Delegation of Algeria, speaking on behalf of the African Group.

17. The Delegation of Indonesia expressed its support for recommending a formalization of the items on which agreement had been reached. The Delegation stated its view that the issue of the unitary Assembly was closely related to any decision concerning changes in respect of the Coordination Committee. Any further discussions on the matters should therefore be continued only after the WIPO General Assembly were to decide to renew or extend the mandate of the Working Group.

18. The Delegation of China endorsed the list of recommended items for formal amendment, and expressed its regret that the Working Group had been unable to reach consensus in respect of the Coordination Committee or the establishment of a unitary Assembly. The Delegation of China opined that constitutional reform of an Organization was a long-term project, and agreement might therefore be reached in the course of time. The Delegation reiterated its position, stated in earlier meetings, in favor of establishing a unitary Assembly and retention of the Coordination Committee. In the Delegation's view, the Working Group's decision not to recommend abolition of the Coordination Committee was also an achievement of the Working Group. It meant that the Working Group had carefully analyzed and studied the suggestion concerning the abolition of the Coordination Committee. The decision was also proof of the fact that the Coordination Committee had a certain function. In respect of the composition of the Coordination Committee, the Delegation of China expressed its preference for a larger and more representative Committee.

19. The Delegation of Guatemala expressed general support for a formalization of the treaties in respect of agreed reform items, and also reiterated its statements in earlier Working Group meetings on the need for as broad and representative a Coordination Committee as possible.

20. The Delegation of Costa Rica also expressed its support for a formalization of the agreed reform proposals, and the submission of the necessary recommendations to the General Assembly at its September 2002 meeting in order to set the amendment process in motion.

21. At the invitation of the Chair, and in response to a question from the Delegation of Egypt, the Secretariat recalled the procedure that would need to be followed to effect treaty amendments to implement the three recommended reforms on which agreement had been reached:

- the Working Group would submit a report to the Assemblies of Member States at their meeting in September 2002. That report would recommend to the Assemblies the adoption and formalization of texts in respect of annual ordinary sessions of the Assemblies, abolition of the WIPO Conference and formalization of the unitary contributions system and changes in contribution classes. The report would be submitted together with preliminary draft text of the proposed amendments (Draft list of Articles proposed for Amendments attached as Annex I), in order to provide Member States with an indication of what the final text to be submitted in January 2003 for their approval would look like ;

- the Assemblies of Member States would need to adopt the Working Group's recommendations at their September 2002 meeting and authorize the Director General to proceed with the formalities required for treaty amendment;
- in January 2003, the Director General would communicate the proposed amendments, in the form of final draft texts, to the Member States, for their consideration at their September 2003 meeting;
- in September 2003, the amendments would need to be formally adopted by a special majority (usually three-fourths of the Member States) of the competent Assemblies; and
- the adopted amendments would enter into force after receipt by the Director General 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.

22. The Delegation of Egypt recalled that under Article 17 of the WIPO Convention, the body that is competent to adopt amendments is the WIPO Conference. By adopting the proposed amendments, the Conference would, in effect, be abolishing itself and ensuring the eventual transfer of constitutional competence to the General Assembly. The Delegation of Egypt also suggested that, in view of the recommendation to abolish the Conference, some of the tasks currently assigned to the Conference, such as supervision of the Permanent Committee on Cooperation for Development Related to Intellectual Property (PCIPD) and establishment of the biennial program of legal-technical assistance, might usefully be transferred to other competent bodies.

23. The Chair stated that the Working Group's mandate was such that it called for a meticulous look at the legality of decisions being taken, as a way of ensuring that there is legal certainty in the future. In the Chair's view, the Working Group had completed the task that was assigned to it by the General Assembly. The Group had been realistic enough to realize that there were certain items on which recommendations could not be made because the prevailing political conditions dictated otherwise. The very creation of the Working Group was recognition by the WIPO General Assembly of the fact that the Organization's governance and constitutional structures were anachronistic in many respects and had to be reformed.

24. The Chair concluded that the Working Group had worked with patience on some sensitive subjects and had reached results which, for some delegations, were less than satisfactory. But the Chair was of the view that the conclusions and the work of the Working Group should not be underestimated. The Group's decision to go ahead and make recommendations for the formalization of treaty amendments in three specific areas was a good and effective decision that would enable it to wrap up its work effectively. The Group's discussion on other topics would also not be lost. Sometime in the future, the General Assembly would no doubt be called upon to take decisions relating to the governance and constitutional structures of the Organization. The Chair finally invited members of the Working Group to ratify the items that had already been completed by the Group as well as the three areas relating to periodicity of the ordinary sessions of the Assemblies, abolition of the WIPO Conference and formalization of the

unitary contributions system and changes in contribution classes. The Secretariat would establish a report of the Working Group for the Assemblies for their consideration at the September 2002 meeting. Draft provisions for the amendments of the relevant treaties would be made available, in conjunction with that report, for the information of the Assemblies.

25. The report was unanimously adopted by the Working Group on June 26, 2002.

[Annexes follow]

ANNEXI

DraftlistofArticlesoftheConventionEstablishingtheWorldIntellectualProperty
Organization(WIPOConvention)andParisConventionfortheProtectionofIndustrial
Property(ParisConvention)proposedforamendmentbytheWorkingGroupon
ConstitutionalReform

WIPOConvention

- Art.6(1)(a)
- Art.6(2)
- Art.6(3)(a)
- Art.6(4)(a)
- Art.6(5)
- Art.7
- Art.8(1)(c)
- Art.8(3)(i)and(iii)
- Art.9(6)
- Art.11(1),(2),(3),(4),(5)and(6)
- Art.11(8)(c)
- Art.17
- Art.20(2)and(3)
- Art.21(1)and(2)(a),(b)and(c)

ParisConvention

- Art.13(7)(a)
- Art.15(3)
- Art.16(1)to(4)

[AnnexIIfollows]

ANNEXEII/ANNEXII/ANEXOII

LISTEDES PARTICIPANTS/LISTOFF PARTICIPANTS

I. ÉTATSMEMBRES/MEMBERSTATES

(dans l'ordre alphabétique des noms français des États)
(in the alphabetical order of the names in French of the States)

ALGÉRIE/ALGERIA

Nor-Eddine BENFREHA, conseiller à la Mission permanente, Genève

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Kazi Imtiaz HOSSAIN, Counsellor, Permanent Mission, Geneva

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VIETNAM

VUHuyTan,Counsellor,PermanentMission,Geneva

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Vice-présidents/
Vice-Chairs: MichèleWEIL -GUTHMANN(Mme)(France)
JānisK ĀRKLIŅŠ(Lettonie/Latvia)
Secrétaire/Secretary: EdwardKWAKWA(OMPI/WIPO)

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FlorenceROJAL(Ms.),juristeauBureauconseillerjuridique/LegalOfficer,Officeofthe
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