

WIPO



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GENEVA

WORLD INTELLECTUAL PROPERTY ORGANIZATION

GENERAL ASSEMBLY

Fourteenth Session (11th Ordinary)
Geneva, September 20 to 29, 1993

REPORT

adopted by the General Assembly

INTRODUCTION

1. The General Assembly was concerned with the following items of the Consolidated Agenda (document AB/XXIV/1 Rev.): 1, 2, 3, 4, 6, 13, 14, 16, 17, 18, 19, 22, 24 and 25.
2. The report on the said items, with the exception of items 6, 13 and 18, is contained in the General Report (document AB/XXIV/18).
3. The report on items 6, 13 and 18 is contained in the present document.
4. Mr. Jean-Claude Combaldieu (France) was elected Chairman of the General Assembly.

ITEM 6 OF THE CONSOLIDATED AGENDA:

QUESTIONS CONCERNING THE DRAFT TREATY
ON THE SETTLEMENT OF DISPUTES BETWEEN STATES
IN THE FIELD OF INTELLECTUAL PROPERTY

5. Discussions were based on document WO/GA/XIV/2.
6. The Delegations of the United Kingdom, Sweden, Israel, Mexico, the Czech Republic, Chile, Egypt, Austria, Germany, Malawi, France, Canada, China, Australia, Poland, Bulgaria, Spain, Japan, Denmark, Belgium, Romania, Portugal, Hungary, Brazil, Italy, Argentina, Netherlands and Syria confirmed their continuing interest in the work for the preparation and conclusion of the proposed treaty on the settlement of disputes between States in the field of intellectual property. Those delegations also expressed their support for the proposals of the Director General, set forth in paragraph 6 of document WO/GA/XIV/2, for the convening of another (the sixth) session of the Committee of Experts and the continuation of the Preparatory Meeting, in March 1994, and for the convening of a Diplomatic Conference in the 1994-95 biennium.
7. The Delegations of the United Kingdom, Sweden, Czech Republic, Austria, Malawi, China, Australia, Poland, Bulgaria, Spain, Belgium, Romania, Italy and Argentina stated their support for the proposal that the Director General convene the Diplomatic Conference either late in 1994 or during the first half of 1995 at a date to be determined by the Director General if he deemed that the Committee of Experts and the Preparatory Meeting had completed their tasks.
8. The Delegation of Israel stated that the proposed treaty would cover an important lacuna in the system for the protection of intellectual property, that it was essential to continue, and proceed at an accelerated pace, in the work on the proposed treaty and that this should be done without regard to the work that was being carried out at this juncture on the subject of dispute settlement in any other forums.
9. The Delegation of Egypt stated that the proposed treaty should be concluded promptly and that, in doing so, consideration should not be given to the relationship between the proposed treaty and the negotiations being conducted in the framework of the Uruguay Round in GATT.
10. The Delegation of Israel, as well as the Delegations of Brazil and the Netherlands, stated that the Diplomatic Conference should be convened in 1994 rather than in 1995.
11. The Delegations of Mexico and Hungary stated that the Diplomatic Conference should take place at the beginning of 1995.
12. The Delegation of Syria added that its Government would welcome being informed as soon as possible of the date of the Diplomatic Conference, as well as of other meetings organized by WIPO, especially those meetings in respect of which a State was not a member, since it was more difficult for those States to be aware of the holding of such meetings.

13. The Delegations of Germany, France and Japan drew attention to the fact that the discussions in the Committee of Experts and in the Preparatory Meeting showed that a number of difficult substantive issues remained to be solved, including those related to the sphere of application of the treaty, in particular the source treaties to which the dispute settlement treaty should be applicable, to the relationship between the procedure for consultations and the convening of a panel, to the nature of the panel procedure, to the matter of introducing between the panel and the Assembly an appellate review mechanism and to the participation of international organizations. In the view of those delegations, further consideration of those issues might even necessitate an additional (seventh) meeting of the Committee of Experts and the continuation of the Preparatory Meeting and that would affect the date of convening the Diplomatic Conference. Furthermore, since not only issues of dispute settlement and intellectual property but also issues of international public law were involved, consultations and coordination among a number of Government units concerned in a given country would be necessary and that would require more time than was usually the case between the completion of the work of committees of experts and the convening of a diplomatic conference. Moreover, work was also in progress leading to the convening of other diplomatic conferences and their dates would also have to be considered. Consequently, for those reasons, it was the view of those delegations that whether further work beyond the March 1994 meetings should be undertaken and the fixing of a date for the Diplomatic Conference should be the subject of consideration by the Governing Bodies of WIPO at their sessions in September 1994.

14. The Delegation of Portugal stated that the question whether the Diplomatic Conference should be convened for a period of three weeks or whether two weeks would be sufficient was also an issue and that could depend upon the success of the meetings in March 1994 of the Committee of Experts and the Preparatory Meeting; so also, whether the Diplomatic Conference could be convened in 1994 would also depend on whether the work could be completed in March 1994, and if not, it would be necessary to fix a date for the Diplomatic Conference which might even be beyond the first three months of 1995.

15. The Delegation of Denmark stated that, in its view, it should not be for the Preparatory Meeting to decide which States and organizations could participate in the Diplomatic Conference and that the final determination on that matter should depend on what the Governing Bodies of WIPO and the Unions administered by WIPO decided in their sessions preceding the Diplomatic Conference.

16. In reply to a question from the Delegation of Chile concerning the financing of the participation in the Diplomatic Conference of representatives from developing countries, the Director General stated that it was necessary to reconcile the wish--that he had, too--to assist the largest number of developing countries with the limited financial resources that were available. The draft budget for the 1994-95 biennium contemplated the cost of the travel expenses and subsistence allowance for the participation of a total of 90 delegates in respect of three diplomatic conferences, that is, 30 delegates in respect of each. The Director General said that the question could, if necessary, be reverted to at the sessions of the Governing Bodies in September 1994; that would, however, necessitate the convening of an extraordinary session of the WIPO General Assembly.

17. The WIPO General Assembly adopted the proposals contained in paragraph 6 of document WO/GA/XIV/2, subject to the understanding that the Director General would, if need be, ask for further instructions from the WIPO General Assembly in 1994.

ITEM 13 OF THE CONSOLIDATED AGENDA:

ESTABLISHMENT OF WIPO ARBITRATION SERVICES

18. Discussions were based on document WO/GA/XIV/1.

19. The Delegation of Finland stated that it was very pleased to have document WO/GA/XIV/1 placed before the Assembly, as it considered that the establishment of WIPO arbitration services would provide a customer service that was much needed. It expressed its full support for the proposal.

20. The Delegation of Sweden stated that it considered the establishment of arbitration services to be clearly within the mandate of WIPO. It approved the establishment of such services, which would be very valued. While other arbitration services were available, it was nevertheless felt that very good reasons existed for establishing services on the part of WIPO, since WIPO was unique in the sense that it could provide an appropriate and unique environment. It also approved the proposed structure of a WIPO Supervisory Board on Arbitration. It emphasized, however, that the composition of the Board should sufficiently reflect intellectual property expertise, which it considered necessary in order for the Board to discharge its functions. It also supported the proposed activities outlined in document WO/GA/XIV/1, particularly the proposed Worldwide Forum to be held in March 1994. It expressed the hope that the proceedings of the Forum and that information concerning WIPO services would be widely disseminated.

21. The Delegation of Israel joined the Delegations of Finland and Sweden in supporting the proposal to establish arbitration services. It recalled that it had indicated on several occasions in the past that dispute resolution was an important function of WIPO, which should be fulfilled whether at the State or the private level. It pointed out that certain cases might involve disputes between State entities and private persons, and drew attention to the experience of the International Center for the Settlement of Investment Disputes (ICSID) which it considered it would be useful to draw on. The Delegation considered that it would also be useful for the WIPO Arbitration Center to take into account, in addition to the arbitration aspects of a dispute, economic information and data relevant to such disputes, such as royalty rates, and to collect and assemble such information for the benefit of arbitrators. It emphasized that arbitration was useful also in respect of ad hoc disputes. The Delegation agreed with the Delegation of Sweden that the Supervisory Board should also reflect intellectual property expertise.

22. The Delegation of Japan expressed its satisfaction with the outcome of the WIPO Working Group of Non-Governmental Organizations reported on in document WO/GA/XIV/1. It noted that industries in many countries had recently been trying to use intellectual property to the fullest extent, but that this active use of intellectual property had increased the possibility of disputes. It also noted that, amongst those disputes, some had been able to be settled satisfactorily without resort to judicial procedures. In that respect, it welcomed the establishment of WIPO arbitration services, since they would provide an alternative for potential users of the arbitration mechanism. It also agreed with the reasoning that the International Bureau had put forward in document WO/GA/XIV/1. It considered that the services to be established should be neutral, expeditious, specialized and cost-effective. The Delegation expected that further discussions would deal with such questions as the time framework of procedures, the inclusion of good experts on the list of arbitrators, the confirmation of the need to offer the four kinds of dispute-settlement procedures proposed, fees and budgetary implications. It considered that the Supervisory Board would be useful in considering those questions, which would benefit from further examination. The Delegation stated that it was pleased to approve the proposal and hoped that the initiation of WIPO arbitration services would facilitate the amicable settlement of intellectual property disputes.

23. The Delegation of the United Kingdom supported the proposal and stated that it considered that it offered considerable scope and potential, since there was substantial interest and demand for this sort of service. It agreed with the Delegations of Sweden and Israel that the Supervisory Board should adequately reflect intellectual property expertise. It pointed out that, once the proposal had been agreed on, there was no turning back, as it was necessary that the service continue. It asked the International Bureau whether work had been done or information was available on the likely level of cost of procedures needed in order for the WIPO services to be self-sufficient.

24. The Delegation of the Russian Federation supported the proposal, stating that it would provide a very useful service. It considered that the WIPO arbitration services should be self-financing and that, if, in the first stages of the establishment of those procedures, funds had to be borrowed from other sources, those funds should later be repaid by fees and revenue derived from those arbitration services.

25. The Delegation of Australia expressed its strong support for the proposal, which it considered would simplify the resolution of disputes and avoid recourse to courts. It expressed the view that the Supervisory Board should reflect expertise both in the area of intellectual property and in the area of dispute resolution. It considered that the list of mediators and arbitrators to be established should contain full details, for the benefit of potential users, of the skills of the persons on those lists. It also considered that the cost of, and revenue derived from, the arbitration services should be fully identified in the future for monitoring purposes.

26. The Delegations of Bulgaria, China, the Czech Republic, Canada, Chile, Sudan, Columbia, Austria, the Former Yugoslav Republic of Macedonia, Egypt, Uruguay, Côte d'Ivoire and Ghana all expressed their support for the proposal, which they considered to be useful and constructive.

27. The Delegation of Sudan supported the proposal in principle and questioned whether the Supervisory Board should also include governments representatives, since the arbitration services concerned the private sector.

28. The Delegation of Spain supported the proposal and associated itself with the view that had been widely expressed that the initiative to establish arbitration services was a positive step and a good one. It considered the step to be positive in particular because it dealt with a sector which was not otherwise sufficiently covered, and which fell within the objectives of WIPO. It requested further information on whether economic studies had been carried out to ascertain the real cost of providing services and the possible financial implications. It also asked whether the scope of the services would extend to cover areas other than intellectual property or would be confined solely to intellectual property disputes.

29. The Delegation of Italy associated itself with the support that had been expressed by other delegations for the proposal, which it considered to be very constructive. It asked by what means it was intended to publicize the arbitration services.

30. The Director General stated, in reply to the questions or requests for information that had been raised, that it was intended to propose experts for the Supervisory Board whose experience would embrace both arbitration and intellectual property. It was considered to be beneficial to propose also government representatives on the Board, since WIPO was an intergovernmental organization and a governmental view would also be useful. Concerning the question of disputes between private parties and State entities, the Director General recalled that recourse to dispute-settlement procedures administered by WIPO would be entirely voluntary, so that the involvement of a State entity would depend on the express consent to such involvement on the part of such an entity. Concerning the costs of the provision of services by the International Bureau, the Director General pointed out that the proposed role of the International Bureau in respect of the administration of any dispute was a limited one, consisting mainly of the appointment of neutrals and the performance of certain tasks in accordance with the rules for the conduct of the various procedures. It was difficult to give an estimate of an average cost, since it would depend upon the procedure involved, but the estimate of an average cost of US\$3,000 for an arbitration might be put forward as a general indication. As to the question of the scope of issues that might be dealt with in any dispute, and whether these would relate to matters other than intellectual property, this would depend on the manner in which the arbitration agreement was drafted. Concerning publicity, it was intended that printed publicity materials should be prepared and that the Forum to be held in March would also provide an opportunity for publicizing WIPO services.

31. The WIPO General Assembly noted the plans contained in document WO/GA/XIV/1 and unanimously approved the proposals in paragraph 26 of that document.

ITEM 18 OF THE CONSOLIDATED AGENDA:

UNITED NATIONS RESOLUTIONS

32. Discussions were based on document WO/GA/XIV/3.

33. The WIPO General Assembly approved the actions taken or proposed to be taken in respect of the resolutions and decisions of the United Nations and noted the information contained in document WO/GA/XIV/3, as referred to in paragraph 56 of that document.

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