

WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

WIPO GENERAL ASSEMBLY

Nineteenth Session (7th Extraordinary)
Geneva, September 23 to October 2, 1996

REPORT

adopted by the General Assembly

1. The General Assembly was concerned with the following items of the Consolidated Agenda (document AB/XXIX/1): 1, 2, 3, 5, 6, 7, 8, 9, 13 and 14.
2. Mr. Moses F. Ekpo (Nigeria), Chairman of the General Assembly, presided over the meetings that dealt with the said items.
3. The report on the said items, with the exception of items 7 and 9, is contained in the General Report (document AB/XXIX/10).
4. The report on items 7 and 9 is contained in the present document.

ITEM 7 OF THE CONSOLIDATED AGENDA:

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

5. The discussions were based on the document WO/GA/XIX/2.
6. The Delegation of Côte d'Ivoire (speaking on behalf of the African Group) stated that it favored the convening of a diplomatic conference as soon as possible, so that WIPO would have its own system of dispute settlement.
7. The Delegation of Chile (speaking on behalf of the Latin American and Caribbean Group) stated that it favored the holding of a diplomatic conference towards the end of 1997 or at the beginning of 1998.
8. The Delegation of the United States of America stated that it was not in favor of the convening of a diplomatic conference. There were, in its view, various obstacles to the convening of the diplomatic conference, some of which, such as the lack of experience to review under the dispute-settlement mechanism of the World Trade Organization (WTO), had not been overcome. The Delegation stated that it could eventually contemplate the possibility of convening a further session of the Committee of Experts to evaluate the experience of the WTO dispute-settlement mechanism and to compare the proposed WIPO dispute-settlement mechanism with other mechanisms.
9. The Delegation of Sri Lanka (speaking on behalf of the Asian Group) stated that it supported the convening of a diplomatic conference. While it could be flexible in relation to the dates of the diplomatic conference, the conference should take place not later than during the first half of 1998. The Delegation stated that it supported the various proposals set out in paragraph 7 of document WO/GA/XIX/2 in connection with the practical arrangements and documentation proposed for the diplomatic conference.
10. The Delegation of the Islamic Republic of Iran stated that it supported the convening of a diplomatic conference late in 1997 or at the beginning of 1998.
11. The Delegation of Ireland (speaking on behalf of the European Union) stated that it supported the convening of a diplomatic conference towards the end of 1997 or in the early part of 1998, but, in any case, not later than by the middle of 1998. It considered that a further session of the Committee of Experts covering all aspects of the proposed treaty would be useful on the understanding that the holding of such a further session would not affect the timing of the diplomatic conference. If, however, a majority of delegations were against the convening of a further session of the Committee of Experts, the European Union was able to accept that position.
12. The Delegation of Japan appealed to other delegations to reconsider the necessity for convening a diplomatic conference and concluding a new treaty. In its view, there should not

be a possibility for forum-shopping among various dispute-settlement mechanisms. The WTO dispute-settlement mechanism had only just commenced its operations. Any decision on the convening of a diplomatic conference should be postponed until discussions and consultations at the expert level had been exhausted and there had also been some opportunity to review the experience of the WTO dispute-settlement mechanism.

13. The Delegation of the Russian Federation stated that it considered the convening of a diplomatic conference to be necessary. A dispute-settlement mechanism within WIPO was necessary as not all members of WIPO were members of WTO and intellectual property was the special competence of WIPO. The conference could be held in 1997 and should not be held later than the beginning of 1998. The Delegation doubted the need for additional sessions of the Committee of Experts.

14. The Delegation of New Zealand stated that it was concerned about the fundamental question of the relationship between any WIPO mechanism and the WTO mechanism. It was against the conclusion of any treaty in WIPO which could undermine or interfere with the obligations of members of the WTO. It considered that it was premature to decide to hold a diplomatic conference as many complex legal issues remained unresolved which could not be solved by a diplomatic conference. The Delegation expressed itself to be in agreement with the holding of a further session of the Committee of Experts.

15. The Delegation of Switzerland stated that the last session of the Committee of Experts had revealed a variety of different views on the relationship between any WIPO mechanism and other mechanisms. While this was a difficult question, the postponement of consideration of it would not assist in resolving it. The Delegation considered that it was both possible and necessary to find a solution to the question at the diplomatic conference. It doubted that another session of the Committee of Experts would be useful, but would agree to such a further session if other delegations wanted it. In conclusion, the Delegation expressed itself to be in favor of a diplomatic conference to be held in 1998.

16. The Delegation of China stated that it supported the convening of a diplomatic conference. It considered that the WTO mechanism and any WIPO mechanism should be complementary and not mutually exclusive. It further considered that the establishment of a dispute-settlement mechanism within WIPO was essential. It favored the convening of a diplomatic conference before the end of 1997. It would be agreeable to a further session of the Committee of Experts if a majority of delegations wished to have one.

17. The Delegation of Finland drew attention to the length of time during which negotiations had proceeded on the subject of a dispute-settlement mechanism with WIPO. It supported the position expressed by the Delegation of Ireland on behalf of the European Union.

18. The Delegation of Canada stated that it agreed with the views expressed by the Delegations of the United States of America, Japan and New Zealand. It considered that discussions should continue in the Committee of Experts and that a diplomatic conference should only be convened with the consensus of all delegations. The Delegation considered that it was important now to find a consensus on the manner in which to proceed.

19. The Delegation of Australia stated that it considered that there was no point in convening a diplomatic conference unless there was a high probability of success. In view of the lack of experience to evaluate in relation to the WTO dispute-settlement mechanism, it was of the view that no such probability of success existed.

20. The Director General made the following proposal as a compromise solution to the various positions expressed by the delegations:

(i) the draft program and budget for the 1998-99 biennium would contain an item for the holding of a diplomatic conference in the first half of 1998;

(ii) the documents mentioned in paragraph 7(i), (ii) and (iii) of document WO/GA/XIX/2 would be prepared by the International Bureau by July 1997 and distributed in that month; and

(iii) the said item of the draft program and budget for the 1998-99 biennium would be examined in the September/October 1997 session of the WIPO General Assembly in the light of the said documents and the experience of other international dispute-settlement mechanisms.

21. In making the proposal set forth in the preceding paragraph and in response to discussion of the proposal by the meeting, the Director General made the following remarks:

(i) the convening of any further session of the Committee of Experts was not desirable, since the legal issues involved have been studied at length and the principal areas of disagreement among the delegations were rather of a political nature;

(ii) a diplomatic conference or treaty in which several of the countries that had the highest rate of intellectual property activities were not interested would not be worthwhile;

(iii) since the item in question would appear in what will be merely a proposal in the draft program and budget, the General Assembly could adopt it, modify it or delete it, and its inclusion in the draft program and budget carried no implications as to the decision to convene a diplomatic conference.

22. In response to proposals made by the Delegation of Ireland (speaking on behalf of the European Union) and the Delegation of the Russian Federation, respectively, the Director General proposed that in item (ii) of his proposal (see paragraph 20, above) "July" be replaced by "April" and in item (iii) of the said proposal the word "other" would be replaced by "the WTO."

23. The WIPO General Assembly decided to adopt the proposal of the Director General set out in paragraph 20, above, as modified in paragraph 22.

ITEM 9 OF THE CONSOLIDATED AGENDA:

MATTERS CONCERNING PREMISES

24. Discussions were based on documents WO/GA/XIX/1 and 3.

25. The Delegate of France, who chaired the September 9 to 11, 1996, joint session of the Budget Committee and the Premises Committee, noted that the member States of the two Committees had decided unanimously to approve the text contained in paragraph 3 of document WO/GA/XIX/3. That decision took everyone's interest into account. On the one hand, the recommendation to the General Assembly was that the International Bureau organize an international architectural competition for constructing a building on the Steiner lot, as proposed by the International Bureau. At the same time, although the two Committees recognized the excellent work done by Mr. Sugden, it was felt that a further study should now be undertaken by a consultant, whose task would essentially be to examine the various options available in Geneva, including the option to construct a building on the Steiner lot; that would enable member States to make an informed decision. The two procedures could be undertaken together, since the first phase of the international architectural competition would be a preparatory stage, during which the consultant study would be done, with about six months available for that. The first stage of the procedure, involving the definition of the terms of reference and the choice of the consultant, should occur as from the next week. With regard to the dates in the text contained in paragraph 3 of document WO/GA/XIX/3, the Delegate proposed (i) that, in order to provide more time, the date by which Members of the two Committees could provide information for consideration by the consultant be changed from "no later than October 15, 1996," to "no later than October 30, 1996," and (ii) that, in light of the dates that had just been agreed for the holding of the next session of the WIPO Coordination Committee, the timing for the next session of the two Committees to consider the report of the consultant be changed from "by mid-March 1997 at the latest" to "by mid-April 1997 at the latest."

26. The General Assembly unanimously decided to approve the recommendation contained in paragraph 3 of document WO/GA/XIX/3, with the two changes mentioned in the preceding paragraph.

27. Following that decision, the following comments were made.

28. The Delegation of the Russian Federation stated that extensive consideration and discussion on this issue had already taken place and therefore, when this matter was looked at by the next joint session of the Budget and Premises Committees, the analysis should be concluded and the question should be finally settled.

29. The Delegation of Brazil said that it shared the views expressed by the Delegation of the Russian Federation, and considered that one cannot continue to re-examine on all occasions the question of the new premises.

30. The Delegation of Germany stated that it shared the views expressed by the Delegations of the Russian Federation and Brazil.

31. The Delegation of the United States of America expressed its satisfaction that the delegations had worked in a very open and constructive manner toward reaching a solution, and it was looking forward to a very comprehensive evaluation of the options. With that in mind, it noted that it was a matter of looking at all information and taking the best decision when it was time to take the decision. The Delegation added that it was encouraged that the right step had been taken.

32. The Delegation of Pakistan stated that it supported the views that had been expressed by the Delegations of the Russian Federation, Brazil and Germany. The Delegation added that it wanted to make it very clear that the approval of the recommendation of the two Committees was on the understanding that there would not be any more delays, and that a final decision would be reached during the next meeting of the two Committees.

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