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PROPOSED DISCONTINUATION OF THE CONFERENCES OF REPRESENTATIVES OF THE PARIS, BERNE, HAGUE AND NICE UNIONS AND OF THE LISBON UNION COUNCIL

Memorandum of 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 (document A/34/16, paragraph 159).
2. The Working Group on Constitutional Reform was convened by the Director General and held its first session in March 2000. At that session, the Working Group recommended, in the context of a consideration of the simplification of the governance structure of WIPO and WIPO-administered treaties, that extraordinary sessions be convened in September 2000 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, with a view to each considering its own discontinuation. The present document sets out the considerations underlying the Working Group's recommendation and requests the aforementioned bodies to decide whether to implement that recommendation.

ORIGIN OF THE CONFERENCES OF REPRESENTATIVES

3. Prior to the reforms effected at the Intellectual Property Conference of Stockholm in 1967 (the 1967 Stockholm Diplomatic Conference), the supervision of the activities and finances of the Secretariats of the Paris Convention for the Protection of Industrial Property (the Paris Convention) and the Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention) was carried out by the Government of Switzerland.¹ The supervisory function was thus not exercised by the contracting States to each Convention acting through a constituent assembly or other body. In the case of the Paris Convention, a body of contracting States having extremely limited functions, known as the Conference of Representatives, existed, but, as the preparatory documents to the 1967 Stockholm Diplomatic Conference noted, “all that this body can do is ‘to draw up a report on the foreseeable expenditure of the International Bureau’ and ‘to consider’ certain questions of interest to the Union. It has no powers of decision. It cannot have any, since they are delegated by the Convention to the Government of Switzerland.”² In the case of the Berne Convention, not even such a limited conference of representatives existed; there was no constituent body of contracting States at all.

4. One of the main structural reforms introduced by the 1967 Stockholm Diplomatic Conference was “to give to the member countries of the Unions the same, full powers of policy making, decision and control, as they customarily have in most other intergovernmental organizations.”³ This was achieved by constituting, in new Acts (the

¹ See the following provisions of the Lisbon (1958) Act of the Paris Convention:

Article 13

“(1) The international office established under the name International Bureau for the Protection of Industrial Property is placed under the high authority of the Government of the Swiss Confederation, which regulates its organization and supervises its operation.

“... ”

“(10) The Government of the Swiss Confederation will supervise the expenditure of the International Bureau and its accounts, and will make the necessary advances.”

See, also, the following provisions of the Brussels (1948) Act of the Berne Convention:

Article 21

“(1) The International Office established under the name of the ‘Office of the International Union for the Protection of Literary and Artistic Works’ shall be maintained.

“(2) That Office shall be placed under the high authority of the Government of the Swiss Confederation, which shall regulate its organization and supervise its working.”

Article 23

“... ”

“(5) The Swiss Administration shall prepare the budget of the Office, supervise its expenditure, make the necessary advances, and draw up the annual account, which shall be communicated to all the other Administrations.”

² *Records of the Intellectual Property Conference of Stockholm (1967)*, Vol. 1, 194.

³ *Ibid.* 204

Stockholm Acts), an Assembly of contracting States for each of the Paris and Berne Conventions and for the specialized agreements constituted under the Paris Convention that were administered by the same secretariat (namely, the Madrid Agreement for International Registration of Marks (the Madrid Agreement), the Hague Agreement for the International Deposit of Designs (the Hague Agreement), the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (the Nice Agreement) and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (the Lisbon Agreement)).

5. As the Stockholm Acts entered into force and attracted an increasing number of accessions, the new constitutional machinery of Assemblies of contracting States replaced the former limited mechanisms for meetings of contracting States established under the earlier, pre-Stockholm Acts of the concerned treaties. The earlier, limited mechanisms continued to apply, however, between States that did not ratify or accede to the Stockholm Acts. In consequence, since there are still States that have not adhered to the Stockholm Acts of certain treaties, those earlier mechanisms continue to survive, even though operative between very few States.

6. At the date of this document, the two earlier bodies established by treaty provision for meetings of contracting States that continue to apply between certain States are:

(i) the *Paris Union Conference of Representatives*, which applies between *three States*: Dominican Republic (party to The Hague (1925) Act of the Paris Convention), Nigeria (party to the Lisbon (1958) Act) and Syrian Arab Republic (party to the London (1934) Act); and

(ii) the *Lisbon Union Council*, which applies between *two States*: Haiti (party to the Lisbon (1958) Act of the Lisbon Agreement) and Mexico (party to the Lisbon (1958) Act).

7. In addition to the two foregoing bodies, there exist three other similar bodies that were established, not by treaty provision in a pre-Stockholm Act of the corresponding treaty, but by a resolution of the States that were party to a pre-Stockholm Act but not yet party to the Stockholm Act and that wished to emulate the example of the Paris Convention in having an Assembly for States party to the Stockholm Act and a conference for States party only to a pre-Stockholm Act. The other bodies and their membership are:

(i) the *Berne Union Conference of Representatives*,⁴ which has *three members*: Lebanon (party to the Rome (1928) Act of the Berne Convention), Madagascar (party to the Brussels (1948) Act) and New Zealand (party to the Rome (1928) Act);

⁴ The Berne Union Conference of Representatives was created by the following Resolution in 1970:

“1. The countries members of the International Union for the Protection of Literary and Artistic Works (Berne Union) which are not members of the Assembly of the said Union,

“2. Meeting in Geneva from September 21 to 28, 1970.

“3. Resolve to establish a Conference of Representatives of the Berne Union;

“4. Decide that the members of this Conference shall be those member countries of the Berne Union which are not members of the Assembly of the Berne Union, and that any

[Footnote continued on next page]

(ii) the *Hague Union Conference of Representatives*,⁵ which has five members: Egypt (party to the London (1934) Act of the Hague Agreement), the Holy See (party to the London (1934) Act), Indonesia (party to the London (1934) Act), Spain (party to the London (1934) Act) and Tunisia (party to the London (1934) Act); and

[Footnote continued from previous page]

member country of the Berne Union which, in the future, shall become a member of the Assembly of the Berne Union shall automatically cease to be a member of the Conference of Representatives;

“5. Decide that the Conference of Representatives shall meet every three years in ordinary session in order to draw up, for each three-year period to come, a report on the foreseeable expenditure of the International Bureau as far as the Berne Union is concerned, and to consider questions relating to the protection and the development of the said Union;

“6. Resolve that the Conference of Representatives may modify, by unanimous decision, the maximum annual amount of the expenditure of the International Bureau as far as the countries members of the Conference of Representatives are concerned, provided that it meets as a Conference of Plenipotentiaries upon convocation by the Government of the Swiss Confederation;

“7. Resolve that the Conference of Representatives shall establish its own rules of procedure.” (See document AB/1/33, Annex A.)

⁵ The Hague Union Conference of Representatives was created by the following Resolution in 1976:

“The countries members of the Special Union concerning the International Deposit of Industrial Designs (Hague Union) which are not members of the Assembly of the said Union,

“Meeting in Geneva from September 27, 1976 to October 5, 1976.

“1. Resolve to establish a Conference of Representatives of the Hague Union;

“2. Decide that the members of the said Conference of Representatives shall be those member countries of the Hague Union which are not members of the Assembly of the Hague Union, and that any member country of the Hague Union which, in the future, shall become a member of the Assembly of the Hague Union shall automatically cease to be a member of the Conference of Representatives;

“3. Decide further that the Conference of Representatives

“(i) may examine the Management Reports of the International Bureau of WIPO as far as the Hague Union is concerned and may make observations thereon to the Director General of WIPO or the Government of the Swiss Confederation or both,

“(ii) may examine the draft budgets of the Hague Union presented to it by the Director General of WIPO and may make observations thereon to the Director General of WIPO or the Government of the Swiss Confederation or both;

“(iii) may modify, on the proposal of the Director General of WIPO or the Government of the Swiss Confederation, the amounts of the fees to be charged under the Hague Agreement the fixing of which is not within the jurisdiction of the Assembly; decision on such modification shall require the majority of the votes of the countries members of the Conference of Representatives; the procedure provided for in the Additional Act of Monaco of 1961, Article 3, may be applied as an alternative procedure,

“(iv) shall, in connection with the working capital fund of the Hague Union have, in respect of the countries members of the Conference of Representatives, rights analogous to those which the Assembly has in respect of the countries members of the Assembly and shall, by analogy, apply the relevant provisions of the Complementary Act of Stockholm (1967) in respect of the said fund,

“(v) shall establish its own rules of procedure.” (See document H/CR/1/2, Annex.)

(iii) the *Nice Union Conference of Representatives*,⁶ which has *two members*: Lebanon (party to the Nice (1957) Act of the Nice Agreement) and Tunisia (party to the Nice (1957) Act).

CONSIDERATIONS UNDERLYING THE RECOMMENDATION FOR DISCONTINUATION

8. Three main sets of considerations underlie the recommendation of the Working Group on Constitutional Reform that the five bodies mentioned in paragraphs 6 and 7 consider their own discontinuation.

9. The first such consideration is that, in view of the fact that the conferences have virtually no powers, the interests of the States members of the conferences could be just as effectively represented through their status as observers in the corresponding Assemblies. There is, in other words, no need for the conferences, since the views of the members of the conferences can be expressed in the corresponding Assemblies.

10. This first consideration is supported in practice by the fact that none of the conferences in question has ever met separately to consider an item of substantive business.

⁶ The Nice Union Conference of Representatives was created by the following Resolution in 1970:

- “1. The countries members of the International Union Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Union) which are not members of the Assembly of the said Union,
- “2. Meeting in Geneva from September 21 to 28, 1970,
- “3. Resolve to establish a Conference of Representatives of the Nice Union;
- “4. Decide that the members of this Conference shall be those member countries of the Nice Union which are not members of the Assembly of the Nice Union, and that any member country of the Nice Union which, in the future, shall become a member of the Assembly of the Nice Union shall automatically cease to be a member of the Conference of Representatives;
- “5. Decide that the Conference of Representatives shall meet every three years in ordinary session in order to draw up, for each three-year period to come, a report on the foreseeable expenditure of the International Bureau as far as the Nice Union is concerned, and to consider questions relating to the protection and the development of the said Union;
- “6. Resolve that the Conference of Representatives may modify, by unanimous decision, the maximum annual amount of the expenditure of the International Bureau as far as the countries members of the Conference of Representatives are concerned, provided that it meets as a Conference of Plenipotentiaries upon convocation by the Government of the Swiss Confederation;
- “7. Resolve that the Conference of Representatives shall establish its own rules of procedure.” (See document AB/1/33, Annex B.)

11. Secondly, each of the conferences in question has a very limited and, by definition, declining membership, as the following table indicates:

Comparative Membership of Assemblies
and Conferences

Treaty	Number of States Belonging to the Assembly	Number of States Belonging to the Conference of Representatives
Paris Convention	159	3
Berne Convention	144	3
Hague Agreement	29	5
Nice Agreement	60	2
Lisbon Agreement	19	2

12. In the case of two of the conferences (the Nice Union Conference of Representatives and the Lisbon Union Council), the forum provided by the conference for the exchange of views could be satisfied through a bilateral meeting, which does not seem to justify the election of a president and two vice presidents and the maintenance of a permanent forum.

13. Thirdly, the discontinuation of the five conferences would alleviate the administrative work for both delegations and the secretariat in the meetings of Member States. Discontinuation would reduce the number of governing bodies convened from 21 to 16, reduce the number of officers to be elected at ordinary sessions in a corresponding manner and simplify the conduct of proceedings, especially in the adoption of reports.

METHOD OF DISCONTINUATION

14. As mentioned in paragraph 6, above, two of the five conferences were created by treaty provision (the Paris Union Conference of Representatives and the Lisbon Union Council). These two bodies cannot be abolished. In effect the Stockholm Acts of the Paris Convention and the Lisbon Agreement eliminated those bodies. They remain valid, however, for States that have not yet adhered to the Stockholm Acts. Those States could, nevertheless, resolve that the two bodies concerned should not be convened or meet in future.

15. The Paris Union Conference of Representatives is invited to resolve not to meet in future and to request the Director General not to convene it.

16. The Lisbon Union Council is invited to resolve not to meet in future and to request the Director General not to convene it.

17. For the three bodies that were created by resolution (the Berne Union Conference of Representatives, the Hague Union Conference of Representatives and the Nice Union Conference of Representatives), dissolution may be achieved through a simple resolution of the appropriate Member States.

18. The Berne Union Conference of Representatives is invited to dissolve itself.

19. The Hague Union Conference of Representatives is invited to dissolve itself.

20. The Nice Union Conference of Representatives is invited to dissolve itself.

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