

Program and Budget Committee

Twenty-First Session
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PROGRESS REPORT ON THE NEW CONFERENCE HALL PROJECT AND NEW CONSTRUCTION PROJECT

prepared by the Secretariat

INTRODUCTION

1. The purpose of this document is twofold: (i) to inform the Program and Budget Committee (“the PBC”) about the implementation by the Secretariat of the recommendation made by the PBC at its nineteenth session held in September 2012 in respect of the New Construction Project and the New Conference Hall Project (“the Projects”) (document WO/PBC/19/27, Agenda item 18); and (ii) to present to the PBC an updated progress report on the Projects covering the period since September 2012, date on which the last progress reports for these two projects were presented to the PBC (documents WO/PBC/19/12, WO/PBC/19/13 and WO/PBC/19/24).
2. It is recalled that the Secretariat informed the PBC, at its nineteenth session, that the contractual relationship in respect of the Projects was terminated by WIPO and the General Contractor, through an amicable and jointly agreed separation at the end of July 2012, and that the Secretariat had decided, in order to protect the best interests of WIPO, to take over the direct responsibility for executing the Projects. By relying on extended professional mandates assigned to the Pilot, Architect and specialized engineers, the Secretariat ensured that both projects would be completed with the level of quality that had been required at the outset and within the budget approved by Member States.
3. It is also recalled that, at that session, the PBC made the following recommendation in respect of the New Conference Hall Project: “(i) WIPO will provide monthly written reports, and monthly briefings with Member States to update the status of the project; and (ii) the Secretariat will provide a more detailed explanation of the events that led to the termination of the contract

for historical reference” (document WO/PBC/19/27, Agenda item 18). At their fiftieth session in October 2012, the Assemblies of the Member States endorsed that recommendation (document A/50/18, paragraph 213).

MONTHLY WRITTEN REPORTS AND MONTHLY BRIEFINGS WITH MEMBER STATES

4. Monthly briefings with Member States have been held on the following dates: October 22 and November 26, 2012, January 21, February 25, March 18, April 22, May 27 and July 11, 2013. The formal reports presented during these briefings have been, each time, posted on the WIPO Internet site reserved for delegates, under a dedicated page for the Project. No briefings were held, in agreement with Member States, for the months of December 2012 (due to the end-of-year holiday period) and June 2013 (due to the diplomatic conference being held in Marrakesh).

5. The Secretariat wishes to inform the PBC that, while the PBC recommendation made in September 2012 related only to the New Conference Hall Project, the Secretariat has also been including, since February 2013, updates on the New Building (formerly the New Construction Project) in its monthly reports and its monthly briefings, in response to the wish expressed in January 2013 by delegations attending those briefings.

6. In agreement with Member States on the occasion of the May 2013 briefing, no briefing will be held in August 2013 (due to the Summer holiday period) and September 2013 (due to the fact that the construction projects are on the agenda of the respective sessions of the PBC and of the Assemblies). However, in agreement with Member States, a standard written report will be posted on the WIPO Internet site reserved for delegates, for the month of August 2013.

7. Finally, on the occasion of its twentieth session (held from July 8 to 12, 2013), and in view of the extent of updated information provided by the Secretariat during the monthly briefings (both orally and in the standard reports) since October 2012, as well as the limited attendance by delegations, the PBC requested the Secretariat to no longer organize oral briefings on the understanding that the Secretariat would continue to post standard written reports on the WIPO Internet site on a monthly basis. The Secretariat agreed to proceed accordingly.

MORE DETAILED EXPLANATION OF THE EVENTS THAT LED TO THE TERMINATION OF THE CONTRACT ON THE NEW CONFERENCE HALL PROJECT, FOR HISTORICAL REFERENCE

8. The more detailed explanation of the events that led to the termination of the contract with the former General Contractor for the New Conference Hall Project, for historical reference, is set out in the Annex to the present document. The Secretariat wishes to inform the PBC that, while the PBC recommendation related only to the New Conference Hall Project, the Secretariat has also included more detailed explanation on the events that led to the termination of the contract on the New Construction Project as the situation on the latter impacted on that of the former. It is recalled that, as was outlined in the progress report presented to the PBC in September 2012 (document WO/PBC/19/24), the amicable and jointly agreed separation related to the two contracts between WIPO and the former General Contractor.

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9. It is recalled that, under the amicable and jointly agreed separation between WIPO and the former General Contractor, WIPO had substituted itself for the General Contractor for all remaining finishing and repair works which had not yet been undertaken by the General Contractor namely: the correction of a variety of small and medium size defects throughout the building and the repair of the facades. WIPO continues to retain, from the balance owed to the former General Contractor, sufficient funds to cover the cost of those works which remain nevertheless legally under the responsibility of the former General Contractor.
10. Also under the agreed separation, the former General Contractor was due to complete, at its own cost, the replacement and repair works for the atria glass tops and the parquet floors.
11. Finally, the last group of finishing works comprises two components: the tunnel between the AB Building and the New Building, and the vegetation cover on the roof of the New Building, both of which are to be carried out by WIPO and financed by funds retained from the balance owed to the former General Contractor.
12. As at the date of the present document, the operational situation is as follows in respect of each item, in the chronological order of completion:
- (i) fully completed by mid-December 2012: replacement of parquet floors;
 - (ii) to be completed in July 2013: corrective works of the atria glass tops;
 - (iii) to be completed by September 2013: tunnel between AB Building and the New Building (work started in April 2013);
 - (iv) to be completed by the end of November 2013: repairs of the blue decorative panels of the facades and repair of windows in the staircases (the work started in April 2013 on both items to benefit from cost avoidance, by using the same worksite team, installations and scaffolding);
 - (v) to be completed by Autumn 2013: installation of the vegetation cover on the roof of the New Building (this can only be done after the atria glass tops are fully repaired by the former General Contractor, and after the Summer);
 - (vi) to be completed by December 2013: correction of a variety of small and medium size defects (about 60% of the corrective works have been completed to date, 30% are being dealt with and 10% remain to be addressed); and
 - (vii) to be completed by mid-2014: replacement and repair of windows on the ground floor and in the interior gardens.
13. In February 2013, WIPO received from the former General Contractor the standard five per cent bank guarantee corresponding to work completed by the latter, in exchange for the payment by WIPO of the remaining balance established in accordance with the terms of the amicable and jointly agreed separation.

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14. Following the amicable and jointly agreed separation between WIPO and the former General Contractor at the end of July 2012, the worksite was closed for two months, during which time the Secretariat undertook the necessary preparations for taking over direct responsibility for the worksite. It received, as provided under the agreed separation, a large volume of project dossiers handed over by the former General Contractor and took cognizance of those dossiers. It determined in coordination with the Pilot, Architect and engineers firms the extent of their respective extended mandates under the new project management structure. It

put in place the new internal management structure by creating the required dedicated committees, and reinforcing (including through backfill positions) several internal units directly involved in the administration of contracts, the payment of invoices and monitoring thereof, as well as the reporting to a number of bodies and entities.

15. At the end of September 2012, the first contracts were awarded by WIPO on the basis of pre-existing contracts which had been concluded by the former General Contractor and which were on the critical path. By the end of 2012, 27 contracts had been awarded for a total amount of about 42 million Swiss francs out of the reference amount (50 million Swiss francs) covered by the contract with the former General Contractor (or 84 per cent). By the end of June 2013, 47 contracts had been awarded for a total amount of about 45.5 million Swiss francs (or 91 per cent). It is recalled that the contract between WIPO and the former General Contractor provided the obligation for the latter to sub-contract only to companies which would be obliged to accept a takeover of their contract by WIPO, without any modification to the terms of the contract (in particular the agreed price), should the contract between WIPO and the General Contractor be terminated. As a consequence, all the General Contractor's contracts or awards with its sub-contractors were taken over by WIPO on the basis of their initial 2010, 2011 and some 2012 prices. Only a few prices were 2012 or 2013 prices due to the fact that new tenders had to be launched by WIPO since July 2012. A total amount of less than five million Swiss francs (or less than 10 per cent) of the reference amount of construction cost, remains to be awarded in the coming months and should be split between about four and six new contracts.

16. Since September 2012, a number of project modifications have had to be dealt with, in a standard manner, as is often the case in respect of any large construction project, but even more so in the case of a project of the scope and complexity as the New Conference Hall Project. As at the end of June 2013, the technically, contractually and financially validated modifications amount to about 600,000 Swiss francs, which have been absorbed by the approved budget.

17. The Secretariat confirms that the general assessment of the expenditures (actual and expected) versus the approved budget outlined in the progress report presented to the PBC in September 2012 (document WO/PBC/19/24) remains valid. The total budget approved by Member States in 2009 and 2011 amounts to 68.5 million Swiss francs, of which, as at the date of the present document, an amount of about 3.8 million Swiss francs remains available for miscellaneous and unforeseen matters, possible further project modifications, and possible other cost resulting from the takeover of the project (for example, a few new tenders have been launched in 2013 with some additional ones to follow and the bids (to be) received may be above the reference amounts which had been estimated by the former General Contractor when it had made its own bid in 2010).

18. In view of the unique architectural and aesthetic character of the future New Conference Hall, compliance with quality requirements has remained the top priority of the Secretariat, of the Pilot, Architect and engineers firms, and of all companies engaged in the implementation of the Project.

19. Finally, it is in respect of the construction phase timetable that the major updates have had to be made and the expected delivery date of the construction has had to be postponed from end of April 2013 to end February 2014, as further detailed below. It is recalled that a delay of almost four months by the former General Contractor had already been assessed by the time of the amicable and jointly agreed termination of the contract, in July 2012. Afterwards, the worksite was closed for two months during Summer 2012 in order for the Secretariat to put in place the new management structure and start reviewing all the technical dossiers handed over by the former General Contractor. The worksite re-opened at the end of September 2012, but it took several months for the Secretariat to take over, under the WIPO internal rules and

procedures, in particular the procurement framework, a critical number of pre-existing contracts or to award new contracts based on tenders previously launched by the former General Contractor or new tenders launched by WIPO. The construction of the wood structure of the future New Hall was completed by the end of June 2013, slightly behind schedule due partly to inclement weather conditions and partly to the complexity of the manufacture and assembly of the wood pieces in the factories and on site. The effect (non-linear) on the overall timetable is still being assessed.

20. The major recent and future construction site milestones are the following:

- (i) the wood structure of the future New Hall was completed at the end of June 2013;
- (ii) all the provisional supporting pillars for the 35-meter long cantilever of the future New Hall were removed at the end of June 2013;
- (iii) the construction of the wood structure of the new access center to the WIPO Campus started mid-June and is expected to be completed during Summer 2013;
- (iv) the partial renovation of the AB Building first basement level (in the area adjacent to the tunnel between the AB Building and the New Building across from the access to the future New Hall) is expected to be completed by the beginning of September 2013;
- (v) the series of new small and medium-size meeting rooms on the AB Building mezzanine are expected to be completed by the end of November 2013;
- (vi) the new access center to the WIPO Campus (on the forecourt of the AB Building) is expected to be completed before the end of 2013, to coincide with the enlargement of the AB Building as both will constitute the new main access and entrance space into the WIPO Campus.

RISK REGISTER

21. The Construction Project Risk Register was substantially revised at the beginning of 2013 in order to take into account the new framework and management structure for the New Conference Hall Project. It is the subject of periodical updates.

OVERSIGHT AND AUDIT

22. Since September 2012, the Secretariat has presented progress reports to the Independent Advisory and Oversight Committee (IAOC) at each of its subsequent sessions held, respectively, in December 2012, March and May 2013, and will, after issuance of the present document, present its next progress report at the August 2013 session of the IAOC.

23. An audit has been conducted by the Internal Audit and Oversight Division (IAOD) between December 2012 and June 2013. During the audit period, the Secretariat provided a large amount of documentation as well as extensive observations to IAOD. The final IAOD report was issued on June 28, 2013.

24. The PBC is also hereby informed that the Joint Inspection Unit (JIU) has initiated a review, No. A388 entitled "Review of good practices in the management of contracts of capital, refurbishment, construction projects across the UN system Organizations". The WIPO Secretariat has spent a substantial amount of time in interviews, in collecting supporting documentation and responding to a very detailed questionnaire on the matter.

25. Furthermore, the JIU has initiated under No. A382-JIU a "Management and Administration Review (MAR) at WIPO", which includes a large portion on construction projects. The Secretariat once again spent a substantial amount of time in interviews, providing

documentation and responding to the related questionnaire. In addition, it must be noted that there are numerous partial duplications between the questions contained in this JIU Review and the specific review on construction projects mentioned above (A388-JIU), which created a significant amount of duplication of effort in the collection of documentation and time allocated by the Secretariat to the specific replies to each and every question of both questionnaires.

26. The Secretariat has been informed that the External Auditors will carry out a compliance audit of the New Conference Hall Project in March 2014.

27. Finally, since October 2012, the Secretariat has been presenting to Member States monthly briefings on both constructions projects, as outlined in paragraphs 4 to 7 of the present document.

SHARING EXPERIENCE AND FACILITIES WITH UN AGENCIES

28. The Secretariat wishes to inform the PBC that it has participated in, or has hosted at WIPO, various meetings on facilities management covering, in addition to standard building-related issues, the specific issues of major construction and renovation projects, sharing office space, meeting rooms and other facilities during major renovation projects while existing buildings cannot be entirely vacated (Inter-Agency Facilities Management, 13th meeting held at the UN in New York in April/May 2013, Geneva-based UN Agencies (UNOG, ILO, WHO, ITU, WTO and WIPO), with two meetings held in the first semester 2013, one of which hosted by UNOG and one by WIPO) and other bilateral meetings with Geneva-based UN Agencies.

FUTURE AVAILABILITY OF THE NEW CONFERENCE HALL TO OTHER INTERNATIONAL ORGANIZATIONS AND OTHER EXTERNAL ENTITIES

29. The Secretariat draws the attention of the PBC to the fact that it considers that one full yearly cycle of WIPO meetings and events will need to take place in order for the new facilities to be extensively tested in a variety of configurations (including with the existing meeting room facilities) and in order for Member States to have priority in fully benefitting from those new facilities for their WIPO meetings. It is only as from 2015 that the Secretariat could envisage promoting the use of the facilities by other entities (as reflected in the proposed Program and Budget for 2014/15, under Program 29).

30. The Program and Budget Committee is invited to recommend to the Assemblies of the Member States of WIPO to take note of the contents of this document.

[Annex follows]

NEW CONFERENCE HALL PROJECT AND NEW CONSTRUCTION PROJECT:
MORE DETAILED EXPLANATION OF THE EVENTS THAT LED TO
THE TERMINATION OF THE CONTRACT WITH THE FORMER GENERAL CONTRACTOR
FOR HISTORICAL REFERENCE

A. Preliminary remarks on this Annex

1. For convenient reference, the “more detailed explanation” provided in the present Annex is structured along the lines of Part I (“Events that led to the termination of the contracts with the General Contractor”) of document WO/PBC/19/24¹, dated September 7, 2012, and it should be read in conjunction with that document.

2. A large number of documents, progress reports and other reports were already referred to in footnotes to document WO/PBC/19/24 and they are obviously incorporated by reference in the present Annex. In certain cases, additional documents are mentioned in footnotes of the present Annex.

B. Chronology of events

3. It is recalled that the contract with the former General Contractor for the New Construction Project included April 8, 2008, and October 8, 2010, respectively, as original worksite opening date and project completion date, and, for the New Conference Hall Project, August 11, 2011, and April 26, 2013, respectively, as original worksite opening date and project completion date.

4. *New Construction Project: Agreed postponement of original (October 2010) delivery date of completed building, subsequent suspension of payments by WIPO on remaining invoices from the General Contractor (paragraph 7 of document WO/PBC/19/24):* Since the General Contractor was not able to deliver the completed building under the contractual deadline of October 8, 2010, it was mutually agreed to (i) fix the new deadline of November 25, 2010 as delivery date of the completed building and (ii) set in favor of WIPO a penalty for delay of 0.5 million Swiss francs due by the General Contractor. However, the postponed delivery date was not met by the General Contractor since only some parts of the building could be protocolled as having been received, either in full compliance with the contractual specifications, or in partial compliance thereto. The parties subsequently agreed to fix a series of delivery dates for the remaining areas, ranging from end December 2010 to April 2011.

5. As a consequence of the continued lack of compliance by the former General Contractor with agreed postponed delivery dates, one after the other, the Pilot, as per his mandate, suspended—as from the end of 2010—the validation of remaining invoices, and WIPO suspended the corresponding payments to the General Contractor. In addition, as provided by the contract to serve for correction of eventual defects, WIPO had been withholding five per cent on payments made for invoices issued by the General Contractor since 2008, which by the end of 2010, corresponded to about six million Swiss francs. Furthermore, it should be recalled that, in conformity with the contract, the five per cent retainer by WIPO was to be exchanged, upon delivery of the completed building, against a bank guarantee for defects, valid for two years, corresponding to five per cent of the contractual amount paid to the General Contractor. The modalities of that guarantee were dealt with as part of the amicable and jointly agreed termination of the contract on the New Building in July 2012.

¹ In order to contribute to the reduction of the size of documents and, as a consequence, to a reduction of the number of pages to be translated in all WIPO official languages, the relevant excerpts of document WO/PBC/19/24 for which more detailed explanation is provided in the present Annex are referred to by short sub-headings and by quoting only the paragraph numbers concerned from document WO/PBC/19/24, instead of repeating the entire text of each excerpt. Proceeding as outlined above has reduced the size of the present Annex by almost three pages. Refer to the WIPO language policy.

6. *Additional negotiated financial compensation for delays by the former General Contractor (paragraph 10 of document WO/PBC/19/24):* In May 2011, the Secretariat, as per the contract, entered into discussions with the former General Contractor with the aim of obtaining additional financial compensation for the series of delayed deliveries since November 2010, noting that a first financial compensation for delay had already been obtained for the period between October 8, 2010 (the original contractual delivery date) and the agreed modified delivery date of November 25, 2010 (see above). These discussions were concluded at the end of May 2011 with the agreement that the General Contractor would compensate the delays since November 2010 by an additional amount of 1,725,000 Swiss francs. As a result, the total amount of financial compensation for delays on delivery of the New Building amounted to 2,225,000 Swiss francs, which was maintained as one of the elements of the amicable and jointly agreed separation in July 2012, and which has since been settled by the former General Contractor.

7. *Rented building to be vacated by August 2011 which required move of over 400 employees into the New Building earlier than originally planned (paragraphs 8 to 9 of document WO/PBC/19/24):* Should the Secretariat have maintained its original plan to move staff into the New Building only when fully completed, this would have required a provision of over seven million Swiss francs on the regular budget in order to keep over 400 employees in the rented building (former P&G Building) for one more year. The Secretariat had therefore no choice but (i) to give by February 28, 2011, the six month notice for vacating the rented building by August 31, 2011; (ii) to organize with the General Contractor a series of partial deliveries of the New Building, floor by floor; and (iii) to entirely reorganize the phased move plans of employees located in the rented building to be completed by early July 2011 so that the necessary emptying, cleaning and other refurbishing works could be carried out on time before vacating the rented building by August 31, 2011. Before the moves into the New Building could start, WIPO had to obtain the "occupancy permit" from the Geneva local authorities, which by then required more expedited action, with a higher degree of monitoring and control, by the Secretariat, the Pilot, the Architect and the firms of engineers, while the General Contractor was not showing the same level of preparedness commitment to deal with the urgency of the matter, in particular in terms of coordination with its own sub-contractors. The permit was issued on March 11, 2011. The moves started on March 14, 2011 and lasted until the end of June 2011.² In the meantime, by the end June 2011, most areas of the New Building had been the subject of protocolled receipts either in full compliance or in partial compliance with the contractual specification, the latter requiring minor corrective works (as further detailed below).

8. *Delays by General Contractor in completing repair and finishing works (paragraph 11 of document WO/PBC/19/24):* By June 2011, the only major area with major defects (leaks, defective insulation, etc.) was the roof, in particular the atria glass roof tops, for which the Secretariat refused the scheduled protocolled receipt altogether.³ In addition, other areas had been the subject of separate protocolled receipts, but with conditions, limitations or other qualifications for several of them. Examples of the latter include additional deadlines for full compliance, requests for postponement of visits by the local authorities to validate certain installations until such time as certain defects were corrected, additional bank guarantees against specific defects, etc. In other words, after the Summer 2011, no serious progress was made by the General Contractor in coping with a variety of delays in finishing and repair works. Numerous operational meetings and exchanges between the Pilot, the WIPO representatives and the General Contractor representatives took place in the course of 2011 and 2012, in

² References were also made to this matter in the Program Performance Report 2010, on Program 29 (document WO/PBC/17/3, page 110, first and second paragraphs, and page 111; document WO/PBC/18/14, page 114, first and second paragraphs, and page 115), and in the Program Performance Report 2010/2011, on Programs 24 and 29 (document WO/PBC/19/2, pages 118 and 133, respectively).

³ As of the date of this document, the roof has still not been received since the former General Contractor has still not completed the corrective works it had agreed to complete under the terms of the amicable and jointly agreed termination of the contract in July 2012.

accordance with the project management structure in place at the time. WIPO and the Pilot had to dedicate a substantial amount of time in trying to facilitate the logistical and coordination aspects of the matter. The only subject which saw some progress was the replacement of the parquet floor in the cafeteria, in the lifts themselves, and in most of the lift areas on the ground floor, in the interior gardens and at the reception counter. The defects in executing the works were such that the General Contractor had to agree to carry out the entire replacement of the parquet floor at its own cost. This corresponded to a total surface area of over 800 m². The replacement works had started before the termination of the contract and spanned the period between December 2011 and February 2012, only to resume in September 2012 and finally to be completed in February 2013. WIPO did not bear any direct cost, but had to deal with the significant inconveniences—affecting employees, as well as delegates and visitors, for several months—of blocked areas and accesses, as well as lifts immobilized for several weeks at a time, etc.

9. *Changes in the General Contractor key management team (paragraph 12 of document WO/PBC/19/24):* Based on information available to it, the Secretariat is in a position to state the following: (i) the Regional Director (for French speaking Switzerland) who had been in place at the time when the General Contractor was awarded the original contract for the New Construction Project in 2008, would have left before the end of the first semester of 2010 and would have been replaced by a new Director in the Summer 2010; (ii) the Geneva branch Director who had been in place at the time when the General Contractor was awarded the original contract for the New Construction Project in 2008, would have left at the end of December 2010 and would have been replaced by a new Director in the Spring 2011; (iii) the Project Leader designated in the bid documentation for the New Conference Hall Project (as at the date of submission of the bids in October 2010) would have held this responsibility until sometime in the Summer 2011 (or only a few months after May 2011, date of the signature of the contract with WIPO for the New Conference Hall Project) and would have been replaced by a new Project Leader at the beginning of the Autumn 2011. In the latter two most critical cases from an operational viewpoint, there were several months gap between the former leaving and the new person arriving, which also aggravated the resulting situation.

10. *New Conference Hall worksite situation:* The worksite opened mid-August 2011, as planned under the contract. Parts of the excavation and main structural works for the new basement level below the conference hall area were somewhat simplified in view of the fact that the General Contractor, as well as a number of the sub-contractors mostly concerned with these works, had been on the adjacent worksite for the then-New Construction Project, and therefore knew the WIPO Campus and the adjacent buildings. In the late Autumn 2011, the Pilot informed the Secretariat that the execution of the masonry works to constitute the foundation for the wood structure of the future hall was not as advanced as it should have been, while that did not seem at that time to represent a risk to the overall timetable.

11. *Delays announced by the General Contractor on the New Conference Hall worksite (paragraph 21 of document WO/PBC/19/24):* In February 2012, the former General Contractor announced a delay of ten calendar days on the construction timetable due to inclement weather conditions. At the beginning of June 2012, it announced a delay of 73 calendar days (including the inclement weather days) and claimed that they were all attributable to delays by the WIPO engineers in providing technical documentation. The Pilot and the Secretariat requested evidence of the causes of this delay on several occasions but received no substantiated reply. In the meantime, the former General Contractor was requesting the Secretariat to modify the contractual monthly payment plan by (only) 30 days, which was not coherent with the announced delay of 73 days on the worksite.

12. *Withholding payments to the former General Contractor on the New Conference Hall Project:* After having complied with its contractual obligations to pay monthly installments according to a contractual payment plan, the Secretariat started in March 2012 to withhold future monthly payments due to the unexplained delays and the lack of responsiveness by the

former General Contractor. The situation remained unchanged until the amicable and jointly agreed termination of the contract in July 2012.

13. *WIPO seeking external professional legal advice (paragraph 20 of document WO/PBC/19/24)*: In Spring 2012, all efforts made by the Secretariat since the end of 2010 to resolve the outstanding issues relating to the New Building in a professional and conciliatory manner had failed. In March 2012, the Secretariat decided to engage an external law firm, specialized in construction-related legal matters, to seek further professional legal advice in respect of both Projects.

14. *Legal notifications with legally binding deadlines on the New Construction Project (paragraph 22 of document WO/PBC/19/24)*: WIPO sent to the General Contractor a series of legal notifications (“*mises en demeure*”) with legally binding deadlines (from early May to June 2012) on several matters concerning the New Building. The General Contractor, however, did not take any of the required actions while denying any responsibility for the non-compliance with contractual technical requirements. The legal consequence was that, after the expiration of each and every legal notification, WIPO substituted itself for the General Contractor in carrying out the corresponding repair works relating to the New Building. The subjects concerned were the following: repairs of the facades (blue decorative panels, ground floor windows, windows in the staircases and windows in the interior gardens) as well as corrections of minor and medium size defects throughout the building.

15. *Further advice sought by the Secretariat from construction planning experts (paragraph 23 of document WO/PBC/19/24)*: Following advice from the external law firm which had been engaged since March 2012, the Secretariat sought the advice of a firm of international construction planning experts, the result of which was an assessment that the actual delay in the construction timetable was, at that time in mid-July 2012, of at least 112 calendar days (rather than 73 days as announced by the former General Contractor in June 2012) (see also paragraph 11, above).

16. *Refusal by the General Contractor to comply with architectural specifications for the New Conference Hall (paragraph 21 of document WO/PBC/19/24)*: The worksite management refused to comply with contractual provisions related to architectural specifications, while the architectural and aesthetic aspects of the Conference Hall were from the start a major characteristic of quality of the Project, amply emphasized in the documents constituting the International Call for Expressions of Interest and the Request for Tender. In other words, compliance by the former General Contractor with the contractually described quality (architectural and aesthetic) aspects was mandatory and therefore could not be compromised in any way neither by the Architect nor by the Client, or those executing the project on their behalf. More precisely, a pillar which is to remain visible to all was not executed according to the contractually described architectural and aesthetic specifications. The Architect, on behalf of the Client, therefore requested the pillar to be demolished and rebuilt according to the specifications since it could not be fixed by some minor finishing touches. However, the former General Contractor disagreed with the Architect’s view and refused to comply, which had the consequence that the worksite reached a standstill in the course of June 2012 since that pillar was a crucial element of the architecture as it was to become the main support for the wood structure. It must be emphasized that the contract foresees such a situation of disagreement and provides a simple resolution mechanism to address such issues while permitting the worksite to proceed: on the one hand, the General Contractor must comply with the Client’s decision and, on the other hand, the General Contractor may present his claim in parallel. In the case at hand, the former General Contractor did not respect the resolution mechanism as provided by the contract.

17. *Legal notifications with legally binding deadlines on the New Conference Hall Project (paragraph 22 of document WO/PBC/19/24)*: After the repeated requests from the Architect and the Pilot which were all dismissed by the former General Contractor, WIPO sent a legal

notification in June 2012 requesting that the defective pillar be demolished and re-built according to the contractual architectural requirements. The former General Contractor reiterated its refusal. WIPO sent a new legal notification instructing the former General Contractor not to lay the wood structure on the defective pillar. One of the main supporting beams of the wood structure was nevertheless laid on that defective pillar, mid-July 2012, by the sub-contractors upon instructions from the General Contractor. The Secretariat was then informed by the General Contractor that the worksite had been closed.

C. High-level bilateral discussions to resolve matters between December 2011 and April 2012

18. *High-level discussions on the remaining issues related to the New Building (paragraph 19 of document WO/PBC/19/24):* There were four high-level meetings held, respectively, in December 2011, January, March and April 2012. At each of these meetings, WIPO was represented by the Assistant Director General for Administration and Management and the former General Contractor by the Head of the countrywide general contractor branch. Each delegation also comprised two or more additional representatives at those meetings. Preparation of and participation in these meetings represented, on WIPO side only, an accumulated number of between 20 hours to 40 hours per meeting, without counting the time spent at lower operational levels to compile technical, financial and logistical documentation. In other words, despite the amount of time and effort which was eventually spent in trying to solve matters through this amicable mechanism, and despite the high-level engagements and commitments made by the General Contractor representatives at these meetings, the General Contractor continued to fail to meet and respect all newly agreed deadlines and undertake corresponding actions.

19. The following subject matters were covered during those high-level meetings: (i) on the New Construction Project, the remaining works on the atria glass tops, the replacement of the parquet floor, the handing over of the complete and updated technical documentation from all the sub-contractors which had participated in the construction, the replacement and repair works on the facades (blue decorative panels, ground floor windows, staircase windows, interior garden windows), the correction of a list of minor and medium size defects throughout the building, the lack of responsiveness to the Client's expectations; and (ii) for the New Conference Hall Project, as from the March 2012 high-level meeting, non-compliance with the construction phase timetable, non-compliance with the contractual requirements, lack of responsiveness to the Client's expectations for a project of the nature, scope and visibility such as those of the New Conference Hall.

D. Top-level decision to hear both parties to attempt an amicable resolution of matters

20. *Top-level discussions (paragraphs 24 to 27 of document WO/PBC/19/24):* As the situation deteriorated quite rapidly between May and mid-June 2012, the conclusion was reached in June 2012 by the Secretariat that a top-level meeting between the two Chief Executives would be necessary to unblock the situation. At the end of June 2012, agreement was reached between the two Chief Executives to hold a "mini-trial" type of hearing, allowing both sides to separately present their case to both Chief Executives, for them to come to a joint conclusion. The meeting took place on July 18, 2012, in Geneva; the participants in the WIPO delegation included also the Pilot and the Architect.

21. The top-level meeting was concluded by the amicable and jointly agreed termination of both contracts.

[End of Annex and of document]