

EXTERNAL REVIEW REPORT

concerning

**THE WORLD INTELLECTUAL
PROPERTY ORGANIZATION**

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0 SUMMARY

On the basis of our enquiry, we cannot conclude that certain employees of **WIPO** and the third parties concerned might have committed any fraud or dishonest acts. Experience shows, however, that certain weaknesses in the management of the Organization, such as described in this report, constitute a factor which might lead to irregularities being committed.

We therefore suggest that the recommendations made by the Joint Inspection Unit on personnel practices and by the Swiss Federal Audit Office on project management be implemented.

We also note that the criminal enquiry currently being conducted by a Geneva judge, which led the latter to look into the renovation of the **ex-WMO** building, is still ongoing and could lead to new facts.

1 INTRODUCTION

In Spring 2005, allegations of mismanagement and fraud at the World Intellectual Property Organization in Geneva (hereafter "WIPO") were published in the press.

These allegations relate mainly to:

- Renovation work on the building on rue Giuseppe **Motta** (ex-WMO).
- The project **for** the construction **of** the new building.
- Work carried out at the residence of the Director General.

Following the allegations made in the press, the executive head of WIPO decided that an enquiry by an independent external firm was called for. In its letter of August 31, 2005, relating to the call for tender, the Swiss Federal Audit Office, as External Auditor of WIPO, informed Ernst & Young of the essential points of the mandate and the terms for conducting the enquiry. The main terms of the mission may be summarized as follows:

- Under the supervision of the External Auditor, an enquiry into the allegations of mismanagement and fraud is to be carried out. The enquiry will focus specifically on purchases of goods and services, as well as on the area of construction and on private remunerated activities carried out by WIPO employees (possible conflict of interest).
- In the first phase of the mandate, the agent will gather all relevant information from WIPO staff and from third persons of their choice.
- In the second phase of the mandate, checks to determine the reliability of the allegations will be carried out.
- The final report will contain a compilation of allegations, together with an evaluation of the degree of reliability of the allegations.

2 MISSION OBJECTIVES

In our tender, the **objectives** of the mission are formulated as follows:

"Ernst & Young will assist the Swiss Federal Audit Office in establishing facts concerning certain contracts of supply and the procedures concerning those contracts to enable you to decide if disciplinary action **and/or** other legal measures are necessary. In addition to establishing the facts, Ernst & Young may formulate recommendations on the measures to be taken to deal with the risk of mismanagement and fraud in connection with **WIPO** procurement procedures."

Details of the mission are described in the External Review Agreement of September 23, 2005, and in our tender of September 14, 2005.

3 WORK CARRIED OUT

Paragraph 3.1 contains a summary of the work we have carried out within the framework of our enquiry. The procedure for interviews and for the correction of interview reports by the persons interviewed is described in paragraph 3.3 below.

3.1 Summary of work carried out

Our work plan was approved by the Swiss Federal Audit Office.

In the course of our mission, we carried out the following work:

- Inventory of allegations of fraud and mismanagement
- Establishment of a whistle-blowing facility following the information sent to all WIPO personnel by senior management
- Review of regulations concerning purchases of goods and services
- Study of documents provided by WIPO
- Interviewing of certain WIPO employees
- Interviews with third parties
- Analysis of information obtained during the interviews, additional research and verification of the reliability of the allegations
- Interview reports

- Action enabling the persons interviewed to correct the interview reports (reorientation process)
- Discussion of the draft report with **WIPO** representatives and the Swiss Federal Audit Office
- Preparation of the final report.

We met around 50 people through **interviews**, sometimes several times, and also informally within the Organization, and additionally have had telephone discussions.

Some 20 people used the whistle-blowing facility put into place.

3.2 Cooperation of the Organization

We would like to emphasize that full cooperation was received from the Director General of WIPO, from management, and from all WIPO officials who were asked to provide us with all useful information and documents. We wish to express our thanks to them.

3.3 Procedures

Through the interview procedure, the persons questioned were able to bring all relevant facts and circumstances concerning the allegations of fraud and/or mismanagement to the attention of Ernst & Young. They were given a summary of their interview and had the possibility of correcting any inaccuracies. Furthermore, WIPO employees were able to use the whistle-blowing facility.

The draft report **was** submitted to WIPO for comment and to allow the Organization to give its opinion on the draft report.

4 LIMITS OF THE MANDATE

Our work is not an audit and consequently no opinion is given on the financial statements of WIPO.

In accordance with the External Review Agreement, we have often guaranteed **anonymity** for the persons who have provided us with information and documents. This information is duly documented in our working notes and used in this report. The source of certain allegations cannot, however, be cited.

The procedures followed were in line with the Uniform Guidelines for **Investigations**. For our mandate, our work was limited to interviews with WIPO employees and third parties likely to have information useful for the purpose of our enquiry. The extent of the work carried out was determined by the time allocated and the budget available. We do not claim this report to be exhaustive.

In accordance with the External Review Agreement, the report is submitted by Ernst & Young to the Director General of **WIPO** and to the Swiss Federal Audit Office. **WIPO** is responsible for the further distribution of the report.

Our report has been prepared with a view to its use in accordance with the terms of the External Review Agreement. Our report is provided solely on the basis of its intended use.

The use of our report falls under the responsibility of **WIPO** and the Swiss Federal Audit Office.

The French version of this report is the authentic version.

5 ASSESSMENT OF ALLEGATIONS

In Spring 2005, the press made allegations of mismanagement and fraud concerning **WIPO**. On this basis, and before carrying out interviews, an inventory of the allegations was made.

As a result of interviews with **WIPO** employees, and with selected third parties and persons who contacted us spontaneously via the whistle-blowing facility, new allegations of mismanagement and fraud were indicated to us.

The allegations brought to our attention are described below, together with an assessment of the reliability of those allegations and the recommended actions.

5.1 Allegations concerning the process of call for tender and the execution of renovation work on the ex-WMO building (Allegation 1)

5.1.1 Description of allegations

The call for tender procedure to select the general contractor covered the period from August 1999 to May 2000. On May 12, 2000, 12 companies were preselected for participation in the final tender and were to submit their tenders by June 20, 2000. On July 10, 2000, nine companies were selected with tenders of 53.4 to 59 million Swiss francs. Those companies were to submit a final tender by July 25, 2000. Company B. was selected on August 18, 2000, to carry out the renovation work.

A first preliminary contract was signed on August 22, 2000, and then the main contract was signed on November 13, 2000.

The allegations relate to possible bribery which might have influenced the selection of Company B.

A criminal enquiry, with certain ramifications at **WIPO**, is currently under way and led by a Geneva judge. Company B. allegedly **paid** Mr. W. a large sum of **money**. The latter allegedly remitted a part of this sum to a WIPO senior official.

In February 2004, the Director General asked this senior official to explain his business relations with Mr. W. In his reply of March 2004, the senior official indicated that he had business relations with Mr. W. for commercial activities abroad. He also specified that those activities had been authorized by the previous Director General, in compliance with the provisions of WIPO Staff Regulation 1.6(b).

Mr. W. was heard by the judge in July 2004. Up to the present time, no charge has been brought within WIPO.

The senior official concerned left WIPO at the end of July 2005.

For a better understanding of the context, we have attached a chronology of the procedures followed in the project for the renovation, modernization and extension of the former WMO building. This chronology has been established within the framework of the internal evaluation carried out upon the initiative of the Director General by the Contracts Review and Construction Committee (CRCC) (**Annex 1**).

5.1.2 Observations

The work for our mission has been based on the following documents and information:

- Contractual documentation concerning the call for tender procedure.
- Report of the External Auditor to the General Assembly, dated November 1, 2004 (Audit of the detailed construction accounts relating to the renovation, modernization and extension of the former World Meteorological Organization building).
- Results of the work of the Contracts Review and Construction Committee on the above mentioned internal evaluation.
- Volker report of October 27, 2005¹.
- Results of interviews conducted with WIPO employees and persons external to the Organization likely to provide us with useful information for our enquiry.

¹ Independent Inquiry Committee into the United Nations **Oil-for-Food** Programme, Manipulation of the **Oil-for-Food** Programme by the Iraqi Regime (www.icc-ofip.org)

The results of our work are as follows:

(a) Concerning the procurement procedure

In its report of November 1, 2004, the Swiss Federal Audit Office considered that the procedures for calls for tender and granting of contracts had been established in compliance with applicable rules, namely Office Instruction No. 3/2001 (Procurement and Purchase Procedures) and the WIPO Financial Regulations of January 1, 1992. Neither the documents consulted nor the interviews conducted provided us with any indications to the contrary.

(b) Concerning the management of the project and internal organization

- The information gathered confirms the conclusions of the External Auditor (numerous changes to the project management structure, management by different teams, limited coordination procedure between the various sectors involved in the **project**, little documentation on the definition of tasks to be performed). Given that the Contract Review and Construction Committee (CRCC) was created only in February 2002, there was not, for this project, a working group with clearly defined tasks, nor was a **project** management procedure implemented.
- Generally, the various persons interviewed indicated to us that there had been significant pressure to select the general contractor and sign the contract as quickly as possible in order to show the Member States that the project was under way.
- The time allowed for selecting the general contractor was limited to five weeks.
- The Director of the Buildings Division was kept "at a distance" at the time of the call for tender and selection of the general contractor. The reasons given to justify this are varied and sometimes contradictory depending on the persons questioned.
- The information gathered shows us that the Buildings Division neither participated in drafting the call for tenders nor examined the tenders themselves.
- A working group met on May 15, 2000, to preselect the companies to be included in the call for tender, but that working group did not have the role of a selection committee.
- At the time, no selection committee existed and the selection was made on the basis of a recommendation of a working group confirming the recommendation made by the external agent (A).

Furthermore, the following specific points may be noted:

- In its letter of July 20, WIPO asked the preselected companies to provide additional information by July 25. Company B. replied one day later, i.e. July 26, submitting a bid of 61.5 million Swiss francs, i.e. the highest bid.

- The Volker report of October 27, 2005² states that the **WIPO** senior official had allegedly received payment of 325,000 Swiss francs from Mr. W. The latter claims that payment of this amount was related to private business matters.
- The WIPO senior official, heard during the criminal enquiry into Mr. W., left WIPO at the end of July 2005 and received significant separation remuneration, in compliance with the WIPO Staff Regulations and Staff Rules.
- Five people in WIPO, including in the Procurement and Contracts Service, knew Mr. W. personally at the time.

(c) Concerning contract management following the selection of the general contractor

The contractual arrangements put in place were complex in so far as the initial contract, transformed into a lump sum contract, was at the same time the subject of negotiations for conclusion of another contract (optional contract) which would allow for the inclusion of optional costs, and therefore not lump sum costs³.

(d) Concerning the external organization of the project

Company A., external agent, was selected through a call for tender of May 27, 1999, closed on June 7, 1999, at an amount of 3.26 million Swiss francs.

As emphasized by the Organization in its internal evaluation, requested by the Director General subsequent to the allegations of fraud, the following specific points may be noted in connection with the procedure:

- Submission deadlines were limited to 10 days.
- The cost estimated by the Procurement and Contracts Service (1.2 to 1.8 million Swiss francs) for the call for tender does not correspond to the amount finally retained for the contract with Company A. (3.26 million Swiss francs).
- Evaluation of the selection criteria was not carried out before opening the tenders but afterwards.
- The technical audit report of Company A. is dated September 15, 1999, whereas the contract between WIPO and Company A. was signed on October 12, 1999.
- Company A. recommended Company B. since there was no selection committee. The role of Company A. was also to finalize the architectural study of the project

² Independent Inquiry Committee into the United Nations **Oil-for-Food** Programme, Manipulation of the Oil-for-Food Programme by the Iraqi Regime, page 478, (www.icc-offp.org).

³ Report of the Swiss Federal Audit Office of November 1, 2005 (Audit of the detailed construction accounts relating to the renovation, modernization and extension of the former WMO building), notes 10 and 27.

and prepare the specifications for the general contractor. In that **context**, the respective roles of Company A. and the Buildings Division are not clearly defined.

- Remuneration of Company A. was based on a percentage of the amount of the main contract. Additions were made to the contract, and additional fees were paid.
- At the end of the project, Company A. received additional fees of 3.5 million Swiss francs following an additional request relating to the final value of the project and based on the contract.

Company A. requested that this amount be paid to a numbered account with a Geneva bank with the mention "reference Company A.". These funds were rejected by this bank since Company A. was not the holder of this account. At the request of **WIPO**, the company then accepted payment of the funds to a non-numbered account with a different bank.

5.1.3 Evaluation of the degree of reliability of the allegations

Our work to date has not provided any evidence of bribery in connection with the renovation of the **ex-WMO** building. However, the observations listed above are such that the existence of financial wrongdoing can be neither excluded nor confirmed.

The criminal enquiry is still ongoing and could lead to new elements. It is therefore premature to make a pronouncement on the reliability of allegations concerning the call for tender process and execution of the building renovation work.

5.1.4 Recommendations

The Swiss Federal Audit Office made a certain number of recommendations in its report of November 1, 2004, concerning the renovation work on the **ex-WMO** building.

Reading a subsequent report of the Swiss Federal Audit Office of July 6, 2005, concerning the project for the construction of the new building, we note that certain of these recommendations, accepted by **WIPO**, have not yet been implemented. This relates particularly to the establishment of a description of internal project management processes, and the definition of the terms of reference, processes and responsibilities for internal management of the project.

We are of the opinion that **WIPO** should follow these recommendations.

We recommend waiting for the outcome of the criminal enquiry under way to determine the necessity of other measures.

5.2 Allegations concerning the call for tender process and the work carried out on the construction of the new building (Allegation 2)

5.2.1 Description of allegations

The Consortium C. and D. was selected through a call for tender open from March to June 2003. The contract was signed between the Consortium and WIPO on October 27, 2003. On December 24, 2003, WIPO informed the Consortium of the cancellation of the contract, that decision being confirmed in writing on January 12, 2004.

The allegations made in the press indicate that the award of this contract could also have given rise to a payment of commissions to Mr. W.

5.2.2 Observations

The Swiss Federal Audit Office reports of October 28, 2004, and July 6, 2005, identified a certain number of irregularities, particularly with respect to the definition of suitability criteria and selection criteria in the procurement procedure for selecting external consultants.

In respect of the selection of Consortium C. and D., it does not appear that any irregularities have been committed in the call for tender procedure.

Neither the documents we consulted nor the interviews provided us with any indications to the contrary.

However, we have been informed that Company C. had allegedly engaged Mr. W. as a consultant for the negotiation of this project; we have not yet been able to check this information.

The following information was also given to us during our interviews and telephone discussions:

- The companies allegedly encountered difficulties between themselves for undertaking the work.
- Communication difficulties between Company C. and Company D. apparently occurred very quickly, the two companies having different cultures and management methods, given particularly their difference in size and turnover.
- The Consortium C. and D. had apparently not succeeded in putting in place the bank guarantee on first demand under the conditions required by WIPO's bank. In this respect, the provisions of the contract of the general contractor providing for a performance bond did not correspond to the specific requests of the bank concerning the guarantee required.

- The two companies allegedly **differed** in their choice of raw materials and **subcontractors**. In this respect, Company D. had proposed a Swiss subcontractor for the foundations. **WIPO** allegedly refused to approve this subcontractor.
- The Consortium requested an advance payment of 40 million Swiss francs. **WIPO** then requested a corresponding bank guarantee for restitution of the advance on first demand. The Consortium was apparently unable to provide this guarantee.

Furthermore, the following specific points may be noted:

- Following cancellation of the contract and the end of the Consortium's existence, and at the start of 2004, a Division of **WIPO** proposed that the construction project be continued, but only by Company C. This proposal was not adopted.
- The possibility of taking legal action to request damages from the Consortium was discussed. This proposal was not adopted.

5.2.3 Evaluation of the degree of reliability of the allegations

Our work to date has not provided any evidence of bribery in connection with the construction of the new building.

5.2.4 Recommendations

The cancellation conditions could be looked at more closely, for example within the framework of the general mandate of the External Auditor.

5.3 Allegations concerning work carried out at the residence of the Director General (Allegation 3)

5.3.1 Description of allegations

- Various work relating to the installation of a security system in the villa of the Director General was allegedly paid for by WIPO.
- It came to light that work in relation to construction of the Director General's swimming pool had been paid for in cash.

5.3.2 Observations

- **Construction of the swimming pool in 2003:**

The swimming pool was purchased from a company in France (in official receivership since then). The Director of the Buildings Division was present on several occasions on the site and gave advice on the construction. The French company indicated that its understanding was that the property of the Director General was the property of WIPO. Payments were made "in cash" by the Director of the Buildings Division.

The order, sent by fax to the French company on June 13, 2003 from WIPO, is signed by the Director of the Buildings Division. The letter heading gives the address of the property of the Director General with the telephone and fax numbers of the Buildings Division.

The Director of the Buildings Division confirmed that he had been present on site, stating however that because of his experience, it seemed to him quite natural to give advice to the construction companies present; it would seem that he acted out of goodwill towards the Director General and not as a WIPO representative on personal behalf of the Director General.

He also acknowledged having accepted to hand over to a representative of the construction company an envelope containing cash which the Director General had given to him. These facts have been confirmed by the Director General who indicated that he had withdrawn the cash from his bank account.

- Installation of the **security** system:

Clause 3.2 of the contract of employment of the Director General of June 25, 2003, for his second mandate, provides that **WIPO** should bear the costs of an appropriate protection and security system. In this context, the Buildings Division requested a quote from Company E. for the installation of a video surveillance system.

The Buildings Division did not request several offers and stated that *"for the usual and obvious reasons of security, the offer of company E. is the only offer available; the quotation submitted corresponds to prices accepted by WIPO for similar services"*⁴.

WIPO regulations concerning procurement and purchase **procedures**⁵ provide that obligations exceeding 50,000 Swiss francs must be subject to limited tenders involving at least three bidders, or an open international tender.

Company E. sent invoices to WIPO for this installation of a security system in the Director General's villa for an amount of 74,898 Swiss **francs**.

The purchase order was signed by the Divisions concerned on December 16, 2003 and the work was paid for by WIPO in accordance with the relevant rules in force.

5.3.3 Evaluation of the degree of reliability of the allegations

Our work has not provided any evidence of the existence of either mismanagement or fraud in connection with the work done at the residence of the Director General.

⁴ Buildings Division Internal Memorandum of November 25, 2003

⁵ **Office** Instruction No. 3/2001: Procurement and Purchase Procedures

5.4 Other allegations of mismanagement and fraud

During our enquiry, we have been informed of other allegations either during interviews or through spontaneous calls, and also via the whistle-blowing facility put in place. We have the following observations and recommendations concerning those allegations.

5.4.1 Personnel practices

The Joint Inspection Unit report of February 2005 noted the absence of a comprehensive human resources strategy. The inspectors were concerned by a certain number of long-term recruitment and promotion practices, including:

- The increase in the number of posts and total workforce: the number of **approved** posts increased by over 50% between 1997 and 2002.
- The increase in the number of short-term staff and consultants: the proportion of this staff category has also increased regularly, and renewal of this type of contract leads to a long-term situation which does not comply with the guidelines in force at the **United Nations**⁶.
- Direct recruitments: this practice is provided for in Staff Regulation 4.8(b) in accordance with precise criteria. **WIPO** practice is to convert the direct recruitments into regular posts, thus circumventing the principles of competitions for vacant posts.
- Personal promotions do not comply with the criteria of the **1984 ICSC recommendation**⁷. It is recommended that this practice be eliminated since it is contrary to the principles of fairness and transparency.

The information we have been able to obtain during our mission confirmed the conclusions of the Joint Inspection Unit report. We have noted a certain degree of discontent concerning the human resources management policy. Globally, we observed signs of fear amongst the various persons interviewed and also a feeling of frustration with recruitment and promotions. This state of affairs creates a situation which is not only detrimental to the efficiency and image of WIPO, but may also, for certain people, reduce their reticence in adopting dishonest behavior.

During the interviews, we noted the following **situations**:

- New posts are allegedly sometimes created and recruitment carried out without a real need being demonstrated.

⁶ Resolution 53/221 of April 7, 1999, adopted by the United Nations General Assembly, and Administrative Instruction **ST/AI/1999/7** according to which "consultants and individual contractors should be highly qualified, and preferably from a roster of candidates; perform assignments of a temporary nature clearly related to the activities in the work program; and undertake tasks capable of being completed in a specified limited period which due to their complexity cannot be met by existing staff."

⁷ **International Civil Service Commission, A/39/39**, 1984, paragraph 222.

- Recruitment is allegedly sometimes carried out without a competition being held, or the principle of competition is allegedly circumvented.
- Direct recruitment of staff and senior officials allegedly sometimes occurs without the persons concerned necessarily having the qualifications required for the posts occupied.
- The recruitment and selection process allegedly does not in practice adequately involve the immediate supervisor or the program manager.
- Promotions are allegedly not always given on merit, other considerations possibly being taken into account.

5.4.2 Recommendations

The Joint Inspection Unit recommended a desk-to-desk survey of posts in order to perform a needs assessment of human resources. This assessment should enable savings to be made in the 2006-2007 budget. It is to be ascertained whether an independent external expert has been selected to perform this assessment in order to verify whether Recommendation 1 made by the Joint Inspection Unit has been followed.

At its Eighth Session in Geneva on April 27 to 29, 2005, the WIPO Program and Budget Committee indicated that everything would be done to finance the implementation of this Recommendation.

We recommend that this desk-to-desk assessment is carried out as quickly as possible and that it looks specifically at recent recruitments and promotions, at the very least for the years 2003-2005.

In addition to this recommendation, it should also be verified that Recommendation 9e of the Joint Inspection Unit⁸ has been implemented by the Director General.

Finally, we recommend that the supervisors of the person to be recruited be closely associated with the recruitment process.

5.4.3 Rental contract for the building used by the Academy in Chambésy

The rental contract was concluded for a period of five years from August 15, 1999 to August 15, 2004, with an extension up to December 31, 2006. In general, it has been mentioned to us on several occasions that the financial conditions for this rental are abnormally high and that the terms of payment are unusual. The rents for the first two years were paid in advance, in accordance with the rental contract, amounting to approximately 4 million Swiss francs. According to the recommendations of the External Auditor for the 2002-2003 biennium, WIPO should have discontinued to make payments in advance. These recommendations were not put into effect since the rents for the 2002-2005 period have also been paid in advance,

⁸ "A comprehensive human resources strategy be established in one properly sanctioned document, which focuses on the identification, development and appraisal of the human resources needed to meet the priorities of the Organization. This should include, in particular, policies on career development, gender balance, geographical distribution and administration of justice."

amounting to approximately 4 million Swiss francs at the start of each **biennium** concerned, in accordance with the rental contract.

5.4.4 Other allegations

We have been informed of other allegations concerning various areas of the Organization.

We have not been able to verify the degree of reliability of all these allegations in view of the priority given to dealing with the allegations concerning the **ex-WMO** building, the project for the construction of the new building and the work done at the residence of the Director General.

We have sent information relating thereto to the External Auditor of the Organization by separate mail.

6 GENERAL CONSIDERATIONS

We think it useful to place the results of this enquiry in a more general context in order to enable WIPO management to adapt their management rules.

From a theoretical viewpoint, the three main conditions in the decision-making process leading to fraud may be represented schematically as follows:



Opportunity

Circumstances may provide an opportunity to commit fraud, such as weaknesses in the control system.

Rationalization

Certain individuals have an attitude or character or certain moral values through which they justify a dishonest act. The justification process is all the stronger in the presence of a feeling of injustice with regard to promotions and recruitment.

Incentive/pressure

Managers or other employees may respond to needs, or feel that they have, through incentive or pressure, a reason to commit frauds. The individual will also analyze the risks and consequences of his act. The fraud will be more easily committed if consequences are minimal.

By fraud is meant here any act detrimental to the Organization. This extends from receiving undue financial benefits to unjustified absences on sick leave.

The various recommendations made so far to WIPO management relate essentially to improvements in the internal control system. They enable a lessening of opportunities for fraud (first factor).

It is, however, essential not to underestimate the importance of human factors, namely the personal integrity of **WIPO** employees, that of the third parties concerned, and the level of integrity of the Organization itself.

Ethical and moral values are key elements when taking decisions. Regulation 1.6(b) of the WIPO Staff Regulations and Staff Rules states that, apart from their duties with the International Bureau, staff members shall not engage in any activity or have any financial interest whatever in any enterprise concerned with intellectual property. They may not accept any gratuities or favors from firms or private individuals concerned with intellectual property or having commercial relations with the International Bureau.

Regulation 1.6(c) states that any staff member who, in the course of his duties, has occasion to deal with a matter involving an industrial or business concern in which he holds a financial interest shall inform the Director General of the extent of that interest.

We recommend that WIPO define clearly and in detail the rules applicable for providing information concerning any financial interest of WIPO employees **and/or** any potential conflict of interest.

List of Annexes

1. Chronology of events
2. List of documents examined concerning the allegations

Annex 1: Chronology

Document prepared by WIPO within the framework of the Internal Evaluation initiated by the Director General.

March 13, 1996: Signature of a "*promesse de vente*" between WIPO and WMO for the sale of the WMO building for an amount of 30 million Swiss francs, **plus** interest (**that is**, a total *in fine* of 3429 million Swiss francs).

July to September **1996:** Approval by the WIPO Budget and Premises **Committee**, of the report of an independent expert (**Mr...**, Deputy Controller, The Patent Office, United **Kingdom**) on **WIPO's** estimated office space requirements, until June 2006. The expert estimates that the Organization will require between 1,040 and 1,300 work **places**, by 2006 (document **WO/GA/22/1**).

December 1997: First evaluation of the costs of the renovation of the WMO building through a study by **Mr. . .** (architect of the CAM and **BIRPI II** buildings). The study indicated a cost of **16.4** million Swiss francs for the renovation and transformation of the WMO building, including the aerial and underground connections with the existing WIPO buildings, and an estimated cost of 14 million Swiss francs for **the enlargement** of the WMO building (addition of one floor 4.2 million Swiss francs; enlargement of the underground **garage: 2.8** million Swiss francs; construction of a second tower: seven million Swiss francs), for an **overall** cost estimated at 30.4 million Swiss francs (document **WO/GA/22/1**).

March 27, 1998: Approval by the WIPO General **Assembly** of the project for the renovation, **modernization**, connection and enlargement of the former WMO building, for an estimated total cost of 30.4 million Swiss francs, to be funded by the WIPO Special Reserve Fund (documents **WO/GA/22/1** and 2).

July to August 1998: The architectural firm Company F is requested to prepare documentation to obtain **required** building authorizations.

July 1998 to **January 1999:** New **evaluation** by Company F (to cover an additional enlargement of the garage) indicating a total **overall cost** of 34.6 million Swiss francs.

December **21, 1998:** WMO confirms its intention to vacate the building by June 30, **1999** ("*État des lieux*", June 17, 1999).

April 1999: The **Director** General of WIPO is requested to consider, and approves, a new strategy consisting of the immediate and complete renovation of the WMO building (a two-step renovation plan had originally been **envisaged**) and the following plan of action: (i) a call for tender, limited to eight pools of architects/engineers (each consisting of an architect, a civil engineer, a heating/ventilation engineer and an electrical engineer) for an estimated cost of **1.2** to **1.8** million Swiss francs, to replace Company F, finalize the study of the **project**, and prepare the specifications for the general **contractor**; (ii) a worldwide call for tender for a general contractor, to carry out the renovation of the **ex-WMO** building, for a total **estimated** cost of approximately 30.4 million Swiss francs (less the cost of the pool of architects and **engineers**).

May 27, 1999: Call for tender sent to 15 architectural firms; closing date set for June 7, 1999; opening of tenders set for June 9, 1999.

June 1999: Evaluation of offers according to a number of criteria (references; experience of the members of the pool, **experience** in working in a pool; number of employees; reliability of the offer); nine offers ranging between 3.57 and 2.02 million Swiss francs are received by WIPO; selection of the Company A, for a total cost of 3.26 million Swiss francs.

June 30, 1999: Signature of the **deed** of sale of the **WMO** building to WIPO.

September 15, 1999: The Company A report dated September 15, 1999, recommends a **complete** revisiting of **the** original (Company F) project. It judges this first project inadequate in **several** respects (necessity of complete transformation of the "circulation elements"; outdated **facade** technology, no security concept; necessity to start dismantling "old, **non-standard**" parts of the WMO building; approval to submit a request for an **additional** construction permit). It states that the original project is not adequate to **house** the PCT.

October 12, 1999: Signing of the contract between WIPO and Company A for the provision of architectural and engineering services in respect of the project for **the** renovation, transformation and enlargement of the former WMO building, for **an** overall amount of 3.358 million Swiss francs; the estimated cost of the renovation project is 30 million Swiss francs.

October 1999: **Internal** discussions on possible financial scenarios for the **project**.

November 1, 1999: The Director General is informed that the cost of the Company F project exceeds 30.4 million Swiss francs. The Director **General** requests a new study by an independent architect with a view to enabling WEPO to remain within the originally approved budget.

November 8, 1999: First amendment of the contract between WIPO and Company A. Company A is entrusted with a study on possible savings on the renovation of the **ex-WMO building** in order to conform with the Director General's instructions to **remain** within the approved budget (cost of the study: 400,000 Swiss francs).

November 1999: tender for the partial demolition of the ex-WMO building; selection of the Company G, for a total cost of **1.285** million **Swiss** francs.

November 22, 1999: Amendment No. 1 to the original contract between WIPO and Company A, for a total amount of 400,000 Swiss francs.

January 2000: Start of demolition of the ex-WMO building.

January 21, 2000: Three alternative financial scenarios to carry out the project are submitted to the Director General:

- **Alternative 1** : 61.7 million Swiss francs
- **Alternative 2**: 39.4 million Swiss francs
- **Alternative 3**: 30.4 million Swiss francs

According to Company A, **only Alternative 1** is **compatible** with the **transfer** of the PCT sector to the **ex-WMO** building; **Alternative 2** does not include the link between the renovated building and the original one, reduces **office** space **from** 450 to 280 places, the parking **capacity** from **180** to 80 **places**, and the cafeteria from **300** to 150 seats; Alternative 3 consists of a building with only 270 work places, 80 parking places and a bar instead of a cafeteria. Alternative 1 is presented by Company A as being the most economical in terms of cost per workspace; it also offers the largest **number** of workspaces.

March 10, 2000: Approval of an Amendment No. 2 to the contract between WIPO and Company A, for a total amount of 950,000 **Swiss** francs. It **relates** to additional work to submit a complementary **request** for authorization to build, on the basis of the revised version of the project.

August 1999 to May 2000: Procedure for the selection of a general contractor. Invitations for **expressions** of interest are sent by WIPO in August 1999, in September **1999** and again in February 2000, to **European associations** of general contractors, 35 international enterprises, and Member States Missions. They **are** also published on the WIPO website. Five **Geneva-**based companies respond to the first **call** for tender, followed by three companies in other countries. Some foreign companies (from neighboring countries) also respond, using their Swiss cooperating partners as intermediaries. An internal working group preselects companies which will be invited to **tender**.

May 12, 2000: Twelve companies are invited to participate in the final tender and are requested to submit their offers by June **20, 2000** (a five-week deadline).

July 20, 2000: The preselected companies are requested certify that their offers respect specifications in respect of materials, and to present a final offer, including possible **rebates**, before July **25, 2000**.

July 26, 2000: The Company B **proposes** a final **rebate**, bringing its offer to 61.5 million Swiss francs.

August 1, 2000: The Director General is asked to consider a revised project for an overall estimated cost of 61 million Swiss francs, of which 53 million Swiss francs for the renovation work itself and eight million Swiss francs for work already completed. Different strategies are proposed in **respect** of Member States, as follows:

- to request Member States to approve **an** increased **budget**, up to 61 million Swiss francs;
- to inform **Member** States that a revised project has been prepared **without**, however, requesting any decision pending negotiations with potential general contractors;
- to inform Member States of **the** likely new costs and request a limited budget increase, in the hope of being able to realize savings during the **implementation** of the project;

- to withdraw the item from the agenda of the September 2000 **Assemblies**, pending a more precise definition of the cost of the revised project

August 3 and 4. 2000: Report by, and meeting with, Company A, to evaluate the offers received from general **contractors**. Company A is of the opinion that **only** Company B meets the specifications of the tender and suggests to identify **those** elements which may be reduced/eliminated, **in order** to reduce costs further.

August 7. and 8 to 14. 2000: Meetings with the companies B, and H, with the objective of obtaining **further** cost reductions; a budget of 45 million Swiss francs is proposed to them by **WIPO**. Company H makes the **best** offer (a turn-key project for an overall amount of 49 million Swiss francs), but Company A considers this offer **unrealistically** low.

August 10. 2000: Report to the Director General: two **alternatives** are submitted for his consideration:

- » a budget of 48 million Swiss francs, of which 40 million Swiss francs for the renovation work (instead of the 57 million proposed by Company B: this implies a reduction of the cost of the project of **11** million Swiss francs, in addition to an estimated amount of 6 million Swiss francs in savings);
- a budget of 59 million Swiss francs, of which **51** million Swiss francs for the renovation work (**instead** of the 57 million Swiss francs proposed by **Company B**: this implies an **estimated** amount of six million Swiss francs in savings).

August 11. 2000 : Company A finalizes a **study** of possible cost savings. An overall amount of six million **Swiss** francs in savings is identified.

August 16 to 18. 2000: WIPO decides to award the contract to Company B; confirmation to Company B of its selection, and closing of the tender procedure.

August 22. 2000: first contract with Company B for eight million Swiss francs and payment, by **WIPO**, of an advance **payment** of four million Swiss francs, against provision, by Company **B**, of corresponding guarantee.

September 2000: The WIPO **General Assembly** approves a revised project for the **renovation**, modernization, **connection** and enlargement of the former WMO building, **for** a maximum total cost of 59 million Swiss francs (of which **16** million Swiss francs for work already completed or under **execution**, and 43 million Swiss francs for work to be carried out). The Secretariat explains that the increase of 28,6 million Swiss francs **over** the **budget** originally approved by Member States is justified by: (i) the increase **in** construction costs **in** Geneva (5.3 million Swiss francs); **(ii)** modifications in relevant regulations (three million Swiss francs); (iii) modifications of the original specifications, in particular, to adapt the project to the requirements of the PCT sector (3.9 million Swiss francs); (iv) an increased available work space surface (800,000 Swiss francs); and, (v) other modifications (3.4 million Swiss francs). The document submitted to the Program and Budget Committee also states that the original budget **established** in late 1997 and early **1998**, had underestimated the cost of the project by 12.2 million Swiss francs, and that the revised project is based on the content of the offers **received** by WIPO in response to the call for tender for a general contractor.

October to November 2000: Meetings with Company B, and several **internal** meetings, with the aim of limiting the total cost of the **contract** with **Company B** to 51 million Swiss francs; several proposals are made, the last being of **51** million **Swiss** francs for the main **contract**, and **1.658** million Swiss francs for additional costs to be financed by **WIPO's** regular budget.

November 13, 2000: Signature of a second contract between **WIPO** and Company B replacing the one signed on August **22, 2000**. **The** contract provides that: (i) work will be paid for on the basis of the unitary prices **established** in the **offer**, plus a rebate of 2.75 **per** cent; (ii) the maximum cost of the contract is 51 million Swiss francs, (iii) if it appears that the total cost may **exceed** this amount, the general contractor shall inform **WIPO** within 48 hours, **for** written authorization; (iv) the schedule of payments foresees the payment of guarantees and deposits (in the amount of 20.666 million Swiss francs) before **the** opening of the construction site, and fixed monthly payments thereafter.

November **17** to **20, 2000**: meeting with Company B, identification of possible elements to be included in an additional contract ("**the** optional **contract**").

November **20, 2000**: WIPO requests further **information** on the so-called "optional" contract for 6.1 million Swiss francs. The contract must be "optional" because the Director General **is** **opposed** to **the** **increase** in the project's budget.

January 2001: Payment, by WIPO, of an advance of **16** million Swiss francs against provision, by Company B, of corresponding guarantees.

April **12, 2001**: Meeting with Company B to discuss the **said** "optional" costs; two alternatives are considered:

- to establish a unitary price contract for a total of 5.5 million Swiss francs; or
- to **establish a "forfait" contract for a total amount of 5.88 million Swiss francs,**

May 8, 2001: Company A recommends the transformation of the original contract of 51 million Swiss francs, and the additional contract **of 5.88 million Swiss francs**, into a new "**forfait**" contract for a **total** amount of 56.88 million Swiss francs.

June 5, **2001**: Company A proposes a third amendment to its original contract with WIPO (study on the adaptation of the project), for a total **amount** of 329,000 Swiss francs (paid on July 2, 2001).

July 27, 2001: The original (November **13, 2000**) contract between WIPO and Company B (51 million Swiss francs) is transformed into a "**forfait**" contract in the amount **of 51** million Swiss francs. A new contract between **WIPO** and Company B is also signed for the execution of additional work as defined in additional **estimates** dated April 26 and July **26, 2001**, for a total amount of 5.88 million Swiss francs.

March 18, 2002: Amendment No. 2 to the November **13, 2000**, contract between **WIPO** and Company B, and amendment of the contract dated July **27, 2001**, also between WIPO and Company **B**, to bring the amount of general **contractor's** guarantee to 2.8 million Swiss francs (instead of 2.5 million Swiss francs).

March. 2002: Proposed Amendment No. 3 to the November **13, 2000**, contract between WIPO and Company B and amendment of the contract dated July **27, 2001**, also between WIPO and Company B, concerning the power supply station (**115 000** Swiss francs).

July 29, 2002: **Amendment** No. 4 to the November **13, 2000**, contract, and to the **July 27, 2001**, contract, between WIPO and Company B for a total **amount** of **95,000** Swiss francs.

August **19** to **28, 2002:** Company B requests payment for unforeseen work; WIPO refuses to consider this work as additional.

April **8 to 29, 2003:** Company A requests additional honoraria in the amount of **4,132** million Swiss francs, claiming that initial honoraria were based on a percentage of a project costing 30 million Swiss **francs**, which has now increased to 56.88 million Swiss francs.

May 7 to June 13, 2003: Letter from Company A reducing its **claims** to 3.5 million Swiss francs; settlement reached between WIPO and Company **A** on this amount.

March **22, 2004:** Report of Company A on Company B claims for additional work.

September to May 2004: Company B agrees to reduce claims from 1.4 million to 700,000 Swiss francs. Final settlement with WIPO for 700,000 Swiss francs.

Annex 2: List of documents examined concerning the allegations

- Report of the Joint Inspection Unit: Review of management and administration in WIPO: budget, oversight and related issues (also stating the position of WIPO and of the staff)
- Evaluation of the procedures followed by the Secretariat in relation to the implementation **project** for the renovation, modernization and enlargement of the former World Meteorological Organization (WMO) building (English)
- Report of the External Auditor to the General Assembly: Audit of the Detailed Construction Accounts relating to the Renovation, Modernization and Extension of the Former World Meteorological Organization (WMO) Building
- Report of the External Auditor to the General Assembly: Interim Audit of the New Administrative Building and Conference Room Construction **Project** - Follow up on the 2003 Audit
- Report of the External Auditor: Interim Audit of the New Administrative Building and Conference Room Construction Project - Follow up on the 2004 Audit
- Financial Management Report 2002-2003
- Interim Financial Statement for 2004 (document A/41/6)
- WIPO Audit Reports for the **bienniums**:
 - 2002-2003
 - 2000-2001
 - 1998-1999
 - 1996-1997
 - 1994-1995
- United Nations document "Uniform Guidelines for Investigations"
- Calls for tender for the former WMO building renovation project (**14 binders**)
- Documents provided by the Buildings Division, available for consultation in their offices, according to the attached lists
- Request for explanations made by the Director General of WIPO to a senior official of the Organization (correspondence)
- Internal memorandum "Tender process undertaken for general contractors of the ex-WMO building and the new building"
- WIPO Financial Regulations

- Office Instruction No. 3/2001 - Procurement and Purchase Procedures
- Request for explanations relating to the internal enquiry addressed to a senior official and response of the latter (period from February 27, 2004 to March 15, 2004)
- Internal report from PCS (dated March 17, 2004) setting out the various steps in the process leading to the granting of a contract for the **ex-WMO** building renovation project and for the new building construction project
- **Volker** report of October 27, 2005 (Independent Inquiry Committee into the United Nations **Oil-for-Food** Programme: Manipulation of the **Oil-for-Food** Programme by the Iraqi Regime)
- Various press articles obtained through the Factiva service in the course of 2005.