

BUREAUX INTERNATIONAUX  
RÉUNIS POUR LA PROTECTION  
DE LA PROPRIÉTÉ INTELLECTUELLE  
GENÈVE, SUISSE

# BIRPI

UNITED INTERNATIONAL  
BUREAUX FOR THE PROTECTION  
OF INTELLECTUAL PROPERTY  
GENEVA, SWITZERLAND

## CONFÉRENCE DIPLOMATIQUE DE STOCKHOLM, 1967 DIPLOMATIC CONFERENCE OF STOCKHOLM, 1967

GRUPE DE TRAVAIL: ARRANGEMENT ADMINISTRATIF (Genève, 20-26 mai 1964)  
WORKING PARTY ON AN ADMINISTRATIVE AGREEMENT (Geneva, May 20 to 26, 1964)

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## INTRODUCTION

### Background

1. The Permanent Bureau of the International Union for the Protection of Industrial Property (Paris Union) and the Permanent Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union) decided, at a joint meeting held in October 1962, to set up a Working Group to begin the preparatory work for a Diplomatic Conference to revise certain administrative provisions of the Conventions and Agreements now being administered by BIRPI and to draw up an "Administrative Convention". The Swedish Government has agreed to act as the host to the Diplomatic Conference which is to be held in Stockholm in 1967.

2. The Permanent Bureau and the Permanent Committee decided to invite the following countries to form the Working Group: Czechoslovak Socialist Republic, France, Federal Republic of Germany, Hungarian People's Republic, Italy, Japan, Mexico, Sweden, Switzerland, Tunisia, United Kingdom of Great Britain and Northern Ireland, United States of America.

3. The Working Party met in Geneva at the Headquarters of BIRPI, from May 20 - 26, 1964.

### Documentation

4. The documents submitted to the Working Group were prepared jointly by the representatives of Sweden and BIRPI. They consisted of an Introductory Report (doc. AA/I/2), a first draft of the Administrative Agreement (doc. AA/I/3) and a Draft Resolution (doc. AA/I/4). They were based largely on a Working Document (BP/GT/2) submitted to the joint meeting of the Permanent Bureau and the Permanent Committee in October, 1962.

### Participation

5. The Working Group was composed of experts from the following countries: Czechoslovak Socialist Republic, France, Federal Republic of Germany, Hungarian People's Republic, Italy, Japan, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, and United States of America.

### Opening of the Meeting

6. Professor G.H.C. Bodenhausen, Director of BIRPI, opened the proceedings of the Working Group. Having reminded the Working Group of their mandate and of the origin of the documents put before them he proceeded to explain the basic reasons for the proposed reform. He stressed that the proposals for reform had not arisen from a feeling that the supervision of BIRPI by the Swiss Government did not work excellently. Any proposals which the Working Group might wish to prepare would later be submitted to a Committee of Experts composed of all Member States of the Paris Union and the Berne Union which might wish to participate, with a view to submitting a final draft to the Diplomatic Conference in Stockholm, which alone had the power to modify the Paris and Berne Conventions and the Agreements administered by BIRPI.

### Powers of the Participants

7. From the beginning it was emphasized that the members of the working Group were experts who did not have the power to bind their Governments. It was clearly understood that the various Governments reserved their positions vis-a-vis both the entire proposal and the individual provisions.

### Officers and Secretariat

8. In its opening session, the Working Group proceeded to elect the following:-

- Mr. H. Morf (Switzerland) proposed by the French experts, was elected Chairman by acclamation.
- Mr. H. Puget (France) and Mr. E. Tasnadi (Hungarian People's Republic) proposed by the United Kingdom and Swedish experts, were elected Vice-Chairman s by acclamation.

9. Dr. A. Bogsch, Deputy-Director of BIRPI, with the assistance of Mr. C. Masouyé, Counsellor of BIRPI, was responsible for the Secretariat of the Meeting.

### GENERAL DISCUSSION

10. The French experts asked to be informed of the attitude of the Swiss Government regarding the transfer of its supervisory functions. As these powers had been exercised for nearly 80 years to the full satisfaction of Member States of the Unions, it would appear that the

view of the Working Group depended on knowing whether the Swiss Government wished to give them up. Moreover, in conformity with international courtesy, it was necessary to sound the Swiss Government on its views.

11. The Chairman of the working Group, Mr. H. Morf, speaking for the Swiss Government, stated that the latter had neither sought to retain its functions nor manifested a desire to abandon them, but that it was prepared to do so if the majority of Member States so asked. In effect, it seemed that recent developments in the field of international cooperation tended to strengthen the influence of States in the management of the Unions and to allow States to control the implementation of their desiderata more closely. If, therefore, the majority of States considered it expedient that the Unions of Paris and Berne should follow the trends of other international organizations, the Swiss Government would have no objection and would not interpret such an attitude as evidence of mistrust.

12. The Italian experts recalled the terms of the note published in October, 1962, by the Permanent Committee and the Permanent Bureau and considered that the documents submitted to the Working Group went further, as they also advocated the establishment of a new international organization. The setting up of such an organization might be a good thing, but the working Group was not empowered to recommend it. The Italian experts, therefore, reserved their Government's position vis-a-vis the entire scheme.

13. On the other hand, the experts of the Federal Republic of Germany, United States of America, Japan, United Kingdom and Sweden considered that the working Group should investigate the best means of achieving the objects of the proposed reform; that the setting up of a new organization seemed to be indispensable to the achievement of those objects and that, consequently, it was perfectly proper for the Working Group to examine and recommend the setting up of a new organization.

14. The Hungarian and Czechoslovak experts, while agreeing in principle with the viewpoint of the Italian experts, did not express opposition to the idea of setting up a new organization. In their view, there were grounds for discussing the administration and financing of the Unions - including the transfer of the supervisory functions from the Swiss Government to an assembly of Member States - on the one hand, and the question of the setting up of a new international organization on the other.

15. The French experts also agreed that, in principle, the Italian experts were right. However, machinery had to be created whereby the Member States could determine the policies of the Unions and initiate new conventions on intellectual property, and also provide a "forum" open to all States, whether Union Members or not, to enable them to discuss problems of common interest in the field of intellectual property and avoid the discussion of such matters elsewhere. There were

thus reasons for setting up a new organization having a certain standing on the international plane, which could be recognized as the acknowledged authority in matters of intellectual property. At the same time, the independence of the Unions had to be respected and non-member States could not be allowed to pronounce on their policies and financing. Briefly, it was advisable to set up a "forum" open to all States but there could of course be no question of granting States which did not accept obligations deriving from the Conventions of the Union the means of influencing them.

16. All experts agreed to interpret the task of the Working Group in this manner except the Italian experts, who reserved the position of their Government.

## DISCUSSION OF THE DRAFT CONVENTION

### Preliminary Remarks

17. Before starting to discuss the draft Convention article by article, the French and Italian experts voiced their reservations on the whole draft whatever the result of the votes which might be obtained.

### Title

18. The name proposed for the new organization in the document before the Working Group was "International Organization for Intellectual Property".

19. Following proposals made by the Japanese and French experts, the Working Group chose the following descriptions: in French, "Organisation Mondiale de la Propriété Intellectuelle" (OMPI); in English, "World Intellectual Property Organization" (WIPO).

20. As regards the title of the instrument, the document before the working Group described it as an "Agreement". At the suggestion of the French experts, the word "Convention" was retained.

### Definitions

(Art.1, doc. AA/I/14; Art.2, doc. AA/I/3).

21. The Working Group proposed the deletion of the expression "Technical Conventions" in describing the Conventions creating the various Unions. They also considered that the word "Union" should cover the individual Agreements made within the framework of the Paris Convention. Lastly, they considered that all references to the Rome

Convention for the international protection of performers, producers of phonograms and broadcasting organizations, as well as the Paris Convention for the protection of new plant varieties should be deleted, and that these two Conventions could be described by a general reference to the "Unions for the administration of which the Organization is responsible"; of course, the Stockholm Conference could, if it so desired, expressly mention these two Conventions as well as all those which may in the meantime come under the administration of BIRPI.

#### Establishment, Objective and Functions

(Art. 2, doc. AA/I/14; Art.1, doc. AA/I/3)

22. The first paragraph of the first draft was completed on the basis of a proposal by the Czechoslovak Delegation that no distinction should be made between the different nations on the grounds of their economic and social structure or the level of their industrial development.

#### Member States and Organs

(Arts. 3 and 5, doc. AA/I/14; Arts. 3 and 5, doc. AA/I/3)

23. The draft submitted to the Working Group envisaged that membership of the Organization should be open to States not parties to the Unions (so-called "third" States) and that all States which were Members of the Organization would be placed on an equal footing.

24. The French experts reminded the Group that if the "forum" were to be open to all States, whether Members of the Unions or not, the policy-making power within each Union should belong only to the Members of that Union. Since the Unions were open to all States, there could be no question of granting States which would not accept their obligations the right to participate in their administration.

25. The Italian experts considered that, if the Swiss Government gave up its supervisory functions, its powers could be transferred to the Assembly of each Union. If, however, an organization open to all States were to be set up, it would be advisable to agree to the suggestions of the French experts, and, furthermore, States which were parties to several Unions ought to be given more weight than those belonging to only one Union or even to none at all.

26. The experts of the Federal Republic of Germany and United States of America thought that so-called "third" States which, while they were desirous of participating in the Organization itself, could not yet belong to one of the Unions, should not be given a secondary status.

Various suggestions along those lines were made to allow States Members of the Unions to exercise their influence within the Organization: qualified or weighted votes (proposed by the experts of the United States of America) or admission to the Organization only of those non-Union States which had adequate institutions for the protection of intellectual property (proposed by the German experts).

27. In the end, the majority expressed themselves as fully aware of the necessity for creating a "forum" open to all States, while at the same time continuing the search for a system which would allow Union Members to remain in control of their Conventions. Within the "forum", States would be equal but the States Members of a Union could alone pronounce on questions relating to that Union. In practice, the General Conference of the Organization would discuss general questions and vote on the general budget of the Organization, while the Assemblies of each Union would determine the policies of that Union and vote on its own budget. This suggestion was accepted by all experts except those of Italy who stated that the suggestion was of interest since its aim was to preserve the independence of the Unions but that they were not authorized to approve it, as their Government had not been able to express a view on the subject.

28. The draft before the working Group envisaged that membership would be open to States which were Members of the Paris and the Berne Conventions or of any Treaty, Convention or Agreement to be administered by the Organization, as well as to the Member States of the United Nations or any of its Specialized Agencies. In order to stress the universal character of the Organization, the Czechoslovak experts proposed that Article 3 should specify that no distinction would be made between States on the grounds of their economic and social structure or their level of industrial development. The majority of experts considered, however, that this formula which was already incorporated in Article 2 did not need to be repeated in Article 3.

29. On the other hand, another proposal by the Czechoslovak experts was upheld. This proposal sought to provide for the admission of States invited by the General Conference to become Members of the Organization. The working Group expressed the unanimous view, with two abstentions (United States of America and Italy), that the General Conference could extend such an invitation by a two-thirds majority (compare Art. 18 (3) (i)).

30. The experts of the Federal Republic of Germany, however, considered that the paragraphs relating to membership of the Paris and Berne Conventions and all other Treaties administered by the Organization were superfluous: it was sufficient to provide that all Member States of the United Nations or of one of its Specialized Agencies could become Members of the Organization. Other States could be invited by the General Conference to become Members of the Organization. This



proposal was rejected by seven votes (Czechoslovakia, France, Hungary, Italy, Japan, Sweden, Switzerland) ... to two (Federal Republic of Germany and United Kingdom) and one abstention (United States of America), the majority holding that the Organization envisaged should be based on the Paris and Berne Conventions. The Delegation of the Federal Republic of Germany asked that its viewpoint should be expressed in a footnote at the end of Article 3. The Working Group carried out the request.

#### Headquarters

(Art. 4, doc. AA/I/14; Art. 4, doc. AA/I/3)

31. This Article, which provides that the headquarters of the Organization shall be at Geneva and can be transferred elsewhere pursuant to a two-thirds majority decision of the General Conference, was approved by the Working Group.

#### General Conference of the Organization

(Art. 6, doc. AA/I/14; Art. 6, doc. AA/I/3)

32. Taking into account the principle of the independence of the Unions, it was understood that each Union should have its own General Assembly (the powers of which would be largely the same as those of the General Conference of the Organization) and also, if appropriate, an Executive Committee. The Working Group, therefore, adopted the French proposal that the powers of the General Conference should be understood to be subject to the powers reserved to the General Assemblies and the Executive Committees of the various Unions.

33. The document before the Working Group provided that the General Conference could decide whether the Organization should agree to administer existing or future treaties on intellectual property. The French experts commented that the "forum" could not be granted the right to refuse to administer existing agreements; nor could it be granted the right to pronounce on the creation of future agreements as that would be contrary to Article 15 of the Paris Convention and Article 20 of the Berne Convention; the right arose from the exclusive power of States which agreed to accept the obligations arising under those agreements; lastly, a new Union on intellectual property could not be prevented from joining the new Organization. The Working Group agreed with this viewpoint. However, it was pointed out that if the General Assembly of each new Union was to make its own decision whether to join BIRPI, the conditions for joining should be negotiated by the Director General with that Assembly and approved by the General Conference of the Organization.

34. On the other hand, at the suggestion of the Czechoslovak experts, it was agreed that the General Conference might admit, as observers, representatives of international organizations and of States not parties to the Convention.

General Assemblies of the Unions  
(Art. 7, doc. AA/I/14)

35. Taking into consideration the advice of the Working Group regarding the independence of the Unions and the formation of the General Assemblies of the Unions, a new Article 7 was drawn up. The provisions of that Article were based on those relating to the General Conference of the Organization.

Executive Board of the Organization  
(Art. 8, doc. AA/I/14; Art. 7, doc. AA/I/3)

36. The draft before the Working Group provided for one single General Conference and a single Executive Board for the entire Organization. As regards election and re-election to the Executive Board, separate rosters were to be established for each of the following categories of States:-

- (i) States parties to the Paris and Berne Conventions and to the Madrid Agreement;
- (ii) States parties to the Paris and Berne Conventions;
- (iii) States parties only to the Paris Convention;
- (iv) States parties only to the Berne Convention.

Separate rosters would be established for the States which were parties to other Conventions on intellectual property and a separate roster for States not parties to any Convention on intellectual property. Further, no State could be inscribed on more than one roster.

37. Some experts, notably those of France and Italy, asked that a certain preeminence should be accorded to States Members of several Unions - for example, by means either of weighted vote, or of the allocation of permanent seats, or by recognising multiple representation, etc.

38. The Czechoslovak experts, for their part, recommended that separate rosters be drawn up for each Union and that Member States of several Unions be inscribed on the rosters of each of the Unions; this would enhance the election chances for those States. The Czechoslovak experts also suggested that a Nominations Committee be set up to submit proposals to the General Conference.

39. Certain experts, notably those of the United States, considered that the preceding proposals might be hurtful to those States who were not parties to any Convention on intellectual property and would penalize States which, although industrially important, belonged only to one Union.

40. After the Working Group had proposed to modify the system provided in the first draft by four votes (Federal Republic of Germany, France, Italy and Switzerland) to one (United States of America), with five abstentions, a small ad hoc Committee submitted the following proposals (doc. AA/I/9): the rosters proposed in the first draft should be retained, but each State not elected to the Executive Board on the basis of the roster on which it was inscribed in the first place could be elected on the basis of the rosters that followed inasmuch as it was a party to at least one of the Treaties mentioned therein; thus, if the first roster contained 16 States, 4 would be elected; if the second roster contained 25 States, 6 would be elected from those 25 States and from the 12 States left on the first roster, and so forth. This process would give multiple chances of election to States parties to several Treaties.

41. This proposal was approved by the Working Group, subject to two reservations: the United States expert reserved the position of his Government in regard to Article 8, since in his view the system penalized unduly the countries which belonged to only one Union or to none at all; the Czechoslovak experts restated their preference for their original suggestion.

42. The Working Group also tackled the problem of the permanent seats on the Executive Board. The Swiss experts stated that they considered it necessary to grant ex officio permanent seats to States that agreed to control the accounts of the Organization. Certain experts, notably those of the United States of America, remarked that the draft Convention did not exclude the existence of de facto permanent seats (the draft provides for the re-election of one-third but does not prohibit a State from being re-elected at three or more successive conferences). The proposal to create permanent seats was rejected by seven votes (Federal Republic of Germany, United States of America, Hungary, Japan, United Kingdom, Sweden and Czechoslovakia) to two (France and Italy) with one abstention (Switzerland). However, it was agreed that Switzerland, which controls the accounts of the Organization, should be an ex officio Member of the Executive Board as well as of the Executive Committees of the Unions.

43. It was specified that each State would have one vote on the Executive Board and its decisions would be by a simple majority of those present and voting. Abstentions were not to count as votes.

44. The experts of the United Kingdom requested that the question of voting and of the majority within the Executive Board be referred to a general article on voting.

45. Before closing the debate on this question, the following was noted: the Czechoslovak experts reserved their position regarding the whole of Article 8. They wished to have it stated that in electing the Members of the Executive Board the General Conference should have regard to a balanced geographical distribution, without distinguishing between different nations on the grounds of their economic and social structure or the level of their industrial development; and lastly, the Czechoslovak experts preferred the system advocated in paragraph 38 above.

Executive Committees of the Unions  
(Arts. 9 and 10, doc. AA/I/14)

46. Having thought it necessary to safeguard the independence of the Unions, the Working Group considered it appropriate to establish Executive Committees of the intellectual property Unions analogous to the Executive Board of the Organization. It was stated that the Paris and Berne Unions should of necessity have such Executive Committees and that the other Unions should have the option of creating them. In effect, Unions which comprise only a few Members could scarcely be required to establish a limited Committee.

47. The Paris and Berne Unions should fix the number of Members of their Executive Committee at one quarter of their Member States.

48. The Executive Committees of the Unions are an emanation of the General Assemblies of the Unions, in the same way as the Executive Board of the Organization is an emanation of the General Conference; the powers of these Executive Committees should, therefore, be largely the same as those of the Executive Board.

Coordination Committee  
(Art. 11, doc. AA/I/14)

49. The first draft before the Working Group provided for a single General Assembly and one Executive Board for the Organization as a whole. The Working Group recommended a General Conference for the Organization and a General Assembly for each Union, and considered it

necessary to set up a Committee to coordinate the activities of these various organs; because of the independence of the Unions, its character would be purely advisory.

50. Members of the Executive Board of the Organization, the Executive Committee of the Paris Union and the Executive Committee of the Berne Union would form the Coordination Committee; individual Agreements made under the provisions of a Union Convention could be represented as such on the Coordination Committee if they appointed their representatives from amongst Member States of that Committee.

51. Certain experts, notably that of the United Kingdom, expressed doubts about the need for a Coordination Committee. In their view, the functions of this Committee could be carried out by the Executive Board. This viewpoint was embodied in a special note at the end of Article 10. Other experts, however, notably those of France, spoke against this view. They considered, in effect, that the Executive Board could not carry out the functions of coordination.

#### Secretariat

(Art. 12, doc. AA/I/14; Art. 8, doc. AA/I/3)

52. The French experts asked that it be laid down that the Director General must belong to a Member State of the two Unions of Paris and Berne, since the Director General had not only to direct the work of the "forum" but to supervise the proper functioning of the two Unions. The majority of the experts considered that international civil servants were, by definition, independent of their respective Governments and that, in any case, they should not prejudge the future, and they rejected the French proposal by six votes (Federal Republic of Germany, Japan, Sweden, Switzerland, United Kingdom, United States of America) to two (France and Italy) with two abstentions (Hungary and Czechoslovakia).

53. At the suggestion of the experts of the United States of America, a provision stating that, should the post of Director General fall vacant between two sessions of the General Conference, the Executive Board shall name an Acting Director General (Art. 8 (3)(vi)), was included in the draft Convention.

54. The French experts proposed that at least two Deputy-Directors<sup>General</sup> be provided for; one in charge of the administration of the Paris Union and the other in charge of the administration of the Berne Union. The majority of the experts, however, considered such a system too inflexible; it would prevent the Director General from allotting certain duties to his staff and would result in creating a "lobby" for the special interests of the Unions. The Working Group therefore, recommended that the Secretariat should include two or more Deputy-Directors General without specifying their duties.

Finances

(Art. 13, doc. AA/I/14; Art. 9, doc. AA/I/3)

55. The first draft before the Working Group provided for a single budget for the entire Organization. In order to decide the amount each State should contribute to it, the States would have to be divided into different classes, according to whether they belonged to the Paris and Berne Unions, or to either the Paris or the Berne Union, or to no Union at all.

56. In order to emphasize the independence of the Unions, the Working Group considered that the Organization should have its own budget and that there should be separate budgets for each of the Unions. The Organization's budget would cover expenses incurred by the Organization itself, as well as its share of the common expenditure; the budget of each Union would be in respect of that Union's expenses and its share of the common expenditure. The question of the allocation of shares in the common expenditure and of determining between items of common expenditure and those specific to each body could be examined by the Coordination Committee.

57. Once separate budgets for the Unions were established, it would no longer be necessary to take into account whether a State belonged to the various Unions in order to determine the contribution of that State to the budget of the Organization itself. Consequently, the system set out in paragraph 55 above should be replaced by the system already existing within the Paris and the Berne Unions (Art. 13(4)(a)). However, as the Working Group had agreed to a Czechoslovak proposal that each State should indicate its class "with due regard to the importance of its national economy", the Director of BIRPI pointed out that the existing six classes did not fully take into account the relative economic situations of States; he, therefore, proposed adding a seventh class representing one unit. This would emphasize the difference between the contributions of States belonging to the first class and those in the last. All experts thought this proposal very interesting. In the absence of instructions from their respective Governments, however, they did not consider they were authorized to pronounce on it. This question will be examined in greater detail by the Secretariat; in particular their study should define the financial effects of the above-mentioned proposal.

58. The first draft before the Working Group provided that the Executive Board should assign a class to those States which had omitted to choose one to which they wished to belong. The Czechoslovak experts asked that it be made clear that this should be done "with the consent of the State concerned". However, this proposal was not accepted by

the Working Group as it did not provide a solution in case a State refused its consent. The Czechoslovak experts expressly reserved the position of their Government on this point.

59. The Working Group also specified that the class chosen by a State, or to which it had been assigned, should apply for purposes of the budget of the Organization itself as well as for the separate budgets of the Unions to which the State belonged (Art. 13 (4)(a)).

60. Similarly, the sanctions provided in cases of delay in the payment of contributions should apply to all organs of the Organization and of the various Unions, including those organs of the Unions where no delay had occurred (Art. 13 (4)(e)). However, the Working Group accepted a proposal from the Swiss experts that States could set off their contribution to the expenses of the Organization or of any one Union against possible credits they might have with any other Union.

61. As regards the financing of the registration services, it was thought that the amount of the fee ought to be fixed by the Director General with the agreement of the majority of the Members of the General Assembly of the Union concerned, and that it should be fixed at a level at least sufficient to cover the expenses occasioned by the maintenance of these services.

62. The first draft before the Working Group provided for the establishment of a working capital fund consisting of the payments made by Member States and the various registration services; this fund should consist approximately of the amount of annual contributions and the fees received in a year.

63. The working Group discussed the name of the working capital fund, the size of the fund, the organ to decide on its size and the problem of the ownership of the fund.

64. Certain experts, notably those of the United States of America, Hungary and United Kingdom, considered that an amount equivalent to the annual budget of the Organization was excessive and that most of the other international organizations had working capital funds representing about one-tenth of their annual budgets. These experts proposed a working capital fund, in view of the special tasks of the Secretariat (registration service), of twenty-five percent of the annual budget, at the same time authorizing the General Conference to review this percentage every three years. Other experts, notably those of the Federal Republic of Germany and Sweden, considered that a higher level than 25 percent should be agreed so that the Organization would not be compelled to ask for a loan from any State or financial institution.

65. On the other hand, certain Delegates, notably those of the United States of America, stressed that in any event it was a matter for the General Conference to decide the size of the fund when examining the triennial budget and that it could, therefore, alter the size.

66. Regarding the question of ownership of the fund, the Working Group considered that the payments should remain the property of the States which made them but that, in the interest of the smooth functioning of the Organization, States should not be allowed to withdraw their payments or reduce their advances except under certain conditions yet to be defined.

67. The preceding remarks apply of course not only to payments made by Member States of the Organization but equally, *mutatis mutandis*, to those made by the registration services which would remain the property of the States parties to the Agreements.

68. Lastly, the Working Group expressed the following view: there shall be a working capital fund consisting of the payments made by States and the registration services; the Convention shall decide the amount of the contributions to be made by States and the registration services, whereas the General Conference can decide to increase or diminish the fund; the payments are to remain the property of the States, but they may only withdraw their money or reduce their payments in certain conditions still to be decided.

69. This entire question should be re-examined by the Committee of Experts.

70. The working Group noted that, depending on the size of the working capital fund, it might perhaps be necessary to obtain advances from a Government or a bank; with regard to that point, the Swiss experts stated that their Government would be prepared to continue to make the necessary advances to the working capital fund provided agreement was reached between the Swiss Government and the Organization concerning the manner of advancing money, of notifying denunciations, etc., and that Switzerland or any other State prepared to make such advances be granted a permanent seat on the Executive Board of the Organization.

71. The Swiss experts, moreover, stated that their Government was prepared to continue to supervise the accounts until the second ordinary session of the General Conference of the Organization, that is to say for three years from the entry into force of the Convention; thereafter, the supervision should be taken over by the Governments of other Member States or by outside auditors appointed by the General Conference.



72. The Working Group stated that the budget should be approved by a two-thirds majority of those voting at the General Conference, it being understood of course that if the budget was not approved, the limit of the expenses would have to be maintained at the same level.

73. As for deciding the currency in which payment for the registration services be made - American dollars or Swiss francs - the Working Group left this question for the Diplomatic Conference in Stockholm.

74. Apart from the reservations noted above, the experts of France, Italy and Japan expressly reserved the positions of their Governments in regard to all financial questions.

Legal Status, Privileges and Immunities  
(Art. 14, doc. AA/I/14; Art. 10, doc. AA/I/3)

75. The first draft before the Working Group was largely based on analogous provisions in the constitutions of other international organizations.

76. The German experts pointed out that, even if they were in agreement with the principles set out in the first draft, it should not be forgotten that some countries had to amend their national legislation before they could ratify the Convention in this respect. They, therefore, suggested that a very general provision be inserted in the Convention and supplemented by an annexed protocol. The question was referred back to the Committee of Experts.

77. The Hungarian experts proposed that as regards Switzerland, the practical details should be settled by a Headquarters Agreement with the Government of that country, and as regards the other States, by bilateral or multilateral agreements to be concluded as required. This proposal was accepted by the Working Group (Art. 14, paragraph (3)).

78. The United Kingdom and German experts reserved the position of their Governments vis-a-vis the entire problem.

Independence of the Intellectual property Conventions, Agreements and Treaties

(Art. 15, doc. AA/I/14; Arts. 11 and 15, doc. AA/I/3)

79. The first draft before the Working Group provided in Article 11 that the substantive provisions of the various treaties on intellectual property would not be affected by the new Convention. In addition, it set out in Article 15 and the Annex the provisions of those treaties which would be replaced by the new Convention.

80. The Working Group expressed its agreement with the above principles.

81. The Group replaced the expression "Technical Convention" in describing the treaties on intellectual property by "Intellectual Property Conventions, Agreements and Treaties"; this formula covers both the Paris and Berne Conventions and the individual Agreements, as well as Conventions or Agreements which the Organization might be asked to administer in the future.

82. The Group proceeded to amalgamate the two Articles listed above (Art. 15, doc. AA/I/14). As a result, the new Article reiterates in its first paragraph the principle of the independence of the treaties on intellectual property and sets out in the second paragraph the two exceptions thereto.

83. The French experts declared that they could express a view only after a detailed examination of the provisions listed in the Annex; in effect, the Annex provides for the abrogation of the Regulations

of various Agreements whereas the clauses containing those provisions are not all being replaced by the provisions included in the draft Convention.

Revision of the Intellectual Property Conventions, Agreements and Treaties

(Art. 16, doc. AA/I/14; Art. 12, doc. AA/I/3)

84. The first draft before the Working Group provided that the revision of the substantive provisions of the treaties on intellectual property shall remain the exclusive right of the States parties to those treaties.

85. This proposal was accepted.

86. The Czechoslovak experts again stated their view that it ought to be stressed that the States competent in the matter were the States parties to those treaties "without distinction as to their economic and social structure or the level of their industrial development".

Relations with other International Organizations

(Art. 17, doc. AA/I/14; Art. 13, doc. AA/I/3)

87. The Working Group stated that only general agreements with other international organizations might be approved by the Executive Board, and not working agreements which could be made in special cases, for example when arranging a joint seminar or meetings between officials for the settlement of common problems.

88. One paragraph (3) provides for the case where another international organization wants to entrust the new Organization with the administration of an already existing treaty on intellectual property; the conditions of joining the Organization should be negotiated by the Director General and approved by the General Conference in accordance with Art. 6(2)(ix).

Settlement of Disputes

(Art. 18, doc. AA/I/14; Art. 14, doc. AA/I/3)

89. The first draft before the working Group provided for compulsory recourse to the jurisdiction of the International Court of Justice except in cases where the parties concerned agree on another mode of settlement. It also provided that the Organization may obtain an advisory opinion from the Court.

90. The provision relating to obtaining an advisory opinion was deleted, in view of the fact that, pursuant to Article 65 of the Constitution of the Court and Article 96 of the United Nations Charter, only the Specialized Agencies of the United Nations are entitled to do so.

91. The German experts expressed their preference for a system of arbitration and the setting up of ad hoc machinery for the purpose (compare Article 27 of the Charter of ITU; Article 84 of the ICAO Charter; and Article 31 of the UPU Charter).

92. The Hungarian and Czechoslovak experts stated that their Governments could not accept compulsory jurisdiction of the Court and that they could not ratify a Convention which included such a provision; in their view, in fact, such a clause interfered with the sovereignty of States. They proposed, therefore, that an article with very general provisions be adopted and that an optional protocol be drawn up. The majority of the working Group, however, agreed on the system of compulsory jurisdiction as known already to the Berne Convention. The problem is to be studied by the Diplomatic Conference in Stockholm.

93. The French experts pointed out that if the Diplomatic Conference could not agree to the system of accepting the compulsory jurisdiction of the Court, it might be advisable to insert a compromise clause; they indicated that they would submit a draft to that effect at the appropriate time.

Voting

(Art. 19, doc. AA/I/12; Art. 15 bis, doc. AA/I/12)

94. The Working Group considered it more suitable to combine in one article the provisions for the necessary voting majorities to enable the General Conference of the Organization and the General Assemblies of the Unions to arrive at their decisions.

95. The United Kingdom expert asked that this article should also contain the provisions for the voting majorities required in the Executive Board of the Organization and the Executive Committees of the Unions. The question was referred back to the Committee of Experts.

96. The United States experts recommended the adoption of an article to provide for voting on important questions - including budget questions, adoption of the program, the examination of the Director General's report on activities, the election of the Executive Board - to be by a qualified majority (two-thirds) and voting on other questions should be by simple majority (as in the United Nations).

97. This proposal was supported by the experts of the United Kingdom and Czechoslovakia who pointed out that up to now the Paris and Berne Conventions applied a unanimous voting system; it would be advisable to provide, therefore, at least in the case of all important questions, for a qualified majority which ought to be as high as possible (for instance four-fifths).

98. The majority of the Working Group agreed in principle with the United States experts. They wished, however, to avoid a general formula such as "important questions" and preferred to enumerate the matters in the draft Convention, namely:

- (i) invitation to a State to become a Member of the Organization;
- (ii) a decision concerning the transfer of the headquarters of the Organization;
- (iii) adoption of the budget;
- (iv) alteration in the size of the working capital fund;
- (v) ratification of decisions concerning the administration of new intellectual property treaties;
- (vi) a possible decision on an agreement with the United Nations.

99. The Working Group advocated the following majorities:
- for all questions other than those listed above, a simple majority;
  - for entering into an agreement with the United Nations for recognizing the Organization as a Specialized Agency of the United Nations, a nine-tenths majority;
  - for ratifying arrangements made by the Director General with a view to undertaking the administration of new intellectual property treaties, a three-quarters majority;
  - for the other important questions listed above, a two-thirds majority.

100. As regards the adoption of the budget, the Working Group considered that if the required two-thirds majority was not obtained, the budget for the preceding year ought to be maintained, it being understood that the allocation between various items might be altered; thus the expenditure ceiling would be the same.

#### Amendments

(Art. 20, doc. AA/I/14; Art. 16, doc. AA/I/3)

101. In modern international organizations, there are two very different systems for amending constitutions: according to the first (as in WHO), an amendment, if it is to be adopted, must be approved by a qualified majority (usually two-thirds) in the Assembly, and be ratified by a qualified majority of States (usually two-thirds); when those two conditions have been satisfied, the amendment binds all Member States; the second system (used by UNESCO) draws the distinction between important questions, to which the above rules apply, and questions of secondary importance for which a qualified vote in the Assembly is sufficient and which do not require ratification.

102. The first draft before the Working Group was a half-way house between the two systems referred to.

103. The United States experts pronounced themselves in favor of the system referred to above as that used by UNESCO.

104. The United Kingdom expert stated that he preferred a nine-tenths majority for all questions whether important or not; if the traditional unanimity rule was to be abandoned, it would be better, in his view, to provide for as high a majority as possible.

105. The German experts recommended the adoption of rules analogous to those referred to above as the WHO system: amendments would come into force for all questions, whether important or not, after a three-quarters majority vote by the General Conference and their ratification by three-quarters of the States (which may not be the same as at the Assembly); once adopted in this manner, the amendment should be binding on all States, irrespective of whether they had voted for the amendment or not.

106. The French experts supported the proposal of the German experts provided that, in addition, provision be made for a unanimous vote by States belonging to a Union in the case of revision of the rules guaranteeing the autonomy of the Unions. The Working Group accepted the proposal of the French experts. They further recommended that amendments to increase the obligations of States would be binding only on States which had accepted them, and provided two-thirds of the Member States of the Organization had also accepted them.

#### Entry into Force

(Art. 21, doc. AA/I/14; Art. 17, doc. AA/I/3)

107. The Working Group considered that States could become parties to the Convention:-

- either merely by signing it and not subject to ratification; this is a recent system adopted notably by the Council of Europe;
- or by depositing instruments of ratification; this is the most usual system nowadays;
- or, if they have not signed the Convention, by depositing instruments of accession.

108. It was specified that no time limit for signing the Convention by all States would be laid down.

109. It was also specified that the instruments of ratification or accession should be deposited with the Director General.

110. The Japanese expert asked on what basis States belonging to a Union but not yet **parties** to the Convention after the latter came into force should pay their contribution; it was specified that there would, of course, be a de facto co-existence between the present and the new system, and that, as was the case at present with the Paris Union, States belonging to a Union could voluntarily pay a higher contribution than that laid down in the Convention of the Union - thus voluntarily giving effect to the decisions of the General Assemblies.

Denunciation

(Art. 22, doc. AA/I/14; Art. 19, doc. AA/I/3)

111. The text of this Article did not give rise to any substantive discussion.

Notifications

(Art. 23, doc. AA/I/14; Art. 19, doc. AA/I/3)

112. The text of this Article did not give rise to any substantive discussion.

Final Provision and Transitional Provision

(Arts. 24 and 25, doc. AA/I/14; Art. 20, doc. AA/I/3)

113. The first draft before the Working Group provided that the Convention would be deposited with the Director General.

114. The German experts expressed the view that it could not be deposited with the Director General since, before the entry into force of the Convention, there would be no Director General. They, therefore, proposed that the Convention should be deposited either with the Government of Sweden or of Switzerland.

115. The majority of the experts agreed the text of the first draft, on the understanding that until the first Director General took up office, all references to the Director General should be read as referring to the Director of BIRPI.

116. The German experts reserved the position of their Government on this point.

117. The Working Group further proposed, bearing in mind their proposals regarding the official languages of the Organization, that the French and English texts of the Convention should be of equal validity and that official translations should be made into German, Spanish and Italian.

Resolution

(Doc. AA/I/14 and doc. AA/I/4)

118. The draft resolution approved by the Working Group is designed to permit the Organization to function in the interim period between the signing of the Convention and its entry into force in the following

manner: the obligations of States belonging to the Unions will remain unchanged, but the resolution grants them rights deriving from the Convention, notably that of participating in the new organs.

119. The draft resolution provides that nine-tenths of the signatories to the Convention may decide on its cancellation or modification; in fact, provision must be made in case the Convention does not come into force.

120. The United States experts proposed that the entry into force of the interim measures should only be within the limits permitted by the Constitution and the laws of each State; this proposal was accepted by the Working Group.

121. The German experts pointed out that to give effect to the resolution was possible only if two conditions were fulfilled - one of which was legal, - namely that it was unanimously adopted - and the other practical, - namely that close collaboration be established between the Government of the Swiss Confederation and the Director of BIRPI.

122. The Swiss experts declared, in their personal capacity, that they would request their Government to do its utmost to facilitate the setting up of the new Organization.

123. Further, the French experts pointed out that, if it is correct that the Paris and Berne Conventions can only be altered by unanimous vote, it should not be forgotten that a resolution, even if not unanimous, has a certain persuasive force for the States which voted in favor of it.

#### Closing of the Session

124. Before the dispersal of the Group, the Italian experts stressed their Government's reservations on the whole matter. The ~~Chairman~~ pointed out that none of the experts present had the authority to bind his Government. Moreover, only the Diplomatic Conference at Stockholm was capable of making decisions which could bind States. Since both the Paris Convention and the Berne Convention and the various individual Agreements had to be revised, - not to mention the other intellectual property Treaties which BIRPI might in the meantime be asked to administer, -



the Stockholm Conference would, in fact, consist of a number of Diplomatic Conferences which would all have to take their decisions in accordance with the rules of the appropriate Convention (which provide for unanimous voting in the case of the Paris and Berne Unions).

125. It was recalled that the Secretariat would furnish to all Union Governments the revised texts of the draft Convention, the draft resolution, and a new explanatory note covering the whole of the proposed reform.