

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

# BIRPI

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

**COMMITTEE OF EXPERTS ON THE ADMINISTRATIVE STRUCTURE  
OF INTERNATIONAL COOPERATION  
IN THE FIELD OF INTELLECTUAL PROPERTY**

**COMITÉ D'EXPERTS CONCERNANT LA STRUCTURE ADMINISTRATIVE  
DE LA COOPÉRATION INTERNATIONALE DANS LE DOMAINE DE LA  
PROPRIÉTÉ INTELLECTUELLE**

Geneva, March 22 - April 2, 1965

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INTRODUCTORY REPORT

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, first, a working party and, then, a committee of experts, to start the preparatory work for a diplomatic conference designed to draw up an "administrative convention". The administrative convention would take the place of certain administrative clauses in the Paris Convention, the Berne Convention and the Agreements administered by BIRPI (the United International Bureaux for the Protection of Intellectual Property). Consequently, the said Conventions and Agreements would have to be amended. Their revision would take place in diplomatic conferences held at the same time as the diplomatic conference to be called for the adoption of an administrative convention. The Government of Sweden agreed to act as the inviting power for these diplomatic conferences which are now scheduled to take place in Stockholm in 1967.

(2) The Working Party referred to in the preceding paragraph met at Geneva in May 1964. It adopted a draft instrument to which it gave the title "Draft Convention of the World Intellectual Property Organization (W.I.P.O.)," hereinafter referred to as "the Draft Convention" or

"the Draft." It also adopted a draft resolution which would provide for some transitional measures. These two drafts, which appear in document AA/II/3<sup>1)</sup>, were, as a whole, unanimously adopted by the Working Party<sup>2)</sup>. Nevertheless, certain features or provisions of the drafts were the subject of reservations by one or more experts. Such reservations are indicated either at the wish of the Working Party in footnotes to the drafts themselves (AA/II/3) or in the summary report of the deliberations of the Working Party. The Working Party consisted of persons appointed by the Governments of the Czechoslovak Socialist Republic, France, Germany (Federal Republic of), the Hungarian People's Republic, Italy, Japan, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. The participants acted in their personal capacity.

(3) The Committee of Experts is convened to examine the drafts of the Working Party and to effect such modifications in them as it deems appropriate. All States members of the Paris Union or the Berne Union were invited to participate in this Committee which will meet at Geneva from March 22 to April 2, 1965.

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- (1) The final text is slightly edited, according to the indications and pursuant to the desire of the Working Party and the Representatives of Sweden as prospective host of the Stockholm Conference.
- (2) The Experts of Italy expressed the view that the Working Party exceeded its mandate and expressly reserved the position of Italy on the Drafts in their entirety.

OBJECTIVE AND MAIN FEATURES  
OF THE DRAFT CONVENTION

(4) The main objective of the draft convention is to provide for an administrative framework in which the basic aims of the Paris and Berne Unions - international cooperation and protection in the field of patents, trademarks, copyright, and similar or related subjects - can be more efficiently served.

(5) The Paris and the Berne Unions were founded more than three quarters of a century ago: in 1883 and 1886, respectively. In 1892 the two Unions were placed under a common administration in the United International Bureaux (today commonly called BIRPI). The age of BIRPI is a source of legitimate pride for all those concerned with the development of intellectual property, since it makes BIRPI one of the oldest intergovernmental organizations, with whose founding date only those of the Universal Postal Union (UPU) and the International Telecommunication Union (ITU) may be compared. But this fact accounts also for the obvious need to review most of the principles on which the administration of BIRPI is based, as they are out of step both with contemporary needs and with the general consensus of our days on how an intergovernmental body should be organized. For similar reasons, in recent years, UPU and ITU underwent a transformation similar to the one proposed in the Draft.

(6) In this connection, it should be noted that the various Unions administered by BIRPI do not have general assemblies in which the Member States could formulate administrative policy and exercise administrative supervision. Furthermore, and partly because of the lack of general assemblies, there is no adequate machinery which could promptly adjust the financial obligations of Member States - in the form of voting the budgets - to the changing needs of the Organization. Finally, and again partly because of the absence of adequate organs in which the Member States may discuss and decide upon policy, there is no forum today (other than the revision conferences meeting approximately once every twenty years) in which States could voice their wishes and needs in the field of intellectual property and could organize the means by which such wishes and needs could be met.

(7) To eliminate these shortcomings in the present administrative set-up, and to do for international co-operation in the field of intellectual property something similar to what has been done in the fields of education, health, telecommunications, and so many other fields, the Draft proposes to do two basic things which are closely interrelated: to establish a World Intellectual Property Organization (WIPO), and to provide each Union with a general assembly of its own in which the Member States decide policy and finances independently and directly. In this respect the powers of the Member States in the present Conference of Representatives of the Paris Union, the Permanent Committee of the Berne Union and the existing organs of the other Unions are clearly insufficient; they would be

raised to the required level in the general assemblies provided for by the Draft for each Union.

(8) As to WIPO, the Draft provides that its objective is to promote international co-operation in the field of protection for intellectual property and thus to enhance the dissemination of intellectual creations among the Nations as well as to foster the production and distribution of goods throughout the world (Art.2(1)). It enumerates the principal means calculated to achieve this objective (Art.2(2)), provides which States are eligible for membership (Art.3), describes the powers and duties of its organs: the General Conference, the Executive Board and the Secretariat (Arts.5, 8 and 12), and regulates its finances (Art.13).

(9) As to the Paris and Berne Unions, as well as any other Union to be administered by WIPO, the Draft provides that each of them must have a general assembly which, in a sovereign manner, determines the program and budget of the Union (Art.6); regulates the other powers of the general assembly and the powers of the executive committee elected by the general assembly (Arts. 6 and 9); and regulates the finances (Art.13).

(10) Some points of terminology should be noted here. When the Draft speaks about "the Organization," it means WIPO; when it speaks about the "Unions," it means the Paris Union, the Berne Union, the Special Agreements established in relation to the Paris Union (i.o., the Madrid, Hague, Nice and Lisbon Unions) and possible other agreements whose administration will be entrusted to WIPO. The main organ of WIPO is the "General Conference," whereas the main organ of each Union is its "General Assembly." Emanations of these are the "Executive Board" in the case of WIPO, and the "Executive Committees" in the case of each Union (Paris, Berne, and possibly others).

(11) As to the interrelation between WIPO and the Unions, the following are the main features of the Draft. The Secretariat (i.e., what is BIRPI today) is a common one (Art.12). The budget of the Organization and the budgets of the Unions must be established with due regard to the requirements of coordination (Art.13). To secure coordination in the budgetary and other fields, a Coordination Committee is established; it consists of the members of the Executive Board of the Organization and the members of the Executive Committees of the Paris and Berne Unions (Art.11). Since the Unions are sovereign, the Coordination Committee has no power of decision: its function is purely advisory, and this is expressly stated in the Draft (Art.11(3)). The Draft also underlines two other features of the independence of the Paris and the Berne Unions and other intellectual property Unions: (i) except for certain administrative provisions, whose modification is the very purpose of the Draft, the provisions of the Paris and Berne Conventions and other intellectual property

treaties are not affected by the Draft (Art.15); (ii) the revision of the said Conventions and treaties remains a matter within the sole jurisdiction of the States parties to each of them and shall be effected as provided in each of them (Art.16).

THE DRAFT CONVENTIONName of the Organization

(12) "World Intellectual Property Organization" is being proposed. "Intellectual property" is, of course, to be understood as embracing both industrial property (patents, trademarks, etc.) and copyright (literary and artistic property). It cannot be said that "intellectual property" is a term in general usage in all countries and languages. Neither can it be said that in all countries and in all languages it means what it means in the Draft. It will have to acquire this meaning by usage. It appeared to the Working Group that notwithstanding this disadvantage, the proposed name was the best that they could find since, in spite of its shortness, it embraced, if properly understood, all the subject matter with which the Organization would deal.

Article 1: Definitions

(13) This article is self-explanatory. At the present time, the following "Special Agreements" established in relation with the Paris Union are in force: the Madrid Agreement concerning the International Registration of Trademarks, the Madrid Agreement concerning the Prevention of False or Misleading Indications of Source on Goods, The Hague Agreement concerning the International Deposit of Industrial Designs, the Nice Agreement concerning the International Classification of Goods and Services to which Trademarks are Applied.

Article 2: Establishment, Objective and Functions

(14) This article is largely self-explanatory. The key words, of course, are "international co-operation" in the opening phrase.

(15) The three categories of beneficiaries of the so-called neighboring rights (performers, phonograph record producers, broadcasting organizations) would be covered by the words "performing artists" in par.(1)(iii), and by the words "industries and services which utilize or disseminate literary and artistic works" in par.(1)(iv).

(16) The spreading of culture ("dissemination of intellectual creations among the various Nations") and economic development ("fostering the production and distribution of goods throughout the world") are the objectives to be attained in the public interest. These should be pursued in an atmosphere devoid of politics ("without discrimination as to their [the various Nations] economic and social structures") and with special attention to the interests of developing countries ("without discrimination as to ... the degree of their industrialization").

(17) The words "registration in the field of intellectual property" (par.(2)(v)) refer in particular to the international registration services of BIRPI for trademarks and industrial designs established under the Madrid

and The Hague Agreements, respectively.

Article 3: Membership

(18) The Article, as it stands in the Draft, provides that there are four categories of States which might become members of WIPO:  
(i) countries party to the Paris Convention or the Berne Convention;  
(ii) countries party to any other treaty the administration of which is entrusted to WIPO; (iii) countries members of the United Nations or any of its Specialized Agencies, and (iv) any State invited by the General Conference of WIPO to become a member. While the Working Party was unanimous in thinking that categories (iii) and (iv) were desirable, opinions were split as to the need for also including categories (i) and (ii). Those who wanted to leave out these two categories argued that they were superfluous because all countries party to any convention, agreement or treaty administered by BIRPI, including in particular the Paris and Berne Conventions, are members of the United Nations or one or more of its Specialized Agencies. Those who wanted to have the first two categories included argued mainly that the Paris and Berne Conventions would occupy a specially important position in the new Organization and therefore deserved special mention. Similar arguments were advanced as to category (ii).

(19) It follows from what was said above that the Working Group was unanimous in not limiting membership in WIPO to countries which are party to the Paris Convention or the Berne Convention. This is explained by the desire to make WIPO a forum open to practically all the countries of the world. If it were not such a general forum, the Organization would fail to fulfil its global mission and it would be entirely possible that other organizations, not specialized in intellectual property matters, would deal with tasks which, by their nature, should be dealt with by the Organization specialized in intellectual property. Furthermore, opening the Organization also to countries which are not yet members of the conventions, agreements and treaties administered by it is likely to lead, ultimately, to adherence by such countries to such instruments. By being members of the Organization, they have an opportunity to learn about intellectual property and may benefit by technical-legal assistance which could be useful, for example, in drawing up their domestic laws in this field or organizing their national patent offices. Since such laws and such offices may be prerequisites of their adherence to the Paris Convention, adherence to it, as is seen, may be considerably facilitated by their first becoming members of the Organization. Naturally, it is expected that eventually each member of the Organization will become party to one or more, if not all, of the conventions, agreements and treaties administered by the Organization. Another reason for item (iii) is that should the Member States and the United Nations one day find it desirable that the Organization be recognized as a Specialized Agency of the United Nations, the existence of a provision like the one included would be necessary, since one of the prerequisites of recognition is that the Organization must admit to membership any country -- wishing to become a member -- which is a member of the

United Nations. Furthermore, if any countries members of the United Nations or the existing Specialized Agencies were excluded from the right to become members in the Organization, then such countries could look for a forum for their intellectual property problems only in the United Nations or the existing Specialized Agencies, and not in WIPO.

Article 4: Headquarters

(20) This article is self-explanatory.

Article 5: General Conference

(21) This article follows the usual pattern for the supreme organ of international intergovernmental organizations, except that the ordinary sessions of the general conference of most organizations are yearly. The Draft provides for an ordinary session every third year (par.(4)). The system of less than yearly sessions is, however, not unknown. For example, UNESCO has ordinary sessions only once in every two years. The nature of the Organization would permit of sessions held every third year; they would, of course, reduce to one third the expenses connected with conferences both for the participating States and the Organization as such.

(22) Articles 57 and 63 of the Charter of the United Nations, referred to in Article 5(2)(x) of the Draft, concern the conferring of the status of a specialized agency on organizations. Such status is established by an agreement concluded between the United Nations and the prospective specialized agency. The fact that reference is made in the Draft to this possibility does not mean that WIPO would necessarily seek the status of a specialized agency. Whether it would do so eventually is a question which has not yet been discussed either in BIRPI or in the United Nations. The reference only reserves the possibility for establishing a relationship with the United Nations, should, at some time in the future, such a relationship become desirable and feasible in the opinion of the States members of WIPO and the States members of the United Nations.

Article 6: General Assemblies of the Unions

(23) What the General Conference is for the Organization (Art.5), the General Assembly is for each of the Unions (Art.6). The article is largely self-explanatory.

(24) One of the main functions of the General Assemblies is to determine the programs and to adopt the budgets of the Unions. In order to avoid duplication and to obtain the maximum measure of economies which should be inherent in all common administration, a certain measure of coordination will be necessary between the program and budget of the Organization and the programs and budgets of the various Unions, all served by the same Secretariat. This coordination is assured by a special committee provided for in Article 11 of the Draft.



(25) As a further measure of coordination and economy, the Draft provides that the ordinary sessions of the General Assemblies of the Unions and of the General Conference of the Organization will meet "during the same period and at the same place" (par.(4)). The "same period" could mean that the meetings of the General Conference follow immediately those of the General Assemblies, or vice versa, or that the meetings, or at least part of them, are held simultaneously, for example in different conference rooms of the same building. Extraordinary sessions, on the other hand, are not necessarily coordinated in the same manner.

Article 7: Voting in the General Conference and the General Assemblies

(26) This article is largely self-explanatory. It provides for four kinds of majority: simple, two thirds, three fourths, and nine tenths. Matters which the Working Group considered to be particularly delicate or important are subjected to increasingly heavy qualifications depending on the degree of their delicacy or importance.

(27) It should be noted that the voting of amendments to the Convention is regulated separately, in Article 19, and requires, in some instances, unanimity.

(28) It is also to be noted that the revision of the Paris Convention, the Berne Convention, or any other convention, agreement or treaty to be administered by WIPO, would not be within the jurisdiction of the General Conference or the General Assemblies but within the jurisdiction of special revision conferences (see Articles 15 and 16). Consequently, the voting provisions of Article 7 of the Draft would not apply to the revision conferences. The rules concerning voting in those conferences depend on the will of the Member countries only.

Article 8: Executive Board

(29) The Executive Board is an emanation of the General Conference (par.(1)(a)). Thus it is an organ of the Organization rather than of the Unions.

(30) The article follows the usual pattern as far as the jurisdiction and procedure of the Executive Board are concerned (pars.(6) to (10)).

(31) The proposed composition of the Executive Board is designed to take into account a feature of the Organization which distinguishes it from most other intergovernmental organizations, namely, that one of its principal functions is to administer a number of separate international treaties. This is why the Draft proposes that the members of the Executive Board be elected from rosters and that the rosters be so constituted as to secure seats on the Executive Board to all the different categories of States members of the various Unions.

(32) The Draft provides in the first place for four rosters, referring to the Paris, Berne and Madrid Unions, namely:

(i) a roster for the States members of the Paris, Berne and Madrid Unions,

(ii) a roster for the States members of the Paris and Berne Unions,

(iii) a roster for the States members of the Paris Union,

(iv) a roster for the States members of the Berne Union.

(33) In addition to these four rosters, there would be as many additional rosters as there will be Unions whose administration is entrusted to WIPO and to which adherence is not limited to States Members of the Paris Union, the Berne Union, or any other Union already referred to in another roster (par.(2)(b)(v)). If the administration of the Convention on the Protection of New Varieties of Plants signed at Paris on December 2, 1961, were assumed by WIPO, it would give rise to the opening of such a new roster. On the other hand, there would be no separate rosters for States members of The Hague and Nice Unions, and the Agreement of 1891 on the Prevention of False or Misleading Indications of Source on Goods, since adherence to them is limited to States members of the Paris Union. Rosters set up under paragraph (2)(b)(v) would be arranged in the order corresponding to the dates of establishment of the Unions to which they refer.

(34) Finally, there would be one more roster: a roster for States which are members of WIPO without being members of any of the Unions administered by the Organization (par.(2)(b)(vi)).

(35) Each State would be inscribed in one roster only, namely the roster for which it qualifies first among the rosters as listed according to the Convention (par.(2)(c)).

(36) It should be noted that among all the Agreements at present administered by BIRPI only the Madrid Agreement on the International Registration of Trademarks is an element in constituting rosters. The reason for which the other Agreements are not treated in the same way is that they are of minor financial interest, that they present no, or only minor, administrative problems, and that States parties to them are anyway necessarily members of the Paris Union. Although the last argument is applicable to the members of the Madrid Union as well, in view of its incomparably higher financial and administrative position (ten to twenty times more income than either the Nice or The Hague Unions), it seems to be reasonable to treat membership in the Madrid Union as one of the criteria according to which the rosters are constituted.

(37) As indicated in par.(2)(a), rosters enter into consideration in two connections: first, for determining the size of the Executive Board ("the number of seats available on the Executive Board"), second, for determining which States qualify for election when the seats available for each roster are to be filled. The first question is regulated in paragraph (3), the second, in paragraph (4).

(38) As to the number of seats, the Draft provides that, subject to certain requirements, for each roster there shall be a number of seats corresponding to one fourth of the number of States inscribed in such roster (par.(3)). Thus the total number of seats on the Executive Board would increase as membership increases. On the basis of the present situation, the number of the seats on the Executive Board would be twenty-two.

(39) When it comes to filling the seats allotted to each roster (par.(4)), not only the States inscribed into that roster ("the roster under consideration," as it is called in par.(4)(a)) would be eligible but also all States (not already elected) which are inscribed in one of the preceding rosters. (Naturally, such a State would also have to be a member of the Union or Unions referred to in the roster under consideration as otherwise it would have no connection with the group of States inscribed in such roster.) This means that, subject to the exceptions stated in the next two sentences, eligibility in connection with any given roster is not limited to the States inscribed in that roster but that, under the said roster, all States are eligible which are members of the Union or Unions referred to in the same. Of course, the reference to "any State inscribed into any preceding roster, provided that such a State is a member of the Union or Unions referred to in the roster under consideration" (par.(4)(a)(ii)) is inapplicable to the first and the last rosters: to the first because, being the first, there cannot be a roster which precedes it; to the last, because, this being a roster for States not members of any Union, there is no reference to any Union in that roster. Furthermore, the reference to preceding rosters cannot be invoked in connection with a State already elected since paragraph 4(b) provides that no State may fill more than one seat.

(40) An example may illustrate how the system would work. France, being a member of the Paris, Berne and Madrid Unions, would be inscribed in the first roster, and the first roster only. But France, should it not be elected when the seats available for the first roster are filled, is still eligible, when the seats of the second roster are filled (since France is a member of the Unions--Paris and Berne--referred to in that roster); or, if not elected from either the first or the second rosters, France is still eligible for election from the third roster (since it is a member of the Paris Union); or if not elected from any of the first three rosters, France is still eligible for election from the fourth roster (since it is a member of the Berne Union). Or, to take another example, the United States, being a member only of the Paris Union, could be elected only from the third roster since it is not inscribed into any

of the preceding rosters. In other words, States members of several Unions have several opportunities to be elected: as many opportunities as there are Unions of which they are members, and which are named in the various rosters. The underlying principle is that States which are members of more Unions assume more obligations than States which are members of fewer Unions, and that those which assume more obligations deserve more chances of being elected to the Executive Board than States which assume fewer obligations.

(41) According to paragraph (5), members of the Executive Board would serve from one ordinary session of the General Conference to the next ordinary session, that is, approximately for a term of three years. However, a limited number of the members could be re-elected. The limit is to be understood as a maximum: no percentage of the members would have to be re-elected, but, within the stated limit, some may be re-elected. The limit is two thirds. In other words, the minimum proportion of new members would be one third at every new election.

(42) The decision as to which members should be re-elected and which should not be re-elected would be taken by voting (the procedure would, of course, stop if and as soon as the maximum number of "re-eligibles" is attained). In actual practice, the General Conference would probably set up a nomination committee which could agree on and propose a complete list, and the General Conference could adopt, by a single vote, the list as proposed.

#### Article 9: Executive Committees of the Paris Union and the Berne Union

(43) The Paris Union and the Berne Union would each have an Executive Committee of its own (par.(1)). The other Unions may each have Executive Committees of their own if they so desire (see Article 10). Whether they will or not, depends on practical considerations. For example, if they only have a few members, they may transact business, normally delegated to Executive Boards, just as efficiently in their General Assemblies (which they must have).

(44) The need for Executive Committees in the Paris and Berne Unions is obvious because of the great number of members of each of these Unions. These two Executive Committees are also constitutive elements of the Co-ordination Committee (see Article 11). The number of the seats available on each Executive Committee would correspond to one-fourth of the number of the States members of the corresponding Union (par.(2)). This would result today in committees of roughly the same size as that of the Executive Committee of the Paris Union and the Permanent Committee of the Berne Union - whose place would be taken by the new Executive Committees. It would also provide for the enlargement of the Committees, should the membership of the Unions grow.

(45) The Draft provides for a minimum rotation in the membership (minimum one third must be renewed every three years (par.(5)) in order

to avoid what happened in the Permanent Bureau of the Paris Union (whose rules did not provide for renewal) and the Permanent Committee of the Berne Union (whose rules for renewal were generally not applied) and to give a chance to every member of the Union to serve on the Executive Committee. On the other hand, since any State may be re-elected any number of times, States whose presence in the Committee is considered to be indispensable could serve continuously. This, by the way, is true also in respect to the Executive Board of the Organization (see Art.8(5)).

(46) The provisions concerning procedure (pars.(7) to (10)) are self-explanatory and follow established practice.

Article 10: Executive Committees of other Unions

(47) See the observations made in paragraph (40), above.

Article 11: Coordination Committee

(48) As already repeatedly stated, coordination between the Organization as such and the various Unions, as well as among the Unions themselves, is necessary. Who should provide this coordination? There were two views in the Working Group. According to one view, incorporated in the Draft, the task should be given to an organ specially established for this purpose and consisting of States members of the Executive Board of the Organization and the Executive Committees of the Paris and Berne Unions (par.(1)(a)). According to the other view, reflected by the footnote appearing under the text of Article 11 of the Draft, the creation of a special body would be superfluous: the tasks of coordination would be carried out, and could be carried out better, by the Executive Board. According to this view, they could be carried out better by the Executive Board mainly because of the composition of that Board and the fact of the multiple chances of election for States members of several Unions.

(49) The functions and procedures of the proposed Coordination Committee would be similar to those of the Interunion Coordination Committee of BIRPI which was set up in 1962. The Coordination Committee would function in an advisory capacity only (par.(3)). On request, the votes would be counted twice, and, in such cases, any proposal would be considered as not carried if it had not obtained the majority of the votes of each State separately inscribed in each group (Executive Board and the two Executive Committees) in which it has a seat (par.(6)(b)).

Article 12: Secretariat

(50) This article follows the usual pattern. Paragraph (1) provides that there should be at least two Deputy Directors-General. A suggestion that one of them should deal with industrial property matters and the other with copyright matters was not accepted by the Working Group on the grounds that such a separation of jurisdiction instead of encouraging

collaboration could lead to division and rivalry within the Secretariat.

Article 13: Finances

(51) Paragraph (1) lays down the principle of separate budgets for each Union plus a separate budget for the Organization as such (subpara.(a)). In view of the fact that the administration of the various Unions and the Organization would be performed by one and the same Secretariat, some of the expenses of the Secretariat would be common to several Unions and the Organization, and only some of the expenses would be directly attributable to any one Union or to the Organization only (see subparas.(b) to (d)). The situation is similar to the one that exists today, and has been in existence since 1892 when the Paris and the Berne Unions were placed under a common administration in the United International Bureaux.

(52) Since, on the one hand, the establishment of its budget is a matter within the sovereign jurisdiction of each Union (and the Organization as such), but since, on the other hand, common administration requires coordination, paragraph (2) provides that the budgets must be established with due regard to the requirements of coordination. This task of coordination, as already stated, would be carried out by the Coordination Committee (see Article 11).

(53) The possible sources of revenue of the Organization and the Unions are enumerated in paragraph (3). The most substantial ones are the contributions of Member States and the fees charged for the international registration of trademarks and designs. Today, almost all of the income of the Paris, Berne and Nice Unions comes from the first source (contributions of Member States), and almost all of the income of the Madrid and The Hague Unions comes from the registration fees paid by private companies or individuals. Taking BIRPI as a whole, today slightly more than half of the income is derived from fees, and the rest from contributions. The provisions relating to contributions are contained in paragraph (4), and those relating to registration fees are contained in paragraph (5).

(54) As to contributions, the Draft would maintain the class-and-unit system which has been in existence in the Paris, Berne and Nice Unions since their inception, and would extend it to the financing of the budget of the new Organization. The class-and-unit system is not followed by the majority of the Specialized Agencies of the United Nations. But it is not unknown to them, since the International Telecommunication Union (ITU) and the Universal Postal Union (UPU) also have a class-and-unit system.

(55) At the present time, there are six classes in the Paris, Berne and Nice Unions, and the units for each State belonging to these classes are 25, 20, 15, 10, 5, and 3, respectively. The Draft would maintain the same classes with the same units, but also suggests the possibility of

adding at least one additional class with less than 3 units. In the present system, a State in class I pays only about 8 times more contributions than a State in class VI, which is the lowest class today (the exact ratio is  $25:3 = 8.33$ ).<sup>\*</sup> It is obvious that, measured by whatever standards--population, gross national product, number of patents, trademarks or copyrighted works--it is far from realistic to assess only eight times more on, say, the United States or France than on some of the smallest countries. Consequently, the Draft mentions in parentheses a seventh class with one unit. This would increase the ratio between the contributions in the highest class and lowest class to  $25:1 = 25$ . The Director of BIRPI believes that even this ratio is too low and that still one more class should be added: a class VIII with 0.5 unit. It might be interesting to note in this connection that the UPU has seven classes with the following units 25, 20, 15, 10, 5, 3, 1; and that the ITU has fourteen classes with the following units 30, 25, 20, 18, 15, 13, 10, 8, 5, 4, 3, 2, 1, 0.5.

(56) It is, of course, too early to forecast how many Swiss francs or dollars each unit would represent in the contributions of the Organization and of the Paris, Berne and Nice Unions, in 1968, when the new system would go into effect. Today, the ceiling of the contributions is 900,000 Swiss francs in the Paris Union, 400,000 Swiss francs in the Berne Union (but an increase of 300,000 Swiss francs is requested as from 1965), and approximately 50,000 Swiss francs in the Nice Union. The value of each unit depends, of course, not only on the ceiling of the contributions but also on the number of the States members and on the choice of the class which each of them makes. Taking into consideration the expanding program of BIRPI and the trend of rising costs, it might be--but this is naturally no more than a rough guess--that the following amounts would be needed in the form of contributions in the later years of the 1960's: Paris Union, 1,500,000 francs; Berne Union, 1,000,000 francs; Nice Union, 100,000 francs; WIPO, 500,000 francs. Supposing--and this is an even more difficult guess to make--that there will be 500 units in the Paris and Berne Unions and WIPO, and 250 units in the Nice Union, the value of each unit would be as follows: in the Paris Union, 3,000 francs; in the Berne Union, 2,000 francs; in the Nice

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In view of the fact that although most States members of the Paris Union contribute on the basis of 900,000 francs per annum some of them contribute on the basis of 214,200 francs per annum, the actual ratio may be as much as 1 to 36. For similar reasons, in the Berne Union, the actual ratio may be as much as 1 to 14 (since while most countries contribute on the basis of 400,000 per annum, some still contribute on the basis of 231,400 francs per annum).

Union, 400 francs; in WIPO, 1,000 francs. This would mean, for example, that a State in Class I (25 units) would have to pay each year 25,000 francs on account of WIPO; 75,000 francs on account of the Paris Union; 50,000 francs on account of the Berne Union; and 10,000 francs on account of the Nice Union. Or, to take another example, a State in Class VIII (0.5 unit) would have to pay 500 francs on account of WIPO; 1,500 francs on account of the Paris Union; 1,000 francs on account of the Berne Union; and 200 francs on account of the Nice Union.

(57) The right of the Member States of the Madrid Union to control the fees charged for the international registration of trademarks would be safeguarded by paragraph (5)(a). The same is true in respect of The Hague Union and other registration services (*ibidem*).

(58) Paragraph (7) provides that the Organization shall have a working capital fund. All details would be regulated in the Financial Regulations. The Working Party discussed these details and included some provisions in the draft Convention itself. Upon reflection, however, it would seem to be more advisable not to try to resolve such details in the Convention itself but to leave them to the Financial Regulations to be adopted by the Member States. Such a solution would be in harmony with the charters or basic instruments of almost all the other major intergovernmental agencies.

(59) Paragraphs (8) and (9) were reserved by the Working Party for certain matters of primary concern to the Swiss Government and BIRPI (auditing, advances, *ex-officio* seat for Switzerland in the Executive Board and Executive Committees). At the time of issuing the present document, the discussions between the Swiss Government and BIRPI on these points were not yet concluded. An additional short paper will deal with these matters and will be distributed in due course to all Governments and Organizations invited to the Committee of Experts.

Article 14: Legal Status, Privileges and Immunities

(60) This article follows the usual pattern.

Article 15: Independence of the Intellectual Property Conventions,  
Agreements and Treaties

(61) Paragraph (1) is designed to make it absolutely clear that the Conventions and Agreements to be administered by WIPO will not be affected by the proposed Convention. Consequently, except those purely administrative provisions which are enumerated in the Annex to Article 15(2) of the Draft, all provisions of those Conventions and Agreements will remain as they are.

(62) Paragraph (2) and the Annex thereto provide in effect that certain administrative and financial provisions of the existing Conventions and Agreements would be replaced by the new provisions of the



Draft. The repeal of these provisions would have to be effected in the form of a revision of the Conventions and Agreements, and such a revision would take place simultaneously with the adoption of the Draft, that is, in the course of the diplomatic conferences at Stockholm.

Article 16: Revision of the Intellectual Property Conventions, Agreements and Treaties

(63) This article is mainly designed to underline a particular aspect of the independence of the Unions, namely their independence in connection with the possible revision of the Conventions and Agreements which established them. The Organization or its General Conference would have no role in connection with such revisions which would remain a matter within the sole jurisdiction of the Member States of the various Unions.

Article 17: Relations with other International Organizations

(64) This article follows established precedents.

Article 18: Settlement of Disputes

(65) The article follows the usual pattern. The footnote to it reflects the objections that certain participants have voiced in the Working Group in the name of countries which are opposed, in principle, to subscribing to the compulsory jurisdiction of the International Court of Justice.

Article 19: Amendments

(66) Paragraph (1) deals with proposals for amendments to the Convention; paragraph (2) describes the procedure for adopting amendments by the General Conference; par. (3) enumerates the conditions which must be fulfilled before amendments become binding.

(67) Paragraph (2) distinguishes between two kinds of amendments: (i) amendments dealing with matters affecting exclusively any particular Union, including provisions concerning that Union's own budget, and (ii) other amendments. Both kinds of amendments would require a three fourths majority in the General Conference but any amendment of the first kind would also require that no country of the interested Union vote against the proposed amendment.

(68) Paragraph (3) deals with the entry into force of amendments. Here too a distinction has to be made, albeit on a different basis, between two kinds of amendments: (i) amendments increasing the obligations of Member States, and (ii) other amendments. Both kinds of amendments would enter into force when they are accepted by three fourths of the Member States, but whereas amendments of the second kind would thereafter bind not only those States which accepted it but also those which have not yet done so, amendments of the first kind (i.e. amendments

increasing the obligations of Member States) would bind only the accepting three fourths. Any State belonging to the group of the remaining one fourth would become bound by such amendments only if and when it accepts them.

Article 20: Entry Into Force

(69) Paragraphs (1) and (2) follow the usual pattern.

(70) Paragraph (3) would give certain rights--without imposing any obligations--to States which are not among those first twenty States whose signature, ratification or accession will have caused the entry into force of the Convention. These States (i.e., the States slower in acceptance), if members of any of the Unions administered by WIPO, would have the same rights as any State among the first twenty, except that they would not be eligible for membership in the Executive Board and that, after five years from the date of entry into force, they would lose their right to vote in the General Assembly. In all other respects, these States would be treated as if they had accepted the Convention. They would, in particular, have a right to vote in the General Assemblies of the Unions to which they belong, and would be eligible for membership in the Executive Committees of such Unions.

(71) Paragraph (4) provides that, once the Convention enters into force, no State may become a member of a Union administered by WIPO without becoming a member of WIPO. Of course, States which became members of such Unions before the entry into force of the Convention, would preserve their membership in the said Unions even if they did not become members of WIPO.

Article 21: Denunciation

(72) Paragraph (1) means, in effect, that a State member of WIPO could abandon its membership in WIPO only if it leaves all the Unions administered by WIPO. Paragraph (2), on the other hand, means that States could leave the Unions of which they are members without, for that reason, losing their membership in WIPO. Paragraph (3) is self explanatory.

Article 22: Notifications

(73) This article is self-explanatory.

Article 23: Final Provision

(74) This article follows established precedents.

Article 24: Transitional Provision

(75) This article is self-explanatory.

Annex to Article 15(2): Provisions Substituted by the Provisions of the Convention

(76) See the observations made in connection with Article 15(2)

DRAFT RESOLUTION

(77) This Resolution would provide for the limited application of the Convention, on an interim basis, from the beginning of the year following the Stockholm Conference.

(78) If the planned schedule is adhered to, the Convention would be adopted in July 1967. It might, however, take several years after 1967 before 20 States take the required action to cause the entry into force of the Convention. This would obviously be much too long a period for the Member States to take over control of the Organization, for the finances to be governed by the antiquated budgetary provisions of the present Conventions, and for the urgent creation of a world forum of intellectual property. This is why the Working Group adopted the draft resolution in question.

(79) The effect of the Resolution would be that the new Organization would start functioning, on an interim basis, from the beginning of the year following the diplomatic conference (i.e., presumably from January 1, 1968). During the interim period, that is, from the said date until the entry into force of the Convention as provided in Article 20(2)(a), all States members of the Paris or Berne Unions or parties to the WIPO Convention, would have the same rights as if the Convention were already in force. On the other hand, the resolution expressly provides that, as far as their financial contributions are concerned, States are merely invited to contribute according to the new system. There would be no obligation to do so. States which, for different reasons, would not be in a position to accept the invitation, could go on contributing on the old basis. This solution of invitation has several precedents in the history of the Paris and Berne Unions. In fact, the present ceilings of contributions in both Unions are the result of invitations and voluntary action, and are higher than the ceilings written into the last revisions of the Paris and Berne Conventions.

