

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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DRAFT REPORT

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PARTICIPATION AND OFFICERS

(1) The Committee of Experts on the Administrative Structure of International Cooperation in the Field of Intellectual Property (hereinafter referred to as "the Committee") met at Geneva from March 22 to April 2, 1965, on the invitation of the Director of BIRPI and/ of the Permanent Committee of the Berne Union and the Permanent Bureau of the Paris Union, adopted in 1962.

(2) Of the Member States of the Paris and Berne Unions, 37 were represented: Australia, Austria, Belgium, Brazil, Canada, Congo (Leopoldville), Czechoslovak Socialist Republic, Denmark, Finland, France, Germany,\* Greece, People's Republic of Hungary, India, Indonesia, Iran, Ireland, Israel, Italy, Ivory Coast, Japan, Lebanon, Luxembourg, Monaco, Morocco, Netherlands, New Zealand, Norway, Pakistan, Polish People's Republic, Rumanian People's Republic, Spain, Sweden, Switzerland, United Kingdom, United States of America, Socialist Federal People's Republic of Yugoslavia.

(3) The Union of Soviet Socialist Republics was represented by Observers, its recent adherence to the Paris Union becoming effective only on July 1, 1965.

(4) Were equally represented by Observers, four intergovernmental organizations, namely, the United Nations, UNESCO, the International Patent Institute, and the Organization of American States, and six non-governmental organizations: International Association for the Protection of Industrial Property (AIPPI), International Bureau for Mechanical Reproduction (BIEM), International Chamber of

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\* Federal Republic of

Commerce (ICC), International Confederation of Societies of Authors and Composers (CISAC), International Federation of Patent Agents (FICPI), International Literary and Artistic Association (ALAI).

(5) The names of the participants appear in documents Nos. 7 and 29.

(6) Altogether more than 100 persons participated in the debates.

(7) Judge Torwald Hesser (Sweden) was elected Chairman by acclamation. Messrs. H. Puget (France), S. Sumodiredjo (Indonesia), and E. Tasnádi (Hungary), were elected Vice-Chairmen, also by acclamation.

#### BASIS OF THE WORK OF THE COMMITTEE

(8) The Committee had before it the texts of the Draft Convention entitled "Convention of the World Intellectual Property Organization" and a draft resolution which a Working Group (hereinafter referred to as "the Working Group") consisting of experts from ten States Members of the Paris or Berne Unions had drawn up in May 1964 (documents Nos. 3 and 4). The Committee had furthermore before it an Introductory Report (document No. 2) drawn up by the Secretariat of BIRPI with the assistance of experts of the Government of Sweden, the prospective host of the Stockholm Revision Conference scheduled to take place in 1967.

(9) The sole substantive item on the Agenda of the Committee (document No. 1) consisted of the discussion and modification of the.

draft texts in question.

(10) As stated in the Introductory Report referred to above, the main objective of the Draft Convention was to provide for an administrative framework in which the basic aims of the Paris and Berne Unions could be more efficiently served.

(11) The Draft of the Working Group provided for the establishment of a World Intellectual Property Organization to which Members of the Paris or Berne Unions and certain other States not Members of any of these Unions (hereinafter referred to as "Third States") could adhere. It also provided for a General Conference of all these States and an Executive Board emanating from the General Conference. Furthermore, it provided for a General Assembly and an Executive Committee for each of the Unions and a Coordination Committee. Finally, it provided for a Secretariat, regulated the finances of the Organization and the Unions, and contained other provisions usual in international treaties of its kind.

#### GENERAL DEBATE

(12) Before embarking upon the consideration of the various provisions of the Draft Convention, a general debate took place, introduced by the opening address of the Director of BIRPI (document No. 5).

(13) Most of the Delegations--while observing that they wished to propose several amendments, some of which were important, to the Draft of the Working Group--declared that they considered this Draft as a suitable basis for discussion by the Committee.

(14) The Delegations of France, Greece, Italy, and the Lebanon were of the opposite opinion.

(15) The French Delegation declared that the Draft of the Working Group did not confine itself to the objective which it should have solely pursued, namely an administrative reorganization of the various Unions, but went far beyond it by setting up an organization to which the existing Unions would be subordinate. The full text of the declaration of the French Delegation is reproduced in document No. 8.

(16) The Delegation of Italy declared that it was in complete agreement with the French Delegation and developed further arguments concerning the unsuitability of the Draft of the Working Group as a basis for discussion. The full text of the declaration of the Italian Delegation is reproduced in document No. 9.

(17) The Delegations which considered the Draft of the Working Group as a suitable basis for discussion argued that they too were anxious to preserve the complete autonomy of each of the Unions and that they did not see in the establishment of an Organization a subordination of the Unions but merely adequate administrative instrumentality for furthering the objectives of the Unions and properly servicing them, as well as creating a forum in which Third States could also participate in order to discuss their problems in the field of intellectual property. (See in particular the statements made by the Delegations of the Federal Republic of Germany and the United States, documents Nos. 10 and 11).

THE BASIS OF UNDERSTANDING

(18) Early in the meeting, Mr. Puget (France) made a proposal, in his personal capacity, recommending some far-reaching changes in the structure of the proposed Organization (see document No. 12). He proposed that the sole power of making decisions should be vested in the Assemblies of the various Unions and that a Conference--to which Third States could also be admitted--should have merely the functions of a "forum." The proposals of Mr. Puget also provided for the creation of a General Assembly consisting of the States of all the Unions but excluding Third States, and a Coordination Committee being an emanation of the General Assembly. The proposals of Mr. Puget implied the abolition of what were called the "General Conference" and the "Executive Board" of the Organization in the Draft of the Working Group.

(19) Several Delegations, among these primarily the Delegation of Rumania, supported in particular by the Delegations of Belgium, France and Italy, defended the thesis according to which the logical consequences of the proposals of Mr. Puget, and the corollary of the complete independence of the Unions, would consist in transferring from the Draft Convention, as prepared by the Working Group, to the Paris and Berne Conventions, as well as the Madrid, Nice, The Hague and Lisbon Agreements, all those provisions of the Draft Convention which related to matters within the exclusive jurisdiction of each Union.

(20) The majority of the Committee accepted the proposal of Mr. Puget (France) as a further basis of discussion, together with a document prepared by the Delegations of the Federal Republic of Germany,

Israel, Sweden, and the United States of America (document No. 14), and entrusted a Working Group, presided over by Mr. Morf (Switzerland), to examine the possibilities of a compromise between the various points of view and, in particular, whether the transfer of certain provisions of the Draft Convention prepared by the Working Group to the Conventions and Agreements of the various Unions would be feasible and practical.

(21) The Working Group, in which participated the Delegations of France, the Federal Republic of Germany, Israel, Italy, the Netherlands, Rumania, Sweden, the U.S.A., reported to the plenary Committee a solution which--subject to certain reservations and modifications--was adopted and incorporated by the Committee in the Drafts as finally approved.

#### GENERAL DESCRIPTION OF THE DRAFTS ADOPTED BY THE COMMITTEE

(22) The Committee accepted the principle according to which matters within the exclusive jurisdiction of each of the various Unions should not be inscribed in the Convention of the Organization but should be related to the texts of the Conventions and Agreements of the various Unions themselves. Accordingly, a Protocol has been drafted, which would serve as a model for each of the Protocols to be attached, individually, to the Berne Convention, the Paris Convention, and the various Special Agreements concluded under the Paris Convention. Each of these Protocols would provide, in particular, for a separate Assembly of the Member States of each Union and for the finances of the Union.

(23) What remained of the Convention dealing with the Organization provided for the establishment of an Organization with four principal organs, namely, General Assembly, Coordination Committee, Conference, and Secretariat. The functions of the Secretariat would be more or less the same as the tasks of BIRPI today. The General Assembly would include only States Members of the various Unions. This Assembly, as well as its emanation, the Coordination Committee, would have mainly consultative tasks with the aim of facilitating and coordinating the work of the Secretariat which would be common to all Unions. The General Assembly would, in a few cases, also have powers of decision, the most important of which is probably that it would appoint the Director-General of the Organization. Even here, however, the decisive influence of the Paris and Berne Unions would be safeguarded as the appointment of the Director-General requires not only the vote of the General Assembly, but also an identical vote in each of the two Unions. In this and other instances, the Committee was particularly careful--and the Delegation of Italy was particularly alert to this point--to ensure not only the sovereignty of each Union but also equality among them when they come into contact with each other within the framework of the Organization. Thus, it is totally excluded that Unions which have a smaller number of Member States than other Unions could be controlled or in any way influenced by Unions with a larger number of Member States.



(24) In addition to the Draft Protocol and the Draft Convention, the Committee also adopted a Draft Resolution concerning the limited provisional application, on an interim basis, of the instruments to be adopted at Stockholm, and a list of consequential changes which would have to be made in the various existing Conventions and Agreements in respect to administrative provisions in them.

DETAILS CONCERNING SPECIFIC PROVISIONS IN THE DRAFT PROTOCOL AND  
THE DRAFT CONVENTION

PROTOCOL

Article A

(25) This Article contains definitions of certain terms used in the text of the Protocol.

Article B

(26) This Article provides for the composition, powers, voting system, convocation, and rules of procedure, of the Assembly. As to voting, the Article provides that whenever a budget is proposed which would increase the financial obligations of the Member States, such a budget must be adopted by a two thirds-majority, and that in all other respects decisions of the Assembly are made by a simple majority. The Delegations of Czechoslovakia, Hungary, Poland, Rumania, and Yugoslavia, said that they reserved their position because they were of the opinion that a qualified majority would be desirable even where an increase in

the budget was not involved.

Article C

(27) This Article deals with the Executive Committee.

Article D

(28) According to this Article, administrative tasks will be carried out by the Secretariat of the Organization. It has been agreed that details as to the specific tasks of the Secretariat under the various Unions would be specified in this Article on the basis of the Note, adopted by the Committee, on certain changes in the <sup>administrative provisions of the</sup> existing Conventions and Agreements (see document No. 27).

Article F

[See Addendum on page 21.]

(29) This Article deals with possible future amendments to the Protocol.

(30) At the beginning, there was substantial difference of opinion among some of the Delegations on the question of whether amendments to the Protocols should be able to be decided by a majority of three-fourths or by unanimity.

(31) Those who argued in favor of unanimity pointed to the fact that the Paris and Berne Conventions were revised by a unanimous vote. Those in favor of a qualified majority argued that the principle of unanimity, justified in the case of the revision of the substantive provisions of the various Conventions and Agreements, did not apply

to the revisions of the administrative provisions which constituted the sole subject-matter of the Protocol. They also emphasized that allowing the Protocol to be amended by a qualified majority did not touch at all upon the unanimity rule concerning the Paris and Berne Conventions and the Agreements because all that concerned substance-- i.e., the protection of intellectual property--was provided in the body of these Conventions and Agreements and would, of course, not be in the Protocols.

(32) In a close vote, the principle of qualified majority was adopted by the Committee. However, on the basis of a proposal by the French Delegation, originally defeated but later reintroduced by the Swiss Delegation (document No. 26), the Committee decided, by 23 votes to 3, with 3 abstentions, to adopt an intermediary solution according to which amendments could be decided by a three-fourths majority except where the Article on the Assembly of the Union (Article B) was to be amended. In this case, unanimity will be required in view of the important powers laid down in this Article for the Assembly.

(33) The Delegate of Israel pointed out that there was a danger that even if the Protocols were identical when adopted in Stockholm, they could be amended differently later by the various Unions and the ensuing differences might render administrative coordination difficult. This view was shared by the United Kingdom Delegation, and both Delegations said that the matter should be further looked into before the Stockholm Conference.

Article G

(34) This Article deals with the entry into force and duration of the Protocol. A State Member of the Union may become party to the Protocol without becoming party also to the substantive revision of the Union's Convention to be effected in Stockholm. Once a State becomes party to the Protocol, it will remain a party thereto as long as it remains a party to the Union's Convention to which the Protocol relates. There is no link established between the IPO Convention and the Protocol: a State may be party to one without being party to the other.

(35) The Delegate of Israel deplored this last fact because, in his view, some link between the two instruments ought to be established, at least to the effect that membership of the Assembly should carry with it membership of the General Assembly and the Co-ordination Committee.

Articles H, I, and J

(36) These Articles constitute the customary final provisions.

## I.P.O. CONVENTION

Preamble

(37) The Preamble as proposed in document No. 25 consisted of two paragraphs, the first expressing the objectives of the Contracting States in concluding a Convention, the second providing for the establishment of the Organization and enumerating its organs. On the proposal of the French Delegation, the Committee decided to make the second paragraph the first Article of the Convention in order to avoid the doubt, expressed by some Delegations, that statements made in preambles had no binding legal effect.

Article 1

(38) The Draft of the Working Group provided for the name "World Intellectual Property Organization." The United Kingdom Delegation proposed omitting the word "World," whereas the United States Delegation proposed replacing it by "International." The latter proposal was first carried by a vote of 17 to 3, with 5 abstentions, but, the following day, on a proposal of the French Delegation, the word "International" was eliminated by a vote of 14 to 12, with 5 abstentions. The Delegation of India reserved the right to propose the reinstatement of the word "International."

(39) It was agreed that the abbreviation of the name of the Organization should be "I.P.O." in all languages, in order to ensure uniformity of reference and citation.

Article lbis

(40) This Article contains the definition of certain terms repeatedly used in the IPO Convention.

Article 2

(41) This Article deals with the objectives of the Organization (paragraph (1)) and its functions (paragraph (2)). The text proposed in document No. 25 gave rise to a thorough examination by the Committee.

(42) On a proposals of the Delegation of Italy, the Committee agreed to mention expressis verbis all three branches of the so-called neighboring rights, and, on the proposal of the Delegation of the Federal Republic of Germany, unfair competition.

(43) Adopting a proposal of the Delegation of the Congo (Leopoldville), paragraph (2) provides that the tasks of the Organization will be carried out "through its appropriate organs and subject to the competence of each of the various Unions."

Article 3

(44) This Article deals with membership in the Organization. It was agreed to insert in the Draft three alternatives and reserve detailed consideration for the Stockholm Conference.

(45) It was noted that the Italian Delegation proposed that the Article be omitted and so-called Third States should be referred to in the Article on the Conference of the Organization since, in the view

of the Italian Delegation, only Union countries should be Members of the Organization, and Third States should merely be allowed to participate in the Conference and should not pay contributions (see document No. 20).

#### Article 4

(46) This Article deals with the place of the Headquarters (Geneva). On the proposal of the Swiss Delegation, it was agreed that any decision concerning the possible transfer of the Headquarters should require two-thirds majority, not only in the General Assembly but also, separately, in the Assembly of the Paris Union and in the Assembly of the Berne Union.

#### Article 5

(47) This Article deals with the General Assembly. Paragraph (2)(iv) provides that the General Assembly shall determine the languages which, in addition to English and French, shall be the working languages of the Secretariat. The Delegation of Spain reserved its position since the provision does not contain a reference to the Spanish language, the language not only of Spain but also of most Latin-American countries. The Delegations of Czechoslovakia and Yugoslavia made a similar reservation in connection with the Russian language which is understood not only throughout the Soviet Union but also in other countries of Slavic languages. On the proposal of the Delegation of Spain, it was noted that the provision did not affect Article 13(2)(b) of the Paris Convention which refers

to Spanish as a language to be used in certain conferences.

Article 6

(48) This Article deals with the Conference of the Organization. The Delegation of Italy stressed its objections to the fact that the Conference should have any functions which may have any influence on the Unions. <sup>It should be noted</sup> / Such functions would be that the Conference would express an opinion (albeit not binding on the General Assembly) in connection with the election of the Director-General, and that the Conference would adopt the Conference budget (albeit the Unions would contribute to it only on a voluntary basis) mainly relating to technical-legal assistance. The Delegation of Italy also objected to Third States contributing to the expenses of the Conference budget because, in its view, Third States should partake in no activity other than discussions.

(49) Most of the Delegations, including in particular the Delegations of Belgium, Congo (Leopoldville), India, the Federal Republic of Germany, the United Kingdom, and the United States of America, said that the role given to Third Countries by this Article was a minimum to satisfy the aspirations of developing countries. The Delegations of Italy and France replied that they, too, were anxious to see that the Organization was of the greatest possible usefulness to developing countries but that this objective did not require giving any other functions to the Conference than consultative functions.



Article 7

(50) This Article deals with the Coordination Committee composed of States Members of the Executive Committees of the Paris and Berne Unions. Paragraph (2) provides that if other Unions wish to be represented, their representatives must be appointed from among Berne or Paris Union Member States already Members of the Coordination Committee. The Delegations of Czechoslovakia, France, Italy, Rumania and Yugoslavia reserved their position on this paragraph.

Article 8

(51) This Article deals with the Secretariat. Paragraph (6) provides that the "paramount" consideration in the employment of the staff shall be the necessity of securing the highest standards of efficiency, competence, and integrity, and that "due regard" shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible. The Delegation of Rumania expressed the opinion that, in view of the present situation in BIRPI, the criteria of professional efficiency and geographical distribution should be given equal force, and reserved its position accordingly.

Article 9

(52) This Article deals with the financing of the Conference budget. The Delegation of Italy reiterated its objection to providing that Third States should pay contributions towards this budget. This Delegation expressed the wish that the Organization should be an organization of Union countries alone, and argued that allowing Third Countries to pay contributions would, at least to some extent, make the Organization an organization not only of the Members of the Unions but also of Third States.

Article 10

(53) This Article deals with legal status, privileges and immunities, adopted on the basis of a joint proposal of the Delegations of the Federal Republic of Germany, the Netherlands and the United Kingdom (document No. 23).

Article 11

(54) This Article deals with relations with other international organizations.

Article 12

(55) Four different alternatives are inserted in the Draft concerning the question of settlement of disputes. Alternative A is the same as it was in the main text of document No. 3 of the Working Group and was expressly supported in the Committee by the

Delegations of Ireland and the United Kingdom. It provides for the compulsory jurisdiction of the International Court of Justice. Alternative B provides for the same, not in the Convention, however, but in an annex Protocol, acceptance of which would be optional. This variant was also referred to in the Draft of the Working Group and, in the Committee, was particularly supported by the Delegations of Hungary and Israel. Alternative C, proposed by the Delegation of the Federal Republic of Germany, provides for arbitration (document No. 21). Alternative D is a proposal of the Delegation of Rumania (document No. 19). The Delegation of Australia expressed the view that this Article should be omitted altogether.

#### Article 13

(56) This Article deals with amendments to the IPO Convention.

#### Article 14

(57) This Article deals with accession to the IPO Convention. The Delegation of Israel deplored the fact that the Article did not provide that a country ratifying the Protocol had also to ratify the IPO Convention, and that it allowed a State to withdraw from the IPO Convention even if it remained bound by the Protocol. The Delegation of France reserved its opinion as to the entire Article because it, too, found the said objections worthy of further study.

(58) The Delegation of the Netherlands said that all States Members of the Unions should be required to adhere to the IPO Convention when they adhered to the Protocol.

#### Article 15

(59) This Article deals with the denunciation of the IPO Convention. It means that a country may withdraw from the IPO Convention even if it does not withdraw from the Protocol. This solution was particularly urged by the Delegations of Italy and Rumania.

[See Addendum on page 22.]

#### FINAL DECLARATIONS

(60) It has been stated by several Delegations and by the Chairman of the Committee himself that the experts, although delegated by their respective Governments to this Meeting, did not in any way express a binding or final opinion of their Governments and did not commit them to accept the Drafts emerging from the work of the Committee. It was understood that all Governments preserved their entire freedom for the Stockholm Conference.

(61) The Delegations of France and Italy declared that, although the Drafts adopted by the Committee were considerably closer to their views than were the Drafts of the Working Group of 1964--to which they were fundamentally opposed--they wished it to be noted that, in addition to their specific reservations referred to hereinbefore, they also expressly reserved their opinion on the Drafts as a whole. The Delegations of Greece, the Ivory Coast, and the Lebanon, associated themselves with the French and Italian declarations.

FORM OF THE DRAFTS

(62) The Delegation of Switzerland proposed that the numbering of the Articles and paragraphs in the Drafts be changed so that it should become easier to cite the various provisions, and that opposite each Article there should be a marginal title useful in locating the various points provided for in the Drafts (see documents Nos. 6 and 6 Addendum).

(63) The Director of BIRPI said that the Swiss proposals would be carefully considered by the Secretariat when it assisted the Swedish Government in preparing the official proposals for the Stockholm Conference.

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ADDENDUMArticle E

(28bis) This Article deals with the finances of the several Unions. The class-and-unit system for the contributions of the Member States, as provided in the existing Conventions, has been retained. However, a new, seventh, class was added to the existing six classes in order to establish a more equitable proportion among the contributions of States whose financial resources differ considerably from each other.

Article 16

(59bis) This Article deals with notifications.

Article 17

(59ter) This Article provides that no reservations to the IPO Convention are permitted. It was agreed that if the Convention, in its final form, would allow reservations on any specific point, the Article would, of course, provide for corresponding exception. The Delegation of Rumania said that should the IPO Convention provide for the compulsory jurisdiction of the International Court of Justice, and should Article 17 not allow reservations on this point, then he would object to the totality of Article 17. This view was shared by the Delegations of Hungary and Poland.

Articles 18 and 19

(59quater) These Articles contain final and transitional provisions.