

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

Genève, 22 mars - 2 avril 1965

ADDENDUM TO WORKING DOCUMENTS AA/II/2 AND 3

1. This document is an addendum to working documents AA/II/2 and 3. It contains proposals concerning two questions referred to in those documents--the question of advances in case of insufficiency of the working capital fund and the question of the auditing of the accounts--and suggestions for the insertion of a new article in the Convention, an article which would declare reservations inadmissible.

Advances

2. It is proposed that Article 13, paragraph (8), of the draft Convention read as follows:

"(8)(a) If the working capital fund is insufficient, the Member State on the territory of which the Organization has its Headquarters shall grant advances. The amount of these advances and the conditions in which they are granted shall be the subject of agreement, in each case, between the Member State in question and the Organization. As long as it remains under the obligation to grant advances, this Member State shall have an ex-officio seat on the Executive Board of the Organization, on the Executive Committees of the Unions of which such State is a Member, and on the Coordination Committee.

(b) The Member State in question and the Organization shall have the possibility of denouncing the obligation to grant advances, by means of a notification in writing. This denunciation shall take effect three years after the end of the year in which it was notified."

3. At the present time the Paris Convention and the Berne Convention provide that the Government of the Swiss Confederation makes the necessary advances to BIRPI (Articles 13(10) and 23(5), respectively). The obligation to make advances is not susceptible to denunciation.

4. In his negotiations with the Swiss Authorities concerning the Draft Convention, the Director of BIRPI proposed that the Swiss Government continue to accept an obligation of the same nature, that is to say, an obligation which cannot be terminated by denunciation. The Swiss Authorities have expressed the view that the justification for an irrevocable obligation resides in the fact that, in the present system, it is the Swiss Government which supervises the expenditure of BIRPI. When this function of supervision disappears, the Swiss Government should have the possibility, as long as the Organization does, of denouncing the clauses concerning advances. While suggesting this possibility, the Swiss Authorities gave assurances to the Director of BIRPI that they did not intend to set limits to their obligation, but that they wanted to provide for the possibility of denunciation in view of circumstances which are as yet unforeseeable.

5. It appears to be natural that a State which undertakes to give advances should have the possibility of full participation in all those bodies of the Organization and of the Unions which deal with budgets and financial management. This is the reason why paragraph (8) provides that such a State should have an ex-officio seat in the bodies whose other members are appointed pursuant to election.

6. In order to make it equally clear in the provisions fixing the composition of these bodies that an ex-officio seat should be added to the number of seats filled by election, it is proposed to insert the following clause in two places, namely, Article 8, paragraph 1(a), and Article 9, paragraph 2(a):

"Furthermore, the Member State on whose territory the Organization has its Headquarters shall, subject to the provisions of Article 13(8), have an ex-officio seat."

7. The draft Resolution attached to the Draft Convention provides for the application of the provisions of the Convention on a provisional basis. In order to avoid any differences of opinion concerning the advances to be made by the Swiss Government during this interim period, the Swiss Authorities have found it useful to propose that a new paragraph (d) be added to point (1) of the draft resolution. This provision would make it clear that the obligation to make advances will, until the entry into force of the Convention, continue to be governed by the present texts. This paragraph would read as follows:

"(d) The provisions of Article 13(10) of the Paris Convention and of Article 23(5) of the Berne Convention concerning advances shall not be affected by the provisional application of the Convention."

Auditing of Accounts

8. It is suggested that paragraph (9) of Article 13 of the Draft Convention read as follows:

"(9) The auditing of the accounts shall be effected by one or more Member States or by external auditors (accountant firms) as provided in the Financial Regulations. They shall be designated, with their agreement, by the General Conference."

9. At the present time it is the Swiss Government which, in conformity with the provisions of the Paris and Berne Conventions, (Articles 13(10) and 23(5), respectively) controls ("supervises," "draws up") the accounts of BIRPI. In the course of the meeting of the Working Group, the Swiss Experts declared that it would be hardly justified to ask the Swiss Government to continue to assume this task in the new system in which the supervision of the Organization would no longer devolve upon the Swiss Government. Nevertheless, Switzerland would be prepared to continue to audit the accounts until the second ordinary session of the General Conference of the new Organization, i.e., during a period of approximately three years from the entry into force of the Convention.

10. Thereafter, the financial control would be exercised by the Government of one or other of the Member States, or by external auditors (professional accountant firms). The designation would be made in agreement, naturally, with the State or States designated, or the professional accountant firm engaged, for this purpose. The details would be regulated by the Financial Regulations.

Inadmissibility of Reservations

11. It is suggested that a new article be inserted, preferably between Articles 22 and 23. This Article would read as follows:

"No reservations to this Convention are admitted."

12. Such a provision would give expression to a principle which needs no explanation. Reservations have never been admitted

in Conventions administered by BIRPI, except a few provisions in the Berne Convention--of a non-administrative nature at that--which expressly provided for the possibility of reservations. The nature itself of the Administrative Convention precludes the possibility of reservations. Nevertheless, to be on the safe side, it seems to be desirable to insert such a clause, which is in harmony with contemporary practice and modern treaty law (see Resolution 598(VI) of the General Assembly of the United Nations and the work of the International Law Committee on the law of treaties (A/5209, supplement 9)).