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BACKGROUND

1. The preparatory work directed towards the administrative reform of the Berne and the Paris Unions and the special Unions created in relation with the latter, as well as towards the establishment of an Organization with the main objective of promoting the protection of intellectual property throughout the world, has a history of slightly over three years.

2. The Permanent Bureau (since replaced by the Executive Committee) of the Paris Union and the Permanent Committee of the Berne Union, at a joint meeting held in October 1962, expressed the opinion that the supervisory functions of the Swiss Government should be transferred to the Assembly of Member States of the Unions and that the system of contributions of the Member States towards the expenditure of BIRPI should be modernized. The joint meeting recommended that a working party, and then a committee of experts, be convened to start the preparatory work for a diplomatic conference designed to effectuate the reform. The program of work in this respect has been reported to and approved by the sessions of the Interunion Coordination Committee held in 1963, 1964, and 1965.

3. The Working Party met at Geneva in May 1964, and the Committee of Experts in March/April 1965, also in Geneva (see BIRPI documents, series AA/I and AA/II, respectively). Experts from the following ten countries were invited to the first meeting and all responded to the invitation: Czechoslovakia, France, Federal Republic of Germany, Hungary, Italy, Japan, Sweden, Switzerland, United Kingdom, United States of America. All the Member States of the Paris and Berne Unions were invited to the second meeting, and 37 participated: Australia, Austria, Belgium, Brazil, Canada, Congo (Leopoldville), Czechoslovakia, Denmark, Finland, France, Federal Republic of Germany, Greece, Hungary,

India, Indonesia, Iran, Ireland, Israel, Italy, Ivory Coast, Japan, Lebanon, Luxembourg, Monaco, Morocco, Netherlands, New Zealand, Norway, Pakistan, Poland, Rumania, Spain, Sweden, Switzerland, United Kingdom, United States of America, Yugoslavia. The Union of Soviet Socialist Republics, at that time not yet member of the Paris Union, attended as an observer.

4. Hereinafter, the Working Party of 1964 will be referred to as "the 1964 Working Party," and the Committee of Experts of 1965 as "the 1965 Committee."
5. As is known, the Government of Sweden agreed to act as the inviting power for the Stockholm Diplomatic Conference on Intellectual Property intended, among other things, to effectuate the administrative and structural reforms. The program of the Conference includes also the administrative revisions of the Madrid and Hague Agreements. Since Sweden is not a party to these Agreements, the Contracting States adopted special resolutions indicating that they would be grateful if the Swedish Government would include these Agreements in the program.
6. The Conference is scheduled for June/July 1967. Hereinafter it will be referred to as "the Stockholm Conference."
7. The 1965 Committee revealed differences of opinion on several questions, including in particular the question of membership in the proposed new Organization and the question of a jurisdictional clause in the Convention establishing that Organization. Furthermore, the Committee only had time to deal hurriedly and incompletely with the question of links between the proposed new Convention, the proposed Administrative Protocols, and the proposed revisions of the substantive clauses of the Berne and Paris Conventions. Finally, the 1965 Committee did not even attempt to propose changes in the final and administrative clauses of the Berne and Paris Conventions and the

Agreements related to the latter, although the revision of the substantive clauses of the Berne and Paris Conventions and the administrative reform of all instruments make the revision of the final and administrative clauses necessary. The Committee had time only to establish a list of the changes in the various Conventions and Agreements which most obviously seemed necessary (doc.AA/II/30, Annex I). Finally, several members of the Committee expressed general or specific reservations in respect to the drafts adopted by the Committee (see doc.AA/II/33) .

8. In view of these considerations, and in order to facilitate the work of the Stockholm Conference, the Director of BIRPI, in agreement with the Swedish Government, decided to convene another Committee of Experts. The Governments of all States Members of the Paris and Berne Unions are invited to participate in this Committee (hereinafter referred to as "the 1966 Committee") which will meet at Geneva from May 16 to 27.

9. The preparatory documents for the 1966 Committee are based on the results of the deliberations of the 1965 Committee and were established, on the invitation of the Swedish Government, by BIRPI, in consultation with Experts of that Government.

MAIN FEATURES OF THE 1964 AND 1965 DRAFTS

10. In order to provide background for the work of the 1965 Committee, it might be useful to recall first the outline of the draft drawn up by the 1964 Working Party. That Working Party formulated only one draft instrument, a convention, which would have included administrative provisions concerning all existing (Paris, Berne, Madrid, The Hague, Nice) and future Unions to be administered by what was called in the draft the

World Intellectual Property Organization (WIPO). WIPO would have had an assembly, consisting of all States Members of the various Unions and of other("Third") States eligible for membership in WIPO, and would have had an executive committee. The WIPO Convention would nevertheless have provided for separate assemblies of the Members of each Union, and executive committees for at least the two largest (Paris and Berne). Each Union would have had a separate budget but since they would all have been administered by the same secretariat, the Secretariat of WIPO, a coordination committee, with purely advisory functions, and consisting of members of the Executive Committees of the Paris and Berne Unions, would have ensured the required coordination.

11. The 1965 Committee substantially modified this outline.
12. It decided to remove from the text of the IPO Convention-- "WIPO" having been changed in the process to "IPO" (International Intellectual Property Organization)--all matters within the exclusive jurisdiction of each Union. It decided that a separate administrative protocol be formulated for each Union, this protocol to be annexed to the Convention or Agreement of the Union which it concerns. The Protocol for each Union would establish an assembly (consisting of the Member States of the Union), outline the duties of the Secretariat in connection with the particular Union, regulate the finances of that Union, and provide for the procedure for amending the Protocol. The Protocols of the Paris and Berne Unions would establish also an executive committee for each of these Unions. The Committee itself drew up the text of a model protocol, to be adapted to the special needs of each Union, particularly as far as the duties of the Secretariat are concerned therewith.

13. This left to the draft Convention establishing the new Organization the regulation of a general assembly (including only the members of the Paris or Berne Unions), a conference (including also "Third" States), a coordination committee, and the Secretariat. The Organization itself would have no executive committee. The General 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, as well as to IPO. The General Assembly would, in a few cases, also have a power of decision, the relatively most important of which probably being 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 would require not only the vote of the General Assembly but also an identical vote in the two Unions.

OUTLINE OF THE DRAFTS SUBMITTED TO THE 1966 COMMITTEE

14. The 1966 Committee will have before it the following drafts:
- (1) the drafts of the final clauses for the Paris and Berne Conventions, the two Madrid Agreements, the Hague Agreement, and the Nice Agreement (doc.AA/III/3);
 - (2) the drafts of the five Administrative Protocols, each of them relating to one of the five Unions (Paris, Berne, Madrid, The Hague, Nice) (doc.AA/III/4);
 - (3) the draft of the IPC Convention (doc.AA/III/5);
 - (4) the draft of the Resolution concerning the provisional and limited application of certain provisions adopted by the Stockholm Conference (doc.AA/III/6).

BRIEF RESUME OF THE CONTENTS
OF THE DRAFTS SUBMITTED TO THE 1966 COMMITTEE;
THE MAIN DIFFERENCES BETWEEN THEM
AND THE DRAFTS OF THE 1965 COMMITTEE

15. This section is intended to give a brief summary of the contents of the drafts submitted to the 1966 Committee.
16. The 1965 Committee formulated drafts of the IPO Convention, the model Protocol, and the Resolution on provisional application. Subject to the exceptions to be stated hereinafter, the documents prepared for the 1966 Committee (docs. AA/III/4, 5, and 6) reproduce these drafts without change. The exceptions are very few and fall into two categories: changes in form or style without legal consequence, and changes of substance. An effort is made to indicate the few changes of substance either in this document and/or in the commentary accompanying the various drafts.
17. The Committee did not draft new final clauses for the Conventions and Agreements and the Protocol Regarding Developing Countries. These are presented now for the first time (see document AA/III/3).

A. FINAL CLAUSES

18. Every revision necessitates some new final clauses, in particular on the deposit, signature, and ratification of, accession to, and entry into force of, the revised texts. It also requires that the effect of the new Act on the relations between States formerly linked by earlier Acts be clarified. The question of the languages of the texts might be re-examined in the light of changing circumstances. These subjects are dealt with in document AA/III/3.

19. That document also deals with the consequential changes necessitated by the proposed administrative changes. The following are the main cases of such consequential changes:
20. (a) The establishment, in each Union, of an assembly and, in the Paris and Berne Unions, also of executive committees involves the deletion of the provisions concerning the Conference of Plenipotentiaries and the Conference of Representatives of the Paris Union, and the provisions on the "Committee of Directors" of the Madrid Union. The Permanent Committee of the Berne Union set up by a resolution of the Brussels Revision Conference of 1948 would be replaced by the Berne Union Executive Committee. This would make the resolution obsolete. Its formal revocation does not seem to be necessary.
21. (b) The regulation of all financial matters in the Administrative Protocols requires deletion of the provisions on financial matters in the Conventions and Agreements now containing such provisions.
22. (c) The enumeration, in the Administrative Protocols, of the functions of the International Bureau involves deletion of the provisions dealing with such functions in the Conventions and Agreements now containing such provisions.
23. (d) The transfer of all depositary functions to the Director General of IPO involves deletion of all references to the Swiss Government as depositary.
24. (e) The entrusting, to the Assembly of each Union, of the task of preparing for revision conferences results in the deletion of provisions which have entrusted this task to the host Government of the revision conference.

B. ADMINISTRATIVE PROTOCOLS

25. The Administrative Protocols of the Paris and Berne Unions would consist of five Articles, dealing, respectively, with the Assembly (Article A), the Executive Committee (Article B), the Secretariat (now proposed to be called "the International Bureau") (Article C), finances (Article D), and amendments to the Administrative Protocol (Article E). As the Madrid, The Hague and Nice Unions would have no executive committees, no article on this subject would be included in their Administrative Protocols.
26. The main reason for placing the administrative provisions in a protocol is that their revision is governed by special rules which are different from the rules governing the revision of the substantive and final clauses of the various Conventions and Agreements. More is said about this matter in the Commentary to Article E of the Administrative Protocols (see document AA/III/4).
27. The main differences between the 1965 Committee drafts and the drafts contained in this paper are the following:
28. (a) Preparation for conferences of revision is now expressly mentioned among the powers of the Assembly. This power was probably already implicit in the provision giving the power to the Assembly to deal "with all matters concerning the...development of the Union" (model Protocol, Article B(2)(ii)).
29. (b) A two-third majority in the Assembly would be required for the admission of observers (States or organizations) to meetings. The provision would parallel similar provisions in the draft IPO Convention (Articles 6(3)(c)(iii) and 7(3)(d)). It was probably inadvertently omitted from the model draft Protocol.
30. (c) The final provisions of the draft model Protocol, dealing with the entry into force of the Protocol (Article G), notifications (Article H), languages, etc. (Article I), and the transitional provision (Article J), do not appear in the draft Administrative Protocols now presented. This difference is,

however, only a difference in form, as the essence of these provisions is maintained: it is included and merged into the final clause of the draft revisions of the Stockholm Acts themselves of the various Conventions and Agreements. It seems necessary that there should be one set of these provisions for the Conventions and Agreements, on the one hand, and the Protocols, on the other, in order to avoid difficulties. If separate clauses of this kind were applicable, difficulties would occur when a State took action (adherence, denunciation, etc.) under one set of clauses which would not be in harmony with the other. Also, matters regarding languages, notifications, etc., should be in one set of provisions. However, it is to be emphasized that this merging of the final clauses does not affect the right which Members of the Berne Union have of becoming party to the revisions to be effected in Stockholm in the substantive clauses (Articles 1 to 20 and the Protocol Regarding Developing Countries) without becoming bound by the Administrative Protocol, and vice versa. Thus, the principle laid down by the 1965 Committee in Article G(1)(a-bis) of the model Protocol is fully respected. The same is true with respect to the Paris Convention's revision on substance (i.e., introduction of inventors' certificates as a basis of priority) and its Administrative Protocol.

C. IPC CONVENTION

31. The draft IPC Convention (see document AA/III/5) consists of a preamble and nineteen articles. The first three deal with establishment, definitions, and objective. Membership and headquarters are regulated by Articles 4 and 5. The four organs of the Organization--General Assembly, Conference, Coordination Committee, and International Bureau--constitute Articles 6 to 9. Finances are dealt with in Article 10; the legal status of the Organization, in Article 11; and relations with other organizations, in Article 12. The usual final provisions--amendments, entry into force, etc.--constitute the last seven articles.

Introductory Report

32. Some of the delegates in the 1965 Committee expressed the view that most of these Articles were too long and that they should be broken down into many more, each of them much shorter. They also expressed the view that the numbering system of paragraphs, subparagraphs, and items (in enumerations), be changed. These suggestions were carefully considered, but it was decided to preserve--at least for the moment--the organization of the Articles as they emerged from the 1965 Committee, mainly in order to facilitate comparing the new draft with the draft of the 1965 Committee.
33. The main differences between the draft of the IPO Convention, as now presented, and the 1965 Committee draft are discussed in the following points:
34. (a) Name of the Secretariat.-- The Secretariat is given a name of its own: "International Bureau of Intellectual Property," abbreviated as "International Bureau." This would maintain the traditional designation, "Bureau," and would avoid the need for any changes since the term "International Bureau" occurs frequently in the various Conventions and Agreements now administered by BIRPI. The fact that the Secretariat would have its own name is not without precedent. For example, the Secretariat of the International Labour Organization is called the "International Labour Office."
35. (b) Membership.-- On the question of membership, the present draft reproduces the first alternative of the 1965 Committee, which provides that the new Organization would be open to (i) countries party to the Paris Convention or the Berne Convention, (ii) countries party to any other treaty administered by IPO, (iii) countries members of the United Nations or any of its Specialized Agencies, (iv) countries invited by the General Assembly of IPO to become members.
36. This draft does not solve the differences of opinion of a political nature regarding the membership in the Paris and Berne Unions but only

extends them into the field of the IPO Convention. This is seen as an advantage as it will not be possible nor can it be considered appropriate to try to solve a highly political and controversial issue in this technical context. All other proposals made in the 1965 Committee are unlikely to meet with unanimous approval because of their political implications. This is the reason for which they have not been taken over into the present draft.

37. (c) Election of Director General.- The 1965 Committee draft provided that the Conference should give advice to the General Assembly as to the question of who should be elected Director General. The election itself was to be by the General Assembly, which could disregard the advice of the Conference. See Articles 5(2)(ii) and 6(2)(iv) of the 1965 draft.
38. In view of certain opinions expressed in the 1965 Committee, and in order to underline even more that in its decision the General Assembly is under no outside influence, the present draft does not contain the provisions which gave this advisory role to the Conference.
39. It is to be noted that when the present draft was prepared and the change in the provision for the election of the Director General made, the Swedish Experts reserved the position of their Government.
40. (d) General Assembly and Coordination Committee.- Article 5(1)(a), in the 1965 draft, provided that the General Assembly shall consist of the States Members of any of the Unions. The present draft specifies that such States must also be party to the IPO Convention.
41. A similar qualification is added in the present draft in connection with membership in the Coordination Committee (Article 8(1)(a)).
42. The changes do not inject any really new thought, since the 1965 draft itself, in one of its transitory provisions, provided that countries not parties to the IPO Convention would not be able to vote in the General Assembly and the Coordination Committee after five years from the Convention's entry into force (Article 14(3)). The proposed changes in the text merely bring out more clearly that countries cannot be full voting members of the organs of an Organisation of which they are not members. However, the said transitory provision would be maintained.

43. (e) Settlement of Disputes.- The draft of the 1965 Committee contained four alternatives for an article on the question of settlement of disputes. Alternative A provided for the compulsory jurisdiction of the International Court of Justice; Alternative B provided for the same but made the acceptance of the clause optional; Alternative C provided for arbitration; and Alternative D provided for the jurisdiction of the International Court of Justice but only if the dispute was brought before it by common accord of all countries party to the dispute. There was also a proposal in the 1965 Committee simply to omit any article on settlement of disputes.

44. It is believed that there is no urgent need for a clause on settlement of disputes. The IPO Convention is administrative in its nature and situations in which interests so important to the countries could be at stake that they would wish to litigate over them would hardly arise. The Paris Convention and the Agreements under it, far more susceptible of different interpretations and affecting substantial material interests, do not contain provisions on the settlement of possible disputes. It is true that the Berne Convention does contain such provisions, but they have never been invoked so far. In view of the foregoing, and because of the differences of opinion regarding provisions on the settlement of disputes, the proposal to omit any provisions on the subject has been adopted in the proposed draft.

45. (f) Entry into force.- Article 14 deals with entry into force of the IPO Convention and differs in three minor respects from the 1965 draft.

46. One of the differences is that the present draft provides for a State to become party to the IPO Convention by ratifying or acceding to the Stockholm Act of the Paris or Berne Conventions, provided it does not make a declaration to the contrary or a declaration indicating that it will not be bound by the Administrative Protocol (which declaration can be made, however, only by Paris or Berne Union countries).

47. The second difference consists in the following. The 1965 draft provided that the IPO Convention would enter into force when twenty Paris Union and twenty Berne Union countries had ratified or acceded to it, it being understood that a State Member of

both Unions would be counted in both groups. The present draft simply provides that the IPO Convention will enter into force when the Administrative Protocols of the Paris and Berne Unions enter into force. The solution seems to be more logical and more practical. Once these two Administrative Protocols enter into force, the two Unions will have Assemblies and Executive Committees. These organs are indispensable for the functioning of the General Assembly of the IPO (see Article 6 (3)(f)) and the Coordination Committee (see Article 8(1)(a)), respectively. Consequently, the IPO Convention could not enter into force before these organs of the two Unions exist, but once they do, the entry into force of the IPO Convention is a practical necessity because of the role of coordination assigned to IPO.

48. The third difference simply makes explicit that which was generally understood—that a Paris or Berne Union country cannot become a party to the IPO Convention without being a party to one of the Administrative Protocols.
49. Thus, the proposed draft merely establishes the link between the IPO Convention and the Administrative Protocols, the need of which was specially underlined in the 1965 Committee by the Delegations of France, India, Israel, and Japan (see document AA/II/33, par.(36)).
50. (g) Denunciation.— For similar considerations on the question of the link between the IPO Convention and the Administrative Protocols, the present draft provides that the IPO Convention may be denounced only by a country which is not party to any of the treaties administered by IPO.
51. (h) Transitional Provisions.— The 1965 draft contained only one transitional provision, providing in essence that until the first Director General of IPO assumes office, references to him will be deemed to be references to the Director of BIRPI (Article 19(1)).
52. The present draft contains, in addition, provisions on what has been referred to in previous discussions as the coexistence of the "old" and the "new" Bureau. In fact, until all the States of the Paris and Berne Unions accept the Administrative Protocols, the present International Bureau must

continue as the Secretariat for the States not yet parties to the said Protocols. The proposed paragraphs (2) and (3) of Article 19 would mean that the Secretariat would, at the same time, be the "old" Bureau, as provided for in the pre-Stockholm Acts, and the "new" Bureau, as provided for in the proposed Stockholm texts.

D. RESOLUTION CONCERNING THE PROVISIONAL
AND LIMITED APPLICATION OF CERTAIN PROVISIONS
ADOPTED BY THE STOCKHOLM CONFERENCE

53. The present draft of this Resolution (see document AA/III/6) is identical with the draft which emerged from the 1965 Committee, except that the changes in terminology (name of the Secretariat, title of the Protocol) effected in the Administrative Protocols have been carried over into it. Also, a provision has been inserted indicating that Article 13(10) of the Paris Convention and Article 23(5) of the Berne Convention, concerning advances by the Swiss Government, shall not be affected by the provisional application.
54. As will be recalled, the Resolution would provide for the interim application--i.e., application before their entry into force--of some of the provisions adopted at the Stockholm Conference.
55. It is to be noted that such interim application has two essential safeguards:
- (i) The interim application would give rise to obligations on any Member State "only to the extent compatible with its Constitution and laws" (par.(1) (a)), and
 - (ii) the contributions to the budgets to be established by the interim organs would be voluntary (par.(1) (c)).