

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

# BIRPI

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

## SECOND COMMITTEE OF GOVERNMENTAL EXPERTS ON ADMINISTRATION AND STRUCTURE

## DEUXIÈME COMITÉ D'EXPERTS GOUVERNEMENTAUX CONCERNANT DES QUESTIONS D'ORDRE STRUCTUREL ET ADMINISTRATIF

Geneva, May 16 to 27, 1966 — Genève, 16 - 27 mai 1966

### CONVENTION ESTABLISHING THE INTERNATIONAL INTELLECTUAL PROPERTY ORGANIZATION (DRAFT TEXT AND COMMENTARY)

1. This document contains the draft text of the Convention establishing the International Intellectual Property Organization ("IPO"). Each draft article begins on a new right-hand page, whereas the opposite left-hand page contains a commentary on the article.
2. The draft text is, with a few exceptions, identical to the text which resulted from the meeting of the 1965 Committee. The main differences between the two texts are enumerated and discussed in detail in the Introductory Report (document AA/III/2).
3. The draft text consists of a Preamble and the following nineteen Articles:
 

<p>Article 1. Establishment and Organs</p> <p>Article 2. Definitions</p> <p>Article 3. Objective and Functions</p> <p>Article 4. Membership</p> <p>Article 5. Headquarters</p> <p>Article 6. General Assembly</p> <p>Article 7. Conference</p> <p>Article 8. Coordination Committee</p> <p>Article 9. International Bureau</p> <p>Article 10. Finances</p>	<p>Article 11. Legal Status, Privileges and Immunities</p> <p>Article 12. Relations with Other Organizations</p> <p>Article 13. Amendments</p> <p>Article 14. Entry into Force</p> <p>Article 15. Denunciation</p> <p>Article 16. Notifications</p> <p>Article 17. Reservations</p> <p>Article 18. Final Provisions</p> <p>Article 19. Transitional Provisions</p>
--	--

Commentary on Preamble

4. The Preamble is a brief expression of the two main objectives behind the establishment of the International Intellectual Property Organization, namely, to modernize and render more efficient the administration of the Intellectual Property Unions, and to promote the protection of intellectual property throughout the world.
5. The principal means for attaining the first objective is the creation of organs in part common to the Unions, namely, the General Assembly, the Coordination Committee, and the Secretariat.
6. The principal means for attaining the second objective is the creation of the "Conference" and the offer of legal-technical assistance to developing countries.
7. It will be noted that the Preamble emphasizes that the common organs fully respect the autonomy of each of the various Unions.

PREAMBLE

The Contracting Parties,

Desiring to modernize and render more efficient the administration of the Intellectual Property Unions through the establishment of administrative organs which, although in part common, fully respect the autonomy of each of the various Unions, and to promote the protection of intellectual property throughout the world, in particular through the creation of a Conference and the offer of legal-technical assistance to developing countries,

Agree as follows:

IPC  
Commentary

Commentary on Article 1 : Establishment and Organs

8. This Article declares the establishment of the Organization and enumerates its main organs.
9. The first sentence contains the name of the proposed new Organization: "International Intellectual Property Organization."
10. "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 has the same meaning as in the Draft; this meaning will be acquired only by usage. Notwithstanding this disadvantage, the proposed name was the best that could be found. It is short, but nevertheless encompasses all the subject matter within the competence of the Organization.
11. Earlier drafts proposed the use of the adjective "World" in the name of the Organization in order to underline its universal vocation, as in the names of the World Health Organization or the World Meteorological Organization. The majority of the 1965 Committee found the word "World" too ambitious and replaced it by "International."
12. The second sentence enumerates the four main organs of the Organization, namely the General Assembly, the Coordination Committee, the Conference, and the International Bureau of Intellectual Property (the Secretariat).

ARTICLE 1: ESTABLISHMENT AND ORGANS

The International Intellectual Property Organization is hereby established. It comprises a General Assembly of the States Members of the various Unions, a Coordination Committee, a Conference, and an "International Bureau of Intellectual Property."

Commentary on Article 2 : Definitions

13. This Article contains definitions of abbreviated expressions.
14. The provisions are self-explanatory.
15. At the beginning of 1966, the following four "Special Agreements" established in relation with the Paris Union were in force: (i) the Madrid Agreement concerning the International Registration of Trademarks, (ii) the Madrid Agreement for the Prevention of False or Misleading Indications of Source on Goods, (iii) the Hague Agreement concerning the International Deposit of Industrial Designs, (iv) the Nice Agreement concerning the International Classification of Goods and Services to which Trademarks Are Applied.

ARTICLE 2: DEFINITIONS

For the purposes of this Convention:

(a) "Organization" shall mean the International Intellectual Property Organization (I.P.O.);

(b) "International Bureau" shall mean the International Bureau of Intellectual Property, that is, the Secretariat of the Organization;

(c) "Paris Convention" shall mean the Convention for the Protection of Industrial Property signed on March 20, 1883, and any of its past or future revisions;

(d) "Berne Convention" shall mean the Convention for the Protection of Literary and Artistic Works signed on September 9, 1886, and any of its past or future revisions;

(e) "Paris Union" shall mean the International Union established by the Paris Convention;

(f) "Berne Union" shall mean the International Union established by the Berne Convention;

(g) "Unions" shall mean the Paris Union, the Special Unions (Agreements) established in relation with that Union, the Berne Union, and any other convention, agreement or treaty whose administration is assumed by the Organization according to Article 3(2)(ii) or (iii).

Commentary on Article 3 : Objective and Functions

16. This Article concerns the objectives of the Organization (par.(1)), and its functions tending towards their attainment (par.(2)).
17. The key words, of course, are "cooperation among States" in the opening phrase. The fields in which this cooperation is desired are enumerated in paragraph (1). They embrace the fields of industrial property, copyright, and the so-called neighboring rights (item (iii)).
18. Paragraph (2), in its introductory phrase, emphasizes that the Organization will function "subject to the competence of each of the various Unions." Among the functions, items (i) to (iii) refer to the administration of treaties, item (iv) to studies, item (v) principally to the registration services maintained under the Madrid and The Hague Agreements, item (vi) to improving legislations, and item (vii) to assistance, mainly to developing countries.



ARTICLE 3: OBJECTIVE AND FUNCTIONS

(1) The objective of the Organization is to promote cooperation among States in the field of protection for

- (i) authors of scientific, literary and artistic works,
- (ii) inventors and creators in the field of industry, agriculture and applied arts,
- (iii) performing artists, producers of phonograms and broadcasting organizations,
- (iv) owners of designs, trademarks, service marks, and other commercial designations,
- (v) enterprises against unfair competition,

through administrative cooperation among the various Intellectual Property Unions and through other appropriate means set out in the present Convention.

(2) To this end, the Organization, through its appropriate organs and subject to the competence of each of the various Unions:

- (i) is entrusted with the administrative tasks of the Paris Union, the Special Agreements established in relation with that Union, and the Berne Union;
- (ii) shall encourage the conclusion of new conventions, agreements or treaties where appropriate in the field of intellectual property and may assume their administration;
- (iii) may assume or participate in the administration of other intellectual property conventions, agreements and treaties, on the request of and in agreement with the competent organs established by such conventions, agreements or treaties;

IPO  
Commentary

/See commentary on page 8, above./

(Article 3, contd.)

- (iv) shall assemble information concerning the protection of intellectual property, promote and carry out studies in this field, and disseminate the information assembled and the results of the studies;
- (v) shall maintain services facilitating the international protection of intellectual property and, where appropriate, provide for registration in the field of intellectual property and the publication of the data concerning the registrations;
- (vi) shall promote the adoption of measures calculated to facilitate the efficient protection of intellectual property throughout the world and to harm-  
nize national legislations;
- (vii) shall advise countries requesting technical-legal assistance in the field of intellectual property;
- (viii) generally, shall take all necessary action to attain the objective of the Organization.

Commentary on Article 4 : Membership

19. This Article deals with the question of which countries may become members of the Organization.
20. As indicated above, the 1965 Committee was unable to agree on this question, and the text which emerged from the Committee contained three alternative solutions. The reasons for including only the first of them in the present draft are explained in the Introductory Report (AA/III/2).
21. It will be noted, however, that the three alternatives were similar to each other on an extremely important point, namely, on the point that membership in the Organization (or, in a fourth view advanced by the Italian Experts, in the Conference) should not be limited to countries which are party to the Paris Convention or the Berne Convention.
22. This uniformity of views is due to the desire of making IPO a truly universal forum. 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.
23. Furthermore, opening the Organization to countries which are not yet party to the conventions, agreements and treaties administered by it is likely to lead, ultimately, to accession by such countries to such instruments. As members of the Organization, they have an opportunity to share in the knowledge available concerning 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 in

ARTICLE 4: MEMBERSHIP

Membership in the Organization shall be open to any State which is:

- (i) a party to the Paris Convention or the Berne Convention, or
- (ii) a party to any other convention, agreement or treaty the administration of which is entrusted to the Organization, or
- (iii) a Member of the United Nations or any of its Specialized Agencies, or
- (iv) a State invited by the General Assembly of the Organization to become a Member of the Organization.

IPO  
Commentary

organizing their national patent offices. Since such laws and such offices may be prerequisites for their accession to the Paris Convention, such accession 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.

24. 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, such a provision would be necessary, since one of the prerequisites of recognition is that the Organization must admit to membership any member of the United Nations which wishes to accede to the IPC Convention.

25. Furthermore, if any countries members of the United Nations or the existing Specialized Agencies were excluded from membership in the Organization, they would have to seek another forum for their intellectual property problems, such as the United Nations or the existing Specialized Agencies.

AA/III/5  
page 15

IPO  
Draft Text

Commentary on Article 5 : Headquarters

26. This Article relates to the location of the Headquarters of the Organization.
27. The Headquarters of the Organization would be the same as that of BIRPI, and since BIRPI is at Geneva the Headquarters of the Organization would be at the same place.
28. Transfer of Headquarters would require at least a two-thirds vote in the General Assembly of the Organization (Art.6 (3)(c)(ii)), as well as in the Assemblies of the Paris and Berne Unions (Art.6(3)(f)).



ARTICLE 5: HEADQUARTERS

The Headquarters of the Organization shall be at Geneva. It may be transferred to another place pursuant to a decision of the General Assembly.

Commentary on Article 6 : General Assembly

29. This Article relates to the following subjects concerning the General Assembly: composition (par.(1)), functions (par.(2)), voting procedures (par.(3)), sessions (par.(4)), rules of procedure (par.(5)), and observers (par.(6)).
30. Paragraph (1) deals with composition. It is to be noted that only those States members of the Organization which are also members of one or more of the Unions would be members of the General Assembly. Certain States, notwithstanding their membership in the Organization, would not be members of the General Assembly. These are the so-called "third States," that is, States not members of any of the Unions. They would merely be invited as observers to the sessions of the General Assembly, without the right to vote in it (cf. par.(6)).
31. Paragraph (2) sets forth the functions of the General Assembly. It is to be noted that all of them relate to matters which are administrative in nature and common to the Unions. None of the functions relates to matters concerning the protection of intellectual property rights, and none of them deals even with administrative matters if they are of interest only to one Union. Item (i) indicates that the Coordination Committee is supervised by the General Assembly. Items (ii), (iii) and (iv) concern the common Secretariat ("The International Bureau"): the election of its head, decision as to what new treaties it may assume to administer, and decision as to its working languages. Item (v) concerns an internal procedure matter for the General Assembly, namely, the admission of certain observers to its session.

ARTICLE 6: GENERAL ASSEMBLY

(1)(a) The General Assembly shall consist of the States Members of any of the Unions, party to this Convention.

(b) The Government of each State shall be represented by one or more delegates who may be assisted by alternate delegates and by advisors.

(2) The General Assembly shall:

(i) review and approve the reports and activities of the Coordination Committee;

(ii) appoint the Director General;

(iii) pronounce upon the arrangements proposed by the Director General concerning the administration of the conventions, agreements and treaties referred to in Articles 3(2)(ii) and (iii);

(iv) determine the languages which, in addition to English and French, shall be the working languages of the Secretariat;

(v) determine which States not Members of the Organization and which international organizations shall be admitted to its meetings as observers;

(vi) exercise such other functions as are allocated to it in this Convention.

(3)(a) Each State, whether Member of one or more Unions, shall have one vote in the General Assembly.

(b) Subject to the provisions of the following subparagraphs and Article 13, the General Assembly shall make its decisions by a simple majority of the votes cast.

(c) The following shall require at least two-thirds of the votes cast:

(i) invitations addressed to a State to become a Member of the Organization (Article 4);

32. Paragraph (3) concerns voting. According to the nature of the proposal, approval will require either a unanimous, a 3/4, a 2/3, or a simple majority vote. Furthermore, in two cases, "triple voting" would be required, i.e., the proposal would have to be carried not only by the General Assembly of the Organization, but also by the Assembly of the Paris Union, and the Assembly of the Berne Union.
33. Unanimity would be required for approval of a possible agreement with the United Nations which would confer the status of Specialized Agency on IPO. Any one State could veto such an agreement, according to the present draft (subpar.(e)).
34. Three-fourths majority would be required for the assumption of the administration of new treaties (subpar.(d)).
35. Two-thirds majority would be required in three cases: invitation addressed to a State to become a member of the Organization (provided it does not qualify under items (i), (ii) or (iii) of Art.4), transfer of Headquarters, invitation to observers (subpar.(c)).
36. "Triple voting" would be required for the transfer of Headquarters and the election of the Director General (subpar.(f)).
37. Paragraphs (4) to (6) are self-explanatory.

(Article 6, contd.)

- (ii) decisions concerning the transfer of the Headquarters of the Organization (Article 5);
  - (iii) invitations addressed to States not Members of the Organization and to international organizations to attend meetings as observers (paragraph (2)(v)).
- (d) The confirmation of arrangements concerning the administration of conventions, agreements and treaties, referred to in Article 3(2)(ii) and (iii), shall require at least three-fourths of the votes cast.
- (e) The approval of an agreement with the United Nations under Articles 57 and 63 of the Charter of the United Nations shall require the unanimous decision of the General Assembly.
- (f) For the possible transfer of Headquarters (Article 5) and the appointment of the Director General (paragraph (2)(ii)) the required majority must be attained not only in the General Assembly but also in the Assembly of the Paris Union and the Assembly of the Berne Union.
- (g) Abstentions shall not be considered as votes.
- (h) Each State shall be allowed to cast only its own vote.
- (4) The General Assembly shall meet once in every third calendar year in ordinary session upon convocation by the Director General. It shall meet in extraordinary session, upon convocation by the Director General, at the request of the Coordination Committee, or at the request of one-fourth of the States constituting the General Assembly. Meetings shall be held at the Headquarters of the Organization.
- (5) The General Assembly shall adopt its own rules of procedure.
- (6) States Members of the Organization but not Members of any of the Unions may attend the General Assembly as observers.

Commentary on Article 7 : Conference

38. This Article deals with the following subjects concerning the Conference : composition (par.(1)), functions (par.(2)), voting procedures (par.(3)), sessions (par.(4)), rules of procedure (par.(5)), and observers (par.(6)).
39. Paragraph (1) relates to composition. Unlike the General Assembly, of which "Third States" are not members, such States would be members of the Conference, since the paragraph provides that all members of the Organization would be members of the Conference.
40. Paragraph (2) deals with the three functions of the Conference.
41. The first is its function, elsewhere described, of serving as a forum for discussion.
42. The second is to adopt the Conference budget. This budget would provide for funds for only two, precisely defined, purposes: expenses of the Conference itself (interpretation, translation, printing of documents, etc.), and expenses of technical-legal assistance (fellowships, seminars, expert missions, etc.). The provision also specifies the sources from which these expenses would come. In addition to possible miscellaneous income, these sources would be the voluntary contributions of the Unions, and the contributions of the Third States. In other words, members of the Unions would contribute only indirectly to the Conference budget, by earmarking, if they so desire, in the Union budget certain sums for this purpose. Such States would pay no direct contributions towards the Conference budget.

ARTICLE 7: CONFERENCE

- (1)(a) The Conference shall consist of the States Members of the Organization.
- (b) The Government of each Member State shall be represented by one or more delegates who may be assisted by alternate delegates and advisors.
- (2) The Conference shall:
- (i) discuss matters of general interest in the field of intellectual property and may adopt resolutions and recommendations relating to such matters;
  - (ii) adopt a triennial budget, consisting of contributions which the various Unions have agreed to make and the contributions of States which are Members of the Organization without being Members of any of the Unions, providing for funds to cover the expenses of the Conference and the program of technical-legal assistance (Article 10(3)(i)) and of the other possible sources of revenue referred to in Article 10(3)(ii) to (v) (hereinafter referred to as the "Conference budget");
  - (iii) within the limits of the Conference budget, establish the triennial program of technical-legal assistance.
- (3)(a) Each Member State shall have one vote in the Conference.
- (b) Subject to the provisions of the following subparagraphs and Article 13, the Conference shall make its decisions by a simple majority of the votes cast.
- (c) Adoption of that part of the Conference budget which is financed from contributions of States which are Members of the Organization without being Members of any of the Unions shall require at least two-thirds of the votes cast by such States to the extent that the Conference budget would increase their financial obligations.
- (d) Invitations addressed to States not Members of the Organization and to international organizations to attend

43. The third function of the Conference is to establish a triennial program of legal-technical assistance, within, of course, the limits of the budget referred to in the preceding paragraph.
44. Paragraph (3) concerns voting. A two-thirds majority of the Third States would be required for raising their financial obligations (subpar.(c)). This provision is similar to those existing in the Administrative Protocols of the Paris, Berne, and Nice Unions (see Art.A(3)(d) in the relevant Protocols). A two-thirds majority would be required also for the admission of observers (subpar.(d)).
45. The other provisions of this Article are self-explanatory.



(Article 7, contd.)

meetings as observers in accordance with paragraph (6) shall require at least two-thirds of the votes cast in the Conference.

(e) Abstentions shall not be considered as votes.

(f) Each State shall be allowed to cast only its own vote.

(4) The Conference shall meet in ordinary session upon convocation by the Director General during the same period and at the same place as the General Assembly. The Conference shall meet in extraordinary session upon convocation by the Director General at the request of the majority of the States Members of the Organization.

(5) The Conference shall adopt its own rules of procedure.

(6) The Conference may admit, as observers, representatives of States not Members of the Organization, and representatives of international organizations, to such of its meetings or its working committees as it sees fit.

IPO  
Commentary

Commentary on Article 8 : Coordination Committee

46. This Article relates to the following subjects concerning the Coordination Committee: composition (par.(1)), representation of Unions other than Paris and Berne (par.(2)), functions (par.(3)), sessions (par.(4)), voting procedures (pars. (5) and (6)), rules of procedure (par.(7)), and observers (par. (8)).
47. Paragraph (1) deals with composition.
48. The Coordination Committee would consist of the States members of either one of the two Executive Committees, namely, the Executive Committee of the Paris Union and the Executive Committee of the Berne Union. Whenever the Conference budget is considered, one-fourth of the Third States would be associated in the work of the Coordination Committee. In view of the fact that all the members of the Madrid, Hague and Nice Unions are necessarily members also of the Paris Union, such three sub-Unions will easily find spokesmen among the members of the Coordination Committee (cf. par.(2)).
49. Paragraph (3) enumerates the functions of the Coordination Committee. Its principal function, as set forth in item (i), is to serve in an advisory capacity on matters of coordination, mainly in the field of common expenses. Items (ii) and (iii) concern preparations for the sessions of the General Assembly and the Conference. Items (iv) to (vi) relate to matters which may require action between sessions of the Conference or of the General Assembly.

ARTICLE 8: COORDINATION COMMITTEE

(1)(a) There shall be a Coordination Committee consisting of the States, party to this Convention, which are Members of the Executive Committee of the Paris Union, or of the Executive Committee of the Berne Union, each of these Committees being composed of one-fourth of the Members of the Unions.

(b) The Government of each State Member of the Coordination Committee shall be represented by one or two delegates who may be assisted by alternate delegates and by advisors.

(c) Whenever the Coordination Committee considers the Conference budget, one-fourth of the States which are Members of the Organization without being Members of any of the Unions shall participate in the Coordination Committee with the same rights as Members of that Committee. This one-fourth shall be elected by and at each ordinary session of the Conference.

(2) If the other Unions administered by the Organization wish to be represented as such in the Coordination Committee, their representatives must be appointed from among the representatives of States Members of the Coordination Committee.

(3) The Coordination Committee shall:

- (i) give advice to the organs of the various Unions, the General Assembly, and the Conference, on all administrative, financial and other matters of common interest to two or more of the Unions; and in particular on the common expenses to be included in the budgets of the various Unions and in the Conference budget;
- (ii) prepare the draft agenda of the General Assembly;
- (iii) prepare the draft agenda and the draft program and budget of the Conference;
- (iv) on the basis of the triennial Conference budget and program, establish the annual Conference budgets and programs;
- (v) when the term of office of the Director General is about to expire, or when there is a vacancy

50. Paragraph (4) provides that the Coordination Committee will meet at least once every year. It would probably be convened at the same period and the same place as the Executive Committees of the Paris and Berne Unions, as the members of the latter are the same as the members of the former.
51. Paragraphs (5) and (6) deal with voting in the Coordination Committee. Although a State member of both Executive Committees would only have one vote (par.(5)), in the "special recount" procedure (par.(6)) its vote would be inscribed both in the Paris and Berne lists. This special recount procedure is intended to allow any of the two Executive Committees to veto a decision taken by the Coordination Committee as such. The consequence of such a veto power makes it, of course, irrelevant that the number of members in one of the Executive Committees may be larger than in the other. The size of the Executive Committees depends on the number of the members of the Unions. As long as the Berne Union has fewer members than the Paris Union, the Executive Committee of the former will be smaller than that of the latter. Representatives of authors' interests in the 1965 Committee expressed the fear that this might lead to a disregard of the interests of the Berne Union in the Coordination Committee. The special recount procedure makes such fear groundless.
52. Paragraphs (7) and (8) are self-explanatory.

(Article 8, contd.)

in the post of the Director General, nominate a candidate for appointment to such position by the General Assembly;

(vi) if the post of the Director General becomes vacant between two sessions of the General Assembly, appoint an Acting Director General, whose term of office shall last until the new Director General assumes office;

(vii) perform such other functions as are allocated to it in this Convention and the Administrative Protocols.

(4) The Coordination Committee shall meet at least once every year upon convocation by the Director General. It shall normally meet at the Headquarters of the Organization.

(5) Each State whether a Member of one or both of the Executive Committees referred to in paragraph (1)(a) shall have one vote in the Coordination Committee. Each State shall be allowed to cast only its own vote.

(6)(a) The Coordination Committee shall express its opinions and make its decisions by simple majority. More than half of the votes cast by the Members present shall constitute a simple majority. Abstentions shall not be considered as votes.

(b) Even if a simple majority is obtained, any Member of the Coordination Committee may, immediately after the vote, request that the votes be the object of a special recount in the following manner: two separate lists shall be prepared indicating, respectively, the names of the States Members of the Executive Committee of the Paris Union and of the Executive Committee of the Berne Union; the vote of each State shall be inscribed opposite its name in each list in which it appears. Should this special recount indicate that a simple majority has not been obtained in each of those lists, the proposal shall not be considered as carried.

(7) Subject to the provisions of this Convention, the Coordination Committee shall establish its own rules of procedure.

AA/III/5  
page 30

IPO  
Commentary

(Article 8, contd.)

(8) Any State Member of the Organization, which is not a Member of the Coordination Committee, may be represented at the meetings of the Committee by observers, having the right to take part in the debates but without the right to vote.

Commentary on Article 9 : International Bureau

53. This Article relates to the International Bureau, that is, the Secretariat.
54. The subjects covered by the various paragraphs are the following: composition of the Secretariat (par.(1)); term of office, legal status, duties and rights of the Director General (pars. (2) to (5)); staff matters (pars. (6) and (7)).
55. The provisions are of the usual kind, except perhaps paragraph (2) which, instead of fixing a rigid period, provides for a certain flexibility as to the length of the term of appointment of the Director General. This more flexible system was chosen by the Committee of 1965 because it would take into consideration certain personal circumstances of the candidate, such as his age.
56. It might be also noted that the 1964 Working Group refused to accept a suggestion that the Berne and the Paris Unions should each be quasi "represented" by a Deputy Director. The suggestion was refused on the ground that such a separation of jurisdiction, instead of encouraging collaboration, could lead to division and rivalry within the Secretariat. The 1965 Committee affirmed this view.



ARTICLE 9: INTERNATIONAL BUREAU

- (1) The International Bureau shall consist of a Director General, two or more Deputy Directors General, and other staff members as required.
- (2) The Director General shall be appointed for a fixed term which shall be not less than six years. He shall be eligible for reappointment for fixed terms. The periods of the initial appointment and possible subsequent appointments, as well as all other conditions of the appointment, shall be fixed by the General Assembly.
- (3) The Director General shall be the chief administrative officer of the Organization and the Unions and shall represent the Organization and the Unions.
- (4) The Director General shall prepare the draft programs and budgets and periodical reports on activities. He shall transmit them to the Governments of the interested States and to the competent organs of the various Unions and the Organization.
- (5) The Director General, or a staff member designated by him, shall normally participate, without the right to vote, in all meetings of the Assemblies, the General Assembly, the Conference, the Executive Committees, the Coordination Committee, and any other committee or working group. He, or a staff member designated by him, shall be ex officio Secretary of these organs.
- (6) The Director General shall appoint the staff necessary for the efficient performance of the tasks of the International Bureau. He shall appoint the Deputy Directors General with the approval of the Coordination Committee. The conditions of employment shall be fixed by the staff regulations to be approved by the Coordination Committee on the proposal of the Director General. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

AA/III/5  
page 34

IPO  
Commentary

/See commentary on page 32, above./

(Article 9, contd.)

(7) The nature of the responsibilities of the Director General and of the staff shall be exclusively international. In the discharge of their duties they shall not seek or receive instructions from any Government or from any authority external to the Organization. They shall refrain from any action which might prejudice their position as international officials. Each Member State undertakes to respect the exclusively international character of the responsibilities of the Director General and the staff, and not to seek to influence them in the discharge of their duties.

Commentary on Article 10 : Finances

57. This Article deals with the finances of the Organization, that is, mainly with the income and expenditure of the Organization as such. It does not deal with the finances of the various Unions which are independent and are dealt with in the Administrative Protocols.
58. The various paragraphs relate to the following subjects: Conference budget (pars.(1) to (3)), contributions of Third States (par.(4)), arrears in contributions (par.5), miscellaneous income (pars.(6) and (7)), working capital fund (pars.(8) and (9)), and auditing (par.(10)).
59. Paragraphs (1) to (3) concern the budget which is designated as the "Conference budget" in order to underline that both the income and the expenditure of the Organization, as such, relate solely to activities carried out or decided upon by the Conference, whereas activities performed by the International Bureau for the benefit of the Unions, even when coordinated by the General Assembly and the Coordination Committee, are not to be financed from this budget but from the individual budgets of the various Unions.
60. The expenses to be provided for in the Conference budget would be of three kinds: the proper expenses of the Conference (interpretation, translation, printing of documents, etc.), expenses of the technical-legal assistance program (fellowships, seminars, expert missions, etc.), and the share of both the Conference and the assistance program in the common expenses (salaries of persons working for the Conference and the assistance program as well as for the Unions, telephone, postage, etc.) (see par.1 (b)).

ARTICLE 10: FINANCES

(1)(a) The Conference shall have a budget.

(b) The Conference budget shall include the proper expenses of the Conference and of the technical-legal assistance program and the share of the Conference and technical-legal assistance program in the common expenses of the International Bureau.

(c) Expenses not attributable exclusively to the budget of any given Union, or exclusively to the Conference budget, shall be apportioned among the budgets of the various Unions and the Conference budget in proportion to the interest each of them has in such expenses.

(2) The Conference budget shall be established with due regard to the requirements of coordination and the contributions of the various Unions.

(3) The Conference budget shall be financed from the following sources:

- (i) sums allocated to the Conference budget in the budgets of the Paris, Berne and possibly other interested Unions, and from contributions of States which are Members of the Organization without being Members of any of the Unions;
- (ii) fees charged for services performed by the International Bureau;
- (iii) sale of, or royalties on, the publications of the International Bureau;
- (iv) gifts, bequests and subventions;
- (v) rents, interests, and other similar miscellaneous income.

(4)(a) For the purpose of establishing its contributions towards the Conference budget, each Member State of the Organization which is not a Member of any Union shall belong to a class, and shall pay its annual contributions on the basis of a fixed number of units as follows:

IPO  
Commentary

61. The income would come from two main and some subsidiary sources. The two main sources are the contributions of Third States and the sums allocated to the Conference budget by the various Unions (par.(3)(i)). The miscellaneous sources of revenue (sale of publications, gifts, rents, etc.) are dealt with in paragraph (3)(ii) to (v) and paragraphs (6) and (7).
62. Paragraph (4) deals with the contributions of Third States, that is, States members of the Organization which are not members of the Paris, Berne, or any other Union. It is important to note that this paragraph, and, for that matter, the whole IPO Convention, does not deal with contributions by countries members of the Unions since such countries would not pay any contributions towards the Conference budget or to the Organization as such.
63. The paragraph is, in its construction and contents, similar to the corresponding provisions of the proposed Administrative Protocols of the Paris, Berne, and Nice Unions. No separate explanations seem, therefore, to be necessary. The same is true also with respect to paragraphs (8) and (9), concerning the working capital fund, and paragraph (10), dealing with the auditing of the accounts.
64. Paragraph (5) relates to arrears in the payment of contributions and parallels the corresponding provisions of the various Administrative Protocols.

(Article 10, contd.)

Class A .....	10
Class B .....	3
Class C .....	1

(b) Each such State shall, concurrently with taking action as provided in Article 14(1), indicate the class to which it wishes to belong. Any such State may change class. If the change is to a lower class, the State must announce it to an ordinary session of the Conference. Any such change shall take effect at the beginning of the calendar year following the session.

(c) The contribution of each such State shall be an amount in the same proportion to the total sum to be contributed to the Conference budget by all such States as the number of its units is to the total of the units of all such States.

(d) The contributions of such States shall become due on the first of January of each year.

(5) A Member State of the Organization which is not a Member of any of the Unions and which is in arrears in the payment of its financial contributions under the present Article, and any State which is a Member of a Union and which is in arrears in the payment of its contributions to any of the Unions, shall have no vote in the General Assembly, the Coordination Committee, and the Conference, if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years.

(6) The amount of the fees charged for services rendered by the International Bureau in the field of technical-legal assistance shall be established, and be reported to the Coordination Committee, by the Director General.

(7) The Organization, with the approval of the Coordination Committee, may receive gifts, bequests and subventions, directly from Governments, public or private institutions, associations or private persons.

AA/III/5  
page 40

IPO  
Commentary

/See commentary on page 38, above.7



(Article 10, contd.)

(8) The Organization shall have a working capital fund, as provided in the financial regulations adopted by the Coordination Committee on the basis of proposals made by the Director General.

(9)(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 on which they are granted shall be the subject of agreement, in each case, between such Member State and the Organization. As long as it remains under the obligation to grant advances, such Member State shall have an ex officio seat in the General Assembly, the Coordination Committee, and the Conference.

(b) Such Member State and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it is notified.

(10) The auditing of the accounts shall be effected by one or more Member States or by external auditors as provided in the financial regulations. They shall be designated, with their agreement, by the General Assembly.

Commentary on Article 11 : Legal Status, Privileges  
and Immunities

65. This Article consists of three paragraphs. The first concerns the legal capacity of the Organization and the second relates to a Headquarters Agreement and privileges and immunities. The third paragraph is, in its essence, a clause safeguarding national constitutions and laws and, in effect, makes the granting of the privileges and immunities optional for each country.
66. Paragraph (1) provides that each member State shall take the necessary measures to ensure that the Organization shall enjoy in its territory the required legal capacity. However, if such measures would require the modification of existing laws, the taking of such measures could be avoided by any State under paragraph (3).
67. Paragraph (2) provides that the Director General will conclude a Headquarters Agreement with the Swiss Confederation, and, as necessary, may conclude agreements on privileges and immunities with other States. The paragraph is, in essence, an authorization for the Director General to conclude certain agreements, but contains no obligations for any of the member States to enter into such agreements.

ARTICLE 11: LEGAL STATUS, PRIVILEGES AND IMMUNITIES

(1) Each Member State shall take the necessary measures to ensure that the Organization shall enjoy in its territory such legal capacity as may be necessary for the fulfilment of the Organization's purposes and for the exercise of its functions.

(2) The Director General shall, in the name of the Organization and with the approval of the Coordination Committee, conclude a Headquarters Agreement with the Swiss Confederation, and may conclude, as necessary, bilateral or multilateral agreements with the other Member States with a view to the enjoyment by the Organization, its officials, and representatives of Member States, of such privileges and immunities as may be necessary for the fulfilment of its purposes and for the execution of its functions.

(3) Such measures and agreements shall be taken and concluded in conformity with the Constitutions and national laws of the Member States concerned.

IPO  
Commentary

Commentary on Article 12: Relations with  
Other Organizations

68. This Article concerns the possible relations of IPO with other organizations and consists of two paragraphs.
69. Paragraph (1) deals with relations with intergovernmental organizations. It speaks about "effective working relations" and "close cooperation."
70. Paragraph (2) deals with relations with non-governmental organizations (whether international or national) and with national governmental organizations. It speaks about "consultation" and "cooperation."
71. The provisions are of the usual kind and do not seem to require any explanation.

ARTICLE 12: RELATIONS WITH OTHER ORGANIZATIONS

(1) The Organization shall, where appropriate, establish effective working relations and cooperate closely with other intergovernmental organizations. Any general agreement to such effect, entered into with such organizations, shall be made with the approval of the Coordination Committee.

(2) The Organization may on matters within its competence make suitable arrangements for consultation and cooperation with non-governmental international organizations and, with the consent of the Governments concerned, with national organizations, governmental or non-governmental. Such arrangements shall be subject to approval by the Coordination Committee.

Commentary on Article 13: Amendments

72. This Article sets forth the procedure for adopting, and for the entry into force of, amendments to the text of the IPO Convention. It does not concern the amendments of the Conventions and Agreements, including the Administrative Protocols, of the various Unions.
73. Paragraphs (1) and (2) deal with the adoption of amendments. The procedure consists of three steps. First, the proposal must be communicated by the Director General to the Member States with a minimum of six months advance notice. Then, the proposal is voted by the Assemblies of the Paris and Berne Unions. If the proposal for amendment is not approved in any of these Assemblies, it cannot be voted upon in the Conference. It is to be noted that in the Assemblies even those countries which are not members of the Organization may vote on the question of amendment of the IPO Convention. Finally, the proposal for amendment, if passed by both Assemblies, is voted upon by the Conference.
74. Paragraph (3) deals with the entry into force of amendments and communicating of acceptances. Three-fourths of the Member States must notify their acceptance to the Director General before the amendment will enter into force. The amendment will then enter into force with respect to all Member States, except that any amendment increasing the financial obligations of Member States will not be binding on any State which does not accept it. These provisions are similar to the corresponding provisions in the proposed Administrative Protocols (see, for example, Art. E(3) and (4) in the Paris and Berne draft Administrative Protocols).

ARTICLE 13: AMENDMENTS

(1) Proposals for the amendment of this Convention shall be communicated by the Director General to the Member States of the Organization at least six months in advance of their consideration by the Conference.

(2)(a) Amendments shall be adopted by the Conference. Adoption shall require a simple majority of the votes cast, provided that the Conference shall vote only on such proposals for amendments as have previously been adopted by the Assembly of the Paris Union and the Assembly of the Berne Union according to the rules applicable in each of them in respect to the voting of amendments of their respective Administrative Protocols.

(b) Abstentions shall not be counted as votes.

(c) Each State shall cast only its own vote.

(3) Amendments shall enter into force when written notifications of acceptance have been received by the Director General from three-fourths of the Member States. Amendments thus accepted shall bind all the Member States except that any amendment increasing the financial obligations of Member States shall bind a State not included in the three-fourths upon acceptance by it.

Commentary on Article 14: Entry into Force

75. This Article deals with the entry into force of the IPO Convention and with related questions. It consists of three paragraphs. Paragraph (1) concerns the various ways in which a State may become bound by the Convention. Paragraph (2) concerns entry into force of the Convention. Paragraph (3) is a transitory provision.
76. Paragraph (1)(a) recalls the provisions of the proposed Stockholm Acts of the Paris (Art. 16<sup>quater</sup>) and Berne (Art. 25<sup>quater</sup>) Conventions whereby any country becoming party to those Acts becomes a party to the IPO Convention; except that a Paris or Berne Convention country may make an express declaration to the contrary.
77. Paragraph (1)(b) is applicable to States which made such a declaration (except perhaps item (i)) and to the so-called Third States.
78. Paragraph (1)(c) recognizes that, while Paris and Berne Convention countries may become party to the Administrative Protocols without becoming party to the IPO Convention, the reverse situation should not apply. It is obvious that a Paris or Berne Convention country which has not become a party to one of the Administrative Protocols should not participate in the IPO, since the special role of the Paris and Berne Convention countries in the IPO (membership in the General Assembly and Coordination Committee, etc.) follows from the legal status given to them by the Administrative Protocols.
79. Paragraph (1)(d) provides that instruments of ratification or accession shall be deposited with the Director General.



ARTICLE 14: ENTRY INTO FORCE

(1)(a) States may become party to this Convention, in accordance with paragraph (2), by ratifying, or acceding to, the Stockholm Act of the Paris Convention in its entirety or with only the limitation set forth in Article 16(2)(i) thereof. [see Article 16<sup>quater</sup> of that Act], or by ratifying, or acceding to, the Stockholm Act of the Berne Convention in its entirety or with only the limitation set forth in Article 25(2)(i) thereof [see Article 25<sup>quater</sup> of that Act].

(b) States may also become party to this Convention by:

(i) signature without reservation as to ratification,  
or

(ii) signature subject to ratification followed by  
the deposit of an instrument of ratification, or

(iii) deposit of an instrument of accession.

(c) Notwithstanding any other provision of this Convention a State party to the Paris Convention, the Berne Convention, or both Conventions may not become a party to this Convention until it ratifies or accedes to either (i) the Stockholm Act of the Paris Convention in its entirety or with only the limitation set forth in Article 16(2)(i) thereof, or (ii) the Stockholm Act of the Berne Convention in its entirety or with only the limitation set forth in Article 25(2)(i) thereof.

(d) Instruments of ratification or accession shall be deposited with the Director General.

(2)(a) In respect to States whose ratifications or accessions have brought into force the Administrative Protocols of the Paris and Berne Conventions, this Convention shall enter into force when both Protocols have entered into force.

(b) Any other State shall become bound by this Convention one month after the date on which such State takes action as provided in paragraph (1)(a) or (b), or on the date of the entry into force of this Convention pursuant to subparagraph (a) of this paragraph, whichever date is the later.

80. Paragraph (2) provides that the Convention will enter into force when the Administrative Protocols of both the Paris and Berne Unions enter into force. It is to be noted that, consequently, signatures, ratifications and accessions by Third States would not play any role in the entry into force of the IPO Convention.
81. Paragraph (3) provides, in essence, that even those countries members of the Paris or Berne Unions which have not yet become party to the IPO Convention when that Convention has come into force will, for five years, have the same rights (without any obligations) as if they were parties to the IPO Convention. The provision is analogous to Article 20(1) of the proposed Stockholm Act of the Paris Convention and Article 32(1) of the proposed Stockholm Act of the Berne Convention.

(Article 14, contd.)

(3) States which are party to any of the conventions, agreements or treaties, the administrative tasks or the administration of which is entrusted to the Organization, but which have not become party to this Convention shall, for five years from the date of entry into force of the Convention, have the same rights as if they had become party to this Convention. Upon expiration of this five-year period, such States shall have no right to vote in the General Assembly, the Coordination Committee and the Conference. Upon becoming party to this Convention, such States shall regain such right to vote.

Commentary on Article 15: Denunciation

82. This Article deals with denunciation of the IPO Convention.
83. Paragraph (1) provides, in effect, that a country which is a member of the Organization may leave the Organization only if such country leaves the Unions administered by the Organization. Of course, any country may leave any or all of the Unions without leaving the Organization.
84. Paragraph (2) concerns notifications of denunciation and their effective dates.

ARTICLE 15: DENUNCIATION

(1) Any State party to the present Convention which is not party to any of the conventions, agreements or treaties, the administrative tasks or the administration of which is entrusted to the Organization, may denounce this Convention.

(2) Denunciation shall be effected by notification addressed to the Director General and shall take effect one year after receipt by him of the notification.

Commentary on Article 16 : Notifications

85. This Article deals, in the usual manner, with notifications.

86. It is self-explanatory.

ARTICLE 16: NOTIFICATIONS

The Director General shall notify the Governments of all States which sign or accede to this Convention of:

- (i) the date of entry into force of the Convention,
- (ii) signatures and deposits of instruments of ratification or accession,
- (iii) acceptances of an amendment to this Convention, and the date upon which the amendment enters into force,
- (iv) denunciations of this Convention.

Commentary on Article 17 : Reservations

87. This Article excludes the possibility of making reservations.

88. It is self-explanatory.



ARTICLE 17: RESERVATIONS

No reservations to this Convention are permitted.

Commentary on Article 18 : Final Provisions

89. This Article, consisting of four paragraphs, concerns the usual matters appearing in final provisions: languages of the Convention (pars. (1) and (2)), communication of certified copies (par.(3)), and registration with the Secretary-General of the United Nations (par.(4)).
90. The provisions are self-explanatory.

ARTICLE 18: FINAL PROVISIONS

(1) The present Convention, of which the English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Director General.

(2) Official translations of the present Convention shall be established in the German and Italian languages.

(3) The Director General shall transmit two duly certified copies of this Convention and of each amendment adopted by the General Assembly to the Governments of the States Members of the Paris or Berne Unions, to the Government of any other State when it accedes to this Convention, and, on request, to the Government of any other State.

(4) The Director General shall register the present Convention with the Secretary-General of the United Nations as soon as possible.

Commentary on Article 19 : Transitional Provisions

91. This Article contains transitory provisions regarding the Secretariat of the existing (BIRPI) and future (IPO) Organizations.
92. Reference is made to the explanations given on pages 14 and 15 of the Introductory Report (doc. AA/III/2).

ARTICLE 19: TRANSITIONAL PROVISIONS

(1) Until the first Director General assumes office, references to the Director General shall be deemed to be references to the Director of the United International Bureaux for the Protection of Industrial, Literary and Artistic Property, also called the "United International Bureaux for the Protection of Intellectual Property" (BIRPI).

(2) As long as there are Member States of the Unions which have not become Members of the Organization, the International Bureau shall also function as the United International Bureaux for the Protection of Industrial, Literary and Artistic Property.

(3) The staff in the employment of the said Bureaux on the date of entry into force of this Convention shall, during the transitional period referred to in the preceding paragraph, be considered as also employed by the International Bureau.

/End/