

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

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

(DRAFT TEXT AND COMMENTARY)

COMMENTARY

1. This document deals with the draft Resolution concerning the Provisional and Limited Application of Certain Provisions Adopted by the Stockholm Conference. The text of the draft Resolution (see page 4 of the present document) is, with a few minor exceptions, identical to the text which resulted from the meeting of the 1965 Committee.
2. The Resolution would provide for the limited application, on an interim or provisional basis, from the beginning of the year following the Stockholm Conference, of the IPO Convention and the Administrative Protocols adopted at that Conference.
3. If the planned schedule is followed, the proposed instruments would be adopted in July 1967. It might take several years before the instruments would enter into force. It is, however, important that the new administrative and budgetary provisions, replacing the present antiquated system, be applied as soon as possible, and that the Organization established to meet the urgent need for a world forum for intellectual property matters begin functioning without delay.

Commentary

4. The effect of the proposed Resolution would be that IPO could start functioning and the Administrative Protocols formulated at the Stockholm Conference could be applied on an interim basis presumably from January 1, 1968 (the beginning of the year following the diplomatic conference).
5. Precedents for interim action can be found in provisions which have been adopted by other international organizations to reduce to some extent the delay involved in awaiting formal entry into force of agreements. For example, provisions for interim application of various provisions during transitional periods have been adopted by the International Telecommunication Union when, after the Second World War, it underwent a substantial reorganization in many respects similar to the reform now proposed in relation to the structure of the Unions administered by BIRPI. Furthermore, a practice has been followed in a number of instances, particularly with respect to the United Nations Specialized Agencies created since 1945, of establishing provisional organs with the task of setting the new organization in motion.
6. As indicated in the Introductory Report, the 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" (last sentence of paragraph (1)(a)), and
 - (ii) the contributions to the budgets to be established by the interim organs would be voluntary to the extent to which they would be in excess of the contributions payable under the texts in force (see paragraph (1)(c)).
7. It is noted that even when the IPO Convention and the Administrative Protocols enter into force, as contrasted with their interim application to which the draft Resolution relates, they would, for the Member States, create no new obligations but only new rights with the possible exception of the proposed provisions on contributions. In any event, so far as interim application is concerned, it is clear from the last sentence of paragraph 1(a) of the draft Resolution that a State could not be required to comply with provisions which would give rise to obligations.

8. With reference to the second safeguard of merely inviting States to contribute on the basis of the new system, it is to be noted that this procedure has several precedents in the history of the Paris and Berne Unions. In fact, the present ceilings of contributions in both Unions are higher than the ceilings written into the last revisions of those Conventions and are the result of invitations and voluntary action.

9. In view of the fact that during the interim period some States might refuse to contribute to the working capital funds, the Organization's need for cash advances may continue. The Swiss Government itself, recognizing this point, offered the solution contained in paragraph (1)(d) according to which Switzerland would, during the interim period, continue to make the necessary advances as provided under the texts in force at the present time.

DRAFT TEXTRESOLUTION
CONCERNING THE PROVISIONAL AND LIMITED APPLICATION
OF CERTAIN PROVISIONS ADOPTED BY THE STOCKHOLM CONFERENCE

The Diplomatic Conference of Stockholm resolves:

(1)(a) Subject to subparagraph (c) concerning the financial obligations of Member States, and subparagraph (d) concerning advances by the Swiss Government, the provisions of the Convention establishing the International Intellectual Property Organization (I.P.O.) and the Administrative Protocols signed today shall be applied on an interim basis as of January 1st of next year and until the Convention enters into force as provided in Article 14(2)(a) of the Convention, unless, prior to such entry into force, the present Resolution is rescinded or amended by not less than nine-tenths of the States signatories of the Convention. Such interim application shall give rise to obligations on any Member State only to the extent compatible with its Constitution and laws.

(b) During the interim period, all States party to any convention, agreement or treaty, the administrative tasks or the administration of which is now entrusted to 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), or will be entrusted to the interim Organization, and all States which, without being party to such conventions, agreements or treaties, sign the Convention without reservation as to ratification, or ratify or accede to it, shall have the same rights as if the Convention were in force and they were parties thereto.

(c) All States are invited to contribute on the basis of the budgets to be established by the Assemblies and the Conference functioning on an interim basis and according to the system provided for in the Administrative Protocols relating to the Conventions and Agreements of the various Unions.

(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 IPO Convention and the Administrative Protocols.

(Draft Text of Resolution, contd.)

(2) Subject to the applicable provisions of the Convention, references in the conventions, agreements or treaties, the administrative tasks or the administration of which have been entrusted to the United International Bureaux for the Protection of Industrial, Literary and Artistic Property, shall be considered:

- (i) as references to the Assemblies or the General Assembly whenever the reference is to assemblies of Member States other than revision conferences;
- (ii) as references to the Director General whenever the reference is to the Director of the Bureau of the Paris Union or of the Berne Union or the United International Bureaux for the Protection of Industrial, Literary and Artistic Property.

(3) The Government of Switzerland, as Supervisory Authority of the United International Bureaux for the Protection of Industrial, Literary and Artistic Property, the Interunion Coordination Committee, and the Director of the said Bureaux, are invited to take the necessary measures for the implementation of the present Resolution.

[End]