

BUREAUX INTERNATIONAUX  
RÉUNIS POUR LA PROTECTION  
DE LA PROPRIÉTÉ INTELLECTUELLE  
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# BIRPI

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**UNION DE PARIS: COMITÉ EXÉCUTIF, QUATRIÈME SESSION**  
**PARIS UNION: EXECUTIVE COMMITTEE, FOURTH SESSION**

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(Geneva, September 24 to 27, 1968)

COMMENTS ON  
THE PROPOSALS CONCERNING THE ORGANIZATIONAL  
RULES OF THE NEW ICIREPAT

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1. Reference is made to document CEP/IV/5. Comments from three further countries--Austria, Sweden and United Kingdom--have been received since the preparation of document CEP/IV/5. These comments are reproduced in the Annexes to this document.

2. The Committee is invited to take these documents into account.



Comments of Austria  
(dated July 10, 1968)

"I. Observations relating to international law

(1) With regard to the planned new institution, it should be pointed out that its legal status is not absolutely clear, nor is it comparable with currently existing institutions.

BIRPI already provides the administration and secretariat for various international Unions. The legal status of these intergovernmental organizations rests in each case on a multi-lateral agreement.

It is perfectly possible, and even provided for in the OMPI Convention, that BIRPI may assume the administration of other international agreements in the field of the protection of industrial property or copyright.

In document CR/II/8, paragraph 3, it is stated that ICIREPAT as constituted at present is not a legal entity, since it is not based on a charter or treaty. Paragraph 15 of the same document states the necessity of establishing a statute (together with rules of procedure).

The Draft does not, however, provide for the drawing up of a multilateral agreement as a basis for the establishment of ICIREPAT as an intergovernmental organization. ICIREPAT would be much more a committee of the Paris Union, that is, an organ of an already existing organization. It is in keeping with this that the Organizational Rules should be adopted as the legal basis for setting up this new organ of an already existing organ of the organization (Paris Union).

It is not made absolutely clear whether the new organ, as obviously originally intended, will itself become a legal entity. Possessing a separate budget is no sure guarantee of this, especially as the budget, according to Article 8, paragraph (3), has a certain connection with the budget of the Paris Union.

The lack of clearness results particularly from the drafting of Article 2. The Article is headed "Membership." The term "membership," together with the name according to Article 1, paragraph (1), suggests the formation of a committee the legal entity of which, although the committee has a certain amount of independence, is that of the Paris Union and the legal basis of which is constituted indirectly by the Paris Convention as a multilateral agreement.



According to Article 2, paragraph (1)(a), of the Draft, however, countries may become members of ICIREPAT by making a declaration and at the same time undertaking to assume certain obligations. This sounds more like the creation of a separate intergovernmental organization. The question then arises whether such an intergovernmental organization should not have a special multilateral agreement as its legal basis.

(2) According to the first and last sentences of the Preamble and Article 15 of the Draft, the Executive Committee of the Paris Union is responsible for the establishment and amendment of the Organizational Rules. But the Executive Committee is only a limited Committee of the Paris Union Conference of Representatives.

It appears (subject to a decision on the first question) dubious both in fact and in law that the legal basis of an organ of the Paris Union should be established and amended not by a plenary assembly of the Union but by one of its subcommittees. On the one hand, not all ICIREPAT member countries are necessarily represented on the Executive Committee and, on the other hand, in certain cases countries not belonging to ICIREPAT are entitled to vote.

In so far as ICIREPAT is set up as a committee of the Paris Union, it would appear that the plenary organ of the Union, that is, the Conference of Representatives, is more competent than the Executive Committee to establish the Organizational Rules. Responsibility for amendment of the Organizational Rules should be entrusted to the new Committee (ICIREPAT) (Amendment of Article 15 of the Draft), in order to ensure that all member countries, and member countries alone, are entitled to vote.

(3) The obligations of member countries include on the one hand direct performance of work in their own national patent authority (Patent Office) and on the other hand contributions to the work of BIRPI in the form of either money or services.

(a) The Draft contains no explicit ruling on the nature and extent of the direct participation of the Patent Offices. Tasks of this kind will clearly be assumed, even in the future, only with the consent of the member country concerned. In this case a dangerous situation could arise only if the task could be imposed on a particular member country against its own wishes by means of a majority vote of the other member countries, a state of affairs which would appear to be practically out of the question.



(b) According to Article 2, paragraph (1)(b), of the Draft, the extent of the financial and other contributions of member countries to the work of BIRPI is to be specified and announced in the Executive Committee. As already pointed out, the Executive Committee is only a Committee of the Conference of Representatives of the Paris Union, to which not all countries parties to the Paris Convention belong. The result is that in certain circumstances not all ICIREPAT member countries will be represented in the Executive Committee. It is true that all Paris Union member countries not represented in the Executive Committee may send observers. The question should, however, be examined whether it is legally sound to have observers making binding declarations on behalf of their Governments (see also Point II(2) in this connection).

## II. Observations relating to subject matter

Article 6 contains certain ambiguities in relation to Articles 5 and 14.

(1) As a result of the negative wording of Article 6, paragraph (1)(a): "Membership...shall be limited to those countries ....whose....," the impression is given that countries could be excluded from membership of the Committees even if they satisfy the necessary criteria. For this reason, it is proposed that the provision should be worded positively: "Those countries.... whose....shall be eligible for membership...." (see also Point (3)).

(2) According to Article 6, paragraph (1)(b), the criteria for membership of the working groups are to be outlined in the rules of procedure. According to Article 14, paragraph (2), the rules of procedure are to be established by the respective working groups themselves. This presents a theoretically insoluble initial problem, since the formation of committees to establish membership criteria presupposes that rules of procedure already exist, whereas the rules of procedure themselves can only be established once the committees have been set up. The problem could be solved by making either ICIREPAT itself or provisional committees (transitional solution) responsible for drawing up the rules of procedure.

(3) According to Article 6, paragraph (1)(c), each country shall be its own judge of the question whether it satisfies the criteria for membership of the Technical Committees. This is



in contradiction to Article 6, paragraph (2), according to which membership in special working groups shall be decided by the Technical Coordination Committee. In this connection it should be pointed out that according to Article 5, paragraphs (1) and (2), the Technical Committees are clearly also to be considered special working groups (Article 5, paragraph (2): "Other working groups with special tasks..."). It would seem necessary to clear up this point on the principle that all ICIREPAT member countries which satisfy the relevant criteria are eligible for membership (see also Point (1)).

(4) Instead of the provision in Article 6, paragraph (3), the present more flexible and democratic solution of complete re-election every so many years is preferred. The number of patent applications would not seem to be the only relevant or materially valid argument for permanent appointment. Complete re-election would not in any case exclude the possibility of re-electing individual members.

For this reason, the following text is proposed for Article 6, paragraph (3): "The Technical Coordination Committee shall be composed of eight countries members of ICIREPAT, elected for a period of ..... years."

(Original: German)

Comments of Sweden  
(dated July 15, 1968)

"Referring to your circular note of April 16, 1968 (No 735), I have the honour to inform you that the Swedish Government is agreeable to the "Proposals concerning the Organizational Rules of the New ICIREPAT", attached to the said note."



Comments of United Kingdom

(dated August 16, 1968)

"Note 25 envisages the ABCS being a "working group" within the meaning of Article 5. This seems to mean that it will operate as a formal Committee with a secretary from the International Bureau (Article 10) and that representatives of both the International Bureau and the I.I.B. will be present at its meetings (Note 42). In fact the ABCS carries out its monitoring operations on an informal, day-to-day basis and it does not seem suited to the formal constitution implied. It is suggested that this be dealt with either (a) by omitting the reference to working groups in Article 10(1) and Note 42 or (preferably) (b) by deleting the last sentence of Note 25, thus leaving it open to treat the ABCS as a special ad hoc operation outside the proper "working groups". Those in my Office who have experience of this work attach great importance to this and I am impressed by what they say. We are, after all, concerned to produce results rather than organisation charts."

(Excerpt from a letter of the  
U.K. Comptroller-General of  
Patents, Designs and Trade Marks)