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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

WIPO GENERAL ASSEMBLY WORKING GROUP ON CONSTITUTIONAL REFORM

Fifth Session
Geneva, February 18 to 21, 2002

CONVENTION ESTABLISHING
THE WORLD INTELLECTUAL PROPERTY ORGANIZATION
- DRAFT TEXTS OF AMENDMENTS AGREED IN PRINCIPLE

Document prepared by the Secretariat

1. At the fourth session of the Working Group on Constitutional Reform (“the Working Group”), the Working Group discussed the draft provisions contained in document WO/GA/WG-CR/4/2 (“Convention Establishing the World Intellectual Property Organization – Draft Texts of Amendments Agreed in Principle”). The said document sets out draft provisions for the implementation, in the Convention Establishing the World Intellectual Property Organization (“the WIPO Convention”), of the various proposed reforms that have been agreed in principle by the Working Group, as well as options for provisions in respect of outstanding proposals on which agreement in principle has not yet been reached by the Working Group. The issues on which the Working Group does not yet have an agreed position are:

(i) the size and the criteria for determining the composition of the Coordination Committee (see document A/36/10, paragraph 10); and

(ii) the creation of a unitary Assembly, as the competent Assembly for all WIPO-administered treaties (see document A/36/10, paragraph 14).

2. As the Working Group did not reach an agreement on the outstanding items described above, the following pages of this document reproduce (as an annex to this document) the draft provisions in the same format and content as those originally distributed and discussed at the fourth session of the Working Group, as contained in document WO/GA/WG -CR/4/2.

[Annex follows]

[FORMER HEADER]

WO/GA/WG-CR/4/2

ORIGINAL: English

DATE: June 17, 2001

**WIPO GENERAL ASSEMBLY WORKING GROUP ON
CONSTITUTIONAL REFORM**

**Fourth Session
Geneva, September 11 to 14, 2001**

CONVENTION ESTABLISHING
THE WORLD INTELLECTUAL PROPERTY ORGANIZATION
— DRAFT TEXTS OF AMENDMENTS AGREED IN PRINCIPLE

Document prepared by the Secretariat

1. These sessions of the Working Group on Constitutional Reform (“the Working Group”) held so far have resulted in “agreement in principle” to recommend a number of proposed amendments to the constitutional structure of WIPO and of the Unions administered by WIPO.
2. By “agreement in principle,” the Working Group has intended to signify tentative or provisional agreement to proceed with a particular proposal, subject, nevertheless, to a review of the proposal in the context of the complete set or package of proposals that may emerge from the discussions of the Working Group. In other words, no particular proposal is to be regarded as finally agreed until the discussions of all proposals have been completed to the satisfaction of the Working Group.

3. The present document sets out draft provisions for the implementation, in the Convention Establishing the World Intellectual Property Organization (“the WIPO Convention”), of the various proposed reforms that have been agreed in principle by the Working Group, namely,

(i) unitary contributions system and changes in contribution classes (see document WO/GA/WG -CR/3, paragraphs 36 to 38, and A/35/3, paragraph 6);

(ii) annual periodicity of ordinary sessions of the Assemblies of member States (see document WO/GA/WG -CR/3, paragraph 51, WO/GA/WG -CR/2/8, paragraph 22, and A/35/3, paragraph 7); and

(iii) the abolition of the WIPO Conference (see document WO/GA/WG-CR/3/6, paragraph 12).

4. In addition, the present document sets out options for provisions in respect of outstanding proposals on which agreement in principle has not yet been reached by the Working Group in order to advance discussion on these issues. The issues in this category are:

(i) the abolition of the Executive Committees of the Paris, Berne and PCT Unions and the composition and maintenance or abolition of the Coordination Committee (see documents WO/GA/WG -CR/2/4, WO/GA/WG -CR/3/4 and WO/GA/WG -CR/3/6, paragraphs 13 to 51); and

(ii) the creation of a unitary Assembly, namely the WIPO General Assembly, as the competent Assembly for all WIPO-administered treaties (see documents WO/GA/WG -CR/3/5 and WO/GA/WG -CR/3/6, paragraphs 52 to 61).

5. Since the constitutional structure of WIPO results from the interrelation of all the treaties administered by WIPO (see, in general, document WO/GA/WG -CR/2), the present document needs to be considered in conjunction with document WO/GA/WG-CR/4/3 (“Paris Convention for the Protection of Industrial Property – Draft Texts of Amendments to Administrative and Financial Provisions Agreed in Principle”). The latter document sets out draft texts for the implementation of proposals agreed in principle and draft texts of options for issues still under consideration in the context of the Paris Convention as a treaty that typifies the WIPO-administered treaties that establish contribution-financed Unions.

6. In the ensuing document the text of any modifications proposed to the WIPO Convention is presented in **bold italics**, where words in the original have been changed or new words inserted, and by “(---)”, where words have been deleted without replacement. To facilitate ease of reference and comparison, the Notes relating to each Article reproduce the existing provision of the WIPO Convention in a clearly distinguishable box.

**Convention Establishing the World Intellectual
Property Organization**

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Notes on Preamble

0.01 No change is proposed to the Preamble.

Preamble

The Contracting Parties,

Desiring to contribute to better understanding and cooperation among States for their mutual benefit on the basis of respect for their sovereignty and equality,

Desiring, in order to encourage creative activity, to promote the protection of intellectual property throughout the world,

Desiring to modernize and render more efficient the administration of the Unions established in the fields of the protection of industrial property and the protection of literary and artistic works, while fully respecting the independence of each of the Unions, agree as follows:

Preamble

The Contracting Parties,

Desiring to contribute to better understanding and cooperation among States for their mutual benefit on the basis of respect for their sovereignty and equality,

Desiring, in order to encourage creative activity, to promote the protection of intellectual property throughout the world,

Desiring to modernize and render more efficient the administration of the Unions established in the fields of the protection of industrial property and the protection of literary and artistic works, while fully respecting the independence of each of the Unions,
agree as follows:

Notes on Article 1

1.01 No change is proposed to this Article.

**Article 1 of the WIPO Convention
Establishment of the Organization**

The World Intellectual Property Organization is hereby established.

Article 1
Establishment of the Organization

The World Intellectual Property Organization is hereby established.

[End of Article 1]

Notes on Article 2

2.01 No change is proposed to this Article.

2.02 It may be noted that the definition of “intellectual property” in **Article 2(viii)** is out of date insofar as it does not include specific mention of geographical indications, rights in respect of know-how or undisclosed information and layout designs of integrated circuits and insofar as it specifically mentions scientific discoveries (cf. the scope of “intellectual property” in Article 1.2 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement)). No attempt has been made to suggest a modification to this provision, however, as such a proposal would seem to be beyond the mandate of the exercise before the Working Group.

Article 2 of the WIPO Convention Definitions

For the purposes of this Convention:

- (i) “Organization” shall mean the World Intellectual Property Organization (WIPO);
- (ii) “International Bureau” shall mean the International Bureau of Intellectual Property;
- (iii) “Paris Convention” shall mean the Convention for the Protection of Industrial Property signed on March 20, 1883, including any of its revisions;
- (iv) “Berne Convention” shall mean the Convention for the Protection of Literary and Artistic Works signed on September 9, 1886, including any of its revisions;
- (v) “Paris Union” shall mean the International Union established by the Paris Convention;
- (vi) “Berne Union” shall mean the International Union established by the Berne Convention;
- (vii) “Unions” shall mean the Paris Union, the Special Unions and Agreements established in relation with that Union, the Berne Union, and any other international agreement designed to promote the protection of intellectual property whose administration is assumed by the Organization according to Article 4(iii);
- (viii) “intellectual property” shall include the rights relating to:
 - literary, artistic and scientific works,
 - performances of performing artists, phonograms, and broadcasts,
 - inventions in all fields of human endeavor,
 - scientific discoveries,
 - industrial designs,
 - trademarks, service marks, and commercial names and designations,
 - protection against unfair competition,and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Article 2
Definitions

For the purposes of this Convention:

- (i) "Organization" shall mean the World Intellectual Property Organization (WIPO);
- (ii) "International Bureau" shall mean the International Bureau of Intellectual Property;
- (iii) "Paris Convention" shall mean the Convention for the Protection of Industrial Property signed on March 20, 1883, including any of its revisions;
- (iv) "Berne Convention" shall mean the Convention for the Protection of Literary and Artistic Works signed on September 9, 1886, including any of its revisions;
- (v) "Paris Union" shall mean the International Union established by the Paris Convention;
- (vi) "Berne Union" shall mean the International Union established by the Berne Convention;
- (vii) "Unions" shall mean the Paris Union, the Special Unions and Agreements established in relation with that Union, the Berne Union, and any other international agreement designed to promote the protection of intellectual property whose administration is assumed by the Organization according to Article 4(iii);
- (viii) "intellectual property" shall include the rights relating to:
 - literary, artistic and scientific works,
 - performances of performing artists, phonograms, and broadcasts,
 - inventions in all fields of human endeavor,
 - scientific discoveries,
 - industrial designs,
 - trademarks, service marks, and commercial names and designations,
 - protection against unfair competition,and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

[End of Article 2]

Notes on Article 3

3.01 No change is proposed to this Article.

**Article 3 of the WIPO Convention
Objectives of the Organization**

The objectives of the Organization are:

- (i) to promote the protection of intellectual property throughout the world through cooperation among States and, where appropriate, in collaboration with any other international organization,
- (ii) to ensure administrative cooperation among the unions .

Article3
ObjectivesoftheOrganization

TheobjectivesoftheOrganizationare:

- (i) topromotetheprotectionofintellectualpropertythroughouttheworldthrough cooperationamongStatesand,whereappropriate ,incollaborationwithanyother internationalorganization,
- (ii) toensureadministrativecooperationamongtheUnions.

[EndofArticle3]

Notes on Article 4

4.01 No change is proposed to this Article.

4.02 It may be noted, again, that *Article 4 (ii)* is out of date insofar as it does not refer to certain treaties concluded under the aegis of WIPO for which the Organization “performs [or will, once the treaties enter into force, perform] the administrative tasks,” such as the WIPO Copyright Treaty, the WIPO Performances and Phonograms Treaty and the Patent Law Treaty. If desired, the provision could be supplemented by words to the following effect: **“and relating to any other treaty concluded under the aegis of the Organization .”**

Article 4 of the WIPO Convention Functions

In order to attain the objectives described in Article 3, the Organization, through its appropriate organs, and subject to the competence of each of the Unions:

- (i) shall promote the development of measures designed to facilitate the efficient protection of intellectual property throughout the world and to harmonize national legislation in this field;
- (ii) shall perform the administrative tasks of the Paris Union, the Special Unions established in relation with that Union, and the Berne Union;
- (iii) may agree to assume, or participate in, the administration of any other international agreement designed to promote the protection of intellectual property;
- (iv) shall encourage the conclusion of international agreements designed to promote the protection of intellectual property;
- (v) shall offer its cooperation to States requesting legal-technical assistance in the field of intellectual property;
- (vi) shall assemble and disseminate information concerning the protection of intellectual property, carry out and promote studies in this field, and publish the results of such studies;
- (vii) shall maintain services facilitating the international protection of intellectual property and, where appropriate, provide for registration in this field and the publication of the data concerning the registrations;
- (viii) shall take all other appropriate action.

Article 4

Functions

In order to attain the objectives described in Article 3, the Organization, through its appropriate organs, and subject to the competence of each of the Unions:

- (i) shall promote the development of measures designed to facilitate the efficient protection of intellectual property throughout the world and to harmonize national legislation in this field;
- (ii) shall perform the administrative tasks of the Paris Union, the Special Unions established in relation with that Union, and the Berne Union;
- (iii) may agree to assume, or participate in, the administration of any other international agreement designed to promote the protection of intellectual property;
- (iv) shall encourage the conclusion of international agreements designed to promote the protection of intellectual property;
- (v) shall offer its cooperation to States requesting legal -technical assistance in the field of intellectual property;
- (vi) shall assemble and disseminate information concerning the protection of intellectual property, carry out and promote studies in this field, and publish the results of such studies;
- (vii) shall maintain services facilitating the international protection of intellectual property and, where appropriate, provide for registration in this field and the publication of the data concerning the registrations;
- (viii) shall take all other appropriate action.

[End of Article 4]

Notes on Article 5

5.01 No change is proposed to this Article.

Article 5 of the WIPO Convention Membership

(1) Membership in the Organization shall be open to any State which is a member of any of the Unions as defined in Article 2(vii).

(2) Membership in the Organization shall be equally open to any State not a member of any of the Unions, provided that:

- (i) it is a member of the United Nations, any of the Specialized Agencies brought into relationship with the United Nations, or the International Atomic Energy Agency, or is a party to the Statute of the International Court of Justice, or
- (ii) it is invited by the General Assembly to become a party to this Convention.

Article 5

Membership

(1) Membership in the Organizations shall be open to any State which is a member of any of the Unions as defined in Article 2(vii).

(2) Membership in the Organizations shall be equally open to any State not a member of any of the Unions, provided that:

- (i) it is a member of the United Nations, any of the Specialized Agencies brought into relationship with the United Nations, or the International Atomic Energy Agency, or is a party to the Statute of the International Court of Justice, or
- (ii) it is invited by the General Assembly to become a party to this Convention.

[End of Article 5]

Notes on Article 6

6.01 The Working Group has discussed two reforms in relation to the WIPO General Assembly as the principal organ of Member States of WIPO: (i) the abolition of the WIPO Conference as an additional, but, in practice, redundant organ of member States; and (ii) the possibility of making the WIPO General Assembly the competent unitary Assembly for all WIPO-administered treaties.

6.02 The Working Group reached agreement in principle to recommend that the first reform – the abolition of the WIPO Conference – should be implemented (see documents WO/GA/WG-CR/3/3 and WO/GA/WG-CR/3/6, paragraph 12). **Article 6(1)(a)** seeks to implement this reform in part by according to all States party to the WIPO Convention membership in the WIPO General Assembly (thereby suppressing, as a condition of such membership, that States be party to the WIPO Convention *and* member of one of the Unions administered by WIPO).

6.03 While there was general interest in the second reform – making the WIPO General Assembly the competent unitary Assembly for all WIPO-administered treaties – the Working Group expressed a desire to consider further how such a reform would work in practice (see document WO/GA/WG-CR/3/6, paragraphs 52 to 61). Article 6 sets out, in square brackets, the various provisions which it is considered would need to be adopted in order to establish the General Assembly as such a unitary Assembly. In addition to these provisions in Article 6 of the WIPO Convention, corresponding enabling or transfer provisions would need to be adopted in each other WIPO-administered treaty which has an Assembly. An example of such corresponding provisions is to be found in the provisions in square brackets in the draft text of Article 13 of the Paris Convention, contained in document WO/GA/WG-CR/4/3.

6.04 **Article 6(1)(a)** contains the first enabling provision needed to constitute the General Assembly as the unitary Assembly. That provision is contained in square brackets and would admit to membership of the General Assembly States and intergovernmental organizations that were party to another WIPO-administered treaty and, thus, member of the Assembly of that other treaty for which the General Assembly would henceforth assume competence. Such admission, however, would be only “for the purposes of matters concerning” the other WIPO-administered treaty.

**Article 6 of the WIPO Convention
General Assembly**

(1) (a) There shall be a General Assembly consisting of the States party to this Convention which are members of any of the Unions.

[continues]

Article 6
General Assembly

(1) (a) *There shall be a General Assembly consisting of the States party to this Convention (----)[and, for the purposes of matters concern ing any other international agreement administered by the Organization and for which the General Assembly is the competent Assembly, States and intergovernmental organizations party to that other international agreement].*

[Article 6 continues]

[Notes on Article 6, continued]

6.05 *Article 6(1)(b) and (c)* contain, in square brackets, the addition of the mention of intergovernmental organizations, as a consequence of the admission of such intergovernmental organizations to the General Assembly for the purposes indicated in the preceding paragraph. There are several WIPO-administered treaties which certain intergovernmental organizations are eligible to join, namely the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (the Madrid Protocol), the WIPO Copyright Treaty, the WIPO Performances and Phonograms Treaty, the Patent Law Treaty and the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs (the Hague Agreement).

Article 6 of the WIPO Convention

[continued]

(b) The Government of each State shall be represented by one delegate, whom may be assisted by alternate delegates, advisors, and experts.

(c) The expenses of each delegation shall be borne by the Government which has appointed it.

[continues]

[Article6,continued]

(b) TheGovernmentofeachState [*andeachintergovernmentalorganization*] shall berepresentedbyonedelagate,whomaybeassistedbyalternatedelagates,advisors,and experts.

(c) TheexpensesofeachdelegationshallbebornebytheGovernment [*or intergovernmentalorganization*] whichhasappointedit.

[Article6continues]

[Notes on Article 6, continued]

6.06 *Article 6(2)* sets out the powers and functions of the General Assembly. Those powers and functions will need to be modified as a consequence of the abolition of the WIPO Conference and the assumption by the General Assembly of the role of unitary Assembly.

6.07 *Article 6(2)(ia) and (vbis)* would introduce into the powers of the General Assembly the two independent functions at present exercised by the WIPO Conference, which would need to be re-attributed to the General Assembly as a consequence of the abolition of the WIPO Conference. The two provisions correspond to those which are found at present in Article 7(2)(i) and (iv) of the WIPO Convention.

6.08 *Article 6(2)(ixbis)* contains a new provision, in square brackets, which would need to be introduced if the General Assembly were to assume the role of unitary Assembly. The provision enables the General Assembly to exercise such powers and functions as are accorded by a WIPO-administered treaty to the Assembly of that treaty for which the General Assembly assumes competence.

Article 6 of the WIPO Convention

[continued]

- (2) The General Assembly shall:
- (i) appoint the Director General upon nomination by the Coordination Committee;
 - (ii) review and approve reports of the Director General concerning the Organization and give him all necessary instructions;
 - (iii) review and approve the reports and activities of the Coordination Committee and give instructions to such Committee;
 - (iv) adopt the biennial budget of expenses common to the Unions;
 - (v) approve the measures proposed by the Director General concerning the administration of the international agreements referred to in Article 4(iii);
 - (vi) adopt the financial regulations of the Organization;
 - (vii) determine the working languages of the Secretariat, taking into consideration the practice of the United Nations;
 - (viii) invite States referred to under Article 5(2)(ii) to become party to this Convention;
 - (ix) determine which States not Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;
 - (x) exercise such other functions as are appropriate under this Convention.

[continues]

[Article 6, continued]

(2) The General Assembly shall:

- (ia) *discuss matters of general interest in the field of intellectual property and may adopt recommendations relating to such matters, having regard for the competence and autonomy of the Unions;*
- (i) appoint the Director General upon nomination by the Coordination Committee;
- (ii) review and approve reports of the Director General concerning the Organization and give him all necessary instructions;
- (iii) review and approve the reports and activities of the Coordination Committee and give instructions to such Committee;
- (iv) adopt the biennial budget of expenses common to the Unions;
- (v) approve the measures proposed by the Director General concerning the administration of the international agreements referred to in Article 4(iii);
- (vbis) *adopt amendments to this Convention as provided in Article 17;*
- (vi) adopt the financial regulations of the Organization;
- (vii) determine the working languages of the Secretariat, taking into consideration the practice of the United Nations;
- (viii) invite States referred to under Article 5(2)(ii) to become party to this convention;
- (ix) determine which States not Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;
- [(ixbis) *on matters concerning any international agreement administered by the Organization and for which the General Assembly is the competent Assembly, exercises such powers and functions as are accorded by such agreement to the Assembly of contracting parties of that agreement;*]
- (x) exercises such other functions as are appropriate under this Convention.

[Article 6 continues]

[Notes on Article 6, continued]

6.9 **Article 6(3)** regulates voting rights in the General Assembly. Several modifications would need to be introduced to the existing provisions of Article 6(3) in consequence of the abolition of the WIPO Conference and the attribution to the General Assembly of the role of unitary Assembly.

6.10 **Article 6(3)(aa)** deals with the voting rights of an intergovernmental organization which, by virtue of Article 6(1)(a), is admitted to the General Assembly for the purposes or matters concerning a WIPO-administered treaty to which the intergovernmental organization is party. It provides, in essence, for the continuation in the General Assembly, in respect of matters concerning the WIPO-administered treaty to which the intergovernmental organization is party, of the same rights with respect to voting as the intergovernmental organization enjoys in that WIPO-administered treaty. The provision does not, therefore, create any new voting rights on the part of intergovernmental organizations, but merely transfer existing rights to the new context of the General Assembly acting as the Assembly for the WIPO-administered treaty to which the intergovernmental organization is party.

6.11 **Article 6(3)(ab)** contains a basic rule designed to implement the principle that a State (or intergovernmental organization) should have the right to vote only in respect of treaties by which it is bound. This provision, without the text in square brackets, would be necessary as a consequence of the abolition of the WIPO Conference, since the result of that abolition would be membership in the General Assembly of States party to the WIPO Convention but not members of one of the Unions administered by WIPO. The text within square brackets would be necessary in the event that the General Assembly were to be made competent as the unitary Assembly for all WIPO-administered treaties.

6.12 **Article 6(3)(bbis)** deals with the rule on quorum in respect of the General Assembly's role as a unitary Assembly. It provides that, where the General Assembly is acting as the competent Assembly for another WIPO-administered treaty, the rule on quorum in that other treaty applies.

Article 6 of the WIPO Convention

[continued]

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

(b) One-half of the States members of the General Assembly shall constitute a quorum.

[continues]

[Article 6 continued]

(3) (a) *Subject to paragraph (ab), each State, whether a member of one or more Unions, shall have one vote in the General Assembly.*

[(aa) On matters relating to any international agreement administered by the Organization and for which the General Assembly is the competent Assembly, an intergovernmental organization party to such agreement may exercise such right to vote as is accorded to it by that agreement.]

(ab) No State [or intergovernmental organization] may vote in the General Assembly on any question relating to a treaty for which the General Assembly is competent and to which the State or intergovernmental organization is not a party.

(b) *[Subject to paragraph (bbis),] one-half of the States members of the General Assembly shall constitute a quorum.*

[(bbis) On matters concerning any international agreement administered by the Organization and for which the General Assembly is the competent Assembly, the quorum shall be determined by the provisions governing the quorum in such agreement.]

[Article 6 continues]

[Notes on Article 6, continued]

Article 6 of the WIPO Convention

[continued]

(c) Notwithstanding the provisions of subparagraph (b), if, in any session, the number of States represented is less than one-half but equal to or more than one-third of the States members of the General Assembly, the General Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the following conditions are fulfilled. The International Bureau shall communicate the said decisions to the States members of the General Assembly which were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of States having thus expressed their vote or abstention attains the number of States which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(d) Subject to the provisions of subparagraphs (e) and (f), the General Assembly shall make its decisions by a majority of two-thirds of the votes cast.

(e) The approval of measures concerning the administration of international agreements referred to in Article 4(iii) shall require a majority of three-fourths of the votes cast.

[continues]

[Article 6, continued]

(c) Notwithstanding the provisions of subparagraph (b), if, in any session, the number of States represented is less than one-half but equal to or more than one-third of the States members of the General Assembly, the General Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the following conditions are fulfilled. The International Bureau shall communicate the said decision to the States members of the General Assembly which were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of States having thus expressed their vote or abstention attains the number of States which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(d) Subject to the provisions of subparagraphs (e) [---], (f) *and [fbis]*, the General Assembly shall make its decisions by a majority of two-thirds of the votes cast.

(e) The approval of measures concerning the administration of international agreements referred to in Article 4(iii) shall require a majority of three-fourths of the votes cast.

[Article 6 continues]

[Notes on Article 6, continued]

6.13 *Article 6(3)(fbis)* regulates the manner of taking decisions where the General Assembly is acting as a unitary Assembly. It proposes that, in such cases, the manner of reaching decisions should be determined by the provisions in the WIPO-administered treaty for which the General Assembly is assuming competence. The expression “manner of reaching decisions” is used in preference to a reference to required majorities so as to accommodate the different provisions to be found in the various WIPO-administered treaties, such as Article 21(4) of the Geneva Act of the Hague Agreement, which refer to consensus.

6.14 *Article 6(3)(g)* contains a technical modification which would need to be introduced if the General Assembly acts as a unitary Assembly. In such an event, the General Assembly would assume competence for the Assemblies of the Paris and Berne Unions. Thus, reference to the latter Assemblies is replaced by reference to “membership” of the Paris and Berne Unions.

6.15 *Article 6(3)(i)* contains a technical modification which would need to be introduced if the General Assembly acts as a unitary Assembly. It includes, for such purposes, reference to intergovernmental organizations.

Article 6 of WIPO Convention

[continued]

(f) The approval of an agreement with the United Nations under Articles 57 and 63 of the Charter of the United Nations shall require a majority of nine-tenths of the votes cast.

(g) For the appointment of the Director General (paragraph (2)(i)), the approval of measures proposed by the Director General concerning the administration of international agreements (paragraph (2)(v)), and the transfer of headquarters (Article 10), 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.

(h) Abstentions shall not be considered as votes.

(i) A delegate may represent, and vote in the name of, one State only.

[continues]

[Article6,continued]

(f) The approval of an agreement with the United Nations under Articles 57 and 63 of the Charter of the United Nations shall require a majority of nine-tenths of the votes cast.

[(fbis) On matters concerning any international agreement administered by the Organization and for which the General Assembly is the competent Assembly, the manner of reaching decisions shall be determined by the corresponding provisions in such agreement].

(g) For the appointment of the Director General (paragraph (2)(i)), the approval of measures proposed by the Director General concerning the administration of international agreements (paragraph (2)(v)), and the transfer of headquarters (Article 10), the required majority must be attained not only in the General Assembly but also in the *[(----) membership]* of the Paris Union and the *[membership]* of the Berne Union.

(h) Abstentions shall not be considered as votes.

(i) A delegate may represent, and vote in the name of, one State *[or intergovernmental organization]* only.

[Article6continues]

[Noteso narticle6,continued]

6.16 TheWorkingGroupagreedinprincipletorecommendthatamendmentsbeintroduced toWIPO-administeredtreatiestoprovideforordinarysessionsoftheGeneralAssemblyand theAssembliesoftheUnionsadministeredbyWIPOto takeplaceannually,ratherthanonce everytwoyears(seedocumentsWO/GA/WG -CR/3,paragraph51andWO/GA/WG -CR/2/8, paragraph22). **Article6(4)(a)** implements that recommendation by establishing annual periodicityfortheordinarysessionsoftheGeneral Assembly.

6.17 VariousprovisionsinArticle6oftheWIPOConventionrefertotheCoordination Committee(for example,Article6(2)(i)and(iii)andArticle6(4)(b)).Inpreviousessionsof theWorkingGroupcertaindelegationsexpressedtheviewthat,iftheGeneralAssemblywere tobecomethecompetentunitaryAssemblyforallWIPO-administeredtreaties,itwouldno longerbenecessarytomaintaintheCoordinationCommittee(seedocumentsA/35/3, paragraph10,andWO/GA/WG -CR/3/6,paragraphs14to 51).Shouldthatviewfindfavor withtheWorkingGroup,itwouldbenecessarytoreviewthereferencestotheCoordination CommitteethroughoutArticle6.

Article6oftheWIPOConvention

[continued]

(4) (a) TheGeneralAssemblyshallmeetonceineverysecondcalendaryearin ordinarysession,uponconvocationbytheDirectorGeneral.

(b) TheGeneralAssemblyshallmeetinextraordinarysessionuponconvocationby theDirectorGeneraleitherattherequestoftheCoordinationCommittee orattherequestof one-fourthoftheStatesmembersoftheGeneralAssembly.

(c) MeetingsshallbeheldattheheadquartersoftheOrganization.

[continues]

[Article 6, continued]

(4) (a) The General Assembly shall meet once in every (---) calendar year in ordinary session, upon convocation by the Director General.

(b) The General Assembly shall meet in extraordinary session upon convocation by the Director General either at the request of the Coordination Committee or at the request of one-fourth of the States members of the General Assembly.

(c) Meetings shall be held at the headquarters of the Organization.

[Article 6 continues]

[Notes on Article 6, continued]

6.18 *Article 6(5)* is deleted since States party to the WIPO Convention but not members of any of the Unions will, as a consequence of the abolition of the WIPO Conference (see Articles 6(1)(a) and 7), become members of the WIPO General Assembly.

Article 6 of the WIPO Convention

[continued]

(5) States party to this Convention which are not members of any of the Unions shall be admitted to the meetings of the General Assembly as observers.

(6) The General Assembly shall adopt its own rules of procedure.

[Article6,continued]

[(5)] (----).

(6) TheGeneralAssemblyshalladoptitsownrulesofprocedure.

[EndofArticle6]

Notes on Article 7

7.01 *Article 7* is deleted in its entirety to reflect the Working Group's agreement in principle to recommend the abolition of the WIPO Conference (see documents WO/GA/WG -CR/3/3 and WO/GA/WG -CR/3/6, paragraph 12). The WIPO Conference's autonomous powers specified in Article 7(2)(i) and (iv) have been attributed to the General Assembly (see Article 6(2)(ia) and (v *bis*) above). The Conference's financial functions specified in Article 7(2)(ii) and (iii) have been subsumed into the new draft provisions which are intended to replace the financial provisions in the WIPO Convention and other WIPO treaties in order to reflect the practice of the unitary contributions system. The procedural and general functions of the Conference specified in Article 7(2)(v) and (vi) need no re-attribution, since corresponding powers already exist for the WIPO General Assembly in Article 6(2)(ix) and (x).

**Article 7 of the WIPO Convention
Conference**

(1) (a) There shall be a Conference consisting of the States party to this Convention whether or not they are members of any of the Unions.

(b) The Government of each State shall be represented by one delegate, whom may be assisted by alternate delegates, advisors, and experts.

(c) The expenses of each delegation shall be borne by the Government which has appointed it.

(2) The Conference shall:

- (i) discuss matters of general interest in the field of intellectual property and may adopt recommendations relating to such matters, having regard for the competence and autonomy of the Unions;
- (ii) adopt the biennial budget of the Conference;
- (iii) within the limits of the budget of the Conference, establish the biennial program of legal-technical assistance;
- (iv) adopt amendments to this Convention as provided in Article 17;
- (v) determine which States not Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;
- (vi) exercise such other functions as are appropriate under this Convention.

(3) (a) Each Member State shall have one vote in the Conference.

(b) One-third of the Member States shall constitute a quorum.

**[Article7
Conference]**

(----

[EndofArticle7]

[Notes on Article 7, continued]

Article 7 of the WIPO Convention

[continued]

(c) Subject to the provisions of Article 17, the Conference shall make its decisions by a majority of two-thirds of the votes cast.

(d) The amount of the contributions of States party to this Convention not members of any of the Unions shall be fixed by a vote in which only the delegates of such States shall have the right to vote.

(e) Abstentions shall not be considered as votes.

(f) A delegate may represent, and vote in the name of, one State only.

(4) (a) 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.

(b) The Conference shall meet in extraordinary session, upon convocation by the Director General, at the request of the majority of the Member States.

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

[Article8startsonpage37]

Notes on Article 8

8.01 Article 8(1) sets out the method for determining the composition of the Coordination Committee.

8.02 *Alternative A* provides, essentially, for the *status quo* with respect to the composition of the Coordination Committee. That *status quo* reflects the origin of WIPO in the joint secretariats for the Paris Union and the Berne Union. Thus, Article 8(1)(a) (in its existing text and in *Alternative A*) provides for the Coordination Committee to be composed of the members of the Executive Committees of the Paris Union and the Berne Union.

8.03 *Article 8(1)(c)* allows for representation in the Coordination Committee of States that are party to the WIPO Convention, but that are not members of the Paris or Berne Unions. These States, it will be recalled, are not members of the WIPO General Assembly, according to the present text of the WIPO Convention, but are members of the WIPO Conference (see Articles 6 and 7, above).

8.04 Two alternatives are provided for Article 8(1)(c). *Alternative AI* seeks to implement the *status quo* for the corresponding provision in the existing WIPO Convention, taking into account, however, the proposed abolition of the WIPO Conference. The abolition of the Conference requires the deletion of reference to the program or budget of that body (the deleted words at the beginning of the provision), as well as the substitution of the General Assembly for the Conference as the competent body to designate members of the Coordination Committee from the class of States that are party to the WIPO Convention but not members of one of the Unions.

**Article 8 of the WIPO Convention
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 the Executive Committee of the Berne Union, or both. However, if either of these Executive Committees is composed of more than one-fourth of the number of the countries members of the Assembly which elected it, then such Executive Committee shall designate from among its members the States which will be members of the Coordination Committee, in such a way that their numbers shall not exceed the one-fourth referred to above, it being understood that the country on the territory of which the Organization has its headquarters shall not be included in the computation of the said one-fourth.

(b) The Government of each State member of the Coordination Committee shall be represented by one delegate, whom may be assisted by alternated delegates, advisors, and experts.

(c) Whenever the Coordination Committee consider either matters of direct interest to the program or budget of the Conference and its agenda, or proposals for the amendment of this Convention which would affect the rights or obligations of State party to this Convention not members of any of the Unions, one-fourth of such States shall participate in the meetings of the Coordination Committee with the same rights as members of that Committee. The Conference shall, at each of its ordinary sessions, designate these States.

[continues]

Article 8
Coordination Committee

Alternative A

(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 the Executive Committee of the Berne Union, or both. However, if either of these Executive Committees is composed of more than one-fourth of the number of the countries members of the Assembly which elected it, then such Executive Committee shall designate from among its members the States which will be members of the Coordination Committee, in such a way that their numbers shall not exceed the one-fourth referred to above, it being understood that the country on the territory of which the Organization has its headquarters shall not be included in the computation of the said one-fourth.

(b) The Government of each State member of the Coordination Committee shall be represented by one delegate, whom may be assisted by alternated delegates, advisors, and experts.

(c) *Alternative A1*

Whenever the Coordination Committee considers (----) proposals for the amendment of this Convention which would affect the rights or obligations of States party to this Convention not members of any of the Unions, one-fourth of such States shall participate in the meetings of the Coordination Committee with the same rights as members of that committee. The (----) *General Assembly* shall, at each of its ordinary sessions, designate these States .

[Article 8 continues]

[Notes on Article 8, continued]

8.05 *Alternative A2* would delete altogether Article 8(1)(c). It would do so on the basis that the abolition of the WIPO Conference renders the provision unnecessary. It is clear, from the records of the 1967 Stockholm Conference at which the WIPO Convention was concluded, that Article 8(1)(c) was intended to safeguard the interests in the Coordination Committee of States party to the WIPO Convention, but not members of any of the unions, whenever the Coordination Committee was examining a question within the competence of the Conference:

“when the Coordination Committee examines questions within the competence of the Conference, it is joined by one-fourth of the States not members of any of the unions, who are elected by the Conference at each ordinary session (Article 8(1)(c)). According to the [original] BIRPIDraft, this was to occur when the Coordination Committee examined questions “of direct interest to the Conference.” The Committee [Main Committee V] considered that this wording was too vague and made it more specific by saying that the Coordination Committee would be joined by the representatives of non-Union countries when it considers either matters of direct interest to the program or budget of the Conference and its agenda, or proposals for the amendment of the Convention which would affect the rights or obligations of non-Union members of the Organization.”

(WIPO, *Records of the Intellectual Property Conference of Stockholm*, Volume II, page 1235).

8.06 It is submitted that the proposed abolition of the WIPO Conference would render Article 8(1)(c) otiose, since States party to the WIPO Convention but not members of one of the Unions would, for the purposes of matters concerning their rights or obligations as States party to the WIPO Convention, be voting members of the General Assembly (see the proposals with respect to Article 6, above).

Article 8 of the WIPO Convention

[continued]

(d) The expenses of each delegation shall be borne by the Government which has appointed it .

[continues]

[Article8,continued]

AlternativeA2

Noprovision

(d) TheexpensesofeachdelegationshallbebornebytheGovernmentwhichhas appointedit.

[Article8continues]

[Notes on Article 8, continued]

8.07 **Alternative B** for Article 8(1) proposes a radically different method for determining the composition of the WIPO Coordination Committee. Alternative B proposes de-linking the composition to the Executive Committees of the Paris and Berne Unions and establishing, instead, a simple numerical basis for the composition of the Coordination Committee (namely, one-fifth of the States party to the WIPO Convention). Alternative B thus emphasizes the role of the Coordination Committee as an executive committee, as opposed to its role as a body coordinating the activities of the various Unions. The latter role seems to be no longer necessary if the WIPO General Assembly were to act as a unitary Assembly for all WIPO-administered treaties. If this conception would find favor with the Working Group, and given that it is proposed that the General Assembly should meet in ordinary session once a year (see Article 6(4)(a)), thus ensuring coordination among the various Unions, considerations should also be given to the possibility of changing the name of the Coordination Committee to "Executive Committee." It is proposed that the question of remainders resulting from dividing the total number of members of WIPO by one-fifth should be dealt with in the Rules of Procedure of the Coordination Committee.

8.08 Alternative B of Article 8(1)(a) also sets out guidelines for the exercise by the General Assembly of its power of designating the States that would constitute the membership of the Coordination Committee. Those guidelines are threefold: (i) the extent of participation of States in WIPO-administered treaties; (ii) the extent of use of States or their nationals of the systems and services established under WIPO treaties; and (iii) the need for equitable geographical representation in the membership of the Coordination Committee.

8.09 The three guidelines given for the exercise of the General Assembly's power of designation reflect, for two of the guidelines, the provisions of the Paris and Berne Conventions on the exercise by the Assemblies of the Paris and Berne Unions of the power of electing members of the Executive Committees of those two Unions (it being recalled that those Executive Committees at present furnish the membership of the Coordination Committee). In this respect, Article 14(4) of the Paris Convention and Article 23(4) of the Berne Convention provide as follows:

“(4) In electing the members of the Executive Committee, the Assembly shall have due regard to an equitable geographical distribution and to the need for countries party to the Special Agreements established in relation with the Union to be among the countries constituting the Executive Committee.”

[Article 8, continued]

Alternative B

(1)(a) *There shall be a Coordination Committee consisting of one -fifth of the States party to this Convention. The General Assembly shall, at each of its ordinary sessions, designate those States taking into account the extent of participation of States in the various international agreements administered by the Organization , the extent of use by States or their nationals of the systems and services established under such agreements and the need for equitable geographical representation among the members of the Coordination Committee.*

(b) The Government of each State member of the Coordination Committee shall be represented by one delegate, who may be assisted by alternated delegates, advisors, and experts.

(c) (----)

(d) The expenses of each delegation shall be borne by the Government which has appointed it.

[Article 8c continues]

[Notes on Article 8, continued]

8.10 Article 8(2) of the existing text of the WIPO Convention was designed to allow for members of the Executive Committees of the Paris and Berne Unions (which constitute the membership of the Coordination Committee) to “represent” the interests of WIPO-administered treaties other than the Paris and Berne Conventions. Thus, the Report of the Main Committee V of the 1967 Stockholm Diplomatic Conference notes “In order not to complicate the composition of the Coordination Committee excessively, the other Unions could not be given direct representation on that Committee. The interests of these Unions can, however, be safeguarded by their members on the Executive Committees of the Paris Union or the Berne Union (Article 8(2)).” (WIPO, *Records of the Intellectual Property Conference of Stockholm*, Volume II, page 1234).

8.11 Two options are provided for Article 8(2). *Alternative A* preserves the *status quo*. *Alternative B* deletes the provision entirely on the grounds that the provision has outlived its relevance. In addition, if Alternative B of Article 8(1)(a) were to be recommended by the Working Group, the interests of other Unions administered by the Organization would already be taken into account in the determination of the composition of the Coordination Committee.

Article 8 of the WIPO Convention

[continued]

(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 States members of the Coordination Committee.

[continues]

[Article8,continued]

AlternativeA

(2) IftheotherUnionsadministeredbytheOrganizationwishtoberepresentedas suchintheCoordinationComm ittee,theirrepresentativesmustbeappointedfromamongthe StatesmembersoftheCoordinationCommittee.

AlternativeB

(2) (----)

[Article8continues]

[Notes on Article 8, continued]

8.12 **Article 8(3)** sets out the functions of the Coordination Committee. Two modifications are proposed to it.

8.13 The first modification is proposed to Article 8(3)(i). The existing text for this provision refers, at its commencement, to “the organs of the Unions,” reflecting the role of the Coordination Committee as a body coordinating between the Assemblies of the various Unions administered by WIPO. In view of the proposal to constitute the WIPO General Assembly as a unitary Assembly, **Alternative B** proposes the deletion of the reference to “the organs of the Unions.” In addition, the reference in Article 8(3)(i) to the WIPO Conference is proposed to be deleted in view of the abolition of that body.

8.14 The second modification proposed to Article 8(3) is the deletion of **subparagraph (iii)**. That provision refers, at present, to the function of the Coordination Committee in preparing the draft Agenda and the draft Program and Budget of the Conference (a function which, in practice, is purely formal).

Article 8 of the WIPO Convention

[continued]

(3) The Coordination Committee shall:

- (i) give advice to the organs of the Unions, the General Assembly, the Conference, and the Director General, on all administrative, financial and other matters of common interest either to two or more of the Unions, or to one or more of the Unions and the Organization, and in particular on the budget of expenses common to the Unions;
- (ii) prepare the draft agenda of the General Assembly;
- (iii) prepare the draft agenda and the draft program and budget of the Conference;
- (iv) [deleted]
- (v) when the term of office of the Director General is about to expire, or when there is a vacancy in the post of the Director General, nominate a candidate for appointment to such position by the General Assembly; if the General Assembly does not appoint its nominee, the Coordination Committee shall nominate another candidate; this procedure shall be repeated until the latest nominee is appointed 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 for the term preceding the assuming of office by the new Director General;
- (vii) perform such other functions as are allocated to it under this Convention.

[continues]

[Article 8, cont inued]

- (3) The Coordination Committee shall:
- (i) give advice to *[Alternative A: the organs of the Unions,] [Alternative B: (----)]* the General Assembly (----) and the Director General, on all administrative, financial and other matters of common interest either to two or more of the Unions, or to one or more of the Unions and the Organization, and in particular on the budget of expenses common to the Unions;
 - (ii) prepare the draft agenda of the General Assembly;
 - [(iii)] (----)
 - (iv) [deleted]
 - (v) when the term of office of the Director General is about to expire, or when there is a vacancy in the post of the Director General, nominate a candidate for appointment to such position by the General Assembly; if the General Assembly does not appoint its nominee, the Coordination Committee shall nominate another candidate; this procedure shall be repeated until the latest nominee is appointed 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 for the term preceding the assuming of office by the new Director General;
 - (vii) perform such other functions as are allocated to it under this Convention.

[Article 8 continues]

[Notes on Article 8, continued]

Article 8 of the WIPO Convention

[continued]

(4) (a) The Coordination Committee shall meet once every year in ordinary session, upon convocation by the Director General. It shall normally meet at the headquarters of the Organization.

(b) The Coordination Committee shall meet in extraordinary session, upon convocation by the Director General, either on his own initiative, or at the request of its Chairman or one-fourth of its members.

[continues]

[Article 8, continued]

(4) (a) The Coordination Committee shall meet once every year in ordinary session, upon convocation by the Director General. It shall normally meet at the headquarters of the Organization.

(b) The Coordination Committee shall meet in extraordinary session, upon convocation by the Director General, either on his own initiative, or at the request of its Chairman or one-fourth of its members.

[Article 8 continues]

[Notes on article 8, continued]

8.15 Two options are proposed for **Article 8(5)(a) Alternative A** preserve the *status quo* for that provision. It depends on the maintenance, in Article 8(1)(a), of the existing method of determining the composition of the Coordination Committee, namely, by reference to the members of the Executive Committee of the Paris and Berne Unions. **Alternative B** depends upon the adoption by the Working Group of Alternative B for Article 8(1)(a), which would eliminate the role of the Executive Committees of the Paris and Berne Unions in constituting the Coordination Committee.

8.16 **Article 8(6)** governs the way in which decisions are taken in the Coordination Committee. It provides, at present, in Article 8(6)(a), for decisions to be taken by a single majority, except where a member of the Coordination Committee requests a special recount in accordance with Article 8(6)(b). Such a special recount requires, for a proposal to be carried, that a simple majority also be obtained among the States which are members of the Executive Committee of the Paris Union and among the States that are members of the Executive Committee of the Berne Union. **Alternative A** in Article 8(6)(b) maintains the *status quo*. It depends upon Alternative A being recommended by the Working Group for Article 8(1)(a), thus continuing the role of the Executive Committees of the Paris and Berne Unions in determining the composition of the Coordination Committee.

8.17 **Alternative B** of Article 8(6) would delete the provision for a special recount in Article 8(6)(b). It depends upon the retention by the Working Group of the Alternative B for Article 8(1)(a) and, thus, the elimination of the role of the Executive Committees in determining the composition of the Coordination Committee.

Article 8 of the WIPO Convention

[continued]

(5) (a) 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.

(b) One-half of the members of the Coordination Committee shall constitute a quorum.

(c) A delegate may represent, and vote in the name of, one State only.

(6) (a) The Coordination Committee shall express its opinions and make its decisions by a simple majority of the votes cast. 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 subject of a special recount in the following manner: two separate lists shall be prepared, one containing the names of the States members of the Executive Committee of the Paris Union and the other the names of the States members 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.

[continues]

[Article 8, continued]

(5) (a) Each State [*Alternative A*: whether a member of one or both of the Executive Committees referred to in paragraph (1)(a),] [*Alternative B*: (----)] shall have one vote in the Coordination Committee.

(b) One-half of the members of the Coordination Committee shall constitute a quorum.

(c) A delegate may represent, and vote in the name of, one State only.

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

Alternative A

(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 subject of a special recount in the following manner: two separate lists shall be prepared, one containing the names of the States members of the Executive Committee of the Paris Union and the other the names of the States members 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.

Alternative B

(----)

[Article 8 continues]

[Notes on Article 8, continued]

8.18 *Alternative C* proposed the most radical solution to the Coordination Committee, namely, its abolition. This proposal was advanced by some delegations in the Working Group, but opposed by most. The proposal for the abolition of the Coordination Committee is based on the following arguments. The coordinating function of the body would not be needed if the General Assembly were to act as a unitary Assembly. This leaves the body with the tasks of an executive committee, with competences relating principally to staff matters and to the nomination of the Director General and the appointment of higher officials (Deputy Directors General and Assistant Directors General). The staff functions could be performed by a non-statutory body, such as the Program and Budget Committee. The appointment of the Director General and higher officials could be made by the General Assembly. Furthermore, the Coordination Committee has not, in the culture of the practice of WIPO, unlike corresponding organs in some other international organizations, functioned as an executive committee since extraordinary sessions of the General Assembly or the Assemblies of the Unions are convened whenever a major statutory decision must be taken between ordinary sessions of those bodies. Thus, the Coordination Committee as an independent statutory organ may not be necessary.

Article 8 of the WIPO Convention

[continued]

(7) 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.

(8) The coordination committee shall establish its own rules of procedure.

[Article8,continued]

(7) 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.

(8) The Coordination Committee shall establish its own Rules of Procedure .

Alternative C

(----)

No Article 8

[End of Article 8]

Notes on Article 9

9.01 It is not proposed to modify *Article 9* except for the deletion of the reference to the WIPO Conference in Article 9(6). As mentioned above, should any changes be contemplated to the continuation of the Coordination Committee, the references to that Committee would need to be re-considered.

9.02 It is recalled that the WIPO Conference unanimously adopted an amendment to Article 9(3) in September 1999, according to which the text of Article 9(3) would read:

“The Director General shall be appointed for a term of six years. He shall be eligible for reappointment only for one further fixed term of six years. All other conditions of the appointments shall be fixed by the General Assembly.”

9.03 The amendment has been accepted by 35 States, but will not come into force until one month after acceptance by three-fourths of the States members of WIPO at the time of the adoption of the amendment (at that time, there were 172 Member States of WIPO, thus requiring notifications of acceptance from 129 of those States).

**Article 9 of the WIPO Convention
International Bureau**

- (1) The International Bureau shall be the Secretariat of the Organization.
- (2) The International Bureau shall be directed by the Director General, assisted by two or more Deputy Directors General.
- (3) 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.
- (4) (a) The Director General shall be the chief executive of the Organization.
(b) He shall represent the Organization.
(c) He shall report to, and conform to the instructions of, the General Assembly as to the internal and external affairs of the Organization.
- (5) 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 Unions and the Organization.
- (6) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the General Assembly, the Conference, the Coordination Committee, and any other committee or working group. The Director General or a staff member designated by him shall be ex officio secretary of these bodies.

Article 9
International Bureau

- (1) The International Bureau shall be the Secretariat of the Organization.
- (2) The International Bureau shall be directed by the Director General, assisted by two or more Deputy Directors General.
- (3) 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.
- (4)
 - (a) The Director General shall be the chief executive of the Organization.
 - (b) He shall represent the Organization.
 - (c) He shall report to, and conform to the instructions of, the General Assembly as to the internal and external affairs of the Organization.
- (5) 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 Unions and the Organization.
- (6) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the General Assembly (---), the Coordination Committee, and any other committee or working group. The Director General or a staff member designated by him shall be ex officio secretary of these bodies.

[Article 9 continues]

[Notes on Article 9, continued]

9.04 The post of Assistant Director General has been created since the conclusion of the WIPO Convention. In practice, the same procedure is followed for the appointment of Assistant Directors General as that described in *Article 9(7)* for the Deputy Directors General. The Working Group may therefore wish to consider inserting the words “and Assistant Directors General” in the second sentence of Article 9(7) after the words “Deputy Directors General.”

Article 9 of the WIPO Convention

[continued]

(7) 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 after approval by 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 services 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.

(8) 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.

[Article 9, continued]

(7) 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 after approval by 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.

(8) 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.

[End of Article 9]

Notes on Article 10

10.01 No change is proposed to this Article.

**Article 10 of the WIPO Convention
Headquarters**

- (1) The headquarters of the Organization shall be at Geneva.
- (2) Its transfer may be decided as provided for in Article 6(3)(d) and (g).

Article 10
Headquarters

- (1) The headquarters of the Organization shall be at Geneva.
- (2) Its transfer may be decided as provided for in Article 6(3)(d) and (g).

[End of Article 10]

Notes on Article 11

11.01 *Article 11* has been modified in an endeavor to reflect the current practice of the Organization of a unitary contributions system and of having classes of contribution different from those set out in the constituent treaties of the Organization and the Unions administered by the Organization. Those reforms were adopted by the competent Assemblies in 1989 and 1991 (for certain changes in classes of contribution) and in 1993 (for the unitary contribution system and for further changes to classes of contribution). A full description of the changes in practice is set out in document WO/GA/WG -CR/2, paragraphs 16 to 50.

11.02 *Article 11(1)(a)* proposes a new enabling provision for the budget consequent upon the adoption of the unitary contributions system. The proposed provision seeks to implement the desire expressed by many delegations in the Working Group that, while the Organization has a unitary contributions system, it should not have a unitary budget in the sense that all income and expenses, regardless of their source or purpose, are mixed without identification. Accordingly, Article 11(1)(a) would require that the budget of the Organization be presented so that the income and expenses of the Organization and of the various Unions be indicated “in a fair and transparent manner.”

11.03 The proposed new enabling provision would not affect the independent power of decision over relevant components of the budget that is exercised by the organs of the Organization and the various Unions. Thus, for example, the power to approve levels of fees for the PCT would remain within the membership of the PCT Union. This would be the case even if the WIPO General Assembly were to act as a unitary Assembly, since the provisions concerning the alternative of a unitary Assembly provide for voting rights to be exercised in respect of matters concerning one Union only by the members of the General Assembly which are members of that Union (see the provisions in Article 6).

11.04 The references in *Article 11(1)(a) and (b)* to “expenses common to the Unions” have been placed in square brackets for the Working Group to consider whether they need to be maintained, in view of the requirement proposed in Article 11(1)(a) that the budget of the Organization present income and expenses of the Organization and the Unions administered by the Organization in a fair and transparent manner.

Article 11 of the WIPO Convention
Finances

(1) The Organization shall have two separate budgets: the budget of expenses common to the Unions, and the budget of the Conference.

[continues]

Article 11

Finances

(1) (----)[a] *The budget of the Organizations shall present the income and expenses of the Organization and the Unions administered by the Organization*, including the budget of expenses common to the Unions,] *in a fair and transparent manner* .

[(b) The budget of expenses common to the Unions shall include provision for expenses of interest to several Unions.]

[Article 11 continues]

[Notes on Article 11, continued]

11.05 *Article 11(2)* has not been changed in substance, but has been modernized to reflect, first, the unitary contributions system (*Article 11(2)(i)*) and, secondly, the fact that the other sources of income referred to in the provision do not always relate to the specific items referred to in the present text of Article 11(2)(b) of the WIPO Convention. Thus, for example, *Article 11(2)(ii)* as proposed to be amended would refer to “charges due for services performed by the International Bureau” without the additional words “not in direct relation with any of the Unions or not received for services rendered by the International Bureau in the field of legal -technical assistance.” The deleted words no longer seem relevant and, indeed, place an unnecessary restriction on the revenue at present received from services performed by the International Bureau. An example of revenue that is not covered by the present wording of Article 11(2)(ii) is the fees received by the WIPO Arbitration and Mediation Center, which may be considered as being related to several of the Unions, while not being related to services rendered by the International Bureau in the field of legal -technical assistance.

Article 11 of the WIPO Convention

[continued]

(2) (a) The budget of expenses common to the Unions shall include provision for expenses of interest to several Unions.

(b) This budget shall be financed from the following sources:

- (i) contributions of the Unions, provided that the amount of the contribution of each Union shall be fixed by the Assembly of that Union, having regard to the interest the Union has in the common expenses;
- (ii) charges due for services performed by the International Bureau not in direct relation with any of the Unions or not received for services rendered by the International Bureau in the field of legal -technical assistance;
- (iii) sale of, or royalties on, the publications of the International Bureau not directly concerning any of the Unions;
- (iv) gifts, bequests, and subventions, given to the Organization, except those referred to in paragraph (3)(b)(iv);
- (v) rents, interests, and other miscellaneous income, of the Organization.

[continues]

[Article 11, continued]

(2) (----)

The budget shall be financed from the following sources :

- (i) contributions *of Member States* (----);
- (ii) *fees and* charges due for services performed by the International Bureau (----);
- (iii) sale of, or royalties on, the publications of the International Bureau (----);
- (iv) gifts, bequests, and subventions, given to the Organization (----);
- (v) rents, interests, and other miscellaneous income, of the Organization.

[Article 11 continues]

[Notes on Article 11, continued]

11.06 It is proposed that *Article 11(3)* be deleted. In practice, there has never been a budget of the Conference and, with the proposed abolition of the Conference, the provision is not only practically, but also theoretically, redundant.

Article 11 of the WIPO Convention

[continued]

(3) (a) The budget of the Conference shall include provision for the expenses of holding sessions of the Conference and for the cost of the legal -technical assistance program.

(b) This budget shall be financed from the following sources:

- (i) contributions of States party to this Convention not members of any of the Unions;
- (ii) any sums made available to this budget by the Unions, provided that the amount of the sum made available by each Union shall be fixed by the Assembly of that Union and that each Union shall be free to abstain from contributing to the said budget;
- (iii) sums received for services rendered by the International Bureau in the field of legal - technical assistance;
- (iv) gifts, bequests, and subventions, given to the Organization for the purposes referred to in subparagraph (a).

[continues]

[Article11,continued]

(3) (----)

[Article11con tinues]

[Notes on Article 11, continued]

11.07 **Article 11(4)** seeks to implement the current practice with respect to classes of contributions and the unitary contributions system. It retains three essential features of the former and present contribution system, namely (i) that contributions are based on a system of classes with assigned numbers of units (**Article 11(4)(a), (b), (c) and (f)**), (ii) that the number of units assigned to each class is determined by the corresponding constituent organ for the treaty or treaties to which the class relates (**Article 11(4)(d)**), and (iii) that each State of its own accord chooses its own contribution class (**Article 11(4)(e)**).

11.08 Two alternatives are provided for the provisions dealing with the number of classes and the units assigned to classes. **Alternative A** comprises sub-paragraphs (b), (c) and (d) of Article 11(4). **Alternative B** comprises sub-paragraph (b) only (without (c) and (d)) of Article 11(4).

11.09 **Alternative A** in Article 11(4)(b), (c) and (d) seeks to implement literally the present system of classes practiced by the Organization.

11.10 **Article 11(4)(b)** seeks to implement the unitary contributions system which provides for one set of classes applicable to States party to the WIPO Convention but not members of any other unions, and a separate and parallel set of classes applicable to States members of one or more of the Unions.

Article 11 of the WIPO Convention

[continued]

(4) (a) For the purpose of establishing its contribution towards the budget of the Conference, each State party to this Convention not member of any of the Unions shall belong to a class, and shall pay its annual contributions on the basis of a number of units fixed as follows:

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 it chooses a lower class, the State must announce it to the Conference at one of its ordinary sessions. Any such change shall take effect at the beginning of the calendar year following the session.

[continues]

[Article 11, continued]

(4) (a) For the purpose of establishing its contribution towards the budget (----), each State party to this Convention (----) shall belong to a class, and shall pay its annual contribution (----) on the basis of the number of units *assigned to that class* (----).

Alternative A

(b) *There shall be two systems of classes:*

- (i) *classes applicable to State party to this Convention but not members of any of the Unions; and*
- (ii) *classes applicable to States members of one or more of the Unions.*

[Article 11 continues]

[Notes on Article 11, continued]

11.11 For the first set of classes, namely the classes applicable to States party to the WIPO Convention but not members of any of the Unions, **Article 11(4)(c)** provides for the number of such classes, and the units assigned to each such class, to be established by the General Assembly. It differs from the corresponding provision in the present text of the WIPO Convention (Article 11(4)(a)) in two ways. First, the organ establishing the classes and the units is the General Assembly, rather than the Conference. Secondly, the provision does not set out the various classes and the corresponding units (cf. Article 11(4)(a) of the present text of the WIPO Convention). Rather, it provides for the number of classes and units to be established by the General Assembly, thus allowing for future changes in the classes and units should the General Assembly deem this to be necessary.

11.12 The second system of classes, namely the classes applicable to States members of one or more of the Unions, is established under the provisions of **Article 11(4)(d)**. That provision provides for two alternatives. **Alternative A1** would apply if it were decided that the General Assembly should not function as a unitary Assembly (see Article 6, above). In this case, the number of classes and the units applicable to each class would be established by the various Assemblies of the Unions whose constituent treaties provide for the payment of a contribution. **Alternative A2** is intended to apply if the General Assembly were to function as a unitary Assembly. In this event, the number of classes and the corresponding units for each class would be determined by “the members of the General Assembly that are members of a Union whose constituent treaty provides for the payment of a contribution, in accordance with the provisions of that treaty.”

11.13 **Alternative B in Article 11(4)(b)** seeks to implement the unitary contributions system in the simplest possible manner. Unlike Alternative A, it does not distinguish (in the Convention text) between two different systems of classes but provides, simply, that the number of classes and the units assigned to each shall be established by the competent organ(s). As to the competent organ or organs, two options are provided. **Alternative B1** would apply if the Working Group were to decide not to recommend that the General Assembly act as a unitary Assembly. In this case, the competence to establish classes and units would rest with the General Assembly and the Assemblies of the various contribution-financed Unions. Since their decisions relate to a unitary contributions system, **Alternative B1** provides that the classes and units be established in a joint session of the General Assembly and the various Union Assemblies. **Alternative B2** would apply if the General Assembly acted as a unitary Assembly. In this case, it would establish the classes and units. Voting rights for such a decision would be regulated by the proposed provisions of Article 6 on the unitary Assembly.

Article 11 of the WIPO Convention

[continued]

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

(d) Contributions shall become due on the first of January of each year.

[continues]

[Article 11, continued]

(c) *The number of classes applicable to States party to this Convention but not members of any of the Unions, and the units assigned to each such class, shall be established by the General Assembly.*

(d) *The number of classes applicable to States members of one or more of the Unions, and the units assigned to each such class, shall be established by*

Alternative A1

the Assemblies of the Unions whose constituent treaties provide for the payment of a contribution, in accordance with the provisions of such treaties.

Alternative A2

the members of the General Assembly that are members of a Union whose constituent treaty provides for the payment of a contribution, in accordance with the provisions of that treaty.

Alternative B

(b) *The number of classes and the units assigned to each class shall be established by*

Alternative B1

the General Assembly meeting in joint session with the Assemblies of the Unions whose constituent treaties provide for the payment of a contribution.

Alternative B2

the General Assembly .

[Article 11 continues]

[Notes on Article 11, continued]

11.11 *Article 11(4)(e)* implements, in the context of the unitary contributions system, the substance of the provisions of Article 11(4)(b) of the present text of the WIPO Convention. In so doing, it provides for the choice of class by each State at the time of becoming party to the WIPO Convention or, in the case of States that are members of a Union, at the time of becoming a member of that Union. It also provides for a State to change classes and for notification to the General Assembly of such a change when it involves moving to a lower class. Both the choice of class and the right to change classes must be exercised subject to any conditions governing eligibility for membership of any classes (such conditions apply in the present system in the lowest classes).

11.12 *Article 11(4)(f)* implements the system of units in the context of the unitary contributions system. It follows, in substance, the provisions of Article 11(4)(c) of the present text of the WIPO Convention. If Alternative A for Article 11(4)(b), (c) and (d) were adopted, the words in square brackets would need to be retained in the text. If Alternative B for Article 11(4)(b) were adopted, the words in square brackets would be deleted.

Article 11 of the WIPO Convention

[continued]

(e) If the budget is not adopted before the beginning of a new financial period, the budget shall be at the same level as the budget of the previous year, in accordance with the financial regulations.

[continues]

[Article 11, continued]

(e) *Subject to any conditions governing eligibility for membership of any classes, each (----) State shall, at the time of becoming party to this Convention or, in accordance with the provisions of the corresponding constituent treaty, at the time of becoming a member of a Union which provides for a contribution* , indicate the class to which it wishes to belong. Any State may , *subject to any of the said conditions governing eligibility for membership of any class,* change class. If it chooses a lower class, the State must announce it to the *General Assembly* at one of its ordinary sessions. Any such changes shall all take effect at the beginning of the calendar year following the session.

(f) The annual contribution of each (---) State shall be an amount in the same proportion to the total sum to be contributed to the budget (----) by all (----) States [*belonging to the same system of classes*] as the number of units is to the total of the units of all the States [*belonging to that system of classes*].

(g) Contributions shall become due on the first of January of each year.

(h) If the budget is not adopted before the beginning of a new financial period the budget shall be at the same level as the budget of the previous year, in accordance with the financial regulations.

[Article 11 continues]

[Notes on Article 11, continued]

11.13 **Article 11(5)** reproduces the existing text of Article 11(5) of the WIPO Convention with minor modifications to reflect the unitary contributions system.

11.14 It is proposed that **Article 11(6)** be deleted, since fees and charges have not been imposed by the International Bureau “in the field of legal technical assistance.”

Article 11 of the WIPO Convention

[continued]

(5) Any State party to this Convention not member of any of the Unions which is in arrears in the payment of its financial contributions under the present Article, and any State party to this Convention member of any of the Unions which is in arrears in the payment of its contributions to any of the Unions, shall have no vote in any of the bodies of the Organization of which it is a member, if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any of these bodies may allow such a State to continue to exercise its vote in that body if, and as long as, it is satisfied that the delay in payment arises from exceptional and unavoidable circumstances.

(6) The amount of the fees and charges due for services rendered by the International Bureau in the field of legal technical assistance shall be established, and shall 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.

[continues]

[Article 11, continued]

(5) Any State party to this Convention not member of any of the Unions which is in arrears in the payment of its financial contribution (----) under the present Article, and any State party to this Convention member of any of the Unions which is in arrears in the payment of its contribution (----) to any of the Unions, shall have no vote in any of the bodies of the Organization of which it is a member, if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any of these bodies may allow such a State to continue to exercise its vote in that body if, and as long as, it is satisfied that the delay in payment arises from exceptional and unavoidable circumstances.

(6) (----)

(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.

[Article 11 continues]

[Notes on Article 11, continued]

11.15 *Article 11(8)(b)* replaces the word “Assembly” in the existing text of the corresponding provision in the WIPO Convention by the word “membership” to reflect the role of the General Assembly as a unitary Assembly.

11.16 *Article 11(8)(c)* is in the same form as the corresponding provision in the existing text of the WIPO Convention except for the replacement of the reference to the Conference by a reference to the General Assembly.

Article 11 of the WIPO Convention

[continued]

(8) (a) The Organization shall have a working capital fund which shall be constituted by a single payment made by the Unions and by each State party to this Convention not member of any Union. If the fund becomes insufficient, it shall be increased.

(b) The amount of the single payment of each Union and its possible participation in any increase shall be decided by its Assembly.

(c) The amount of the single payment of each State party to this Convention not member of any Union and its part in any increase shall be a proportion of the contribution of that State for the year in which the fund is established or the increase decided. The proportion and the terms of payments shall be fixed by the Conference on the proposal of the Director General and after it has heard the advice of the Coordination Committee.

[continues]

[Article 11, continued]

(8) (a) The Organization shall have a working capital fund which shall be constituted by a single payment made by the Unions and by each State party to this Convention not member of any Union. If the fund becomes insufficient, it shall be increased.

(b) The amount of the single payment to each Union and its possible participation in any increase shall be decided by its **membership**.

(c) The amount of the single payment to each State party to this Convention not member of any Union and its part in any increase shall be a proportion of the contribution of that State for the year in which the fund is established or the increase is decided. The proportion and the terms of payments shall be fixed by the **(---) General Assembly** on the proposal of the Director General and after it has heard the advice of the Coordination Committee.

[Article 11 continues]

[Notes on Article 11, continued]

Article 11 of the WIPO Convention

[continued]

(9) (a) In the headquarters agreement concluded with the State on the territory of which the Organization has its headquarters, it shall be provided that , whenever the working capital fund is insufficient, such States shall grant advances. The amount of these advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such State and the Organization. As long as it remains under the obligation to grant advances, such States shall have an ex officio seat on the Coordination Committee.

(b) The State referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciations shall take effect three years after the end of the year in which it has been 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.

[Article 11, continued]

(9) (a) In the headquarters agreement concluded with the State on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such States shall grant advances. The amount of these advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such State and the Organization. As long as it remains under the obligation to grant advances, such States shall have an ex officio seat on the Coordination Committee.

(b) The State referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciations shall take effect three years after the end of the year in which it has been 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.

[End of Article 11]

Notes on Article 12

12.01 No change is proposed to this Article. The reference to the Coordination Committee in paragraph (4) would need to be reviewed should the Working Group contemplate any change in the maintenance of that Committee.

Article 12 of the WIPO Convention Legal Capacity; Privileges and Immunities

(1) The Organization shall enjoy on the territory of each Member State, in conformity with the laws of that State, such legal capacity as may be necessary for the fulfilment of the Organization's objectives and for the exercise of its functions.

(2) The Organization shall conclude a headquarters agreement with the Swiss Confederation and with any other State in which the headquarters may subsequently be located.

(3) The Organization may conclude bilateral or multilateral agreements with the other Member States with a view to the enjoyment by the Organization, its officials, and representatives of all Member States, of such privileges and immunities as may be necessary for the fulfilment of its objectives and for the exercise of its functions.

(4) The Director General may negotiate and, after approval by the Coordination Committee, shall conclude and sign on behalf of the Organization the agreements referred to in paragraphs (2) and (3).

Article 12

Legal Capacity, Privileges and Immunities

(1) The Organization shall enjoy on the territory of each Member State, in conformity with the laws of that State, such legal capacity as may be necessary for the fulfilment of the Organization's objectives and for the exercise of its functions.

(2) The Organization shall conclude a headquarters agreement with the Swiss Confederation and with any other State in which the headquarters may subsequently be located.

(3) The Organization may conclude bilateral or multilateral agreements with the other Member States with a view to the enjoyment by the Organization, its officials, and representatives of all Member States, of such privileges and immunities as may be necessary for the fulfilment of its objectives and for the exercise of its functions.

(4) The Director General may negotiate and, after approval by the Coordination Committee, shall conclude and sign on behalf of the Organization the agreements referred to in paragraphs (2) and (3).

[End of Article 12]

Notes on Article 13

13.01 No change is proposed to this Article. Again, as noted previously, the reference to the Coordination Committee would need to be reviewed if the Working Group were to contemplate any change to the continuation of that Committee.

Article 13 of the WIPO Convention Relations with Other Organizations

(1) The Organizations shall, where appropriate, establish working relations and cooperate with other intergovernmental organizations. Any general agreement to such effect entered into with such organizations shall be concluded by the Director General after approval by the Coordination Committee.

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

Article 13

Relations with Other Organizations

(1) The Organization shall, where appropriate, establish working relations and cooperate with other intergovernmental organizations. Any general agreement to such effect entered into with such organizations shall be concluded by the Director General after approval by the Coordination Committee.

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

[End of Article 13]

Notes on Article 14

14.01 No change is proposed to this Article.

Article 14 of the WIPO Convention Becoming Party to the Convention

(1) States referred to in Article 5 may become party to this Convention and Member of the Organization 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.

(2) Notwithstanding any other provision of this Convention, a State party to the Paris Convention, the Berne Convention, or both Conventions, may become party to this Convention only if it concurrently ratifies or accedes to, or only after it has ratified or acceded to:

either the Stockholm Act of the Paris Convention in its entirety or with only the limitation set forth in Article 20(1)(b)(i) thereof,

or the Stockholm Act of the Berne Convention in its entirety or with only the limitation set forth in Article 28(1)(b)(i) thereof.

(3) Instruments of ratification or accessions shall be deposited with the Director General.

Article 14

Becoming Party to the Convention

(1) States referred to in Article 5 may become party to this Convention and Member of the Organization 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.

(2) Notwithstanding any other provision of this Convention, a State party to the Paris Convention, the Berne Convention, or both Conventions, may become party to this Convention only if it concurrently ratifies or accedes to, or only after it has ratified or acceded to:

either the Stockholm Act of the Paris Convention in its entirety or with only the limitation set forth in Article 20(1)(b)(i) thereof,

or the Stockholm Act of the Berne Convention in its entirety or with only the limitation set forth in Article 28(1)(b)(i) thereof.

(3) Instruments of ratification or accessions shall be deposited with the Director General.

[End of Article 14]

Notes on Article 15

15.01 No change is proposed to this Article.

Article 15 of the WIPO Convention Entry into Force of the Convention

(1) This Convention shall enter into force three months after ten States members of the Paris Union and seven States members of the Berne Union have taken action as provided in Article 14(1), it being understood that, if a State is a member of both Unions, it will be counted in both groups. On that date, this Convention shall enter into force also in respect of States which, not being members of either of the two Unions, have taken action as provided in Article 14(1) three months or more prior to that date.

(2) In respect to any other State, this Convention shall enter into force three months after the date on which such State takes action as provided in Article 14(1).

Article 15

Entry into Force of the Convention

(1) This Convention shall enter into force three months after ten States members of the Paris Union and seven States members of the Berne Union have taken action as provided in Article 14(1), it being understood that, if a State is a member of both Unions, it will be counted in both groups. On that date, this Convention shall enter into force also in respect of States which, not being members of either of the two Unions, have taken action as provided in Article 14(1) three months or more prior to that date.

(2) In respect to any other State, this Convention shall enter into force three months after the date on which such State takes action as provided in Article 14(1).

[End of Article 15]

Notes on Article 16

16.01 No change is proposed to this Article.

**Article 16 of the WIPO Convention
Reservations**

No reservations to this Convention are permitted.

Article 16
Reservations

No reservations to this Convention are permitted.

[End of Article 16]

Notes on Article 17

17.01 Two modifications are proposed to Article 17, which sets out the manner in which amendments may be made to the WIPO Convention.

17.02 First, in order to reflect the abolition of the WIPO Conference and the attribution of its independent functions to the WIPO General Assembly (see Article 6, above), references to the Conference are replaced by references to the General Assembly in each paragraph.

17.03 Secondly, in order to reflect the proposal, under discussion, to make the General Assembly the competent unitary Assembly for all WIPO-administered treaties, references *in paragraph (2)* to the adoption of proposed amendments by the Assemblies of the Paris Union and the Berne Union are replaced by references to the adoption of proposed amendments by the membership of the Paris Union and the Berne Union.

**Article 17 of the WIPO Convention
Amendments**

(1) Proposals for the amendment of this Convention may be initiated by any Member State, by the Coordination Committee, or by the Director General. Such proposals shall be communicated by the Director General to the Member States at least six months in advance of their consideration by the Conference.

(2) Amendments shall be adopted by the Conference. Whenever amendments would affect the rights and obligations of States party to this Convention not members of any of the Unions, such States shall also vote. On all other amendments proposed, only States party to this Convention members of any Union shall vote. Amendments shall be adopted by 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 regarding the adoption of amendments to the administrative provisions of their respective Conventions.

(3) Any amendments shall enter into force one month after written notification of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the States Members of the Organization, entitled to vote on the proposal for amendment pursuant to paragraph (2), at the time the Conference adopted the amendment. Any amendments thus accepted shall bind all the States which are Members of the Organization at the time the amendment enters into force or which become Members at a subsequent date, provided that any amendment increasing the financial obligations of Member States shall bind only those States which have notified their acceptance of such amendment.

Article 17
Amendments

(1) Proposals for the amendment of this Convention may be initiated by any Member State, by the Coordination Committee, or by the Director General. Such proposals shall be communicated by the Director General to the Member States at least six months in advance of their consideration by the **(----) General Assembly**.

(2) Amendments shall be adopted by the **(----) General Assembly**. Whenever amendments would affect the rights and obligations of States party to this Convention not members of any of the Unions, such States shall also vote. On all other amendments proposed, only States party to this Convention members of any Unions shall vote. Amendments shall be adopted by a simple majority of the votes cast, provided that the **(----) General Assembly** shall vote only on such proposals for amendments as have previously been adopted by the **(----) membership** of the Paris Union and the **(----) membership** of the Berne Union according to the rules applicable in each of them regarding the adoption of amendments to the administrative provisions of their respective Conventions.

(3) Any amendments shall enter into force one month after written notification of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the States Members of the Organization, entitled to vote on the proposal for amendment pursuant to paragraph (2), at the time the **(----) General Assembly** adopted the amendment. Any amendments thus accepted shall bind all the States which are Members of the Organization at the time the amendment enters into force or which become Members at a subsequent date, provided that any amendment increasing the financial obligations of Member States shall bind only those States which have notified their acceptance of such amendment.

[End of Article 17]

Notes on Article 18

18.01 No change is proposed to this Article.

**Article 18 of the WIPO Convention
Denunciation**

- (1) Any Member State may denounce this Convention by notification addressed to the Director General.
- (2) Denunciations shall take effect six months after the day on which the Director General has received the notification.

Article 18
Denunciation

(1) Any Member State may denounce this Convention by notification addressed to the Director General.

(2) Denunciations shall take effect six months after the day on which the Director General has received the notification.

[End of Article 18]

Notes on Article 19

19.01 No change is proposed to this Article.

**Article 19 of the WIPO Convention
Notifications**

The Director General shall notify the Governments of all Member States 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.

Article 19
Notifications

The Director General shall notify the Governments of all Member States of:

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

[End of Article 19]

Notes on Article 20

20.01 The proposed revisions reflect the re-attribution of the power of amendment of the Convention from the Conference to the General Assembly, consequent upon the abolition of the Conference (see Articles 6 and 7, above).

Article 20 of the WIPO Convention Final Provisions

(1) (a) This Convention shall be signed in a single copy in English, French, Russian and Spanish, all texts being equally authentic, and shall be deposited with the Government of Sweden.

(b) This Convention shall remain open for signature at Stockholm until January 13, 1968.

(2) Official texts shall be established by the Director General, after consultation with the interested Governments, in German, Italian and Portuguese, and such other languages as the Conference may designate.

(3) The Director General shall transmit two duly certified copies of this Convention and of each amendment adopted by the Conference 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. The copies of the signed text of the Convention transmitted to the Governments shall be certified by the Government of Sweden.

(4) The Director General shall register this Convention with the Secretariat of the United Nations.

Article 20

Final Provisions

(1) (a) This Convention shall be signed in a single copy in English, French, Russian and Spanish, all texts being equally authentic, and shall be deposited with the Government of Sweden.

(b) This Convention shall remain open for signature at Stockholm until January 13, 1968.

(2) Official texts shall be established by the Director General, after consultation with the interested Governments, in German, Italian and Portuguese, and such other languages as the (----) **General Assembly** may designate.

(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. The copies of the signed text of the Convention transmitted to the Governments shall be certified by the Government of Sweden.

(4) The Director General shall register this Convention with the Secretariat of the United Nations.

[End of Article 20]

Notes on Article 21

21.01 The proposed revisions simply delete references to the WIPO Conference. Several of the transitional provisions are merely of historical significance.

**Article 21 of the WIPO Convention
Transitional Provisions**

(1) Until the first Director General assumes office, references in this Convention to the International Bureau or to the Director General shall be deemed to be references 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 its Director, respectively.

(2) (a) States which are members of any of the Unions but which have not become party to this Convention may, for five years from the date of entry into force of this Convention, exercise, if they so desire, the same rights as if they had become party to this Convention. Any State desiring to exercise such rights shall give written notification to this effect to the Director General; this notification shall be effective on the date of its receipt. Such States shall be deemed to be members of the General Assembly and the Conference until the expiration of the said period.

(b) Upon expiration of this five-year period, such States shall have no right to vote in the General Assembly, the Conference, and the Coordination Committee.

(c) Upon becoming party to this Convention, such States shall regain such right to vote.

(3) (a) As long as there are States members of the Paris or Berne Unions which have not become party to this Convention, the International Bureau and the Director General shall also function as the United International Bureaux for the Protection of Industrial, Literary and Artistic Property, and its Director, respectively.

(b) 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 subparagraph (a), be considered as also employed by the International Bureau.

[continues]

Article 21
Transitional Provisions

Alternative A

(1) Until the first Director General assumes office, references in this Convention to the International Bureau or to the Director General shall be deemed to be references 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 its Director, respectively.

(2) (a) States which are members of any of the Unions but which have not become party to this Convention may, for five years from the date of entry into force of this Convention, exercise, if they so desire, the same rights as if they had become party to this Convention. Any State desiring to exercise such rights shall give written notification to this effect to the Director General; this notification shall be effective on the date of its receipt. Such States shall be deemed to be members of the General Assembly (----) until the expiration of the said period.

(b) Upon expiration of this five -year period, such States shall have no right to vote in the General Assembly (----) and the Coordination Committee.

(c) Upon becoming party to this Convention, such States shall regain such right to vote.

(3) (a) As long as there are States members of the Paris or Berne Unions which have not become party to this Convention, the International Bureau and the Director General shall also function as the United International Bureaux for the Protection of Industrial, Literary and Artistic Property, and its Director, respectively.

(b) 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 subparagraph (a), be considered as also employed by the International Bureau.

[Article 21 continues]

[Notes on Article 21 continue on page 98]

[Article 21, continued]

Alternative B

(----)

(1) As long as there are States members of the Paris or Berne Unions which have not become party to this Convention, the International Bureau and the Director General shall also function as the United International Bureaux for the Protection of Industrial, Literary and Artistic Property, and its Director, respectively.

(2) 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 paragraph (1), be considered as also employed by the International Bureau.

[Article 21 continues]

[Notes on Article 21, continued]

**Article 21 of the WIPO Convention
Transitional Provisions**

[continued]

(4) (a) Once all the States members of the Paris Union have become Members of the Organization, the rights, obligations, and property, of the Bureau of that Union shall devolve on the International Bureau of the Organization.

(b) Once all the States members of the Berne Union have become Members of the Organization, the rights, obligations, and property, of the Bureau of that Union shall devolve on the International Bureau of the Organization.

[Article 21, continued]

(4) (a) Once all the States members of the Paris Union have become Members of the Organization, the rights, obligations, and property, of the Bureau of that Union shall devolve on the International Bureau of the Organization.

(b) Once all the States members of the Berne Union have become Members of the Organization, the rights, obligations, and property, of the Bureau of that Union shall devolve on the International Bureau of the Organization.

[End of Article 21]

[End of Annex and of document]