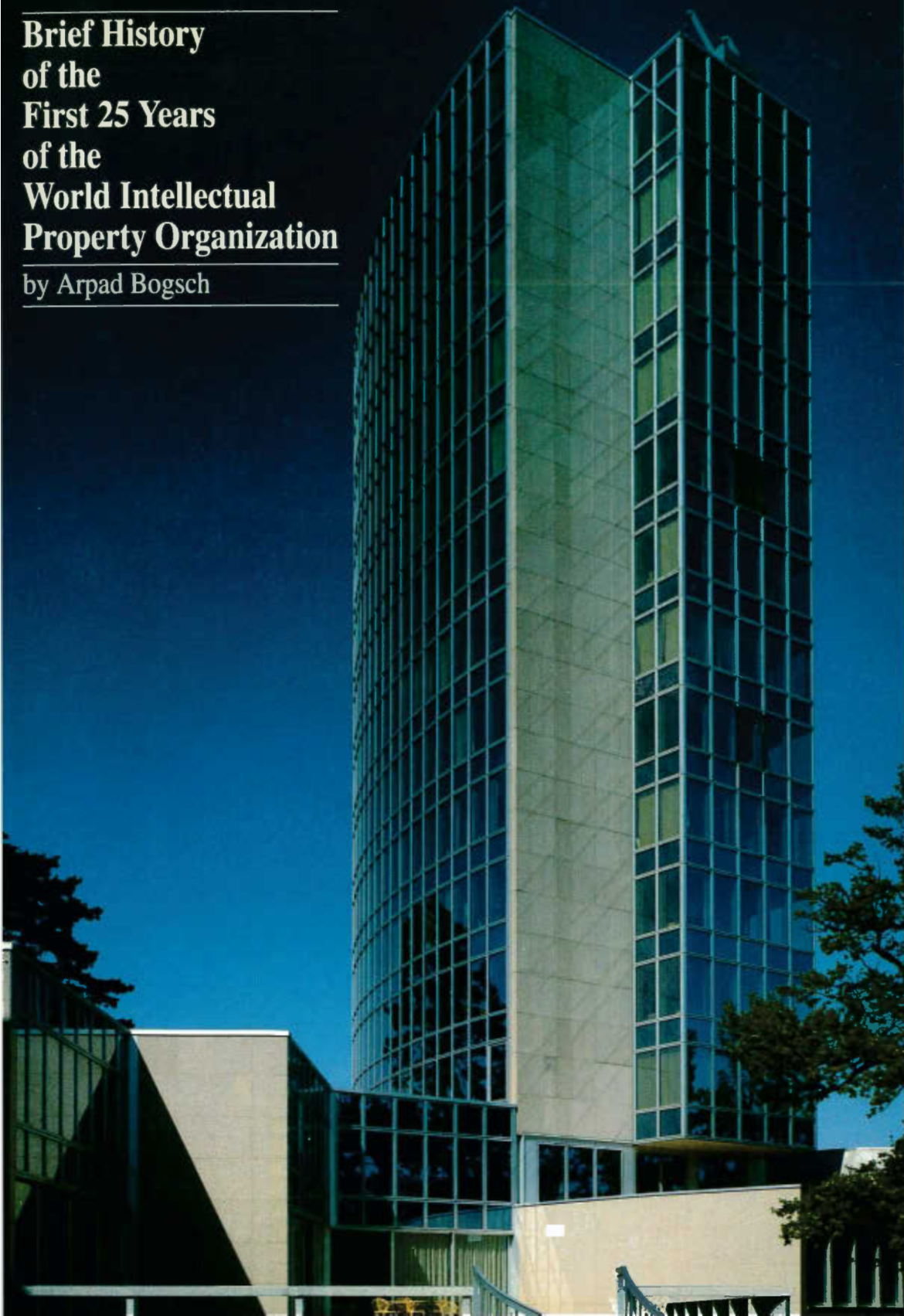
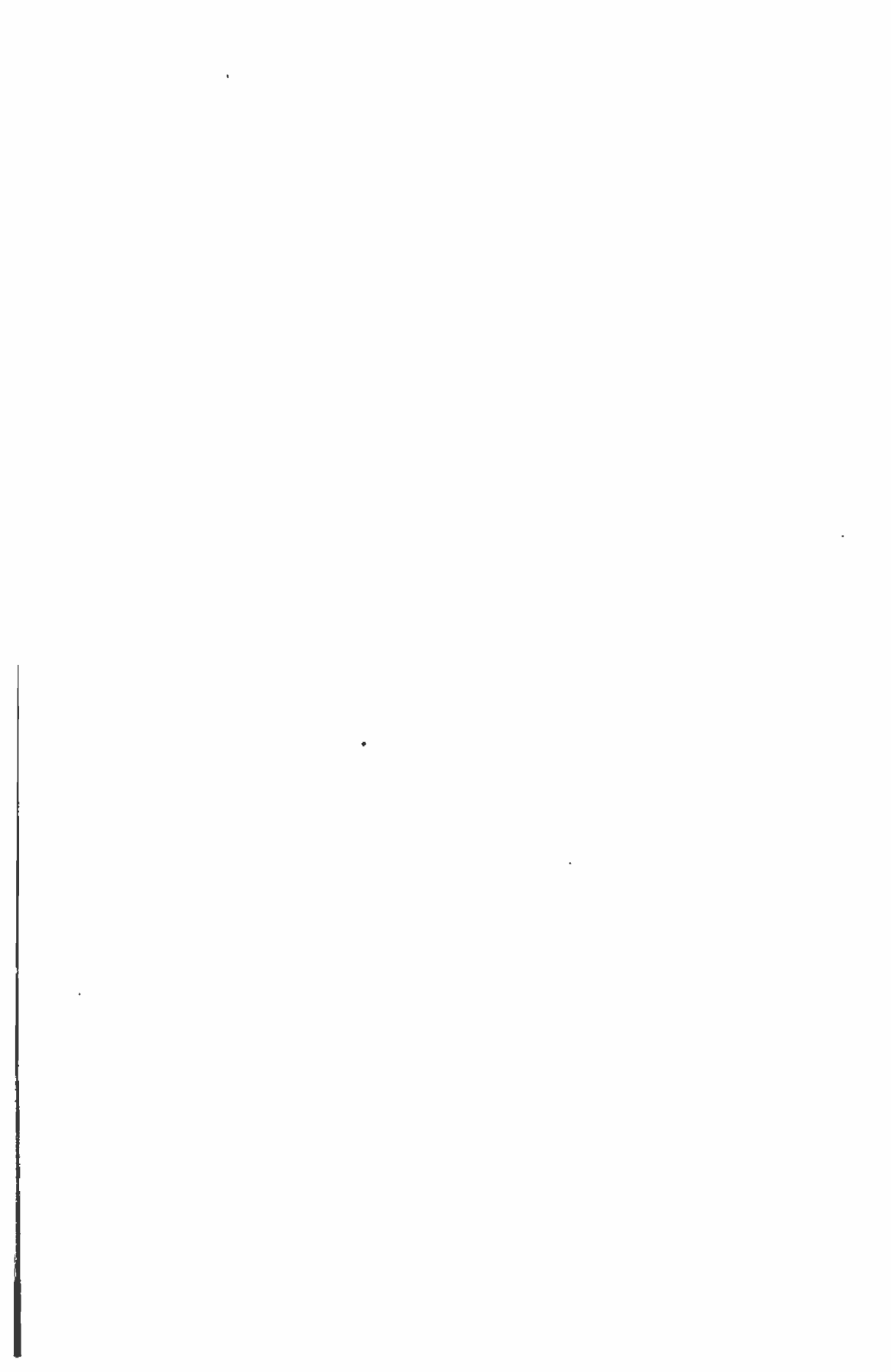

**Brief History
of the
First 25 Years
of the
World Intellectual
Property Organization**

by Arpad Bogsch





Arpad Bogsch
Director General of WIPO, 1973-



**Brief History of the
First 25 Years of the
World Intellectual Property
Organization**

by

Arpad Bogsch



WORLD INTELLECTUAL PROPERTY ORGANIZATION

GENEVA 1992

WIPO PUBLICATION No. 882 (E)
ISBN 92-805-0431-2

WIPO 1992

CONTENTS

	<i>Page</i>
INTRODUCTION	5
1. THE CONSTITUTION OF WIPO AND THE STRUCTURAL AND ADMINISTRATIVE REFORM OF THE UNIONS	7
2. ACHIEVEMENTS OF WIPO IN MULTILATERAL TREATY-MAKING	23
3. ACTIVITIES OF WIPO ADVANCING, OUTSIDE OF TREATIES, THE PROTECTION OF INTELLECTUAL PROPERTY	41
4. ACTIVITIES OF WIPO ADVANCING INTERNATIONAL COOPERATION IN THE FIELD OF PATENT INFORMATION AND DOCUMENTATION	49
5. ASSISTANCE OF WIPO TO DEVELOPING COUNTRIES	57
6. ASSISTANCE OF WIPO TO COUNTRIES IN TRANSITION FROM A CENTRALLY PLANNED TO A MARKET ECONOMY SYSTEM	69
7. THE DIRECTION AND CONTROL OF THE INTERNATIONAL BUREAU BY THE MEMBER STATES	75
8. THE ORGANIZATION AND THE WORK OF THE INTERNATIONAL BUREAU	83
9. WIPO'S RELATIONS WITH OTHER INTERGOVERNMENTAL ORGANIZATIONS	119
10. WIPO'S RELATIONS WITH NON-GOVERNMENTAL ORGANIZATIONS	131

INTRODUCTION

This is an essay recounting the main events in the history of BIRPI and WIPO during the 25 years that have elapsed since the signature of the treaty which established the World Intellectual Property Organization.

That signature took place in Stockholm on July 14, 1967.

BIRPI was the predecessor of WIPO. BIRPI was in existence, under various names, from 1883 (when the Paris Convention for the Protection of Industrial Property created the International Bureau) to 1970 (when the treaty establishing WIPO went into effect).

In order to place the 25 years in a historical context, the essay does, exceptionally, deal also with pre-1967 events and with post-1992 possibilities.

The history of those 25 years was made—as is all history—by individuals.

The individuals comprise, first of all, the delegates of the Governments of the member countries: it is they who decide what WIPO should do and it is they who control whether what they decided was carried out. The representatives, in WIPO-convened meetings, of the private sector are also among the history-making individuals: the private sector consists of the world of inventors, authors, composers and artists, of industry and commerce disseminating or otherwise using inventions, literary and artistic works, industrial designs and trademarks as well as of “the profession,” that is, the lawyers who protect their clients’ interests in the field of intellectual property.

The said individuals consist also of the staff of the International Bureau of WIPO. It is they who carry out the tasks entrusted to WIPO. During the 25 years under examination, that staff worked intelligently, diligently and efficiently.

Lastly, those individuals comprise also the executive heads of the International Bureau. There were two of them during those 25 years: Georg H.C. Bodenhausen during the first six years, and Arpad Bogisch, the author of this essay, during the 19 subsequent years. It was their task to direct the translation of the wishes of the Member States into facts, through their and the staff's work. But not very much is said, for obvious reasons, in this essay, about the Director General who wrote this essay.

Making norms that regulate or are useful in international relations is the primary task of any intergovernmental organization. The accomplishments of WIPO in this field are (after the introductory chapter I) recounted in chapters 2, 3 and 4. Assistance to countries needing and wanting assistance is also a specially important task of any intergovernmental organization. The assistance given to them by WIPO is the subject matter of chapters 5 and 6. Chapter 7 analyzes the direction and control of the International Bureau by the member countries. Chapter 8 relates the functioning of the International Bureau and the results of its work. Finally, chapters 9 and 10 give a summary of WIPO's relations with the United Nations and other international organizations.

The title of this essay says that it is a *brief* history of the 25 years. This is intended to call the reader's attention to the fact that not everything that happened is reported on. For the sake of—relative—brevity, selections had to be made, and the essay does not cover events that the author believed to be of secondary importance.

1. THE CONSTITUTION OF WIPO AND THE STRUCTURAL AND ADMINISTRATIVE REFORM OF THE UNIONS

- 1.1 The History of BIRPI and its Status in 1967 –
- 1.2 The Preparations for the Diplomatic Conference of Stockholm (1962-1966) –
- 1.3 The Stockholm Conference (1967) and the Entry into Force of the Stockholm Texts (1970-1975) –
- 1.4 The Status of WIPO as a Specialized Agency in the United Nations System of Organizations (1974)

1.1 *The History of BIRPI and its Status in 1967*

BIRPI is the acronym of Bureaux internationaux réunis pour la protection de la propriété intellectuelle, usually translated into English by United International Bureaux for the Protection of Intellectual Property.

BIRPI was the predecessor organization to the World Intellectual Property Organization (WIPO).

BIRPI started in 1883, and WIPO superseded it 87 years later, in 1970.

The nucleus of the intergovernmental organization or, at least, of the international secretariat that BIRPI later became, was the “International Bureau” established by the 1883 Paris Convention for the Protection of Industrial Property (hereinafter referred to as “the Paris Convention”). “Bureau” was the then fashionable name for the secretariat of an international organization.

Three years later, in 1886, another “International Bureau” was created, this time by the Berne Convention for the Protection of Literary and Artistic Works (hereinafter referred to as “the Berne Convention”).

The two International Bureaus were under “the high supervision” (in French, *haute surveillance*) of the Government of the Swiss

Confederation which, in 1893, "united" them, that is, placed them under the same director and gave them the same staff. Hence the words "United International Bureaux" in the title of BIRPI.

The words "Intellectual Property" in BIRPI's title came into use much later, in the nineteen-fifties. Before that, "industrial property," mainly covering the property in inventions (patents), trademarks and industrial designs, and "property in literary and artistic works" (or, in English, "intellectual property" or "copyright") were the expressions commonly used. However, as from the nineteen-fifties "intellectual property" has been understood as covering both industrial property and copyright.

By the early nineteen-sixties, BIRPI had developed into an international secretariat, with a director and some 50 staff. Until 1960, the headquarters were in the capital of Switzerland, Berne. In that year, the headquarters were moved to Geneva. French was the only working language of the Secretariat.

BIRPI "administered" not only the Paris Convention and the Berne Convention but also the "special agreements" (an expression used in the Paris Convention) concluded under the Paris Convention, "under" meaning that only States party to the Paris Convention are eligible to adhere to those agreements and that the latter may not contravene the provisions of the former.

By 1967, there were five such special agreements: the Madrid Agreement Concerning the International Registration of Marks, concluded in 1891 (hereinafter sometimes referred to as "the Madrid (Marks) Agreement"); the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, also concluded in 1891 (hereinafter sometimes referred to as "the Madrid (Indications of Source) Agreement"); the Hague Agreement Concerning the International Deposit of Industrial Designs, concluded in 1925 (hereinafter sometimes referred to as "the Hague Agreement"); the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, concluded in 1957 (hereinafter sometimes referred to as "the Nice Agreement"); and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, concluded in 1958 (hereinafter sometimes referred to as "the Lisbon Agreement"). The names of cities in the titles of these and other treaties denote the place where the diplomatic conference that adopted the treaty was

held. "Treaty" is used in this essay as covering both "Conventions" and "Agreements."

Both the Paris and the Berne Conventions and four of the five Agreements (namely, the Madrid (Marks), Hague, Nice and Lisbon Agreements) provide that the countries party to them "constitute a (Special) Union." The term "Union" is also an expression that was fashionable when these treaties were concluded. It is intended to convey the idea that the States party to a treaty, together, form an entity which has legal personality and its own finances. It seems strange today that none of the Unions had a governing body, that is, an assembly in which the States members of the Union meet, discuss and decide (by voting, if there is no unanimity). Instead, as already stated, they were under the supervision of the Swiss Government, which appointed the director and staff of BIRPI, the common secretariat of the six Unions, and which handled (alone) the finances of BIRPI.

This situation corresponded to the customs of the 19th century. The status of BIRPI and the Unions it administered was very similar to the then status of what are today the International Telecommunication Union and the Universal Postal Union, whose predecessor organizations ("predecessor" in the sense that BIRPI is the predecessor of WIPO) came into existence several years before BIRPI, namely in 1865 and 1874, respectively, with their headquarters also in Berne and also under the supervision of the Swiss Government. However, those two organizations went through the modernization of their structure and became specialized agencies of the United Nations system of organizations much earlier than WIPO, namely in 1949 and 1948, respectively.

I.2 *The Preparations for the Diplomatic Conference of Stockholm (1962-1966)*

The modernization of the structure and administration of the Unions started with the establishment of,

(i) in 1948, by a decision of the Brussels Revision Conference of the Berne Union, the *Permanent Committee of the Berne Union*,

(ii) in 1958, by a resolution of the Lisbon Revision Conference of the Paris Union, the *Consultative Committee of the Paris Union* and, in Article 14(5) of the Lisbon Act, the *Conference of Representatives of the Paris Union*,

(iii) in 1961, by the Consultative Committee of the Paris Union, a *Permanent Bureau* of that Committee (five members),

(iv) in 1962, jointly by the Permanent Bureau of the Consultative Committee of the Paris Union and the Permanent Committee of the Berne Union, the *Interunion Coordination Committee*.

These bodies, however, were not really governing bodies in the sense in which the term has been generally understood since the creation of the United Nations in 1945. BIRPI itself had not been essentially changed at all before the Diplomatic Conference of Stockholm (1967), except that, in 1963, the Swiss Government appointed, for the first time in its history, a non-Swiss as Director of BIRPI. He was Georg H.C. Bodenhausen, a national of the Netherlands.

The idea of a structural and administrative reform of the kind realized, some seven years later, at the Stockholm Diplomatic Conference of 1967 had come, originally, in 1960, from Jacques Secrétan, a citizen of Switzerland, Director of BIRPI from May 1, 1953, to January 15, 1963.

In 1962, the idea was developed, translated into practical proposals and vigorously promoted by the writer of this essay, Arpad Bogsch, who then was a delegate of the United States of America to various BIRPI meetings.

The interest of the European countries in the said proposals was mainly the merit of Guillaume Finnis, who, as a delegate of France, was the chairman of most of the BIRPI meetings of that era.

When Bodenhausen became Director and Bogsch Deputy Director of BIRPI early in 1963, the preparations for the "structural and administrative" reform (an expression coined for the purpose and consistently used in the official documents) were pursued with thoroughness and speed. A great number of documents were issued by BIRPI proposing the reform and marshalling arguments for it. Several meetings convened by BIRPI dealt with the proposed reform, in particular a working party that met in May 1964 and a committee of experts that met twice, in March 1965 and in May 1966. The Working Party consisted of representatives of Czechoslovakia, France, Germany (Federal Republic of), Hungary, Italy, Japan, Sweden, Switzerland, the United Kingdom and the United States of America. All the States members of the Paris and Berne Unions were invited to the Committees of Experts of 1965 and 1966. The role of Sweden and its chief

delegate, Torwald Hesser, was particularly important since Sweden declared itself ready to host not just a revision conference of the Berne Convention (which Sweden had announced itself prepared to do 19 years earlier, at the Revision Conference of Brussels in 1948) but, in addition and instead, what was later officially called the "Intellectual Property Conference of Stockholm" (hereinafter referred to as "the Stockholm Conference"), which was a diplomatic conference and which then took place in the Swedish capital in 1967. The Stockholm Conference adopted, on July 14, 1967, the WIPO Convention. That was the starting date of the quarter-century with which the present essay deals.

1.3 *The Stockholm Conference (1967) and the Entry into Force of the Stockholm Texts (1970-1975)*

Thus, the Stockholm Conference had two main objectives. One was to effectuate the structural and administrative reform of the Paris and Berne Unions as well as of the then existing five special agreements under the Paris Union. The other main objective was the revision of a number of important substantive provisions of the Berne Convention and one substantive provision of the Paris Convention.

All this was accomplished through the conclusion of a new treaty, namely the one establishing WIPO, and, as far as the existing treaties were concerned, through the revision of the Paris and Berne Conventions (which then had 77 and 58 contracting States, respectively) and the Madrid (Marks), Nice and Lisbon Agreements, and through the establishment of an "Additional Act" and a "Complementary Act" to the Madrid (Indications of Source) and the Hague Agreements, respectively.

In other words, one completely new multilateral treaty had to be created and seven multilateral treaties had to be modified, all at the same time.

All these objectives were attained in one and the same set of meetings at the Stockholm Conference.

Seventy-three States, represented by 389 delegates, and 36 organizations, represented by 93 observers, participated. The Secretariat was furnished by BIRPI; it consisted of 14 persons. Thus, there were almost 500 participants. They met for five weeks (June 11 to July 14,

1967) in the Swedish Parliament (Riksdag) building. The President of the Plenary was the Minister of Justice of Sweden, Herman Kling, but his functions were mainly exercised by Torwald Hesser, Justice of the Supreme Court of Sweden.

The Stockholm Conference did most of the work in five so-called Main Committees. Three of them dealt with provisions of substantive intellectual property law that resulted in the revision of the Berne and Paris Conventions: Main Committee I, with the general revision of such provisions in the Berne Convention (under the chairmanship of Eugen Ulmer, a law professor in the Federal Republic of Germany); Main Committee II, with the creation of a protocol that instituted possible exceptions to some of the stricter rules of the Berne Convention in favor of developing countries (under the chairmanship of Sher Singh, a Minister of State in the Ministry of Education of India); and Main Committee III, with the revision of those provisions of the Paris Convention that deal with the right of priority (under the chairmanship of Lucian Marinete, head of the Romanian State Office for Inventions).

Main Committee I worked on the revision of the then existing substantive provisions of the Berne Convention, particularly on the authorship of and rights in what were then called cinematographic works (today, they are called audiovisual works) and on the extent to which the legislation of member countries might limit the (otherwise) exclusive right of reproduction.

Main Committee II, as already stated, proposed an addition to the Berne Convention. That addition was called "Protocol Regarding Developing Countries." The proposed Protocol was adopted in Stockholm. However, soon after the Stockholm Conference, it was realized that the Protocol went too far and that it could never go into effect. It was replaced by less far-reaching provisions, four years later, at a diplomatic conference of revision of the Berne Convention, held in Paris (1971) at the same time as similar provisions were added also to the Universal Copyright Convention (administered by the United Nations Educational, Scientific and Cultural Organization (Unesco)).

The revision proposed by Main Committee III consisted in assimilating inventors' certificates to patents for the purposes of the right of priority provided for in Article 4 of the Paris Convention. Inventors' certificates were a form of protection invented by the Soviet Union in

the nineteen-twenties. With the dissolution of that country in 1991, the institution of inventors' certificates has ceased to exist.

As far as the structural and administrative reforms were concerned, Main Committee IV dealt with the introduction of changes in the administrative and final clauses of the Paris and Berne Conventions and the five Special Agreements, whereas Main Committee V dealt with the establishment of WIPO. The establishment of WIPO and the introduction of the said changes in the then existing seven treaties were complementary operations in the sense that neither of them could be realized without, at the same time, realizing the other. Main Committees IV and V were chaired, respectively, by François Savignon, Director of the National Institute of Industrial Property of France, and Eugene M. Braderman, a high official of the Department of State of the United States of America.

Each of those five Main Committees issued remarkably well-written reports. Their authors were Svante Bergström (a professor of law in Sweden; Main Committee I), Vojtech Strnad (a legal advisor in the Ministry of Culture of Czechoslovakia; Main Committee II), Alfred Capel King (a barrister in Australia; Main Committee III), Valerio de Sanctis (an attorney-at-law in Italy; Main Committee IV) and Joseph Voyame (Director of the Swiss Federal Intellectual Property Office; Main Committee V).

The Secretary General of the Stockholm Conference was Arpad Bogsch, then First Deputy Director of BIRPI.

The structural and administrative reform, accomplished in Stockholm, had as its overall objective the creation of a situation in which the Member States, collectively and systematically, decide and control, or at least discuss, the development of international relations in the field of intellectual property. This new situation contrasted with the situation that existed between 1883 (when the Paris Union was created) and 1970 (when the reforms made in Stockholm entered into effect): before 1970, Member States made decisions only *ad hoc* (mainly in diplomatic conferences of revision, held, on the average, every 20 years), and the control of the secretariat's (that is, BIRPI's) activities and finances was essentially exercised by one country, Switzerland, the country on whose territory the secretariat was located.

The structural and administrative reform had also the objective of enabling the new organization, WIPO, to become a specialized agency

of the United Nations system of organizations. This objective could not be realized at the Stockholm Conference itself because becoming a specialized agency is a matter that must be agreed upon between the United Nations and WIPO, and that could be achieved only once WIPO existed, namely once the Convention Establishing the World Intellectual Property Organization (hereinafter referred to as "the WIPO Convention") had entered into force (it did, but only three years after the Stockholm Conference). Nevertheless, the draft of the WIPO Convention and the drafts for the revision of the then existing seven treaties, presented by BIRPI to the Stockholm Conference, were proposed with the said objective in mind and with the firm determination to insist that the texts, as adopted, should make it possible that the future WIPO could aspire to the status of a specialized agency of the United Nations system of organizations.

These two objectives were realized through the texts adopted at the Stockholm Conference. They were realized in the following manner.

WIPO was established. Its members are those States that adhere to the WIPO Convention. Any State party to the Paris Convention or the Berne Convention, as well as any State member of the United Nations system (that is, the United Nations, any of its specialized agencies, the International Atomic Energy Agency or the International Court of Justice), can become a member of WIPO. Thus was fulfilled the double condition that (i) any State associated with BIRPI could become a member of WIPO even if it did not belong to the United Nations system, and (ii) any State belonging to the United Nations system could become a member of WIPO even if it was not associated with BIRPI.

WIPO has three Governing Bodies: the Conference, the General Assembly and the Coordination Committee.

The members of the Conference are all the States that are members of WIPO.

The members of the General Assembly are all the States that are not only members of WIPO but that are also members of the Paris and/or Berne Unions. This means that States that are members of WIPO but not members of the Paris or Berne Unions, as well as States that are members of the Paris and/or Berne Unions but not members of WIPO, are *not* members of the General Assembly. In other words, the General Assembly is a body in which the members of at least one of

the two “main” Unions (Paris and Berne) make the decisions, thereby giving them a certain preponderance since some of the important decisions—for example, the election of the Director General—are reserved for the General Assembly.

The members of the Coordination Committee are (automatically) the members of the Executive Committee of the Paris Union (see below) and the Executive Committee of the Berne Union (see below), with some *ad hoc* members which belong to neither of the two Unions but are members of WIPO.

Each of the Unions has an Assembly (not a *General* Assembly but a (simple) Assembly), that is, a body of which all the members of the Union (that adhere at least to the administrative and final clauses of the Stockholm Act (1967) of the Paris Convention or the Paris Act (1971) of the Berne Convention) are members. At the time of the Stockholm Conference, there were six such Unions (Paris, Berne, Madrid (Marks), Hague, Nice and Lisbon). The two great ones—Paris and Berne—also have, each, a separate Executive Committee, elected from among the members of each Union. Their number is one-fourth of the members of the Union concerned. Switzerland is *ex officio* a member of both Executive Committees.

These bodies were established in the texts adopted at Stockholm and started functioning once the Stockholm texts or their relevant provisions had entered into force.

On July 14, 1992, 131 States were members of WIPO; the WIPO Coordination Committee had 52 members, the Paris Executive Committee 26 members, and the Berne Executive Committee 23 members.

The texts adopted at Stockholm provided that the Conference and the General Assembly of WIPO and the Assemblies of the Unions would have to meet in regular session once every three years. This period, however, proved to be too long and, in any case, did not correspond to the practice of most of the other specialized agencies. The main governing bodies of those agencies normally meet every second year. WIPO and the Unions adopted the same frequency, through an amendment of the relevant treaties, in 1977 and 1980, and, since then, the General Assembly and the Conference of WIPO and the Assemblies of the Unions meet in ordinary session once every second year, in the years with an odd number.

The lower-ranking governing bodies, the Coordination and Executive Committees, meet in ordinary session each year.

The ordinary sessions are usually held towards the end of September.

In addition to ordinary sessions, any of the governing bodies may meet in extraordinary session.

In the nineteen-eighties, on more and more occasions, the General Assembly of WIPO and the Assemblies of the Unions met in extraordinary session at the yearly sessions of the Coordination Committee and the Executive Committees. This practice resulted in a situation in which the said Committees have a rather limited role, since their main task—the preparation of the work of the (General) Assemblies—becomes unnecessary if they meet (as they do in practice) mostly at the same time as and together with the (General) Assemblies and even the WIPO Conference.

Nevertheless, the WIPO Coordination Committee does continue to have an important role in the election of the Director General and in staff matters. Only a person proposed by the Coordination Committee may be elected Director General. The Staff Rules were established and are regularly modified by the Coordination Committee. The Deputy Directors General and any staff member of directorial rank (there were two of the former, and 21 of the latter, on July 14, 1992), although appointed by the Director General, are appointed after the approval of the Coordination Committee is given, as far as Deputy Directors General are concerned, and after the advice of the Coordination Committee is heard, as far as staff members of directorial rank are concerned, that is, for all practical purposes, their appointment requires a meeting of the minds of the Coordination Committee and the Director General.

The most important function of the Assemblies consists in the establishment of the biennial program and budget of each Union that has its own finances and of WIPO as such. Since the Secretariat—officially called the International Bureau of Intellectual Property but, in practice, simply called “the International Bureau (of WIPO)”—is one and the same for all the Unions (in 1992 there were 12, but two of them (the Lisbon and the Budapest Unions) had no budget), the coordination of the budgets is a very special task. The budgets of those Unions must be separate because each Union has its own members and

the identity of the member States varies from Union to Union. It is because States members of a given Union want, without interference by States not members of that Union, to decide the program and budget of the said Union, that the programs and the finances of the various Unions have to be separated from each other but, at the same time, have to be coordinated with each other. More is said about the programs, budgets and the carrying out of each later in this essay.

In respect of treaties concluded before the Stockholm Conference, the Swiss Confederation had the task of depositary; according to the texts of the Stockholm Conference (and later texts), this task belongs to the Director General of WIPO. This change was introduced to conform to the practice of the specialized agencies of the United Nations system of organizations.

Another feature corresponding to that practice consists in the fact that the Director General is elected by the Member States. He is "the chief executive" of WIPO and "represents" WIPO. He must "report to, and conform to the instructions of, the General Assembly." (The quotations are from Article 9(4) of the WIPO Convention.) His duties include the preparation of the draft programs and budgets and of the periodical reports on activities. The Director General appoints the staff.

The first Director General of WIPO was Georg H.C. Bodenhausen. His term (after having been Director of BIRPI since 1963) lasted from September 22, 1970, to November 30, 1973.

He was succeeded by Arpad Bogsch who was elected in 1973, took office on December 1, 1973, and was reelected in 1979, 1985 and 1991. His latest term of office expires on December 1, 1995. Between 1963 and 1970, he was (First) Deputy Director of BIRPI, and between 1970 and 1973, First Deputy Director General of WIPO.

But this anticipates the working of the Stockholm texts. Those texts were adopted on July 14, 1967, but they attained the number of ratifications and accessions required for entry into force only a few years later, variantly between 1970 and 1975:

in 1970, the WIPO Convention and the Madrid (Indications of Source) Agreement (on April 26), and the administrative and final clauses of the Stockholm Acts (effecting the structural and

administrative reform) of the Paris Convention (on April 26), of the Berne Convention (on May 4) and of the Madrid (Marks) Agreement (on September 19),

in 1972, the said clauses concerning the Nice Agreement (on July 5),

in 1973, the said clauses concerning the Lisbon Agreement (on October 31),

in 1975, the said clauses concerning the Hague Agreement (on September 27).

But the later entry into force of the last three did not prevent the meeting, for the first time in history, of the three Governing Bodies of WIPO and the Assemblies of the Paris and Berne Unions in September 1970. The further history of the Governing Bodies and the International Bureau is narrated in later parts of this essay.

The composition and the powers of the Governing Bodies, and the powers of Director General of WIPO, were very similar to those of the governing bodies and the executive heads of the specialized agencies of the United Nations system of organizations. Thus, the possibility of seeking specialized agency status for WIPO came into existence in 1970.

1.4 *The Status of WIPO as a Specialized Agency in the United Nations System of Organizations (1974)*

The possibility of WIPO becoming a specialized agency of the United Nations system of organizations existed, but a number of the Member States hesitated.

All States seemed to agree on the potential advantages of specialized agency status for WIPO. At least three such advantages were seen at the time: (i) the fact that dealing with intellectual property was the prerogative and the task of WIPO would receive worldwide recognition, (ii) WIPO would have more or less the same members as the United Nations, and in particular, many developing countries would join WIPO (only very few of them belonged to BIRPI), (iii) the governments of Member States would be liberated from having to deal with the fixing of salaries, other working conditions and

pensions of the staff, since salaries and pensions would automatically follow the so-called "common system" of the United Nations and its specialized agencies (except the World Bank and the International Monetary Fund which were—and still are (together, later, with the International Financial Corporation and the International Development Association)—outside the common system).

The hesitation concerned the second point: some of the industrialized countries feared that the developing countries would become the great majority of the membership and would try to weaken, rather than to strengthen, the international protection of intellectual property, since it was believed by certain people that most developing countries were likely to advocate lower standards of protection. This fear was partly based on the insistence of developing countries at the Stockholm Conference of 1967, on having the right to give, in certain respects, a lesser degree of copyright protection than the other countries. (On January 1, 1970, 47 States, that is, 57% of the 83 member States of the Paris and Berne Unions were developing countries; by July 14, 1992, 94 States or 70% of the 139 members of WIPO and the said Unions were developing countries.)

Other industrialized countries and the Director General recognized that this possibility existed but were of the opinion that, on balance, the step should be taken. They took the view that what was of prime importance was that the developing countries should belong to the international intellectual property system so that the protection of intellectual property might extend all over the world, or at least to the great majority of the countries. Undoubtedly, this fact would not allow the industrialized countries to establish rules as if they were alone among themselves, but this price seemed worth paying if a reasonable—even if from the point of view of the interests of some of the industrialized countries, not ideal—international system of protection of intellectual property were to result.

In 1992, that is, some 20 years after this thinking developed and after WIPO became a specialized agency, one can say that—although the first two of the three above-mentioned expected advantages were not fully realized—on balance, the decision to seek specialized agency status was a wise one since it resulted in better and wider international relations in the field of intellectual property.

But before speaking of the results, the procedure for becoming a specialized agency will be outlined.

As already stated, an international organization becomes a specialized agency through a bilateral agreement concluded between the organization and the United Nations. The contents of such an agreement between the United Nations and WIPO were first negotiated by their Secretariats, the International Bureau being assisted by Martin Hill, an expert in such agreements; the agreement was then approved by the General Assembly of WIPO on September 27, 1974, and by the General Assembly of the United Nations on December 17, 1974. A protocol was signed by Kurt Waldheim, then Secretary-General of the United Nations, and Arpad Bogsch, Director General of WIPO, on January 21, 1975; the protocol noted that the Agreement had entered into force on December 17, 1974.

At that time—namely, the end of 1974—the following organizations were already specialized agencies: the International Labour Organisation (ILO), the Food and Agriculture Organization of the United Nations (FAO) and the United Nations Educational, Scientific and Cultural Organization (Unesco) since December 14, 1946; the International Civil Aviation Organization (ICAO) since May 13, 1947; the International Bank for Reconstruction and Development (IBRD or “World Bank”) and the International Monetary Fund (IMF) since November 15, 1947; the Universal Postal Union (UPU) since July 1, 1948; the World Health Organization (WHO) since July 10, 1948; the International Telecommunication Union (ITU) since January 1, 1949; the World Meteorological Organization (WMO) since December 20, 1951; the International Finance Corporation (IFC) since February 20, 1957; the International Maritime Organization (IMO) since January 13, 1959; the International Development Association (IDA) since March 27, 1961. After 1974, two more organizations, namely, the International Fund for Agricultural Development (IFAD) on December 15, 1977, and the United Nations Industrial Development Organization (UNIDO) on May 29, 1986, became specialized agencies. Thus, on July 14, 1992, WIPO was one of 16 specialized agencies.

Now we return to the evaluation of the said 20 years. The agreement between the United Nations and WIPO says that WIPO is recognized as specialized agency in the field of intellectual property, but it adds “subject to the competence and responsibilities of the United Nations and other specialized agencies.” This was found necessary, in 1970, mainly because of the copyright part of WIPO’s activities: in addition to the Berne Convention (concluded in 1886) administered by WIPO, there had been since 1952 the Universal Copyright Convention, a multilateral treaty on copyright (like the Berne

Convention) concluded mainly on the urging of the United States of America (which then was not a member of the Berne Union) under the aegis of Unesco. In the meantime, the United States of America left Unesco (1986) and joined the Berne Convention (1989), whereas the Soviet Union (like the United States of America, party to the Universal Copyright Convention but not to the Berne Convention) ceased to exist (1991). These events slowed down Unesco's activities in the field of copyright and, by 1992, WIPO was undoubtedly the leading specialized agency in the field.

Another duplication of WIPO's activities came and in 1992 still comes from two organizations which, although not specialized agencies, are in their essence not very different from them. One is the United Nations Conference on Trade and Development (UNCTAD, founded in 1964) whose supreme body is the Conference of the Member States, but whose secretariat is part of the secretariat of the United Nations. The other is the General Agreement on Tariffs and Trade (GATT) which, as is constantly underlined by GATT itself, is not an organization but merely an agreement. Nonetheless, the Agreement (which was concluded in 1947 and to which 103 countries were party on July 14, 1992) has two governing bodies (the Sessions of Contracting Parties and the Council of Representatives) and a secretariat. In the negotiations of the so-called Uruguay Round of GATT, started in 1986 and not yet finished on July 14, 1992, a long text on intellectual property was drafted which, if it comes into effect, will clearly duplicate the Paris and Berne Conventions and the Washington (Integrated Circuits) Treaty, which are administered by WIPO. If this duplication becomes a reality, the question will arise in which of the two organizations—WIPO or GATT (which might become in the future a "real" organization, possibly under the name of Multilateral Trade Organization (MTO))—the international norms of the protection of intellectual property will be further developed.

The writer believes that such norms will probably be developed in both, thereby prolonging the duplication. Incidentally, duplication is a phenomenon that most governments rigorously condemn. But its existence is a reality, not as if the secretariats would cause it by trying to extend the field of their activities: secretariats cannot do that since their activities are decided by the governments of the Member States. Rather, it is they, the governments, that decide duplication, usually as a result of persuasion by those among them that believe that a second or third organization is a more favorable forum, giving more scope for their bargaining power.

The other objective—bringing developing countries into the mainstream of international relations in the field of intellectual property—was, to a large extent, accomplished by WIPO during the nineteen-seventies and eighties. But there remain some exceptions, particularly the absence, not from WIPO of which they are members, but from the Paris Union, of India and some of the middle-sized Latin American countries and, from the Berne Union, of the successor States of the former Soviet Union. But the signs were, in 1992, that by the end of the 20th century those gaps would be filled.

The third objective of achieving specialized agency status for WIPO was also essentially attained: the Member States generally do not have to deal with the salaries and pensions of the staff of WIPO since salaries and pensions are governed by the “common system” controlled by the decisions of the General Assembly of the United Nations. The results are not always to the liking of the International Bureau since the “common system” is based in New York and is worldwide, and it does not sufficiently take into account the needs of those specialized agencies (like WIPO) most of whose staff are in Europe.

2. ACHIEVEMENTS OF WIPO IN MULTILATERAL TREATY-MAKING

- 2.1 Twenty-Nine Treaties – 2.2 The 16 New Treaties (2.21 The PCT, 2.22 The Three Classification Treaties, 2.23 The Budapest Treaty, 2.24 The Other New Treaties) –
- 2.3 The 8 Old Treaties (2.31 The Paris Convention, 2.32 The Berne Convention, 2.33 The Madrid (Marks) Agreement, 2.34 The Madrid (Indications of Source) Agreement, 2.35 The Hague Agreement, 2.36 The Nice Agreement, 2.37 The Lisbon Agreement, 2.38 The Rome Convention) –
- 2.4 The 5 Possible Future Treaties (2.41 The Patent Law Treaty, 2.42 Treaty in the Field of Trademarks, 2.43 Treaty on the Settlement of Disputes Between States, 2.44 Protocol to the Berne Convention, 2.45 Instrument on the International Deposit of Industrial Designs)

2.1 *Twenty-Nine Treaties*

The most important objective of the World Intellectual Property Organization is “to promote the protection of intellectual property throughout the world” (WIPO Convention, Preamble), and the most important means of attaining this objective is the creation of multi-lateral treaties. Thus, the most important activities of the International Bureau are giving the inspiration for and preparing the conclusion of new treaties, the further development of existing treaties and the administration of the treaties that are in force.

By July 14, 1992, there were 29 multilateral treaties (five of them in the planning stage) for which WIPO was responsible.

Sixteen of the 29 were concluded on or after July 14, 1967, and before July 14, 1992. They will be called in this essay “the new treaties.” Ten of them were, by July 14, 1992, already in force.

Eight treaties were concluded before July 14, 1967. They will hereinafter be called “the old treaties.” All of them were in force on July 14, 1992. Seven of them were amended during the period of 25 years under consideration.

Work on five possible new treaties had started but not yet been completed during that period. They will be called “the possible future treaties.”

2.2 *The 16 New Treaties*

Among the 16 new treaties—and without counting the Treaty establishing WIPO, already discussed—the *Patent Cooperation Treaty* (usually called, not only in English but also in other languages, “the PCT”) has proved to be the most successful.

2.21 *The PCT*. Its idea was conceived in the International Bureau by the writer of this essay. It received encouragement, of decisive importance, by the then Commissioner of Patents of the United States of America, Edward J. Brenner. The Federal Republic of Germany, France and the United Kingdom—although deeply engaged at the time in the preparation of the European Patent Convention (concluded in 1973, three years after the PCT)—were ready to examine the idea closely. So were several other countries, including Japan.

The first preparatory meeting was convened by the International Bureau in 1967. Fifteen others followed before the Diplomatic Conference, held in Washington in 1970, adopted the PCT.

Ratifications were slow to come, mainly because of the resistance of many patent agents in most countries. The resistance was caused by the fear that the services of patent agents would be less needed under the PCT than without the PCT.

Another reason for the long period (almost eight years) between the adoption and the entry into force of the PCT was the desire of some Western European countries that operations under the PCT should not start before operations under the European Patent Convention started, and the preparations for the conclusion of that Convention and the opening of the European Patent Office—a major organizational and financial achievement—took time. This is why the PCT came into effect only in 1978.

The great success of the PCT resides both in the number and identity of the States that are party to it and in the number of international (PCT) patent applications that are filed under it.

On July 14, 1992, 50 States were party to the PCT. Among them were all the highly industrialized countries of the world and several of the developing countries that have important industrial activities.

The PCT facilitates the obtaining of patents for an invention where patents for that invention are desired in several countries. The facilities consist in filing a single patent application that has effect in as many of the (presently 50) States party to the PCT as the applicant desires. They also consist in the fact that the applicant obtains information—from one of the leading patent offices of the world—in the light of which he (the applicant) can make an educated guess on the likelihood of the invention's patentability. The facilities also consist in the saving of expenses which, without the use of the PCT, could not have been avoided.

The success of the PCT can be measured by the development of the number of international applications received by the International Bureau under it. That number was 2,625 in 1979 (the first full calendar year in which the PCT was in force); four years later, in 1983, it rose to 4,971; another four years later, in 1987, it attained 9,201; whereas, again four years later, in 1991 (the last full calendar year for which statistics were available when this essay was written), it reached 22,247. It is estimated that the average number of countries in which each international application had the effect of a national application was 23 in 1991; on the basis of that estimate, the 22,247 international applications received in the single year of 1991 replaced some 510,000 national applications.

The total number of international applications under the PCT received by the International Bureau between the date on which operations under the PCT started (June 1, 1978) and July 14, 1992, was 132,910.

Up to July 14, 1992, staff of the International Bureau spent some 240 working days at seminars and other meetings in which the usefulness and the use of the PCT system were explained. Such meetings were held in 33 countries, the staff used seven languages and the number of participants exceeded 12,000. The use of the PCT is much facilitated by the "PCT Applicant's Guide," a loose-leaf publication of the International Bureau regularly kept up to date.

The PCT is a successful treaty also for the finances of the International Bureau.

The expenses of the International Bureau caused by the preparations of the operations of the PCT were covered by contributions from the Member States. So also were the deficits of the first five years of operation. They amounted to 10,580,819 Swiss francs; their reimbursement by the International Bureau to the States that paid them will be completed by the beginning of 1993.

Beginning with the 1982-83 biennium, the yearly PCT income of the International Bureau, mainly coming from the fees paid by the applicants, exceeded the yearly PCT expenses (staff, computerization, printing and other) of the International Bureau. At the end of 1991, the resulting surpluses amounted to 47,700,000 Swiss francs. Part of this money is kept in reserve for covering any deficits, and part of it is put aside for the major investments which will be necessary to further computerize the International Bureau's activities and to build new premises for the additional staff who carry out those activities.

The success of the PCT is also due, and to a decisive degree, to the quality of service provided for the PCT system by the staff of the International Bureau. That service is accurate, prompt and courteous. Relations between the International Bureau on the one hand, and the applicants, the patent agents, the national patent offices and the European Patent Office on the other, are truly excellent.

2.22 *The Three Classification Treaties.* Among the 16 new treaties, three established *international classifications*: one for industrial designs, one for inventions and one for marks (trademarks and service marks). They all serve the same purpose: finding, among millions of industrial designs, inventions or marks, those which are more or less similar to each other. The process is generally called search or searching. Without grouping—according to criteria of affinity—the designs, inventions or marks into “classes,” search would be impracticable because of the tremendous numbers involved. Each class is identified by a symbol (letters and/or numbers), and all the classes, together, constitute the classification system or, briefly, the *Classifications*. But the word “classification” also means the process of assigning the appropriate symbol to a given design, invention or mark.

The first of the three new classification treaties was concluded in Locarno (Switzerland) in 1968 and is called the *Locarno Agreement Establishing an International Classification for Industrial Designs*.

The Classification consists of 32 classes and 223 subclasses, each covering a certain type of goods (for example, class: means of transport and hoisting; subclasses: ships and boats, tractors, etc.). To facilitate the use of the Classification, it also contains an alphabetical list of goods, listing some 6,000 different kinds of goods.

Although only 18 States were party to the Locarno Agreement on July 14, 1992, the Classification was used by at least 35 national registries, by the regional designs office of the three Benelux countries, and by the International Bureau (in the international (Hague) system of deposit of industrial designs).

The second of the three new classification treaties was concluded in Strasbourg (France) in 1971 and is called the *Strasbourg Agreement Concerning the International Patent Classification*. In abbreviated form, the Classification is known as "the IPC."

The first international classification treaty in this field was concluded under the aegis of the Council of Europe in 1954, and the States that could become party to it were necessarily only members of the Council of Europe. But the members, as well as the Council of Europe, seeing the success of the Classification, generously decided to transform it into a worldwide system under the administration of WIPO. This is what the Strasbourg Agreement effected in 1971.

The IPC divides technology into eight main Sections and, under each Section, several hierarchical layers of subdivisions, resulting in some 64,000 subdivisions. The appropriate classification symbol or symbols are indicated in every published copy of a patent application or patent. Various indexes, as well as, since early 1992, a CD-ROM search system, facilitate the use of the Classification.

The IPC is revised every five years. Each revision results in a new edition of the (nine-volume) Classification. The original edition was published in 1968, and the four revised editions entered into force in 1974, 1980, 1985 and 1990, respectively. The revisions are organized by the International Bureau and carried out by a Working Group consisting of representatives of member States of the WIPO Permanent Committee on Industrial Property Information (PCIPI) and the European Patent Office. The revisions are adopted by the Committee of Experts instituted by the IPC Agreement. All States party to that Agreement are members of the said Committee of Experts.

On July 14, 1992, 26 States were party to the IPC Agreement, but as many as 70 national and three regional patent offices used the Classification for their publications and, to various extents, in their searches for anticipations and substantive examinations for patentability. The Classification is used also for the international patent applications published by the International Bureau under the PCT.

The third of the three new classification treaties was concluded in Vienna in 1973 and is called the *Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks*. The Classification is hierarchical and consists of 29 categories (e.g., "Human Beings"), 144 divisions (e.g., "Men") and 1,569 sections (e.g., "Men wearing a dinner jacket").

On July 14, 1992, there were only five States party to the Agreement, but the Classification was used by 27 national offices, the regional trademark office of the three Benelux countries and by the International Bureau (for international registrations under the Madrid (Marks) Agreement).

The three classification treaties have in common that each constitutes a Union with its own Assembly, program and budget, that the activities of each Union are financed mainly by contributions that the Member States pay to the International Bureau, and that each Classification is systematically revised to make it responsive to changing needs (new types of inventions, goods or services). Such revisions are carried out from time to time by the "Committee of Experts" of the States members of the respective Unions, established by each of the Agreements.

It is to be noted that WIPO also administers a further classification treaty relating to marks, the Nice Agreement. Since it was concluded before 1967, it is dealt with further along in this essay, among the old treaties.

2.23 The Budapest Treaty. Among the new treaties, the *Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure* has also proved to be particularly useful and successful. It was concluded in 1977 in Budapest and, on July 14, 1992, it had 23 States party to it, among them most of those which have a very important chemical industry.

The Treaty—which does not provide for financial contributions—introduced a bold innovation in patent procedures: it obliges each State party to it to give the deposit of a sample of a microorganism with a recognized scientific institution (“international depositary authority”) in one such State the same effect as if the sample had been deposited in all the States party to the Treaty. The resulting simplification is significant: the delicate transfer of living organisms from one country to the other is no longer needed, and the resulting cost savings are considerable. The European Patent Office also recognizes the deposits. Any contracting State and the European Patent Office have the right to designate international depositary authorities.

On July 14, 1992, 23 international depositary authorities existed. They were in Australia, nine European countries, Japan, the Republic of Korea and the United States of America.

2.24 *The Other New Treaties.* Among the 16 new treaties, there are four (in addition to the six already described) that were in force on July 14, 1992, and there were six that were not in force (one of them through “freezing”) on that date.

The former four are, in chronological order,

(i) the *Geneva Convention of 1971 for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms* (diplomatic conference co-sponsored by WIPO and Unesco; 43 contracting States; no Union; no contributions);

(ii) the *Brussels Convention of 1974 Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite* (14 contracting States; no Union; no contributions);

(iii) the *Nairobi Treaty of 1981 on the Protection of the Olympic Symbol* (32 contracting States; no Union; no contributions);

(iv) the *Film Register Treaty of 1989*, concluded in Geneva and officially called Treaty on the International Registration of Audio-visual Works (six contracting States; a Union but no contributions; the Registry is located in Klosterneuburg near Vienna).

The latter six, also in chronological order, are

(i) the *Trademark Registration Treaty of 1973*, concluded at Vienna (since 1991, “frozen” (that is, no longer applied) by a decision of its five members; it may be regarded as potentially replaced by the Madrid Protocol (see below));

(ii) the *Vienna Agreement for the Protection of Type Faces and their International Deposit* of 1973 (it seems doubtful whether it will ever come into effect);

(iii) the *Geneva Treaty on the International Recording of Scientific Discoveries* of 1978 (with the disappearance of the Soviet Union, which was its main promoter, it will probably never come into effect);

(iv) the *Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties* of 1979, concluded in Madrid under the co-sponsorship of WIPO and Unesco (interest in it seems to have largely disappeared, and it is not expected to enter into force);

(v) the *Washington Treaty on Intellectual Property in Respect of Integrated Circuits* of 1989 (although adopted by a great majority at the diplomatic conference, it was declined by Japan and the United States of America; those countries being the most important producers of microchips, their attitude is likely—while their opposition lasts—to discourage accession by other countries);

(vi) the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks*, concluded in Madrid in 1989 and commonly called “the Madrid Protocol.” In contradistinction to the five preceding treaties, this treaty seemed, at least in 1992, to be completely viable. It is expected to find acceptance by a great number of countries and the European Community (which would be, for the first time, a contracting party to a WIPO-sponsored treaty) as soon as the United Kingdom and/or the United States of America—two important countries missing from among the members of the (in 1992) 101-year old Madrid Union (see below)—adhere to it. The Madrid Protocol was concluded mainly in order to make it possible for the United Kingdom and three other countries of the European Communities not members of the Madrid Union, as well as the United States of America, to become party to the Madrid system of international trademark registration administered by the International Bureau. The Madrid Protocol was also concluded to establish a link between the Madrid system and the (European) Community Trade Mark system once the latter comes into force.

In 1992, prospects were good that those countries would, within a year or two, adhere to the Madrid Protocol.

2.3 *The 8 Old Treaties*

During the 1967-1992 period, what were the significant events concerning the eight “old” treaties? Among those treaties, all concluded

before 1967, are, first of all, the two basic Treaties, the pillars of the international protection of intellectual property, namely the *Paris Convention for the Protection of Industrial Property* ("Paris Convention") concluded in 1883, and the *Berne Convention for the Protection of Literary and Artistic Works* ("Berne Convention") concluded in 1886.

Then there are five treaties, called "special agreements" under the Paris Convention, concluded between 1891 and 1958, and the *Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations* ("Rome Convention") co-sponsored by BIRPI, the International Labour Organisation and Unesco and concluded in 1961. The five special agreements are (i) the *Madrid Agreement Concerning the International Registration of Marks* ("Madrid (Marks) Agreement") of 1891, (ii) the *Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods* ("Madrid (Indications of Source) Agreement"), also of 1891, (iii) the *Hague Agreement Concerning the International Deposit of Industrial Designs* ("Hague Agreement") of 1925, (iv) the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks* ("Nice Agreement") of 1957 and (v) the *Lisbon Agreement for the Protection of Appellations of Origin and their International Registration* ("Lisbon Agreement") of 1958.

As already stated in connection with the Stockholm Conference, these treaties, except the Rome Convention, were revised in 1967 at that Conference, as far as their administrative and final clauses were concerned. The same treaties, except the Madrid (Indications of Source) Agreement, were amended by their Assemblies in 1979 to introduce a two-year, instead of a three-year, program and budget cycle. Also, the Assemblies of the Paris and Berne Unions decided, in 1989 and 1991, the establishment of new contribution classes. The new classes were applied as from 1990 and 1992, respectively.

2.31 The *Paris Convention*, as far as its substantive provisions are concerned, was not revised during the 25-year period between 1967 and 1992. Not that no attempt to revise it was made. Such an attempt took place in a Diplomatic Conference of Revision which met in 1980, 1981, 1982 and 1984. Although the Diplomatic Conference was thoroughly prepared in 16 *ad hoc* working groups held between 1974 and 1979 and in five meetings of the member States of the Paris Union between 1976 and 1978, and although

six "consultative meetings" tried to restart it between 1985 and 1989, the Diplomatic Conference could not accomplish the contemplated revision. On July 14, 1992, the Diplomatic Conference had still not been formally terminated; however, its continuation had become unlikely.

The proposed revision had two main objectives.

One of the objectives was to give inventors' certificates the same status in the Paris Convention as have patents in that Convention. With the abolition—shortly before the Soviet Union ceased to exist—of inventors' certificates in that country, this objective of the planned revision lost its *raison d'être*.

The second main objective of the proposed revision was the allowing of more flexible rules in respect of compulsory licenses as far as developing countries were concerned. But the thinking of developing countries on this question seems to have gradually changed during the Uruguay Round negotiations of GATT, started in 1986, in such a way that a return to what were their goals in the Paris Revision Diplomatic Conference would be difficult to imagine in 1992 although, by mid-1992, the Uruguay Round was not yet completed.

Notwithstanding this situation concerning its attempted revision, the validity and the vitality of the Paris Convention, also in the eyes of developing countries, were amply proved: the total number of the member States of the Paris Union on July 14, 1967, and July 14, 1992, was 78 and 105, respectively. During the 25 years under consideration, the number of 78 decreased by 4 (since the German Democratic Republic, Southern Rhodesia and the Soviet Union ceased to exist, and since Laos denounced the Convention) and 31 States became members of the Paris Union, so that the net increase in the period under consideration was 27. Of the said 31 States, 27 were developing countries (China among them).

Still, the difficulties associated with the attempted revision created the belief that the modernization of international norms in the field of intellectual property should be sought not by revising the Paris (and, for that matter, also the Berne) Convention but by concluding new treaties. Hence the work on the proposed Patent Law Treaty, Trade-mark Law Treaty and Protocol to the Berne Convention, discussed further on.

2.32 The *Berne Convention*, or more precisely its 1967 Stockholm Protocol containing special rules for developing countries (wishing to benefit by such special rules) concerning the right of reproduction and the right of translation was revised, or rather replaced, in 1971, at a Diplomatic Conference held in Paris, by an Appendix to the Berne Convention. This revision has already been described in an earlier part of this essay.

The total number of member States of the Berne Union on July 14, 1967, and July 14, 1992, was 60 and 93, respectively. During the 25 years under consideration, the number of 60 decreased by one (since the German Democratic Republic ceased to exist), and 34 States became members of the Berne Union. Of the said 34 States, 31 were developing countries (China among them).

2.33 *Madrid (Marks) Agreement*. The total number of member States of the Union created by the Madrid (Marks) Agreement on July 14, 1967, and July 14, 1992, was 22 and 31, respectively. During the 25 years under consideration, the number of 22 decreased by two (since the German Democratic Republic ceased to exist, and since Tunisia denounced the Agreement) and 11 States became members of the Madrid (Marks) Union, so that the net increase in the period under consideration was nine.

The average yearly number of international registrations of marks under the Madrid Agreement was 4,547 during the 75 years preceding 1967; it was 13,568 between 1967 and 1992. The total number of international registrations in force was approximately 208,000 at the end of 1967, whereas it was approximately 280,000 at the end of 1991.

The income of the International Bureau on account of the Madrid Agreement was 2,592,000 Swiss francs in 1967, and it was 21,512,000 Swiss francs in 1991.

The money distributed among the States party to the Madrid Agreement totalled 11,190,000 Swiss francs during the 75 years preceding 1967; during the 25-year period between 1967 and 1992, that is, a period whose length is one-third of the preceding period, the money distributed amounted to 204,862,000 Swiss francs.

In other words, the vitality and usefulness of the Madrid system of international registration of marks is evident. Its growth is due not only

to its intrinsic value for trademark owners and to the expansion of its geographical coverage, but also to the generally recognized promptness and accuracy of the services of the International Bureau. Nevertheless, the potential of and the need for the international registration of trademarks far exceed the results, however good, of the present Madrid system. Its further growth is mainly prevented by its total incompatibility with the legal traditions of a good many of the States not party to it. This is why, in 1989, the Madrid Protocol, mentioned above, was concluded.

2.34 Madrid (Indications of Source) Agreement. The number of contracting States of the Madrid (Indications of Source) Agreement was 28 in 1967, and it was 30 in 1992. This is a sign of the Agreement having largely lost its attractiveness, probably because its provisions are not sufficiently stringent. As will be indicated further on in this essay, attempts to find new solutions to the old problem of the misuse of geographical indications were, however, undertaken by the International Bureau.

2.35 Hague Agreement. As far as the Hague Agreement is concerned, the 25 years under consideration show a mixed result. The total number of Member States of the Hague Union on July 14, 1967, and July 14, 1992, was 12 and 21, respectively. During the 25 years under consideration, the number of 12 decreased by one (since the German Democratic Republic ceased to exist) and 10 States became members of the Hague Union. The number of international deposits and renewals was a yearly average of 3,400 from 1967 to 1974, declined to a yearly average of 2,600 between 1975 and 1987 (the lowest point having been reached in 1981) but rose to a yearly average of 4,100 between 1988 and 1991 (the highest point, with 4,400, having been recorded in 1991).

Although these figures are not discouraging, it is generally believed that the international deposit of industrial designs could and should do better and that the system should be modernized mainly in order to attract more States to participate. As will be indicated further on, the International Bureau started work in the direction of such modernization in 1990.

2.36 The Nice Agreement is the oldest of the four international classification agreements. Concluded in 1957, it established an international classification of goods and services for the purposes of the registration of marks.

The number of its contracting States grew from 25 in 1967 to 35 in 1992, that is, by 40%. But the actual number of national trademark offices using the Classification is far greater, probably in the neighborhood of 100. Why do these additional countries not adhere? Probably because they can use the Classification—both in their searches for similar marks and in their publications—without having to be a member of the Nice Union (created by the Nice Agreement) and, consequently, without having to pay contributions for membership to the International Bureau. But not being a member does have a serious drawback: a State not member of the Nice Union cannot influence the perfecting of the Classification.

Such perfecting is carried out systematically by the Committee of Experts, consisting of representatives of the States members of the Nice Union. During the 25 years under consideration, the Classification was revised five times. Revision consists of adding new products and services to the Alphabetical List of Goods and Services and, in the light of experience, improving their classification. In 1992, the Classification had 42 classes: 34 for goods and eight for services. At the same time, the Alphabetical List of Goods and Services comprised some 12,000 items.

The Nice Classification is an extremely useful and well-functioning system. Its systematic updating, however, remains an absolute necessity, the more so when countries not previously party to the Agreement accede to it and wish to see goods and services peculiar to them covered by the Classification. An example of such necessity was the adherence, in 1990, of Japan to the Nice Agreement.

2.37 The *Lisbon Agreement* not only contains rules on the protection of appellations of origin but also sets up an international registry, kept by the International Bureau, for the registration of such appellations. The Agreement is an “old”—that is, pre-1967—treaty, but the International Register started to function only in 1968.

The Agreement had, on July 14, 1992, 16 contracting States: eight of them are pre-1967, eight of them are post-1967.

The number of international registrations amounted to 729 on July 14, 1992. The countries from which the highest number of registrations came were France (472), Czechoslovakia (108), Bulgaria (48), Hungary (26) and Italy (25). The remaining 50 registrations came from the other contracting States. The overwhelming majority

of the registrations concerns wine, beer and spirits. The registrations are published in a Gazette of the International Bureau. Twenty issues of that Gazette were published between 1968 and 1992.

2.38 The *Rome Convention* was concluded in 1961. Its Secretariat is a joint one of the International Bureau of WIPO, the International Labour Office and the Secretariat of Unesco. On July 14, 1967, the number of contracting States was 10. Twenty-five years later, the number was 38.

Although that increase in the numbers was relatively good, more and more interested circles voiced a desire for stronger international protection for producers of phonograms and for performing artists. Such desire was also expressed in respect of the rights of broadcasting organizations but to a lesser degree.

When the present lines were written (mid-1992), a new question was in the air: Should the possible Protocol to the Berne Convention not be a Protocol also to the Rome Convention, or should the Rome Convention not be revised? It is quite possible that the interested countries and the European Community will have to face this question before the end of the 20th century.

2.4 *The 5 Possible Future Treaties*

At the time of writing, the member States of WIPO and the International Bureau were deeply engaged in the task of creating five new multilateral treaties in the field of intellectual property.

2.41 *The Patent Law Treaty*. Preparatory work has advanced the most on the proposed Patent Law Treaty. This is the tentative name, used since 1989, of this possible new treaty which earlier was called Treaty on the "Harmonization" of Patent Law. Preparatory work started in 1983. The successive drafts, prepared by the International Bureau, were considered in 11 meetings of Committees of Experts. They dealt with a variety of subjects, including the determination of the filing date of a patent application, the grace period (for the public disclosure of the invention without destroying the novelty otherwise required for the purposes of patenting it), the manner of describing and claiming an invention, the exclusive rights of a patent owner, the non-exclusion of certain kinds of invention from the possibility of patenting, the duration of a patent, the

prohibition of pre-grant opposition and—last but not least—giving the right to a patent, between two inventors having made the same invention, to the one who was the first to apply for a patent (“first to file”) rather than the one who was the first to make the invention (“first to invent”).

The Diplomatic Conference that, eventually, should adopt the Treaty met—in what was termed the first part of a two-part Conference—in The Hague in June 1991. Not concluding the task in The Hague was decided for two reasons: one was that the negotiations of the Uruguay Round of GATT, also dealing with many of the questions on the agenda of the Diplomatic Conference, were not yet completed; the other was that the Delegation of the United States of America had not yet concluded its consultations with the interested circles in its country. Whether these reasons would disappear and, if so, when, was not known in mid-1992, when these lines were written.

2.42 *Treaty in the Field of Trademarks*. The plan for establishing a treaty for the harmonization of trademark laws emerged in 1987, and a committee of governmental experts met twice, once in 1989 and once in 1990, to examine a draft prepared by the International Bureau. In those meetings it became obvious, however, that the said draft was too ambitious and that, in particular, the time did not seem to be ripe for a general agreement on the definition of the concept of “trademark,” on the protection to be given to well-known and famous marks and on the registrability of marks not yet in actual use.

In the light of the situation and at the urging of the interested private circles, the International Bureau lowered its ambitions and proposed in 1992 a new draft treaty which only dealt with simplifications in the administrative procedures of trademark registration. The title of the new draft reads, accordingly, “*Draft Treaty on the Simplification of Administrative Procedures Concerning Marks*.” The new draft proposed a uniform content and layout for applications for the registration of trademarks and the possibility of asking, in *one and the same paper*, for the recording of changes in names, ownership and the identity of agents and of correcting mistakes when the changes or corrections affected *several* registrations of the same holder. The new draft also proposed to prohibit certain prevailing excessive formalities as, for example, the legalization of signatures or the requirement to submit as many applications as there were classes (according to the Nice Agreement) to which the claimed goods and/or services belonged.

The new draft was discussed for the first time in June 1992 in a WIPO Committee of Experts in which (as usual) not only governments but also interested intergovernmental and non-governmental organizations very actively participated. In mid-1992, the work was expected to continue in the Committee of Experts and it will probably only be in 1994 that a decision is made on whether the matter is ripe for a diplomatic conference.

2.43 *Treaty on the Settlement of Disputes Between States.* Discussions on such a treaty started in 1990 in a WIPO Committee of Experts. That Committee had met four times at the time of writing: in February and October 1990, in September 1991 and in July 1992.

The draft treaty was the work of the International Bureau. It circumscribes the subject matter of the dispute: it must concern an issue of intellectual property law, mainly a question of interpretation of treaty provisions. Furthermore, the draft defines who the parties can be: not only States but also supranational authorities having responsibilities in the field of intellectual property, such as the European Communities. The draft treaty also defines the various steps of the procedure: consultation, conciliation, good offices, mediation and findings by a panel. It prescribes the composition of the panel. It does not provide the possibility of the panel awarding damages or other sanctions. These are merely the main features of the draft.

Whether the matter can advance to a diplomatic conference for the conclusion of a treaty will probably not be clear before the mid-nineteen-nineties.

2.44 *Protocol to the Berne Convention.* It was generally believed that revising, once again, the Berne Convention, last revised in 1971, would be hardly possible because revision requires unanimity, and unanimity is well-nigh impossible to achieve among more than 90 States.

At the same time, it was generally believed—at least in 1989 and 1991, when the Assembly of the Berne Union made the corresponding decisions—that there were questions in the Berne Convention that needed clarification and that there were new facts provoked by technological developments which needed regulation in international relations. Among the latter were computer programs, computerized data bases, broadcasting through communication satellites, reprographic

reproduction, digital recordings of sounds and images, and the enormous volume of rental of sound recordings and videotapes.

The International Bureau prepared draft provisions of a possible treaty on these and other questions and tentatively called it a Protocol. No firm proposal was made on the question of whether only countries party to the Berne Convention or also other countries could adhere. It was, however, proposed that supranational authorities having copyright legislation should, in any case, be allowed to adhere.

The Committee of Experts met twice: first in November 1991, and then in February 1992. The discussions did not yield a sufficient basis for the continuation of the plan: some delegations thought that the draft of the International Bureau ought not to have dealt with certain matters because they were clear enough under the Berne Convention; others thought that the said draft was right in dealing with those matters but ought to have dealt with them differently; and some delegations said that the draft ought to have dealt with additional matters. Some even thought that the draft, or a parallel separate draft, should (also) deal with the rights of producers of phonograms and, even, performers.

As a consequence, on July 14, 1992, it was an open question whether the work on a Protocol to the Berne Convention should continue and if so, with what parameters and according to what timetable.

2.45 Instrument on the International Deposit of Industrial Designs. As has been already indicated, the old Hague Agreement (existing since 1925) could do better and the system of the international deposit of industrial designs should be modernized in order to attract more States to participate in it.

The existing system seems to be satisfactory in respect of the method of depositing, namely, that the applicant may make the deposit direct with the International Bureau (i.e., without the intermediary of a national office). It also seems to be satisfactory in respect of the legal effect of the international deposit, which is that the international deposit has, in each of the contracting States, the same effect as if all the national formalities for effecting a deposit had been complied with. But the existing system has been criticized for the almost immediate publication, in the gazette of the International Bureau, of all the particulars, including the pictures, of the deposited designs, for not

allowing the deposit to be kept secret, for a period of time which would be longer than the presently authorized 12 months (for example, two or three years), and for not allowing the depositor to choose between a shorter and a longer period of minimum protection, with less fees to be paid for the former.

Discussions started in 1990 on the question of whether a new instrument could not improve upon the existing system, and also on the legal nature of any new instrument providing for such improvement, in particular, whether the new instrument should be a revision of the existing Hague Agreement or should be a new treaty, independent in every respect of the existing Hague system.

The discussions take place in a Committee of Experts in which both Governments and private circles participate, the former irrespective of whether they are from countries party to the present Hague Agreement. There seemed to be substantial interest in going ahead. The Committee of Experts met in 1991 and in April 1992. At least one further meeting of the same Committee was planned, in 1992, for 1993. It is only after the third or fourth such meeting that it will be decided whether the instrument drafted by the International Bureau should be submitted to a diplomatic conference.

3. ACTIVITIES OF WIPO ADVANCING, OUTSIDE OF TREATIES, THE PROTECTION OF INTELLECTUAL PROPERTY

- 3.1 Patents – 3.2 Trademarks – 3.3 Geographical Indications –
- 3.4 Industrial Designs – 3.5 Copyright – 3.6 Computer Programs –
- 3.7 Neighboring Rights – 3.8 Extra-Judicial Dispute Settlement –
- 3.9 Franchising – 3.10 Character Merchandising –
- 3.11 Unfair Competition

The advancement of the understanding and protection of intellectual property was promoted by WIPO during the first 25 years of its existence with imagination and vigor in all the fields of intellectual property.

The present chapter lists the most important of WIPO's activities in these fields.

The usual form of those activities is meetings, convened and organized by the International Bureau. The participants come from governments and/or the private sector. Their number in each meeting varies from a handful to a thousand. There were at least 200 such meetings during the quarter-century under consideration. The average length of the meetings is five days, and the average number of participants in each meeting is estimated to be 50. Thus, the total number of meeting days was around 1,000 and the total number of participants was around 10,000.

But the number of persons who profit by these activities is higher, since most meetings work on the basis of preparatory documents written by the International Bureau and the deliberations and/or conclusions are reflected in documents or other publications of the International Bureau, and such documents and publications are at the disposal of anyone and are mostly available in several languages. The total number of pages, in one language (that is, without counting any versions in one or more additional languages), published by the International Bureau in preparation for, during and after these meetings is estimated to be 20,000 (that is, an average of 100 for each meeting).

It is to be noted that the present chapter does not deal with meetings and other activities primarily intended to serve developing countries, since such meetings and activities are mentioned below in the chapter specially dealing with developing countries.

3.1 *Patents*

The International Bureau tries to deal with new problems as soon as possible after they emerge. It also tries to anticipate them by looking into the future. Examples in the patent field are the WIPO Worldwide Forum on the Impact of Emerging Technologies on the Law of Intellectual Property (both industrial property and copyright) (Geneva, 1988), followed by regional forums on the same subject in Africa, Asia and Latin America (1989), and the WIPO Worldwide Symposium on the International Patent System in the 21st Century (Beijing, 1989).

The protection of biotechnological inventions was the subject of various other meetings organized by the International Bureau between 1984 and 1990, including a symposium in Ithaca (New York) in 1987.

3.2 *Trademarks*

Counterfeiting of products, particularly where connected with the unauthorized use of protected trademarks, is rampant all over the world. Devising and effectively applying measures that could be adopted by governments for combating counterfeiting is one of the important tasks of WIPO. In 1986, 1987 and 1988, three meetings of international committees of experts were organized and held by WIPO on the subject. Since the inscription of the matter on the agenda of the Uruguay Round of GATT, WIPO has been awaiting the results of that Round, but the Round had not been completed by July 14, 1992. At that date, it seemed that WIPO itself would have to renew its activities in the field of anti-counterfeiting measures.

3.3 *Geographical Indications*

The protection of appellations of origin and indications of source—since the late nineteen-eighties more and more frequently called by a simpler name, “geographical indications”—is a matter of particular

concern in international relations, since cases of disrespect of geographical indications of a country most frequently occur not in that country but in other countries.

The matter is the subject of intensive study by WIPO. The chances of a successful revision of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration or the conclusion of a new treaty have been examined since the early nineteen-seventies (there were WIPO Committees of Experts in 1974, 1975 and 1990), and symposiums were organized by the International Bureau on the subject in Bordeaux (France) (1988), Santenay (France) (1989) and Wiesbaden (Germany) (1991), in the famous wine-growing regions of Bordeaux, Burgundy and the Rhine valley.

3.4 *Industrial Designs*

Since the late nineteen-eighties, interest in better protection of industrial designs has been growing. The anti-counterfeiting program, mentioned above, concerns not only trademarks but also industrial designs. The modernization of the Hague Agreement Concerning the International Deposit of Industrial Designs has been actively pursued by the International Bureau and should, in the mid-nineteen-nineties, lead to the revision of that Agreement or to the conclusion of a new treaty. Awareness of those problems was enhanced by a WIPO symposium in Amboise (France) in 1990.

3.5 *Copyright*

Paralleling, in the field of copyright and neighboring rights, the anti-counterfeiting activities of WIPO, the International Bureau organized the WIPO Worldwide Forum on the Piracy of Sound and Audiovisual Recordings (1981) and the WIPO Worldwide Forum on Piracy of Broadcasts and of the Printed Word (1983). A Group of Experts on the Unauthorized Private Copying of Recordings, Broadcasts and Printed Matter, organized by the International Bureau, met in 1984.

The International Bureau, mostly with the help of committees of experts, and in some cases in cooperation with the secretariat of Unesco, examined questions concerning the reprographic reproduction of works (1973 to 1975), videocassettes (1977 and 1978), private copying (1984), cable television (1977 to 1983), transmission of

protected works by communication satellites (1985), rental of phonograms and videograms (1984), the role of computers in storing, accessing or creating works (1979 to 1982), access to protected works by handicapped persons (1982), *domaine public payant* (1982), expressions of folklore, culminating in the publication of model provisions for national laws and a draft treaty (1982 to 1985), the rights of employed (salaried) authors (1982 to 1986) and publishing contracts (with model provisions for national laws discussed in 1985).

During the discussions on the various new uses of works, it was recognized that there were even more cases where the individual exercise of copyright was impossible and that it was collective administration of copyright which made the maintenance and reasonable exercise of exclusive rights possible. Consequently, growing attention was devoted to this way of exercising rights. In 1980 and 1983, a WIPO/Unesco Committee of Experts had two meetings and worked out model statutes for copyright administration organizations. In 1986, WIPO organized an International Forum on the Collective Administration of Copyrights and Neighboring Rights. Study on collective administration was continued and this activity culminated in the publication by the International Bureau of a book in various languages in 1990 and 1991, containing a global study on "Collective Administration of Copyright and Neighboring Rights."

Between 1986 and 1988, in a Committee of Experts jointly organized by WIPO and Unesco, all aspects of copyright were reviewed. The Committee met six times and dealt separately with the various kinds of work: architectural, of the visual arts, dramatic, choreographic and musical, of applied art, expressed in printed words, and photographic. The results were summed up in the Committee of Experts on the Evaluation and Synthesis of Principles on Various Categories of Works in 1988.

This monumental review of contemporary copyright problems led to the formulation of a model law on copyright which was discussed in three meetings of a WIPO Committee of Experts in 1989 and 1990. The Model Law, in its definitive form, had not yet been published by July 14, 1992.

3.6 *Computer Programs*

The study of intellectual property in computer programs started in WIPO in 1971. "Model Provisions on the Protection of Computer

Software” and a draft treaty entitled “Treaty for the Protection of Computer Software” were published in 1978 and 1983, respectively, after several years of work in committees of experts convened by the International Bureau. At that time, the general view was that protection could be *sui generis* or copyright-like or patent-like. As from 1985, however, and particularly during the work on a model law on copyright and a possible protocol to the Berne Convention, computer programs have more and more been considered to be works that receive or should receive copyright protection.

In 1991, the International Bureau organized in Stanford (California) a “Worldwide Symposium on the Intellectual Property Aspects of Artificial Intelligence.”

3.7 *Neighboring Rights*

A model law concerning the protection of performers, producers of phonograms and broadcasting organizations, based on the Rome Convention on neighboring rights of 1961, was elaborated in committees of experts sponsored by WIPO, Unesco and ILO and published in 1974.

The Rome Convention established an Intergovernmental Committee whose members are the States which ratified the Convention. The Committee reviews, generally once every second year, the progress of the protection of neighboring rights. Its secretariat is furnished by the International Bureau of WIPO, the secretariat of Unesco and the ILO. During the period 1967-1992, it met 15 times, namely, in 1967, 1969, 1971, 1972 (extraordinary session), 1973, 1974 (extraordinary session), 1975, 1977, 1979, 1981, 1983, 1985, 1987, 1989 and 1991.

The Committee of Experts referred to above which discussed principles on various categories of works between 1986 and 1988 did so not only from the viewpoint of copyright but also from the viewpoint of the rights of performers, producers of phonograms and broadcasting organizations. The principles dealt, *inter alia*, with the questions of piracy, private copying, rental, satellite broadcasting and cable television from the viewpoint of neighboring rights.

In June 1992, the International Bureau convened a Committee of Experts which discussed a draft WIPO Model Law on the Protection of Producers of Sound Recordings.

3.8 *Extra-Judicial Dispute Settlement*

Since the early nineteen-eighties, there had been a substantial increase in the use of arbitration and other extra-judicial procedures for the settlement of disputes between private parties, partly in response to delays in the judicial system and partly to take advantage of the benefits which such extra-judicial procedures offered in terms of efficiency, speed and suitability for achieving solutions that permitted the continuation, even while the dispute lasted, of any business relationship that might exist between the parties to a dispute. While the use of such procedures in the field of intellectual property was, compared with other areas of commercial and industrial activity, relatively undeveloped, the International Bureau commenced, in 1990, to study the possibility of services in respect of such procedures being offered within the framework of WIPO. An informal working group of experts was convened to discuss this question in 1991, and a working group of non-governmental organizations was held early in 1992.

3.9 *Franchising*

“Franchising,” as used in the context of industrial property, primarily means the granting by contract, by the owner of intellectual property rights (the franchisor), usually a mark and often also an industrial design or know-how, to another person (the franchisee), the right to render services or sell goods with the use of those intellectual property rights, in one or several specified locations, in a specified way and conforming to a specified quality. The franchisee undertakes, in exchange, to pay a royalty to the franchisor and to offer the goods or services in a form and quality prescribed by the franchisor and, to the extent permitted by antitrust regulations, to obtain certain ingredients or assistance only from the franchisor or other sources specified in the contract. Franchising contracts frequently deal also with unfair competition questions. In other words, franchising contracts always have important industrial property aspects.

The practice of franchising has been constantly increasing, so that franchising has become one of the major forces in marketing goods and services. Since 1990, the International Bureau has been looking into the question and, in 1992, it was engaged in the preparation of a “Franchising Guide.”

3.10 *Character Merchandising*

“Character merchandising” means the use of the name, picture, voice, statements and other distinctive attributes (such as mode of dressing, self-presentation or mannerisms) of a real or fictitious personage to promote the sale and use of certain products or services. This has become an important activity of certain enterprises, in particular where the use of a given character is licensed to a great number of different licensees. Such licenses involve trademark, industrial design and copyright law. Since 1990, the International Bureau has dealt with the question and, in 1992, it was working on a report which should be useful for the respect of intellectual property rights playing a role in character merchandising.

3.11 *Protection Against Unfair Competition*

Protection against unfair competition supplements other forms of intellectual property protection, in particular in the area of advertising and marketing (involving the protection of trademarks and geographical indications) and trade secrets (involving the protection of inventions). There are a great variety of possible acts of unfair competition (many more than those expressly mentioned in Article 10bis of the Paris Convention) and protection is particularly important in the market economy system of free competition. Since 1990, the International Bureau has dealt with the question and, in 1992, it was engaged in preparing a report that should help in the fight against unfair competition.

4. ACTIVITIES OF WIPO ADVANCING INTERNATIONAL COOPERATION IN THE FIELD OF PATENT INFORMATION AND DOCUMENTATION

- 4.1 The Field of Patent Information and Documentation –
4.2 The Program of WIPO – 4.3 INPADOC – 4.4 The Periodical
“World Patent Information” – 4.5 Industrial Property Statistics

4.1 The Field of Patent Information and Documentation

Patent “documents” are principally the pamphlets that are published by patent offices containing patent applications or granted patents. A pamphlet contains the “claims” (statement of what is the invention for which protection is applied or granted) and the “description” (explanation of the background and the substance), frequently accompanied by drawings and charts and containing chemical formulas (sometimes thousands of them), as well as an “abstract” (that is, a statement of a few lines giving the gist of the invention). A pamphlet also contains what are called the “bibliographic data,” characteristically, the name of the Office, the name, address and nationality of the inventor, the name, address and nationality of the applicant or the owner of the patent, a serial number (given by the Office), the date of the filing and of the publication of the application or the grant of the patent, the classification of the substantive content according to the International Patent Classification (IPC), the title of the invention and the country, serial number and date of any priority application. The bibliographic data and the abstract usually appear on the first page of the pamphlet, the abstract being accompanied, in most cases, by a characteristic drawing. The pamphlets were, in 1992, still published on paper, or on both paper and CD-ROMs. Each pamphlet has an estimated average of 32 pages. It is furthermore estimated that, by 1992, some 30,000,000 published patent documents were in existence. They came from some 90 different offices and were in some 30 different languages. It is expected that, in the last decade of the 20th century, an average of 1,000,000 new patent documents will be published each year.

Patent documents are a necessity for the applicant, since without an application, the applicant cannot request a patent, and without a patent

he cannot prove his right to protection. But patent documents are needed also by two other kinds of (what is called) "users."

One of them is any patent office that grants or refuses a patent on the basis of the examination of the novelty of the alleged invention: if a publication exists describing a technical solution which is the same or very similar (perhaps different but not "obviously" so or not with a sufficiently significant "inventive step") to the claimed invention, the patent office should refuse the application because the claimed invention is covered by "the state of the art," that is, it is not new, it is "anticipated." Most of the "anticipations" are found in (already published) patent documents. The process of looking for them is called "searching" and the process of reaching a decision whether the documents considered anticipate the claimed invention is called "examination."

The other user of patent documents is the general public. The information contained in such documents may interest a member of the public because he wants to know what solutions, if any, have already been invented for solving a technological problem. And it may interest him, particularly if he is an industrial competitor of the applicant or owner of the patent, because he wants to avoid infringing any rights of others or suffering the infringement by others of his own rights.

The quantity of patent documents is so enormous that their collection and keeping as well as consultation ("accession" or "searching") require sophisticated methods. Without such methods, finding a patent document of possible interest among 30,000,000 is like finding a needle in a haystack.

The cornerstone of those methods consists of classification. Since each office classifies the patent documents it publishes, all patent offices should, ideally, use the same classification system (the IPC or its further developed forms) and, where the same invention has been the subject of patent documents published by several offices, each of them should bear the same classification symbol. The latter is not an easy task if one considers that the IPC has over 64,000 subdivisions and the person who effects the classification has to choose (ideally) only one of them. This is not as difficult as finding a needle in a haystack but it is as difficult as removing an apple from one's son's head with an arrow.

The preceding description is a simplified one; there are further—sometimes important—details and qualifications that this chapter

(because of a desire for relative brevity) does not attempt to cover. What was attempted above was a demonstration of the extreme difficulties involved in keeping a collection of, and "accessing" the information contained in, patent documents ("the patent information").

4.2 *The Program of WIPO*

What has been done and what is being done by WIPO on the international level to facilitate access to patent documentation?

Organizationally, three periods may be distinguished. The first lasted for 17 years, from 1962 to 1979, when matters were in the hands of the "Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT)." The second lasted eight years, from 1979 to 1987, when the Committee was called "WIPO Permanent Committee on Patent Information (PCPI)." The third period started in 1987 and still continued in 1992, so that, when these lines were written, it had a past of five years; since 1987, the Committee has been called "WIPO Permanent Committee on Industrial Property Information (PCIPI)." The difference in the last two acronyms is small (it consists of adding the letter "I" in the middle of the old abbreviation, so that PCPI has become PCIPI), but it denotes an important new trend: PCIPI deals with "industrial property" rather than merely "patent" information, that is, it deals not only with patent documents but also with publications of industrial property offices covering trademarks and industrial designs. Incidentally, publication in the latter two fields does not mean publication in a pamphlet (since none are published) but it means publication of entries in the office's official gazette, the entry containing the relevant names, numbers, dates, addresses and classification, as well as a reproduction (picture) of the mark or the industrial design, the list of goods and services covered by the mark or the indication of the kind of article in which the industrial design is incorporated, as the case may be.

The activities of the PCIPI in the field of trademarks and industrial designs are analogous (as far as possible) to its activities in the field of patents and, for this reason and because the former are still in an initial stage, nothing more will be said about them in this chapter.

ICIREPAT was founded in Munich in 1962 by a few patent offices, and, until 1967, BIRPI was a mere observer in its meetings. In that year, ICIREPAT was officialized by the Paris Union, and the International

Bureau automatically became its secretariat. The Committee was then renamed "Paris Union Committee for International Cooperation in Information Retrieval Among Patent Offices (ICIREPAT)" ("Paris Union" was added to, and "Examining" was removed from, its title).

The PCPI was a creation of WIPO's competent governing bodies. It took the place of ICIREPAT. The aim was to streamline all activities carried out in the framework of WIPO as far as patent information and patent documentation were concerned.

The PCIPI is a continuation of the PCPI with the difference, as already indicated, that it deals not only with patents but also with trademarks and industrial designs.

The main objectives and the tasks of PCIPI, in the field of patents are

(i) to standardize the form of, and certain expressions used in, patent documents or gazettes, and the places where the various information should appear (for example, size of the paper and the margins, two-letter codes for the names of the countries, numbers ("INID" codes, "INID" standing for "Internationally-agreed Numbers for the Identification of Data) for identifying the various, recurrent data appearing in a patent document, such as the name of the patentee or the "nature" of the document (e.g., unexamined application, examined application, patent)),

(ii) to effectuate a similar standardization where the "document" is reproduced photographically, on magnetic tape or on a CD-ROM,

(iii) to develop systems and methods for the classification, indexing and coding of patent documents,

(iv) to develop systems and methods for establishing search reports ("state-of-the-art reports"),

(v) to develop the computerized storing and searching of patent documents, and

(vi) to keep abreast of the latest technological developments and consider their use in the production, storage, access and dissemination of industrial property information.

Where there is a sufficient degree of agreement on any question in the PCIPI, the PCIPI adopts recommendations. Although they are generally followed by the participating offices, small variations exist

and nothing much can be done about them since a recommendation is not a binding rule. In any case, there is no doubt that, thanks to this activity, there was already, in 1992, a high degree of uniformity among offices in the field of patent documentation.

In the future, it will be particularly important that standards be worked out by the PCIPI for the electronic filing of applications and the electronic storage of patent documents and data so that there is compatibility among the systems used by the various offices, the more so as, by the beginning of the 21st century, it should be current practice to access information existing in one place in the world from any other place in the world. Technically, this was already possible in 1992. But to translate this technical possibility into everyday reality will require cooperation among the world's patent offices and all users, a cooperation which the PCIPI is destined to bring about.

On July 14, 1992, the PCIPI had 76 States as well as the European Patent Office, the African Intellectual Property Organization, the African Regional Industrial Property Organization, the Benelux Trademark Office and the Benelux Designs Office as members and six more States as observers. The PCIPI itself meets generally every two years. Its Executive Coordination Committee (to which all PCIPI members belong) meets twice a year. The former supervises the Executive Coordination Committee and the latter supervises the Working Groups. In 1992, there were three standing working groups: one on "General Information," one on "Search Information" and one on the "Management of Industrial Property Information." In the same year, there were three *ad hoc* working groups: one on "Optical Storage," one on "Long-Term IPC Revision Policy" and one on "Trademark Information." Membership in any working group is open to any member of the PCIPI. The frequency of the meetings of the working groups varies. In 1991, the working groups held seven meetings, and the average duration of each meeting was five days.

Among the above-mentioned standing working groups, the Working Group on Search Information has a leading role in the revision of the International Patent Classification (IPC). Although it is the Executive Coordination Committee that decides which revision proposals (made by the different members) should be studied, the results of the labors of this Working Group go direct to the IPC Committee of Experts (a body created by the IPC Agreement itself) which is the sole organ (whose members are only the members of the IPC Union) qualified to modify the IPC.

The servicing of the various bodies of the PCIPI is a major task for the International Bureau. The documentation prepared by the International Bureau for and after the various meetings requires a high degree of imaginative thinking and is very voluminous. For example, in 1991, the number of pages of these documents amounted to some 2,000.

All the recommendations of the PCIPI as well as documents of major and lasting interest are published by the International Bureau in the *WIPO Handbook on Industrial Property Information and Documentation*. This is a loose-leaf publication, updated every year. In 1992, it consisted of three volumes containing 680 pages.

4.3 INPADOC

The life of the International Patent Documentation Center (INPADOC) started and ended during the quarter-century under consideration: it was founded in 1972 and went out of existence in 1990.

The idea of a collection of all—or almost all—the patent documents of the world, or at least the main data, was born in what was then still BIRPI in the late nineteen-sixties. But BIRPI did not want to set up and administer such a collection itself. Eventually, the framework of such a collection, called a Center, was put together, with the cooperation of WIPO, by a commercial firm, established and wholly owned by the Government of Austria in Vienna. This was INPADOC. The cooperation was regulated in a treaty between WIPO and Austria, ratified by the Governing Bodies of WIPO and the Parliament of Austria, respectively. The Treaty guaranteed certain services to the member States of WIPO, for example, that their patent data would be included in the data bases of INPADOC and that they would have access to all data stored in INPADOC. Considering that this treaty facilitated the international flow of technological information of the first order, the foundation was a political as well as professional success since it took place at the peak of the cold war between the Western and the then communist countries.

INPADOC did succeed in building a universal patent data base, and its services were used not only by patent offices but by private industry and patent agents the world over. In the last years of its existence, INPADOC made a profit, had some 40 employees and a yearly turnover of the equivalent of some 8,000,000 Swiss francs.

But with the growing sophistication of computer technology and its correspondingly growing cost, INPADOC did not seem to be prepared to make the necessary massive investments. At the same time, the European Patent Office wanted to universalize its patent documentation and its market for patent information. These seem to be the circumstances which led to the takeover, by the European Patent Office, in 1990, of the goodwill, equipment, data bases and most of the staff of INPADOC.

The treaty between WIPO and Austria has not been denounced. But an agreement has been concluded by the two parties according to which the Government of Austria is responsible for WIPO's members receiving the same treatment in the new set-up as they did from INPADOC.

4.4 *The Periodical World Patent Information*

World Patent Information is the title of a periodical co-sponsored by WIPO and the Commission of the European Communities (CEC). The cooperation between WIPO and the CEC is based on an agreement signed by the two parties in 1978. The publication is quarterly and contains articles and information on what is happening in the world in respect of patent information. Consequently, it also gives news on what is going on in the International Bureau and the PCIPI. Its first editor-in-chief was (1979 to 1986) Jacob Dekker; its editor-in-chief since 1986 has been Vincent Dodd. They are retired high officials of the Patent Offices of the Netherlands and the United Kingdom, respectively.

4.5 *Industrial Property Statistics*

The gathering and publication of statistics in the field of industrial property titles (grants or registrations as well as applications therefor) has been, from the very beginning, a continuing task of the International Bureau. And it has remained a task whose accomplishment requires that the national and regional industrial property offices—there were more than 100 of them in 1992—(i) keep statistics, (ii) keep them in a way that they can respond to the questions of the yearly statistical questionnaires of the International Bureau and (iii) communicate them to the International Bureau within a reasonable period.

The history of the International Bureau's efforts in this field is a tale of the International Bureau's coaxing and cajoling the national and regional offices to comply. Although the statistical questionnaires addressed to them each year are composed in consultation with them, many of them do not keep statistics on certain facts and, then, inevitably, they cannot reply to the corresponding questions. For example, some of the Offices that, under the PCT, can be designated, regrettably do not differentiate, when they report on the number of patents granted in a given year, between those granted on the basis of international applications and of national applications. Consequently, the impact of the PCT cannot be measured from those statistics.

Naturally, comparing the statistics of one country with those of the other countries gives results, under the said circumstances, that must be taken *cum grano salis*. Another reason for such an attitude is the diversity of the systems. For example, no real possibility of making meaningful comparisons of the number of applications for trademark registrations of two countries exist, where one of them allows the inclusion of goods pertaining to several classes in one and the same application, and the other requires a separate application for each class of goods. Or, to take another example, when comparing the average length of time that elapses between the date of the receipt of a patent application and the date of the decision (grant or refusal) thereon, it must be borne in mind whether the system is one with or without substantive examination, with or without pre-grant opposition or with or without the possibility of deferring substantive examination.

All the difficulties notwithstanding, the International Bureau has continued to deal with statistics, and not only in the field of patents, but also in other fields, particularly in the field of marks and industrial designs.

The number of the questions covered, the volume of the data and the sophistication of their analysis have constantly grown during the 25-year period under consideration. The statistics concerning 1967 were published in the form of a 30-page insert in the December 1968 issue of *Industrial Property* (one of the monthly periodicals of the International Bureau). The statistics concerning 1990 were—in their short version—published as an insert of the kind just mentioned and—in their complete version—published in book form, in two volumes. The first contained 46 pages, the latter 662 pages.

5. ASSISTANCE OF WIPO TO DEVELOPING COUNTRIES

- 5.1 Fields of Development Cooperation and Methods of Assistance
(5.11 Legislation, 5.12 Administration, 5.13 Judiciary,
5.14 Law Enforcement Agents, 5.15 Teaching,
5.16 Creation of Awareness) – 5.2 Promotion of Inventiveness –
5.3 Transfer of Technology – 5.4 The Two Permanent Committees –
5.5 Patent Information Services

The notion of “developing country” is one typical of the second half of the 20th century. There are no universally accepted, precise criteria according to which one could determine whether a country is a developing country or—and this is the other kind—an “industrialized country.” But there is a practice established by the United Nations, and that practice has even established a subgroup of developing countries called “the least developed countries.”

In the case of some countries—not listed below—the practice is not uniform: a given country may be regarded as developing for some purposes only, for example, for the purposes of qualifying for assistance by the United Nations Development Programme (UNDP). This seems to be the case, for example, for Albania, Bulgaria, Cyprus, Romania, Turkey and Yugoslavia.

The following three lists give—by regions—the names of the developing countries according to the United Nations practice that prevailed on July 14, 1992. “LDC” indicates that, on that date, the country was regarded as a least developed country. The names of the countries that are members of WIPO and/or party to one or more treaties administered by WIPO are in italics.

AFRICA: Algeria, Angola, Benin (LDC), Botswana (LDC), Burkina Faso (LDC), Burundi (LDC), Cameroon, Cape Verde (LDC), Central African Republic (LDC), Chad (LDC), Comoros (LDC), Congo, Côte d'Ivoire, Djibouti (LDC), Egypt, Equatorial Guinea (LDC), Ethiopia (LDC), Gabon, Gambia (LDC), Ghana, Guinea (LDC), Guinea-Bissau (LDC), Kenya, Lesotho (LDC), Liberia (LDC), Libya, Madagascar (LDC), Malawi (LDC), Mali (LDC), Mauritania (LDC), Mauritius, Morocco, Mozambique (LDC), Namibia, Niger (LDC), Nigeria, Rwanda (LDC), Sao Tome and Principe (LDC), Senegal,

Seychelles, *Sierra Leone* (LDC), *Somalia* (LDC), *Sudan* (LDC), *Swaziland*, *Togo* (LDC), *Tunisia*, *Uganda* (LDC), *United Republic of Tanzania* (LDC), *Zaire* (LDC), *Zambia* (LDC), *Zimbabwe*.

ASIA AND THE PACIFIC: *Afghanistan* (LDC), *Bahrain*, *Bangladesh* (LDC), *Bhutan* (LDC), *Brunei Darussalam*, *Cambodia* (LDC), *China*, *Democratic People's Republic of Korea*, *Federated States of Micronesia*, *Fiji*, *India*, *Indonesia*, *Iran (Islamic Republic of)*, *Iraq*, *Jordan*, *Kiribati*, *Kuwait*, *Laos* (LDC), *Lebanon*, *Malaysia*, *Maldives* (LDC), *Marshall Islands*, *Mongolia*, *Myanmar* (LDC), *Nauru*, *Nepal* (LDC), *Oman*, *Pakistan*, *Papua New Guinea*, *Philippines*, *Qatar*, *Republic of Korea*, *Samoa* (LDC), *Saudi Arabia*, *Singapore*, *Solomon Islands* (LDC), *Sri Lanka*, *Syria*, *Thailand*, *Tonga*, *Tuvalu*, *United Arab Emirates*, *Vanuatu* (LDC), *Viet Nam*, *Yemen* (LDC).

LATIN AMERICA AND THE CARIBBEAN: *Antigua and Barbuda*, *Argentina*, *Bahamas*, *Barbados*, *Belize*, *Bolivia*, *Brazil*, *Chile*, *Colombia*, *Costa Rica*, *Cuba*, *Dominica*, *Dominican Republic*, *Ecuador*, *El Salvador*, *Grenada*, *Guatemala*, *Guyana*, *Haiti* (LDC), *Honduras*, *Jamaica*, *Mexico*, *Nicaragua*, *Panama*, *Paraguay*, *Peru*, *Saint Kitts and Nevis*, *Saint Lucia*, *Saint Vincent and the Grenadines*, *Suriname*, *Trinidad and Tobago*, *Uruguay*, *Venezuela*.

Giving assistance to developing countries has been, is and will remain one of the most important tasks of the specialized agencies of the United Nations system of organizations and of some of the special organs and programs of the United Nations, in particular the United Nations Development Programme (UNDP).

5.1 *Fields of Development Cooperation and Methods of Assistance*

Naturally, WIPO's development cooperation activities are directed towards intellectual property matters and try to cover all persons and institutions who and which in a developing country have, occasionally or continuously, to do with intellectual property matters.

Among these institutions are, first of all, the three branches of government, that is, the legislative, executive and judicial branches. They will be dealt with one after the other.

5.11 *Legislation*. The basis of the protection of intellectual property in each country is legislation.

The International Bureau gives advice on legislation. It gives it only where expressly and officially requested by the competent ministry or other authority (typically, the industrial property office or the copyright office) of the country concerned or through diplomatic channels (typically, the Permanent Mission in Geneva of that country). The advice may consist of comments made by the International Bureau on a draft text of a law or implementing regulations prepared by the competent authority of the government. In some cases, the International Bureau is requested to prepare the first draft of the legislative text, in which case further discussions are based on that draft. In giving advice, the International Bureau makes sure that it understands the special objectives of the government of the country, particularly its social and economic goals. It takes into consideration the economic situation of the country, its governmental and administrative infrastructure and the resources available for the implementation of the proposed law, in order not to give advice which the government could not reasonably be expected to follow because of the scarcity of funds available for the administration of the intellectual property law in question, or because of the lack of sufficient qualified staff. In addition, the International Bureau's advice is inspired by what is, at the moment of giving the advice, the generally accepted world trend, regarded as the best and the most modern in the specific fields of intellectual property. And, finally, the International Bureau pays special attention to the draft law's compatibility with international treaties, particularly the Paris and Berne Conventions, because the participation of every country in those treaties is an objective that the International Bureau considers to be a most important one.

The process is similar in respect of a request for assistance in the revision of an existing law or its implementing regulations.

The advice is given by the Director General or in his name. The advice is strictly confidential between the requesting party and the International Bureau unless the requesting party also asks for outside experts to be consulted.

The advice takes into consideration the model laws which the International Bureau has prepared with the help of committees of experts in which both Governments and the private sector were represented. There were several meetings of experts for each model law and the work lasted several years. Model laws have been prepared on marks, trade names and unfair competition (1967), industrial designs (1968), geographical indications (1975), copyright (1976) and patents for

inventions (1979 and 1980). However, the advice to each Government is individualized and the text eventually recommended meets each country's special requirements and may differ on several points from any given model law.

The process of advising consists not only of correspondence but usually also of visits of government officials to the Geneva headquarters of WIPO or of WIPO staff members to the capital of the country concerned.

During the 25-year period under consideration, the International Bureau gave legislative advice to 109 developing countries, and to the majority of them in connection with several laws.

5.12 *Administration.* The kind of assistance asked for most frequently concerns the administration of industrial property laws, carried out in what is generally called an industrial property office or institute, or a patent office, or a trademark office or registry. The usual questions concern the form and content of applications for the grant of patents and the registration of trademarks and industrial designs; the type of fees that should be charged for the grant and maintenance of patents, the grant and renewal of trademark and industrial design registrations, and for the publications and other services of the industrial property office; the search and examination of patent and trademark applications; regulations and office instructions implementing the laws; the number and qualifications of the staff (with organizations) and the equipment needed by the said office; the acquisition, storage and maintenance of patent documents and their accessing and use by the staff of the office and the general public; the computerization of certain office procedures; and the cost of running the office.

In the field of copyright, the assistance asked for usually concerns the setting up of governmental or private institutions for the collective administration of certain rights, for example the setting up of a society that collects the fees payable for the public performance of musical works and distributes those fees among the concerned composers and publishers. Here, too, manning tables and budgets are worked out and advice is given on the degree of government control that the institutions should be under.

This assistance is given by different persons and in various ways: by the staff of the International Bureau or by outside experts hired by the International Bureau; in writing and in face-to-face discussions, or

in seminars or training courses, that take place either in the country to which the assistance is given or at the headquarters of WIPO (in either case, the travel and subsistence expenses are usually borne by the International Bureau); by facilitating the acquisition of patent documents and the equipment needed for the storing and searching of such documents. If the questions are of interest to several countries, they may be discussed in subregional, regional or global seminars or courses, organized by, and mostly at the expense of, the International Bureau, whether they are "in the field" or at headquarters.

In many cases, the assistance is continuous, or at least lasts several years. This may be needed where the questions to be solved are many or complex and if the turnover of staff, in the country concerned, is high. Where funds are likely to be available over several years, the assistance is planned in what is generally called a "project document" signed by the government authorities of the interested country and the International Bureau and, where financing comes also from UNDP, then also by the resident representative of UNDP in the beneficiary country or by the headquarters of UNDP in New York.

The project document indicates, among other things, the objectives to be attained and a timetable for achieving each of them, the terms of reference of the outside experts selected by the International Bureau and the number of months that they have to spend on the project in the interested country, as well as the contribution that the government will make in terms of years of staff, premises and equipment. It states the expected results. Each project is constantly and closely monitored by the International Bureau and the recipient governments; where circumstances change, adjustments are made to the objectives, inputs or expected results.

During the 25 years under consideration, the International Bureau organized and gave direct assistance of this kind to some 105 developing countries. The funds needed came from the regular budget of WIPO, from UNDP or from donor governments and, in some instances, from the beneficiary governments themselves.

5.13 *Judiciary.* In most developing countries—and, for that matter, in many industrialized countries too—civil lawsuits concerning the infringement of intellectual property rights, penal actions against counterfeiters or pirates and litigation concerning the validity of patents or trademark and industrial design registrations are relatively rare. Consequently, countries frequently have little or no experience in such matters.

The assistance of the International Bureau is therefore available also to the third branch of the government, the judiciary.

The assistance mostly consists of colloquiums, courses or seminars and "mock trials," that is, the simulation of a trial. In such trials, the "actors," if one can call them that, are real judges and trial lawyers coming from countries with great experience in court proceedings in intellectual property cases. The judge in the mock trial is a judge, frequently of elevated status, in his home country. There is a lawyer for the plaintiff, and there is a lawyer for the defendant, well-known, specialized lawyers in their home country. Then there are witnesses, clerks and ushers trained in advance in their respective roles. Before the mock trial, there is usually a course explaining to the audience—which consists of judges and lawyers of the developing country or countries—the typical issues in a case involving intellectual property law, the typical parties and the role of judges, lawyers and witnesses. After the trial, there is a discussion between the "actors" and the audience. Such mock trials usually arouse great interest. In China, for example, where the International Bureau organized several mock trials, the proceedings were recorded on videotape, and it has been said that the videotapes were shown in many places in the country and viewed by thousands of interested people.

For some countries, the International Bureau has, at their request, given advice on the establishment of a special court to deal with certain intellectual property questions, such as a court for dealing only with patent dispute cases.

5.14 *Law Enforcement Agents.* The International Bureau also organizes courses for law enforcement agents in developing countries such as the police and the customs officials. They play a decisive role in discovering counterfeiting and piracy, in seizing articles that infringe trademark or industrial design rights or copyright, such as fashion items (jewelry, clothing, leatherware, etc.) that imitate the genuine ones, or books and video and sound recordings (tapes, cassettes, etc.) that were manufactured without the authorization of their copyright owners.

5.15 *Teaching.* The teaching of intellectual property law, including that based on WIPO-administered treaties, in universities, particularly in law faculties, is of paramount importance. It is needed in particular by lawyers and judges who want to specialize in intellectual property law. The International Bureau assists in the training of law professors

in developing countries so that they become specialized in intellectual property law. Such training takes place in courses and study trips organized and financed by the International Bureau for professors or future professors from developing countries to universities in other countries, developing or industrialized, which have experience in university-level teaching of intellectual property law.

For the same purpose, the International Bureau initiated the creation, in 1981, of an international non-governmental organization under the name of International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP). Ever since, it has regularly assisted the Association, particularly by financing the participation, in its meetings, of professors from developing countries. In 1992, the Association had 248 members coming from 50 countries. The Association gives particular attention to the establishment of model curriculums and the availability of teaching material for law faculties and libraries in developing countries.

5.16 Creation of Awareness. The International Bureau is particularly anxious to create awareness of the importance of intellectual property in developing countries where such awareness is not sufficient. The awareness is created in courses or seminars, or through study trips, organized by the International Bureau for participants from developing countries. The travel and subsistence costs are usually borne by the International Bureau.

Every year, the International Bureau organizes what are called general introductory courses—one in the field of industrial property (since 1978), the other in the field of copyright and neighboring rights (since 1988)—at the headquarters of WIPO. In those courses, the lectures are mostly given by staff members of the International Bureau. Since 1981, some 1,000 trainees from 105 developing countries and 15 organizations of developing countries have participated in these courses. Diplomats from their countries' Permanent Missions in Geneva are also invited to follow the courses. Once the courses are finished, the participants attend, mostly at the International Bureau's expense, specialized training courses organized by the International Bureau in cooperation with various industrialized countries or the European Patent Office in various areas of industrial property. For some of the participants, the general introductory courses are followed by individual training programs in national industrial property offices, in authors' societies or private law firms, of a duration of between one and four weeks.

Such courses and individual training programs are offered also outside the introductory courses organized at the headquarters of WIPO. Courses and fellowships at different levels and in different fields of speciality are regularly organized or sponsored by the International Bureau, frequently in cooperation with the industrial property offices of Australia, Austria, Brazil (every year), France (every year), Germany, Japan (every year), the Netherlands, Spain (every year), Sri Lanka (every year), Sweden, Switzerland, the United Kingdom, the United States of America and—while they existed—the German Democratic Republic and the Soviet Union, as well as with the European Patent Office (every year) and the Benelux Trademark and Designs Offices. The same is done in the field of copyright with the Ministry of Justice of Sweden, the Copyright Office of the United States of America, the British Copyright Council (once every three years) and with several authors' societies, particularly the Swiss Society for Authors' Rights in Musical Works (SUISA, every year) and the Hungarian Bureau for the Protection of Authors' Rights (ARTISJUS, once every three years).

In addition, the International Bureau provides on-the-job training for the staff of industrial property offices through special missions of WIPO staff or outside experts. It also prepares manuals and other training material adapted to developing countries' needs. It places special emphasis on the "training of trainers."

The overwhelming majority of the participants—whose travel and/or other expenses are normally paid by WIPO—are government officials. However, local participants are always present in seminars and courses organized in their countries; often, they form the majority of the audience and are also from the non-governmental or private circles, particularly from industrial and commercial circles, the legal profession, universities and research institutions, and the literary and artistic milieu.

During the 25 years between July 14, 1967, and July 14, 1992, some 23,000 individuals participated in training courses and seminars sponsored or co-sponsored by the International Bureau, of which some 5,000 individuals benefited from fellowships financed or co-financed by the International Bureau. Those 5,000 beneficiaries were from some 125 developing countries, two territories and 24 organizations of developing countries.

The United Nations Development Programme (UNDP) has been a major source of extrabudgetary resources for WIPO's development

cooperation activities in the field of intellectual property through a number of UNDP-financed projects executed by the International Bureau of WIPO at the national, regional and interregional levels. Over the period from 1967 to 1991, there were 41 national, 12 regional and two interregional UNDP-financed projects. They involved a total UNDP assistance of US\$29,578,000. The activities financed by those projects included the organization of national, regional and sub-regional training courses, seminars, workshops and other meetings, support for regional and subregional institutions, the promotion of regional and subregional cooperation and the preparation of manuals, guides and surveys in the field of intellectual property.

5.2 *Promotion of Inventiveness*

From 1967, the International Bureau has been actively promoting inventive work in countries, focusing on the potential in developing countries. Its support was instrumental in the establishment, in 1968, of the International Federation of Inventors' Associations (IFIA). Since then, on a regular basis, the International Bureau has organized with IFIA seminars and other activities to promote the interests of inventors. It also organized five WIPO-IFIA worldwide symposiums which were held in Geneva (1984), Stockholm (1986), Beijing (1988), Tampere (Finland, 1990) and Geneva (1992), and discussed how inventors could be helped, with special attention to those in developing countries. A number of inventors and inventors' organizations from developing countries are financially assisted by the International Bureau in attending some of the said meetings or exhibitions for inventors. The International Bureau publishes jointly with IFIA a *Guide on Associations of Inventors*, which is regularly updated.

In 1979, the International Bureau launched the WIPO Gold Medal Award for inventors. The purpose of awarding medals to inventors is to promote inventive activities, particularly in developing countries. Most medals are awarded at exhibitions or contests for inventors, but meritorious promoters of the interests of inventors have also been recognized for their valuable work with the WIPO Award.

Between 1979 (when medals were awarded for the first time) and July 14, 1992, WIPO medals have been awarded to 264 inventors and promoters of inventive activity. One hundred and fifty-five of the winners came from 37 developing countries. The handing over may take place at special occasions, for example, twice (in 1989 and 1991) it

took place at the Heads of State Conference of the Organization of African Unity, and it takes place every year at the *Salon des inventions* in Geneva.

5.3 *Transfer of Technology*

In most of the courses, much attention is paid to the role of intellectual property in the transfer of technology.

A Licensing Guide for Developing Countries, very complete in its coverage, was prepared by the International Bureau with the help of outside experts who met several times between 1971 and 1976. The Guide was first published in 1977 and is still in great demand in 1992. It exists in Arabic, Chinese, English, French, Japanese, Portuguese, Russian and Spanish.

5.4 *The Two Permanent Committees*

Besides the Governing Bodies, there are two other WIPO bodies which are also directly interested in the International Bureau's development cooperation activities; those two bodies are the WIPO Permanent Committee for Development Cooperation Related to Industrial Property (PC/IP) and the WIPO Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights (PC/CR).

The systematic organization of the International Bureau's assistance to developing countries in the early years of WIPO's existence led in 1976 to the creation of the two committees, thereby institutionalizing the review of that assistance at a level below that of the governing bodies. To carry out their mandate of monitoring WIPO's two "Permanent Programs for Development Cooperation," those two Committees (membership voluntary) meet regularly, every one or two years. As of July 14, 1992, the PC/IP had 107 member States, of which the preponderant majority are developing countries. The same holds for the PC/CR which had, on the same date, 92 member States.

Every member State of either Committee that is a least-developed country may send a delegate to Committee meetings at the expense of the International Bureau. Furthermore, a large number of delegates from other developing countries also have their expenses covered by

the International Bureau. In this way, developing countries have a full and direct say in the activities which are organized for their benefit.

5.5 *Patent Information Services*

By 1992, there were some 30,000,000 published patent documents (patent applications and patents) in the world. This tremendous number makes it virtually impossible for most developing countries to possess a collection of them, to keep the collection up to date and to have at their disposal the persons and expertise needed for finding the technological information looked for in specific cases.

The International Bureau has, since the beginning of the nineteen-seventies, instituted various services which, free of charge, give information on and/or copies of patent documents to developing countries. Three such services are mentioned hereafter.

First, there is the furnishing of the "search reports." A government agency or a private institution (with the authorization of a competent government agency) requests the International Bureau to furnish a list of patent documents that reflect the "state of the art" (meaning the state of the technology) in respect of a given technological question that is specified in the request. The International Bureau forwards the request to a cooperating national patent office which, within a few weeks, produces the required list (the "search report"). The list is then sent, together with copies of the patent documents cited in it, to the requesting party. This service started in 1975. By the end of 1991, the International Bureau had received 5,956 requests from 78 developing countries and 11 organizations. By July 14, 1992, reports on approximately 90% of the requests had been delivered. The difference of 10% was mainly due to the fact that some of the reports were not yet completed by that date, or that the request had been withdrawn, or to the telescoping in one and the same report of the answers to two or more requests.

The reports were prepared by the national Patent Offices of Australia, Austria, Finland, France, Germany, Japan, the Russian Federation, Sweden, Switzerland and the United Kingdom, as well as the former German Democratic Republic and the former Soviet Union. Reports were prepared also by the European Patent Office.

The second service, called "International Cooperation for the Search and Examination of Inventions (ICSEI)" has been functioning since 1983. The patent office of a developing country addresses a request to the International Bureau. Attached to the request is a copy of a patent application which that office received. The request asks for a report on the patentability of the invention. It is forwarded to a cooperating patent office with advanced patent examination facilities and great experience, namely, the Patent Offices of Austria, Canada, Germany, the Russian Federation, Sweden and the former Soviet Union, or the European Patent Office. By the end of 1991, 472 requests had been received, from the African Regional Industrial Property Organization (ARIPO), from 12 developing countries (Jordan, Kenya, Lesotho, Libya, Malaysia, Mauritius, the Philippines, Sri Lanka, Trinidad and Tobago, Tunisia, Turkey, Zimbabwe) and from Yugoslavia. By July 14, 1992, 80% of the requests had been satisfied, and the rest were under preparation.

The third service is that of supplying copies of patent documents needed for various reasons, such as background information in research projects or the negotiation of licensing contracts to better understand the reports mentioned above. The International Bureau acts as an intermediary between the patent office in the developing country and the office—in an industrialized country—that furnishes the copies. Between 1986 and 1991, 2,173 such requests were received and satisfied. They meant the furnishing of 21,387 patent documents or some 400,000 pages of text. Ninety-five developing countries availed themselves of this service which, it is repeated, is free of charge. The copies were mainly donated by the Patent Offices of Austria, France, Germany, Japan, the Russian Federation, Switzerland, the United Kingdom, the United States of America and the European Patent Office. Occasional donations were made by the Patent Offices of Australia, Belgium, Brazil, Canada, China, Czechoslovakia, Finland, Hungary, India, the Netherlands, Norway, Portugal, Romania, the former Soviet Union and Spain. The supplying of copies has consisted in giving, as a gift, whole collections. For example, the Patent Office of China, the Democratic People's Republic of Korea, Egypt and Viet Nam, received patent document collections from Austria, France, the former German Democratic Republic, Germany, the former Soviet Union, Sweden, Switzerland and the United Kingdom which, together, represented several million published patent applications, patents or abstracts.

6. ASSISTANCE OF WIPO TO COUNTRIES IN TRANSITION FROM A CENTRALLY PLANNED TO A MARKET ECONOMY SYSTEM

6.1 Newly Independent States (6.11 The Baltic States,
6.12 The Other Successor States to the Soviet Union, 6.13 Successor
States to Yugoslavia) – 6.2 The Other Former Socialist Countries

6.1 *Newly Independent States*

6.11 *The Baltic States.* The three Baltic States declared their independence with effect on the following dates: Lithuania, March 11, 1990; Estonia, August 20, 1991; Latvia, August 21, 1991. (At that time, the Soviet Union was still in existence and was a member of WIPO and party to the Paris Convention and several other treaties administered by WIPO.)

Contacts between each of them and the International Bureau were established in the second half of 1991. In January 1992, the International Bureau invited representatives of those three countries, together with representatives of Denmark, Finland, Norway and Sweden, four countries particularly interested in assisting the three newly-independent Baltic States, to a meeting to discuss any future assistance to the Baltic countries in the field of industrial property. This was followed by individual visits of the leaders of the Industrial Property Offices of Estonia, Latvia and Lithuania to the headquarters of WIPO and by two missions by officials of the International Bureau to Estonia to discuss copyright matters.

By July 14, 1992—the cut-off date of the present essay—one of the three Baltic States, Lithuania, had acceded to the WIPO Convention (in January 1992) and had thereby become a member of WIPO.

During the first six months of 1992, each of the three countries had asked for and received advice: on draft laws on intellectual property; on the effect in the territory of each of them of intellectual property rights that were in existence on the same territory by virtue of Soviet Union legislation; on the protection they should give to intellectual property rights that were acquired or might be deemed to have been

acquired in them between their dates of independence and the effective dates of their laws (under preparation but not yet in force); and on their status vis-à-vis the WIPO-administered treaties.

6.12 *The Other Successor States to the Soviet Union.* The Soviet Union ceased to exist on December 24, 1991. Its 12 successor States (without counting the Baltic States mentioned above) are the following: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Republic of Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine, Uzbekistan.

As far as WIPO and the treaties administered by WIPO are concerned, the situation, on the same date, was as follows:

(i) The Russian Federation had declared that it was to be considered to be a successor to the Soviet Union. Consequently, the Russian Federation was, as from December 25, 1991, a member of WIPO and party to all the WIPO-administered treaties to which the Soviet Union used to be party.

(ii) Belarus and Ukraine continued to be members of WIPO. They had been members since 1970, but neither of them had made, by July 14, 1992, a declaration in respect of the other WIPO-administered treaties to which the Soviet Union used to be party.

(iii) The other nine of the 12 States mentioned above had made no declaration in respect of the WIPO Convention and any of the other treaties administered by WIPO.

During the period between December 25, 1991, and July 14, 1992, the International Bureau had several consultations with the legislative and governmental authorities of the Russian Federation responsible for industrial property and copyright matters. The advice concerned draft texts (corresponding to the requirements of a market economy) of laws that should replace the Soviet laws (corresponding to the requirements of a centrally planned, communist economy). Furthermore, the consultations concerned the Madrid (Marks) Agreement and the PCT, in respect of which it was clarified that applicants could designate the Russian Federation as a country in which they wanted their international (PCT) applications and their international (Madrid) registrations to have effect, whereas international applications and registrations which previously had effect in the former Soviet Union would continue to have effect in the Russian Federation. Finally, the advice also concerned the question of how to preserve the right,

particularly of foreigners, to file patent applications (outside the PCT) and applications for the registration of trademarks (outside the Madrid Agreement) pending the existence of national laws on patents and trademarks in the Russian Federation.

As far as Ukraine is concerned, the advice given by the International Bureau to the competent authorities of that country concerned their planned new legislation in the field of intellectual property and the interim measures that would be desirable for securing rights while the new legislation did not yet exist.

As far as Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, the Republic of Moldova, Tajikistan, Turkmenistan and Uzbekistan were concerned, the International Bureau had contacted them. In particular, a high official of the International Bureau had had discussions, in New York, in July 1992, with the Permanent Missions to the United Nations of Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, the Republic of Moldova and Uzbekistan.

6.13 *Successor States to Yugoslavia.* Slovenia and Croatia, two of the successor States to Yugoslavia, declared that, as from the dates of their independence, namely from June 25, 1991, and from October 8, 1991, respectively, they continued to apply the treaties to which Yugoslavia was party on those dates.

The implementation of these declarations required various measures. The competent authorities of Slovenia were in contact with the International Bureau from the beginning of 1992. Several visits were paid to WIPO's headquarters by the competent Slovenian authorities. The procedures concerning the confirmation of the status of the international trademark registrations effected under the Madrid Agreement and designating Yugoslavia were still under discussion on July 14, 1992.

6.2 *The Other Former Socialist Countries*

Albania, Bulgaria, Czechoslovakia, Hungary, Poland and Romania were, in 1992, fully engaged in the process of changing their economic system from a centrally planned, communist economic system (which it was until the late nineteen-eighties) to a free-market economic system.

The change in the economic system necessitated certain changes in some of their intellectual property laws, particularly in the field of the protection of inventions, namely, the abolition of inventors' certificates. It is to be noted that not all of the six countries provided for inventors' certificates. Hungary did not.

In connection with changing their laws, some of the six countries asked for the advice of the International Bureau.

The change in the political regime in the six countries made closer cooperation between their patent offices and offices in Western Europe possible.

The International Bureau encouraged such closer cooperation, particularly with the European Patent Office. For example, in November 1991, in Budapest, the International Bureau and the European Patent Office jointly organized a symposium under the title "Symposium on Patent Protection in a Market Economy: Czechoslovakia, Hungary, Poland."

It is to be noted that it was after the change of their regime that Albania became a member of WIPO (in April 1992), that Poland (in 1990) and Czechoslovakia (in 1991) became party to the PCT and that Poland (in 1991) became party to the Madrid (Marks) Agreement.

It was during the period of their socialist regimes (i) that Bulgaria, Czechoslovakia, Hungary, Romania (all four in 1970) and Poland (in 1975) became members of WIPO (the WIPO Convention itself came into effect in 1970), (ii) that Romania (in 1979), Hungary (in 1980) and Bulgaria (in 1984), became party to the PCT (the PCT itself came into effect in 1978), (iii) that Hungary (in 1984) became party to the Hague Agreement, (iv) that Bulgaria (in 1985) became party to the Madrid (Marks) Agreement, (v) that Czechoslovakia (in 1964) became party to the Rome Convention (the Rome Convention itself came into effect in 1964) and (vi) that Hungary (in 1975) and Czechoslovakia (in 1985) became party to the Phonograms Convention (the Phonograms Convention itself came into effect in 1973).

As far as the Paris Convention is concerned, Hungary became party to it in 1909, and Bulgaria and Romania in 1920. Czechoslovakia and Poland became party to the Paris Convention in 1919, the year following the establishment of the first and the re-establishment of the second of the two countries.

As far as the Berne Convention is concerned, five became party to it only after World War I: Poland in 1920, Bulgaria and Czechoslovakia in 1921, Hungary in 1922 and Romania in 1927.

7. THE DIRECTION AND CONTROL OF THE INTERNATIONAL BUREAU BY THE MEMBER STATES

7.1 Program and Budget Making – 7.2 Control of the Execution of the Program and of the Finances – 7.3 Election of the Director General – 7.4 Control Over Appointments to Certain Higher Staff Positions

WIPO and the Unions administered by it are associations of States. The International Bureau is their executive arm. It is the Member States that direct and control the activities of the International Bureau whose only *raison d'être* is the carrying out of the policy of the Member States.

That policy must correspond to the objectives of WIPO and the Unions as laid down in their “constitutions,” that is, the WIPO Convention and the treaties that provide for the creation of the Unions. But whether the policy corresponds, in fact, to those objectives, is judged by the Member States themselves, and no one else.

This chapter tries to outline how this policy is determined and how its carrying out by the International Bureau is controlled.

7.1 *Program and Budget Making*

The policy is determined by the decisions taken by the Member States in the General Assembly of WIPO and the Assemblies of the Unions. The members of the WIPO General Assembly are the States members of WIPO that are members of the Paris or Berne Unions. Each Union has its own Assembly; the members of the Assembly of each Union are the States members of that Union (except those—very few—which have not yet accepted the administrative provisions of the Stockholm texts). On July 14, 1992, there were 12 such functioning Assemblies, namely those of the Paris, Berne, Madrid (Marks), Hague, Nice, Lisbon, Locarno, PCT, IPC, Vienna (Figurative Elements of Marks), Budapest and FRT Unions.

Since the International Bureau is the same for all Unions, it is indispensable that, in matters of common interest to two or more Unions, the decisions of the Unions concerned are coordinated.

Most of the decisions concerning the International Bureau are made in the framework of the biennial program and budget covering a two-year period that starts with an even-numbered year. "Program" is the description of the activities that the International Bureau has to carry out. The "budget" indicates, on the one hand, the amounts that each activity is expected to cost and, on the other hand, the estimated amounts of income from which those costs are to be met.

Although, compared with the budgets of other specialized agencies of the United Nations system of organizations, WIPO's budget is a relatively small one, it still represents a significant amount. For example, the budget of the 1992-93 biennium showed an income of 216 million Swiss francs and an expenditure of 188 million Swiss francs, corresponding to some US\$151 million and US\$131 million, respectively, on the basis of the exchange rate of December 1991, that is, US\$1 = 1.43 Swiss francs.

The biennial program and budget are proposed by the Director General in what is called the draft program and budget. Again as an example, that draft, for the 1992-93 biennium, consisted of a document of some 150 pages. The document is divided into two main parts: the draft program and the draft budget.

The draft program (of the same biennium taken as a typical example) was divided into eight chapters, dealing, respectively, with (i) the holding of the meetings of the Governing Bodies, (ii) development cooperation with developing countries, (iii) normative (particularly treaty-making) activities, (iv) international classification and standardization activities (particularly the Strasbourg (IPC), Nice, Locarno and Vienna Unions), (v) registration activities (particularly the PCT, Madrid (Marks), Hague, Lisbon and FRT Unions), (vi) promotion of the worldwide recognition of and respect for intellectual property (educational and information activities), (vii) organization and numbers of the staff of the International Bureau and, (viii)-administrative support activities (premises, electronic data processing, equipment and supplies, etc.). Each chapter is introduced by a statement of the objectives that the proposed activity is designed to achieve.

The corresponding draft budget indicates the estimated cost of each of the program items, with justifications of the calculation of the cost. Furthermore, it indicates which Unions cover the cost of which activities and, whenever the cost of an activity is borne by several Unions, the percentage that each Union covers. A typical activity whose cost is borne by several Unions is development cooperation, an activity which consists of the International Bureau's assisting ("cooperating with") developing countries. The cost of such activity was, in the 1992-93 budget, divided between the Paris (55.2%), Berne (24.8%), PCT (12.4%), Madrid (Marks) (6.4%) and Hague (1.2%) Unions. The determination of the share of each interested Union in the cost of activities of common interest is one of the more delicate tasks of budget making.

Such cost-sharing is also of importance in connection with the staff costs. Approximately 30% of the staff work for one particular Union, that is, their duties consist in carrying out the program of a given Union. But the individuals of the other 70% perform duties for several Unions, and many of them for all the Unions. In the latter category are the Director General and the staff dealing with development cooperation and external relations, finances, language services, mail, reproduction, personnel and maintenance of premises.

The number of staff—in the biennium taken as an example—was indicated in the budget as 414 for 1992 and 433 for 1993, but the actual number depends on the actual level of operations within the PCT, Madrid (Marks), Hague and FRT Unions.

This number of staff is one of the smallest among the specialized agencies. For example, the International Labour Office and Unesco had about eight times as many staff, and the Food and Agriculture Organization had almost 17 times as many staff in 1992.

Before starting the preparation of the draft program, each Member State is invited to make suggestions.

The draft program and budget is then prepared by the International Bureau and is presented to the Assemblies by the Director General.

The draft is distributed, some seven months before the date of the meetings of the Assemblies, to the Governments of the States

members of the Budget Committee. That Committee has 15 members. The members are elected, each time for four years, by the WIPO General Assembly and the Assemblies of the Paris and Berne Unions. In 1992, the members of the Budget Committee were Brazil, Canada, Chile, China, Czechoslovakia, Egypt, France, Germany, India, Japan, the Russian Federation, Switzerland, the United Republic of Tanzania, the United States of America and Yugoslavia.

Approximately two months after the distribution of the draft program and budget to its members, the Budget Committee meets. It discusses the draft and asks questions of the representatives of the Director General who provide the answers. At the end of its deliberations, the Budget Committee adopts a report which contains comments and suggestions.

Approximately one month later, the draft program and budget, together with the report of the Budget Committee and the written comments of the Director General on that report, are transmitted to the Governments of all Member States. They have about four months to consider these three documents before they meet and are requested to make decisions in the various Assemblies.

The draft program and budget is then considered in a meeting of the competent Governing Bodies. In these discussions—in which most of the member States usually participate—the delegations comment on the draft and may make proposals for amendments.

During the 21 years between 1970 (when the Assemblies created by the Stockholm texts of 1967 met for the first time) and 1991, draft programs and budgets were discussed in the ordinary sessions of the Assemblies in 1970, 1973, 1976, 1979, 1981, 1983, 1985, 1987, 1989 and 1991. The programs proposed by the Director General were, in each case, approved without, or with only minor, changes. As far as the amounts of the budgets proposed by the Director General are concerned, the Assemblies accepted them without any changes except that—as decided by them—the proposed amounts of expenditure were reduced in 1982-83 by 1.4% and raised in 1980-81, 1990-91 and 1992-93 by 1.5%, 1.0% and 1.5%, respectively, whereas the proposed amounts of the contributions payable by the Member States to the International Bureau were diminished for the years 1974, 1977-79 and 1982-83 by 1.0%, 3.8% and 2.9%, respectively, and raised for the years 1980-81 by 2.6%.

The amount of the fees payable by the users of the international registration systems (Madrid (Marks), PCT and Hague) are fixed by the Assemblies of the Madrid (Marks), PCT and Hague Unions.

Almost all policy decisions call for activities by the International Bureau, and their execution costs money. Consequently, they are reflected in the program and budget.

7.2 *Control of the Execution of the Program and of the Finances*

The Member States control not only the program and budget but also their execution. To each ordinary session of the Governing Bodies, the Director General addresses a written report on the activities of the International Bureau that have been carried out since the preceding session. The report is mainly factual and is rather detailed, usually containing between 100 and 200 pages. The report is debated by the Governing Bodies and a dialogue takes place between the delegates and the Director General.

As far as the execution of the budget is concerned, the two-yearly accounts are presented by the Director General to the Governing Bodies for approval. Before that, however, they go through various preliminary controls.

Each commitment to incur an obligation (*engagement de dépense*) and each payment must be approved by the Controller. The Controller is a staff member of directorial rank (so that his appointment requires the advice of the WIPO Coordination Committee) but enjoys a certain degree of independence from the Director General: if the Controller disagrees with any decision of the Director General, he may report direct and at any time to the Chairman of the WIPO General Assembly.

Another preliminary control is done by an "internal auditor" who is not a staff member (although paid by WIPO) and is chosen by the Director General in agreement with the external auditors.

The auditing of the accounts of the International Bureau is done by external auditors. They are appointed by the Assemblies. The Government of the Swiss Confederation has been the external auditor ever since 1970, when external auditors were appointed for the first time.

The auditing is effected by officials of the Swiss Government's auditing authority (*Contrôle fédéral des finances*) on the premises of WIPO. The said officials have their own offices there. In a typical year, three persons spend 30 days each at the headquarters of WIPO on this task.

The audit is carried out on the basis of the financial records of the International Bureau and a two-yearly so-called "Financial Management Report" whose draft is submitted to the scrutiny of the auditors.

Both this report and the report of the auditors are submitted to the Member States. The Governing Bodies then decide whether to approve the accounts of the International Bureau. So far, they have always done so.

7.3 Election of the Director General

Naturally, the control of the International Bureau by the Member States is very effectively exercised not only in the framework of the program and budget but through the choice of the person of the Director General. The Director General is elected by the Member States. He is not, as some uninformed persons sometimes believe, appointed by the General Assembly or the Secretary General of the United Nations. The latter have no say in and no influence whatsoever on the choice of the person of the Director General. The Director General of WIPO is elected, on the proposal of WIPO's Coordination Committee, by the General Assembly of WIPO. The decision must be supported by the Assemblies of the two principal Unions (Paris and Berne).

7.4 Control over Appointments to Certain Higher Staff Positions

Member States have a direct influence also on the appointment of deputy directors general and directors. On July 14, 1992, there were two of the former and 21 of the latter. They are appointed by the Director General but, before doing so, the Director General must ask for the approval of the WIPO Coordination Committee as far as deputy directors general are concerned, and ask for the advice of the same Committee as far as directors are concerned. During the 22 years

between 1970 (the year in which the WIPO Governing Bodies met for the first time) and July 14, 1992, approval was withheld once, and advice was always positive. In the former case, the Director General had to propose another person to the Coordination Committee (in respect of whom, then, the approval was given).

This method of appointing is an excellent one: on the one hand, the Coordination Committee itself can neither appoint staff members nor can it force the Director General to appoint anybody and, on the other hand, the Director General is, de facto, not free to appoint to higher positions anybody whom the Coordination Committee does not also favor.

8. THE ORGANIZATION AND THE WORK OF THE INTERNATIONAL BUREAU

- 8.1 Staff (8.11 Composition of the Staff, 8.12 Salaries and Working Conditions, 8.13 Structuring of the Staff, 8.14 Information Flow Inside the International Bureau, 8.15 Services for UPOV) –
8.2 Services for Delegates – 8.3 Finances
(8.31 Results, 8.32 Sources of Income and Expenditure, 8.33 Contributions, 8.34 Fees) – 8.4 Premises
(8.41 The BIRPI Building, 8.42 The WIPO Building, 8.43 Situation on July 14, 1992) – 8.5 Writings
(8.51 Documents, 8.52 Periodicals [8.521 General Periodicals, 8.522 Gazettes], 8.53 Books and Brochures) –
8.6 Meetings (8.61 Diplomatic Conferences, 8.62 Governing Bodies, 8.63 Other Meetings, 8.64 Number of Meeting Days) – 8.7 Mail –
8.8 The Production of Letters and Documents –
8.9 Computerization (8.91 Financial Services, 8.92 Personnel Administration, 8.93 Word Processing, 8.94 PCT Services, 8.95 International Trademark Registration Services, 8.96 Other Services)

8.1 Staff

8.11 *Composition of the Staff.* On July 14, 1992, the International Bureau had a staff of 409, all of them, with four exceptions, at the headquarters in Geneva. The exceptions are one staff member in charge of the WIPO's Liaison Office in New York and three staff members in charge of the International Film Registry in Austria.

The 409 staff came from 56 different countries, 60% being developing countries. Twenty-five years earlier, the staff consisted of 73 persons, coming from 15 different countries, none of them being a developing country. Also on July 14, 1992, there were some 100 additional persons in short-term employment. They are hired for specific transitional tasks or to temporarily replace absent regular staff members.

Quality and nationality are both important. An international secretariat must have people coming from as many countries as

possible. Without understanding the mentality of its member countries, that is, their customs, history, culture, etc., the secretariat cannot establish the mutual confidence and understanding that are indispensable for efficient work. Such understanding is enormously facilitated when staff members dealing with countries other than their own can rely on the experience and advice of their colleagues who come from those countries.

It is not very easy to maintain the right mix of nationalities, since those whose mother tongue is not English or French must be fluent in at least one of these languages for easy communication with their colleagues and delegates and for understanding the written material they receive, not to mention for the drafting of letters or documents. On the basis of criteria established by the Governing Bodies, quotas for each region of the world are calculated for most of the so-called professional staff positions and are, subject to small but unavoidable exceptions, respected.

Another objective whose realization also requires constant watching is the employment of a sufficient number of women. In 1967, 50% of the staff were women; in 1992, women constituted 57%. Naturally, it is also important that there be a good proportion of women in Professional posts. On July 14, 1992, their percentage was 23%.

Vacant posts are notified to the Member States and otherwise advertised. The candidatures for any post (other than directors' posts) are put before a selection committee consisting of four staff members appointed by the Director General, one of them selected among persons recommended by the Council of the Staff Association. For each vacant post, there is a separate selection committee with different members. The selection committee recommends to the Director General who among the candidates should be appointed.

8.12 *Salaries and Working Conditions.* The United Nations and 12 of the 16 specialized agencies apply the same system of salaries and other working conditions. Since it is common to them (or, rather, to 12 of them), it is called "the common system."

In the common system, staff are divided into two categories, "Professionals" and "General Service personnel," usually called "P" and "G" categories. A small percentage of the Professional staff is in the Directors ("D") category.

The salaries of the P and D categories are fixed by the General Assembly of the United Nations. This is a source of constant complaint, the staff believing—and frequently quite rightly—that they are not sufficiently consulted and that the General Assembly, acting in New York, does not sufficiently take into account the circumstances prevailing only in Geneva. For example, the working hours are 12% longer in Geneva than in New York but this fact is not taken into account in the fixing of the salaries.

The principles for fixing the salaries of the G category are decided by the General Assembly of the United Nations, on the recommendation of the International Civil Service Commission, a body whose members are appointed by the said General Assembly. Local conditions are the controlling factor. Since in Geneva the local conditions are such that salaries are higher than in most places in the world, G salaries are relatively higher than P salaries, which are established worldwide and which, consequently, are increasingly overlapped by G salaries: in 1967, the average G salary amounted to 37% of the average P salary; in 1992, the average G salary amounted to 60% of the average P salary. During the same 25-year period, the average amount of the G salaries grew by 239% and that of the P salaries by 115%.

Staff belong to the United Nations Joint Staff Pension Fund. The contributions represent 27% of the total amount of salaries. One-third (that is, 9%) is deducted from the staff member's pay. The rest is paid by the International Bureau.

Staff have the right to be on "annual leave" on 30 working days per year. Those not recruited locally have the right to visit, with their dependants, once every two years, their home country ("home leave"), the travel expenses being borne by the International Bureau.

The working time is 40 hours per week. Since 1978, each staff member has had the choice either to work the same hours (8.15 a.m. to 12.15 p.m. and 2 p.m. to 6 p.m.) each day, or to follow the so-called flexi-time system. In the latter, one has to work from 9 a.m. to 11.45 a.m. and from 2.15 p.m. to 4.30 p.m. ("core time") whereas the remaining 15 hours per week can be spent at work during hours according to the wishes of the staff member (but not earlier than 7 a.m. and not later than 7 p.m.), and may be different each day. Staff on flexi-time have to record the time of arrival and departure both in the morning and in the afternoon ("clocking in" and "clocking out"). Eighty per

cent of the staff are on flexi-time. No such recording is required for the two daily "coffee breaks."

Since 1978, there has been a cafeteria in the headquarters building of WIPO which is at the disposal of the staff, the delegates and the general public.

All staff members are provided with health insurance and professional accident insurance. Between 25% and 50% of the health insurance premiums is deducted from the salaries, the remaining part being paid by WIPO. The premiums for the professional accident insurance are entirely paid by WIPO.

Since 1987, smoking has been allowed only in rooms occupied by one person or whose occupants all agree to smoking.

Since December 1985, a staff member called the Social Welfare Officer has assisted staff by providing information on housing, schools, insurance, doctors, hospitals and other like matters, particularly where the staff member is not familiar with local conditions in Geneva. The same staff member also deals with the health and accident insurances.

The International Bureau finances or co-finances courses for the staff on such matters as learning foreign languages, handling personal computers, preparing for retirement and giving up smoking.

Since 1958, there has been a Staff Association, membership of which is voluntary. In 1992, more than 300 persons or 75% of the staff belonged to it.

There has been, since 1963, a committee, called the Joint Advisory Committee, composed of representatives of the Director General and the Staff Association, which discusses and recommends changes in working conditions and related matters.

The age at which staff members must retire has varied during the first 25 years of WIPO: for staff recruited before November 1, 1977, it is 65 years; for those recruited between that date and October 31, 1990, it is 60 years; and for those recruited after October 1990, it is 62 years.

On July 14, 1992, there were 67 persons who benefited from pensions either as retirees of the International Bureau or as their surviving dependants (widows, orphans, etc.).

8.13 *Structuring of the Staff.* In 1967, the 73 staff were structured into six main administrative units (the numbers in parentheses indicate the number of staff in the unit): "Direction" (10), Industrial Property (5), Copyright (3), Registration of Marks and Industrial Designs (23), Publications (3), General Administration (14) and Mail and Documents (15). In the same year, the International Bureau was headed by a Director and two Deputy Directors.

On July 14, 1992, as already stated, the number of staff was 409.

The persons under the direct supervision of the Director General were: the staff of his Office (14), the two Deputy Directors General (one in charge of industrial property matters, the other of developing country matters) with six direct aides (8), the Legal Counsel (4), who is also the Director of General Administration, and four other Directors in charge, respectively, of copyright matters (15), relations with international organizations (2), budget and finance (being also the Controller) (30) and personnel (16). Three of the four Directors directed divisions, whereas one of them directed a department (Copyright) that included a division (Developing Countries (Copyright)) and the International Film Registry.

The Deputy Director General in charge of industrial property had the responsibility of six Divisions and the registries (42), the latter performing the tasks of the international registration of marks, industrial designs and appellations of origin. The six divisions are called Industrial Property (14), Developing Countries (Industrial Property) (5), International Classifications (8), Industrial Property Information (10), PCT Administration (78) and PCT Legal (9).

The Deputy Director General in charge of developing country matters had the responsibility of four Bureaus, one each for Africa, the Arab countries, Asia and the Pacific and Latin America and the Caribbean (21), the Interregional Sectoral Advisor (2) and the Development Cooperation Program Support Unit (12).

The General Administrative Services consisted of two Divisions (Languages (34) and Computerization (15)) and four Sections (Buildings (9), Reproduction (19), Conference, Communications and Procurement (31), Publications Sales and Distribution (10)). Here are some easily quantifiable workload statistics in the single year of 1991: the Languages Division worked in six languages (Arabic, Chinese, English, French, Russian and Spanish) and translated some 9,000 pages

(of 500 words each). The Reproduction Section produced some 60 million pages. The Mail Registration Service handled 433,000 pieces of mail (incoming and outgoing).

Mobility is one of the reasons why the number of Professional staff can be kept low. Mobility means travelling to the countries which ask for advice or need other individualized attention. In 1991, 127 staff members went on missions outside Switzerland; they accomplished 516 missions, of an average duration of 5.7 days each.

8.14 *Information Flow Inside the International Bureau.* It is a basic working principle in the International Bureau, which has been applied during the whole 25-year period (1967 to 1992), that the work of each staff member will be far more efficient if he or she is well informed of what is happening in the house of WIPO and in the outside world of intellectual property. Such information or knowledge allows the staff member to see his or her duties in context, to see the relative importance and urgency of the duties. Such a view enhances the execution of the tasks with intelligence and an increased sense of responsibility. It makes cooperation among the various services natural and easy. It makes work more interesting.

There are five organized methods of securing efficient inside information flow in the secretariat: the "Days" and "Weeks," the "Courier," the "Management Meetings" and the two "Internal Calendars."

One hundred of the 132 P and D staff, the Deputy Directors General, as well as the Director General, write a daily or weekly report, called "Day" or "Week," respectively. The report must cover contacts that the writer had the preceding day (or week) with persons other than colleagues. Days and Weeks do not report on the work accomplished. They are not intended to show every activity of the staff member. They are primarily a record of contacts with representatives of member States and other non-staff. All Days and Weeks are internal documents and are submitted directly to the Director General and to other supervisors, if any, of the staff member. Copies are communicated *ad hoc* to any other colleagues interested in the matter dealt with in the report.

The "Courier" (meaning "mail" in English) is a daily meeting in one of the conference rooms of WIPO. It starts at 8:30 a.m. and lasts between five and 30 minutes. Some 100 P and D staff are required to attend. The Director General is in the chair and reads out or

summarizes the most important pieces of mail (hence the word "Courrier") received since the last "Courrier" and sorted out immediately beforehand. Then come oral reports by any staff member who has just returned from a mission or who was the secretary of a WIPO-organized meeting just completed. They report on their missions and meetings, respectively. Once the "Courrier" is completed, some of the participants speak with the Director General or with each other, in the same room where the "Courrier" took place. This direct and instantaneous contact makes communication among colleagues much more efficient than contact by visits, telephone calls or formally convened meetings, not to mention written memoranda.

Three or four times a year, the Director General holds a two-day "Management Meeting." The Deputy Directors General, the Directors and a few other staff members, altogether some 30 (in 1992), participate. All items of activity are called up for discussion, progress or lack of progress is explained, new directives are agreed upon or given. It is to be noted that each participant hears about, without necessarily speaking on, all matters, not only those for which he or she is directly responsible. This, again, creates awareness of the tasks, achievements and difficulties of the International Bureau as a whole, and thereby allows each participant to see his role in context, that is, in the same way as it is seen by the delegates of the Member States and the Director General.

The remaining two methods of internal communication consist in the distribution to staff members of what are called the "Internal Calendar of Meetings and Missions" and the "Internal Calendar of Expected Absences from Headquarters." The first shows all the scheduled meetings organized by the International Bureau and all the meetings organized by others which the Director General or a staff member is expected to attend, as well as missions outside Geneva (other than missions to attend such meetings). The second shows the dates on which the Director General, the Deputy Directors General, the Directors or any of some 60 staff members in Professional posts are expected to be absent, during the forthcoming period of four months, from headquarters, whether on mission or on leave. Each calendar is issued at more or less monthly intervals. The two calendars thus provide the staff member with an overview of coming events and information on the colleagues that are engaged. Such knowledge permits that staff member to plan activities involving the cooperation of colleagues in the light of whether they are already otherwise engaged on certain dates.

8.15 *Services for UPOV.* The Union for the Protection of New Varieties of Plants (UPOV, corresponding to the French name of the organization *Union pour la protection des obtentions végétales*) had, on July 14, 1992, twenty-one member States. On the same date, it had its own secretariat (eight persons), located in the WIPO Building in Geneva. The executive head (Secretary-General) is the same person as the Director General of WIPO. The administrative, financial and personnel services of the International Bureau also work for the Secretariat of UPOV. The resulting staff and related expenses are reimbursed by UPOV to WIPO. In 1991, they amounted to 558,000 Swiss francs.

8.2 *Services for Delegates*

Serving the delegates is a particularly important task of the International Bureau and its staff. This is why this topic is dealt with separately in this essay.

Strictly speaking, a “delegate” is a person who represents a government in a meeting organized by the International Bureau, whether it is a meeting of a governing body, diplomatic conference, committee of experts or other gathering. In a broader sense, delegate means any participant in a meeting, including, in particular, persons representing international governmental and national or international non-governmental organizations. In the following paragraphs, it is used in the latter sense.

What is of paramount importance to delegates is that they receive the preparatory documents well in advance of any meeting in which they plan to participate. These are written and translated by the staff of the International Bureau. The documents are in English and French and, depending on the subject matter and the character of the meeting, also in any of the following languages: Arabic, Chinese, Russian, Spanish.

During the whole period between 1967 and 1992, documents intended for any given meeting generally reached the invited governments and organizations several months before the date of that meeting. It is estimated that the number of documents prepared by the International Bureau for meetings totalled, counting only once documents that were issued in two or more languages, 40,000.

According to the declarations made by most delegates at the beginning of each meeting, the documents are generally held to be informative, imaginative, clear and objective.

Once the delegates arrive at the meeting, they have to find their places, may want to receive additional copies of the documents or may need assistance in telephoning and obtaining information on local transportation, hotels and restaurants. The attendants in the conference rooms, staff members of the International Bureau, are there for these very reasons.

During the deliberations, many of the delegates need interpretation. This is provided by professional simultaneous interpreters who are not staff members and are selected among freelance interpreters. English and French interpretation is available in practically all meetings. According to the status or practical needs of the body meeting, interpretation is provided also in Arabic, Chinese, Russian or Spanish. The main conference room, opened in 1978, can handle only four languages. But its transformation, started in 1992, will enable the handling of six languages from 1993 onwards.

The International Bureau has provided, throughout the 25-year period under consideration (and even before it, starting in 1963), a unique service for delegates. It is unique in the sense that there are very few, if any, comparable instances in other specialized agencies and the United Nations itself. The service concerns the reports on a meeting.

The report on any given meeting briefly recalls the circumstances of its convocation, lists the participants, summarizes the interventions of the participants (with or without identifying them, as required) and reproduces the decisions or other conclusions. The volume of a typical report consists of 10 pages for every day of discussion.

The staff prepares the draft of the report; the draft is presented to the meeting and the meeting adopts it, with or without amendments.

What is unique is that the draft report is presented, discussed and adopted, during—and not after—the meeting. A typical timetable for a meeting convened for five days (Monday to Friday) is the following: the first three and a half days are spent in discussions (Monday, Tuesday, Wednesday and the morning of Thursday); one day is reserved for the International Bureau for writing, translating and reproducing

the draft report (between Thursday noon and Friday noon); during the last half day (Friday afternoon) the meeting reconvenes to discuss the draft report and adopt it, which makes it a report (rather than a draft report).

It is to be noted that the draft report is normally available to the delegates in all the languages used in the meeting, and it is normally distributed at least one hour before the time set for its consideration.

This procedure has at least the following great advantages: each delegate can check the summary of his intervention; each delegate has a clear record of what the position of the other delegates was; there is no ambiguity about what the decisions or other conclusions were; each delegate can take the report home and immediately report to his government or organization.

Any changes effected by the delegates during the discussion of the draft report are usually so few and can be expressed so briefly that each delegate can pencil them into his copy of the draft report.

Usually within a week from the closing of the meeting, the International Bureau publishes the report, as adopted, and sends copies not only to the governments and organizations that were invited to the meeting but also to each individual participant.

Starting in 1980, and usually on the first day of each yearly series of the sessions of the Governing Bodies, a concert has been given for the entertainment of the delegates in the lobby of WIPO's headquarters building. There had been altogether 10 concerts up to the end of 1991. Each concert lasted twice 30 minutes. The performing artists came from 10 different countries.

The cafeteria of WIPO, on the top (13th) floor of the headquarters building, is open to delegates too. It is estimated that approximately half of the delegates, on any given day of a meeting, have lunch in the WIPO cafeteria. Delegates can have coffee or tea in the morning and afternoon breaks of the meetings, mostly at a special counter reserved for them near the conference rooms.

Unfortunately, the number of parking places around the WIPO headquarters building reserved for delegates' cars is totally insufficient if not virtually non-existent.

It is customary that at 6 p.m. of the first day of each meeting the Director General offers a reception to the delegates in the lobby of the WIPO headquarters building. This is a good occasion for making acquaintances between delegates, on the one hand, and between staff members and delegates, on the other.

8.3 *Finances*

8.31 *Results.* The financial situation of the International Bureau was, on the whole, satisfactory during the period 1967 to 1991.

During the first 15 years of that period, accounts were closed at the end of each year (rather than bi-annually) and, although in six of them expenditure exceeded income, the situation was the reverse in the other nine years, and the deficits of the six years were easily absorbed by the surplus income of the other nine years.

Since 1981, accounts have been closed after two-yearly periods, and each period showed an excess of income over expenditure. That excess was 2.1% of the total expenditure in the period 1982-83, and grew to 3.0%, 9.9% and 26.4%, respectively, in the subsequent three periods. In the 1990-91 period, it was 26.3%.

In absolute figures, both income and expenditure grew sharply during the 25 years. This is due mainly to the appearance, as from 1978, of income and expenditure connected with the administration of the Patent Cooperation Treaty (PCT), but it is also due to inflation. Income in 1967 and 1991 amounted to 4.7 and 92.1 million Swiss francs, respectively, and expenditure in the same two years at both ends of the 25-year period, amounted to 5.1 and 72.9 million Swiss francs, respectively.

At the end of 1991, the reserves totalled 82 million Swiss francs, of which 33 million was committed to the cost of acquiring or constructing new premises and of substantially developing computerization in the International Bureau.

8.32 *Sources of Income and Expenditure.* As to the sources of income and expenditure, the following may be noted. In 1967, contributions paid by States members of one or more Unions administered by WIPO represented 34% of all the income. The corresponding percentage was 26% in 1991. It is quite possible that

by the end of the 20th century not more than 10% of the income would come from contributions if the principles of budgeting applied up to 1993—namely, that activities of the International Bureau not directly connected with the registration activities (Madrid (Marks), PCT, Hague) are mostly financed from contributions—continue. But if the registration activities continue to grow, one could finance all activities of the International Bureau from the income of those activities, and States would not need to pay any contributions. A first step in that direction—reducing the contributions by one-half—was proposed by the Director General in 1991 but was declined by the Assemblies of the Member States.

As to expenditure, it may be noted that staff costs represent the greatest part. But their percentage in the total expenditure became gradually smaller during the 25 years: it was 63% in 1967, and 59% in 1991. The decrease is mainly due to computerization.

8.33 *Contributions.* The rules governing the distribution of the burden of contributions among member States—the contribution system—underwent important changes in the last years of the 25-year period. Before 1967, the contribution system consisted in each country that was a member of the Paris or Berne Unions having to choose a “class” among six classes (I to VI). A new class, class VII, was added in the revisions effected in Stockholm in 1967. The contributions in classes VI, V, IV, III, II and I amount, respectively, to three, five, ten, fifteen, twenty and twenty-five times more than in class VII. In 1991, two more classes were added: classes VIII and IX; certain developing countries belong to them, and the amount of the contributions is $\frac{1}{2}$ and $\frac{1}{4}$, respectively, of the contribution in class VII. Even earlier, in 1989, a new special (“S”) class was created in which all the least developed among the developing countries belong; the amount of the contributions in that class is $\frac{1}{8}$ of the contributions in class VII. By those changes, the difference between the countries paying the highest and the lowest contributions in the Unions has been changed from 25:1 to 200:1. The result is that many of the developing countries have a burden that is nearly 10 times less than before.

It is interesting to note that, unlike in other organizations, the highest share in the contributions is not that of one country, the United States of America (whose share in most organizations is 25%) but that, in the system prevailing in WIPO, several countries are in the highest contribution class (class I) and the share of each of them is the same. Those countries were, in 1991, France, Germany, Japan, the Russian

Federation (or the Soviet Union), the United Kingdom and the United States of America. The percentage of each in the Paris Union, in 1991, was 5.15%.

It is also interesting to note—because it is so different from the situation in the United Nations and the other specialized agencies—that the amount of all member countries' contributions in the Paris Union having been, in 1991, 13.6% of the total income of the International Bureau, the share of the Paris Union contributions of each of the six countries just mentioned in the total income of all the Unions was 0.7%.

If one considers that those six countries members of the Paris Union were also members of the Berne Union (except the Russian Federation) and some of the other Unions in which they pay contributions, the percentage of each in the total income of all the Unions in 1991 was as follows: France 1.51%, Germany 1.50%, United Kingdom 1.48%, United States of America 1.48%, Japan 1.47%, Russian Federation (or the former Soviet Union) 1.11%.

8.34 *Fees*. The income of the Madrid (Marks), Hague and PCT Unions consists mainly of fees paid by private parties—the applicants—to the International Bureau.

In 1967, the PCT did not yet exist, and the income of the Madrid (Marks) Union was 2.6 million Swiss francs whereas that of the Hague Union was 0.3 million Swiss francs. Together, they represented 61% of the total income of the International Bureau in that year.

In 1991, the PCT did exist, and the income of the Madrid (Marks) Union was 21.5 million Swiss francs; that of the Hague Union, 3.2 million Swiss francs; and that of the PCT Union, 41.1 million Swiss francs. Together, they represented 71.5% of the total income of the International Bureau in that year.

8.4 *Premises*

8.41 *The BIRPI Building*. On July 14, 1967, all the staff of BIRPI was located in what is now called “the BIRPI Building.”

That building was constructed between 1958 and 1960, on the initiative and under the supervision of Jacques Secrétan, then Director

of BIRPI. The architect was Pierre Braillard from Geneva (the same who, later, was the architect of the WIPO Building).

It had six levels and a floor area of 4,360 square meters. It contained a conference room with 84 seats but no simultaneous interpretation facilities. The building cost 2.6 million Swiss francs and belonged to BIRPI; since 1970, it has belonged to WIPO. The ground on which it is built belonged and still belongs to the Canton of Geneva; a ground rent is paid for it.

The BIRPI building was enlarged by an additional floor and modernized in 1988-89.

8.42 *The WIPO Building.* The WIPO building, adjacent to the BIRPI building, was constructed between 1973 and 1978. Its construction was decided when Georg H.C. Bodenhausen was Director General of WIPO. Most of its construction, and its inauguration, took place when Arpad Bogsch was Director General of WIPO. As already stated, its architect was Pierre Braillard, a Swiss national.

When completed—and the situation had not changed by July 14, 1992—it had 19 levels: five underground and 14 above ground. Its height, above ground, is 50 meters. Its floor area is 23,290 square meters. It belongs to WIPO but the ground belongs to the Canton of Geneva, and a ground rent is paid for it. The construction cost 55 million Swiss francs, in great part covered by a loan from Swiss and Geneva Government sources, granted for 40 years at an interest rate of 3% or 3.5% per year.

It has two conference rooms equipped for simultaneous interpretation: one for 270 delegates with four languages, and one for 84 delegates with three languages.

Furthermore, it has a cafeteria and underground parking spaces for 216 cars.

The building is a success not only from the technical but also from an aesthetic viewpoint.

The blue glass façades of the tower-like main part are a landmark of Geneva. The marble floors and decoration of the lobby as well as the mosaic covering of the inside of its cupola are masterpieces from two specialized old firms of Rome. The main conference room, with

a view on oak trees, and its decoration, are the delight of most delegates. More than a hundred works of art (sculptures, paintings, textiles), many of them gifts from governments and organizations, embellish several parts of the interior. Water plays an important role: there is a marble wall fountain in the lobby; a 58-meter-wide, 3.5-meter-high waterfall around the outside of the main conference room; and a classical fountain at the entrance. That fountain was erected to commemorate the 100th anniversary of the Paris Convention (1983); a nude sculptured by Paul Belmondo (a French sculptor) commemorates the 100th anniversary of the Berne Convention (1986); an antique Roman marble column (in the garden) commemorates the 100th anniversary of the Madrid Agreement (1991); and the 25th anniversary of the WIPO Convention (1992) is commemorated by a painting of WIPO's building by the Hungarian artist Emeric and by a sculpture of two dolphins by the Italian artist Fiore de Henriquez.

The total surface of the land on which the two buildings were erected is 13,748 square meters, out of which the garden around the buildings occupies 9,000 square meters. Part of the garden was designed by Robert Burle Marx from Brazil.

8.43 *Situation on July 14, 1992.* On July 14, 1992, WIPO occupied the following premises in Geneva, with the following floor areas:

WIPO building: 23,290 square meters

BIRPI building (as enlarged): 4,986 square meters

Rented premises in Chemin des Colombettes: 364 square meters

Rented premises in Avenue Giuseppe Motta: 510 square meters

Rented storage premises in various places: 868 square meters

On the same date, a building destined for rental to WIPO was under construction at a distance of two kilometers from the headquarters building. Its floor area will be 5,040 square meters. This building is an interim solution since by the turn of the millennium at the latest, WIPO is expected to need an additional building for some more and bigger conference rooms, more parking spaces and at least 300 additional work places.

The rented premises in Vienna for the International Film Registry, and in New York for the Liaison Office, have floor areas of 274 and 60 square meters, respectively.

8.5 *Writings of the International Bureau*

This chapter deals with three kinds of writings emanating from the International Bureau: documents; periodicals; books and brochures.

8.51 *Documents.* For the most part, documents are papers prepared for meetings convened and organized by the International Bureau, meetings meaning any kind of meeting, from diplomatic conferences and assemblies of governing bodies to seminars, working groups and training courses.

The writings that represent the highest degree of intellectual input in connection with any meeting are the documents prepared by the Director General or the staff of the International Bureau in advance of, and intended to serve as the basis of, the discussions of the meeting. The quality of these, so-called preparatory, documents is of decisive importance for the efficient running of the meeting for which they have been prepared: they must be complete and clear and must contain all the elements that are required for the meeting to have a well-structured and economical discussion allowing an easy formulation of decisions or other conclusions if such are necessary. Their translations must be accurate.

In the actual course of any meeting, only few documents are issued, the most important among them being proposals made by delegations to the meeting.

At the conclusion of each meeting, the draft report and, promptly thereafter, the final report are issued. It has already been said how important it is to have those papers. It may be added that the writing of good reports is an art. A good report should be not only accurate but also concise. Frequently, however, it cannot be short, particularly where the evolution of the argument facilitates the understanding of the decisions made, or where delegations insist that every shade of argument and every suggestion made by them be reflected.

There are also documents that are not connected with meetings (for example, information documents of a general nature), and documents whose authors are neither the Director General of WIPO nor staff members of the International Bureau (for example, lectures of outside specialists). But their number is very small compared with the number of documents emanating from the International Bureau.

The volume of documents may be measured by the number of documents and by the number of their pages.

As already stated, the number of documents between 1967 and 1992 is estimated to be 40,000, counting only once documents that were issued in two or more languages. According to the nature of the meetings that they concerned, the percentages were the following: meetings dealing with industrial property, 46%; meetings of the Governing Bodies, 25%; meetings concerning patent documentation, 18%; meetings dealing with copyright and neighboring rights, 8%; others, 3%.

The number of pages of the documents issued between 1967 and 1992 is estimated to be 750,000; this figure covers the number of pages irrespective of language, so that, for example, a page that has been produced in its original language and two other languages counts as three.

There are no statistics for the number of copies produced of each document or each page. But if one assumes that the average number of copies produced of each sheet (two pages) of a document is 300, one may say that the number of sheets is around 110 million.

Documents are printed on paper of different colors according to language: green (Arabic), salmon (Chinese), pink (English), white (French), yellow (Russian) and blue (Spanish). Using separate colors for separate languages was, among international organizations, essentially an innovation of BIRPI/WIPO. It has spread all over the world.

8.52 *Periodicals.* Among the publications issued by the International Bureau at fixed time intervals, a distinction is made between general periodicals and specialized periodicals, which will be called gazettes.

8.521 *General Periodicals.* The two main general periodicals are *La Propriété industrielle* and *Le Droit d'auteur*. The first has been published since January 1885, the second since January 1888. They are monthly. No issue of either of them has been missed over the period of more than a century during which they have existed. The period from 1967 to 1991 is no exception.

Just before the latter period or during it, these two periodicals, both of which are in French, received companion publications in English and in Spanish.

La Propriété industrielle started publication in English, under the title *Industrial Property*, as a monthly in 1962. It started publication in Spanish, under the title *Propiedad Industrial*, as a quarterly in 1990 and as a two-monthly periodical in 1992.

Le Droit d'auteur started publication in English under the title *Copyright* as a monthly in 1965. It started publication in Spanish, under the title *Derecho de Autor*, as a quarterly in 1989 and as a two-monthly periodical in 1992.

All these periodicals continued in production on July 14, 1992.

The number of pages in *La Propriété industrielle* between 1885 and 1991 inclusive, and those in *Le Droit d'auteur* between 1888 and 1991 inclusive, was 32,617 and 24,424, respectively.

In 1991, each issue of *Industrial Property* was printed in 1,400 copies, and each issue of *Copyright* was printed in 700 copies.

The contents of these periodicals, from the beginning, consisted of official communications of the International Bureau (accessions to treaties and the like), texts of treaties and national laws (in the original language or in translation), notes or entire documents of meetings organized by the International Bureau, articles on current subjects (unsigned if by a staff member of the International Bureau, signed if authored by someone else), particularly "Letters" from various member countries. Two changes were made, however, during the period under consideration.

One is that the texts of laws and treaties are no longer part of, but are annexes to, the periodicals. The annex to each issue of the periodical can be collected in separate binders. The change took place in 1976 (*Industrial Property* and *La Propriété industrielle*), 1980 (*Le Droit d'auteur*) and 1987 (*Copyright*), respectively. The publication of those texts is based on a collection of the legislative texts of all countries of the world in their original language and official edition, which the International Bureau has kept up to date for more than 100 years.

The other change is that the publication of articles was, at least provisionally, discontinued in 1992. The main reason for that change was that the number of other excellent periodicals ready to publish such articles had reached a level at which WIPO's periodicals were no

longer indispensable for conveying views on current subjects to the general public.

Besides the above-mentioned periodicals, WIPO has also published three other periodicals, the *WIPO Newsletter*, *Intellectual Property in Asia and the Pacific (IPAP)*, and the *Journal of Patent Associated Literature (JOPAL)*.

The *WIPO Newsletter* was published between 1979 and 1991 (since 1992, it has no longer been published because it would have duplicated the changed contents of *Industrial Property and Copyright*). While it lasted, the *Newsletter* contained accounts of WIPO's activities of interest to the general, non-specialist reader. It was issued in Arabic, English, French, Portuguese, Russian and Spanish and averaged eight pages per issue. There were two to four issues a year.

IPAP has been issued as a quarterly since 1983, with some financial assistance from the United Nations Development Programme. This periodical, which averages some 80 pages per issue, is available only in English. It contains information on WIPO's activities in the Asian and Pacific region, news on important developments in intellectual property in that region, and, of much interest to its readers, a summary of important intellectual property court cases in the region.

The monthly *JOPAL* provides, in a highly concentrated form, bibliographic data on scientific articles published in periodicals which figure in the Patent Cooperation Treaty list of "minimum documentation." During the first 11 years of its existence (1981-1991), it contained references to some 90,000 scientific articles.

8.522 *Gazettes*. There are five *Gazettes* published by the International Bureau.

The *PCT Gazette* is fortnightly. It has been published since 1978, in both English and French versions, the latter being called *Gazette du PCT*. In respect of each published international patent application filed under the PCT, there is a separate entry in that issue of the *Gazette* which has the same date as the publication date of the application. The entry contains various data (serial numbers, names, dates, classification) as well as an abstract of the invention that is the subject matter of the application and at least one drawing, if drawings are part of the application. The *Gazette* contains some additional information items too.

By July 1992 (inclusive), the number of issues amounted to 405 and the number of pages (of the English edition) totalled 77,378.

Les Marques internationales is monthly. It was first published in February 1893. It has only a French version. It contains a separate entry in respect of the international registration of each mark effected under the Madrid (Marks) Agreement. This entry normally appears during the second month which follows the month in which the mark was internationally registered. The entry contains various data (serial numbers, names, dates, classification), as well as a reproduction of the mark and the list of the goods and services for which the mark is registered. Changes in the original registration, and renewals of the registration, are also published in this *Gazette*, namely in the issue which is the next following the recordal of the change or renewal.

By July 1992, the number of issues amounted to 1,188 and the number of pages totalled 147,197. Of these, 306 and 93,205, respectively, concerned the period starting with 1967.

The *Bulletin des dessins et modèles internationaux* is monthly. Originally published only in French, it started in 1928. Since 1979, it has been in mixed—English and French—language as far as the descriptions of the articles that incorporate the designs are concerned. Its title includes also the expression *International Designs Bulletin*. It contains a separate entry in respect of each international deposit of an industrial design or designs effected under the Hague Agreement. The entry contains various data (serial numbers, names, dates, classification, as well as the picture(s) of the design(s) deposited).

By July 1992, the number of issues amounted to 762 and the number of pages totalled 43,651. Of these, 306 and 18,258, respectively, concerned the period starting with 1967.

Les Appellations d'origine is an official gazette but not a periodical in the sense that the issues are published at regular intervals. Its issues are published when the accumulation of sufficient material makes publication economical. Its first three issues were published in 1968. Its last issue before July 14, 1992, was published in 1991. It was the gazette's 20th issue. It is published in French only.

It contains a separate entry in respect of each international registration effected under the Lisbon Agreement. The entry contains

not only the appellation and the name of the country whose government requests the registration, but also various other data, such as serial numbers and dates.

The above-mentioned 20 issues contain 326 pages.

The *International Film Registry Gazette* is the official publication of the International Film Registry, published when a sufficient number of international registrations has been received. Between September 15, 1991—when its first issue was published—and July 14, 1992, altogether six issues were published. They contain, in respect of each audiovisual work registered, the basic data, in particular, the title of the audiovisual work and the name of its producer.

8.53 *Books and Brochures.* WIPO's (before 1970, BIRPI's) *General Information Brochure* has been published each year since 1964 in an updated form. By the late nineteen-eighties, this brochure was published in nine languages (Arabic, Chinese, English, French, German, Japanese, Portuguese, Russian, Spanish). Its volume increased from 31 to 85 pages. A list of the main publications of the International Bureau is included in each yearly issue. That list, with more complete contents, is also published separately as a catalog, at least every second year.

The *Records* of each diplomatic conference organized by BIRPI/WIPO were (with one exception) published in book form.

The texts, in various languages, of all the *treaties* (and their accompanying regulations, if any) administered by WIPO are published and republished when updating is necessary or the stocks are exhausted.

The (*Financial*) *Management Report* of the International Bureau is published in respect of and after each financial period. It goes back to 1884. During the first 70 years, it was published only in French (*Rapport de gestion*). Thereafter, it has been published both in French and in English.

The various international *classifications* in the field of patents, trademarks and industrial designs are updated from time to time and, when they are, they are republished in various languages and in bilingual and trilingual editions. They include various indexes facilitating their use.

For the use of the three international *registration systems*, users' guides are prepared and published by the International Bureau, separate for each system (PCT, Madrid (Marks), Hague), in revised new editions, whenever the need arises.

Commentaries (called "Guides") concerning various treaties published by the International Bureau were much valued by specialists and students of intellectual property law, especially the Guides to the Paris and Berne Conventions, written by Georg H.C. Bodenhausen, when Director of BIRPI (from 1963 to 1970) and Claude Masouyé, when member or Head (from 1976 to 1986) of the Copyright Division of the International Bureau.

Equally appreciated, especially by developing countries, were the numerous *manuals* issued on subjects ranging from the organization of a patent information and documentation center, through the management and exploitation of patented inventions by research and development institutions, the examination of patent applications and the automating of industrial property offices to the licensing of industrial property and the collective administration of copyright and neighboring rights.

A total of 10 *model laws* were prepared and published by the International Bureau, primarily for the benefit of developing countries. They deal with all the main objects of intellectual property, namely, inventions, marks, industrial designs, geographical indications, copyright and neighboring rights. They were often used as the basis of legislative advice given by the International Bureau to developing countries.

Two *glossaries* were published, one dealing with industrial property terms in eight languages, and the other dealing with copyright and neighboring rights terms in seven languages.

The International Bureau issued three special publications known, in short, as the "P," "B" and "M" Books, *commemorating the centennials of the Paris and Berne Conventions and the Madrid (Marks) Agreement*, in 1983, 1986 and 1991, respectively. Those three books are symbols of the exceptional, if not unique, character of WIPO as a specialized agency that administers treaties which, a hundred years later, have remained as useful as they ever were.

The *proceedings* of many of the WIPO-organized symposiums and courses are compiled and published by the International Bureau in various languages. Each publication contains an average of 250 pages.

Between 1967 and July 14, 1992, the number of symposiums and courses covered by such volumes was 53.

The Library of the International Bureau had, on July 14, 1992, 40,000 items ("records") registered in its computer system: 16,000 books, 15,000 articles, 6,000 bound volumes of periodicals (255 titles), 3,000 bound volumes of BIRPI/WIPO documents. The Library has been publishing since 1960 a bimonthly bibliographic list of its acquisitions which is particularly useful for the libraries of universities, patent and trademark offices and other libraries wishing to keep up to date their collections of records dealing with intellectual property.

8.6 *Meetings*

The more intensively an international organization can promote international dialogue through meetings the better it will function. As far as WIPO is concerned, this is true for all fields of its activity: (i) international norms in the field of intellectual property are prepared by and issue from meetings of delegates of governments of member States, of representatives of the private sector and the Director General and staff members of the International Bureau, and (ii) knowledge about the usefulness of intellectual property in general and the treaties administered by WIPO in particular is most efficiently spread in meetings organized by the International Bureau whose participants and speakers are invited or selected according to the subject matter of the meetings.

8.61 *Diplomatic Conferences.* Hierarchically, the most important meeting in the life of WIPO is a diplomatic conference because it creates a new treaty or brings up to date an existing treaty. During the 25-year period from July 14, 1967, to July 14, 1992, the International Bureau intellectually and physically prepared and serviced 18 diplomatic conferences (one consisting of four sessions) which adopted 15 new treaties, revised three existing ones, attempted to revise one existing treaty and started to create one possible new treaty. Of the 18 diplomatic conferences, 12 took place outside Geneva, five in Geneva and one partly outside and partly in Geneva. They lasted 355 days.

The preparatory meetings for diplomatic conferences between July 14, 1967 and July 14, 1992, lasted 674 days.

8.62 *Governing Bodies.* As already mentioned, the policy of WIPO and the Unions is decided, the program and budget of the International Bureau are fixed and the execution of the program and the use of the moneys by the International Bureau are controlled by the Governing Bodies. They have also some other tasks.

On July 14, 1967, WIPO did not as yet exist, and there were no governing bodies in the proper sense of the expression. Twenty-five years later, WIPO and the Unions had, together, 25 Governing Bodies. Sixteen of them were of the first order (WIPO General Assembly, WIPO Conference and the 14 Assemblies of 14 Unions) and three were of the second order (the WIPO Coordination Committee and the Executive Committees of the Paris and Berne Unions), whereas the remaining six were of a transitional nature.

During the 25 years under consideration, there were 62 occasions at which one or more of the Governing Bodies met and the number of meeting days was 372. Subsidiary bodies of the Governing Bodies (such as the Budget Committee) spent, during the same period, 52 days in meetings, 32 of them being days of meetings of the WIPO Budget Committee.

8.63 *Other Meetings.* By "other" meetings, what is meant are meetings convened and serviced by the International Bureau which do not fall into any of the preceding categories and which are not courses and seminars for developing countries. The latter were mentioned earlier in this essay. Among these "other" meetings are the meetings of the WIPO Permanent Committees, the meetings dealing with the development of the international classifications and the meetings of the committees of experts dealing with the promotion of the international protection of intellectual property by means other than treaty-making. The number of days of such meetings was around 3,200.

8.64 *Number of Meeting Days.* In round figures, the meetings referred to in the preceding paragraphs lasted 4,700 days. By adding to that number the number of meeting days of courses and seminars for developing countries (some 3,000 days), it can be concluded that, from July 14, 1967, to July 14, 1992, the total number of days of meetings for whose organization the International Bureau was responsible was around 7,700.

8.7 Mail

The 25-year period from 1967 to 1992 was remarkable for the changes that took place in the ways the International Bureau sent and received written communications to and from destinations, whether near or far, from its headquarters in Geneva.

In 1967, most of the written communications were made on paper, sent by public post and delivery time was one to seven days, depending on distance and provided that, except for distances up to a few hundred kilometers, air mail was used. When a written message was urgent, it was sent by telegram, frequently called a "cable" when going overseas.

The first radical change was caused by telex, when the written text had to be typed or retyped on a special machine (either all in capitals or all in lower case letters), transmitted through a line similar to a telephone line, and instantaneously typed out (in the same form as sent) at the receiving end. Telex started to be used by the International Bureau in 1972.

Some 15 years later, telefax had gradually and practically replaced telex. Telefaxing consists of transmission over telephone lines near the sender and the receiver and, otherwise, over special lines or transmission by radio waves, mostly passing through artificial telecommunication satellites. Telefax transmits the exact image (or "facsimile") of whatever there is on a given page and, at the receiving end, the image is printed on paper. It is, therefore, not only words or numbers that can be transmitted, but also pictures and, most importantly for correspondence, the image of a signature or a seal.

In the case of telex and telefax, no paper copy needs to be sent by the sender to the recipient, and the paper copy that the recipient has is a copy that is produced at the point of destination. Nevertheless, even in 1992, the great majority of communications of written material was effected by sending a paper copy, and what the addressee received was the very copy that was sent. However, since the official postal services needed more and more time for transmission (mainly because of the insufficient number of postal staff and the reduction in the number of deliveries per day or week), the International Bureau and its correspondents used more and more, instead of the public post, privately owned and run delivery services. The latter need a much shorter time than the public post. For example,

in 1992, a letter from Geneva to New York would take one or two, instead of four to eight, days. The International Bureau started to use private mail services in 1988. In 1992, private mail service generally cost more than the public post, and as long as it remains so, it will (as in 1992) be used only when the saving of a few days' time is of importance.

On a typical working day in 1992, the International Bureau (i) sent 918 letters and like pieces of mail (other than documents, periodicals and other publications), of which 876 were sent by public post, seven by private post, 12 by telex and 23 by telefax, and (ii) received 850 letters and like pieces of mail, of which 768 were received through public post, 35 by private post, eight by telex and 39 by telefax.

WIPO's gazettes, periodicals, other publications and documents were generally sent only by public or private mail services. Some 37,000 pieces for some 13,000 destinations were sent in a typical month of 1992.

Most of the individual communications (as distinguished from gazettes, other periodicals, other publications and documents), that is, letters (including telexes and telefaxes) sent to the International Bureau are received, classified (according to their origin and subject matter) and registered by the "Registry" (in French, the *Chancellerie*), a unit in the International Bureau. The original is kept by the Registry, which distributes copies to the interested staff members. Each piece of mail received needs, for the purpose of the said distribution, to be first photo-copied ("xeroxed," a word derived from a trademark registered in many countries). Each piece, for the purpose of internal distribution, was reproduced in five copies on the average in 1992.

All outgoing letters, etc., also go through the Registry, which classifies and records them and keeps at least one copy of each.

In 1967, the Registry handled in the said way 145,000 pieces of mail; in 1991, it so handled 435,000 pieces of mail. For the 25 years (1967 to 1992), the total was 5,600,000. The average number of mail items handled each working day in 1991 was around 2,000. It is obvious that the methods used in 1992 for keeping paper copies and registering them were in need of modernization. And, indeed, as from 1991, the International Bureau was engaged in setting up a highly computerized system for such purposes.

8.8 *The Production of Letters and Documents*

Not only the techniques of mailing but also the techniques of the production of letters and documents has undergone a great change during the 25-year period under consideration.

Unless first written out in longhand by their drafters, letters or documents were, in 1967, dictated to secretaries who took down the text in shorthand. By 1992, this method of work had been, to a large extent, replaced by dictation into a voice-recorder (“dictaphone,” a word that is a registered trademark in many countries) and, when typing, the typist listens to the replay of the dictation (“audio typing”). It is estimated that, in 1992, 80% of the dictation and typing in the International Bureau was done in this way.

In 1967, typing was done on mechanical typewriters. A few years thereafter, electric typewriters started to be used. Electronic word processors started to be used in 1980. By 1992, the use of typewriters became very limited, and almost all typing in the International Bureau was done on word processors.

The keys of a typewriter impressed a piece of paper or a stencil.

When using paper, several copies could be made at the same time, by placing a sheet of “carbon paper” between each sheet of paper. But corrections were extremely tedious: on the “ribbon copy” (the only or the first copy on which the letters were typed with the help of an ink-impregnated ribbon), as well as on each of the carbon copies, one had either to erase (with a rubber eraser) the mistake, or paint it over with a white sticky powder or fluid and type the corrected part over it.

A stencil was a translucent paper treated with wax or plastic on which the keys of the typewriter made perforations corresponding to each letter or other sign. The stencil was then put in a stencil printing machine (in the early years, a “Gestetner,” a trademark registered in many countries) in which the stencil’s perforations let through a dry ink on the sheets of paper fed into the machine. Correcting a mistake on a stencil was bothersome: one had to fill the perforations with a gluey pink substance and then, on this now perforation-less surface, make the right perforations by (a second) typing. The typical position in which one saw a typist working on a stencil was that of holding the stencil against a window (by day) or a lamp (by night) trying to read the words and other typed signs as they appeared as perforations.

Where the corrections on a page were numerous, it was simpler to retype it in its entirety, but this entailed additional proofreading.

When (relatively) fast copying machines came into use in the nineteen-seventies, one stopped using stencils; instead, typing was done on paper in one copy (the ribbon copy) only (which was simpler to correct than a stencil), and all the other copies were reproduced by a copying machine.

Word processors have none of these drawbacks. The typist does not work at all with paper. What is typed is seen on a computer screen, and corrections, changing of margins and spacing are done within seconds and are instantly visible on the screen. The preparation of paper copies is done with a separate machine called a "printer," which "prints out" a page within a few seconds. The text, once inputted into the word processor, is stored in its computer memory and can be recalled at any time for updating and reprinting. In consequence, editing and proofreading became much easier and faster.

8.9 *Computerization*

At the beginning of the 25-year period under consideration, that is, in 1967, no computers were used by the International Bureau, and that situation lasted for almost seven of the 25 years.

8.91 *Financial Services.* Computerization started with the financial services of the International Bureau. The preparation took place in 1973 and the first result was the production of the payroll of January 1974. The programs were written by outside consultants (rather than members of the staff), but the computers used for processing (the hardware) were then, and still were in 1992, computers of the International Computing Centre, a cooperative facility of several organizations of the United Nations system of organizations, located in Geneva. The system installed in 1973 went through several improvements during the subsequent 18 years, with most of the new programs written by staff of the International Bureau.

In 1992, computerization in the financial sector of the International Bureau meant mainly the use of computers in the calculations necessary in the preparation of the draft budgets, the billing of contributions, the recording of every payment received, financial commitment (*engagement de dépense*) incurred and payment made by

the International Bureau, as well as the monitoring of the accounts. It also meant the monitoring of the dates on which payments should have been received or should be made. Among the payments is the payment of staff salaries and allowances. That payment is calculated (with the help of the computer system) on the basis of information given by the personnel administration on each individual staff member's entitlements. The resulting figures are then transmitted to the banks as instructions to pay to the individual staff members, since all payments are made by crediting their bank accounts.

Furthermore, the system makes it possible to establish, in respect of any budget item, to what extent the actual income and expenditure correspond to the amounts of income or expenditure as budgeted under that item.

The system was given the name FINAUT (Finance Automation system). Until 1986, it was entirely a batch system, that is, all questions addressed to the computer on a given working day were answered together on the following working day. The system gradually became a fully interactive on-line system between 1986 and 1990, that is, questions may be asked from the computer at the International Computing Centre at any time, and the answer is received instantaneously or within seconds (hence "interactive"), since the computer work station of the questioning staff member of the International Bureau and the computer at the International Computing Centre, some two kilometers distant from each other, are connected by cable (hence "on-line").

8.92 *Personnel Administration.* The service which is responsible for the administration of personnel matters, has to deal with numerous and complex data, and computers are ideal for their processing. It was in 1977 that the inputting of such data in computer memories, and their treatment by computers providing the replies needed to questions concerning personnel administration, started.

As in the case of the financial services just mentioned, the computers used were then—and in 1992 they were still—the computers at the International Computing Centre.

The system utilized in the field of personnel administration is used, in particular, for the monitoring of each staff member's entitlements flowing from the pay grade and step, the number and kinds of dependants, within-grade increments, promotion, right to any language

allowance, installation allowance, housing subsidy and children's education grant. Attendance under the "flexi-time" system of working hours, annual and sick leave entitlements and their use and the participation in staff insurances and the Pension Fund are also monitored with the help of computers. Finally, the system allows the production of staff lists and statistics on the staff as a whole, as to the age, nationality, sex, length of service, length of service in the same pay grade, of each staff member, as also the monitoring of expiration dates of fixed-term appointments, retirement, the due dates for performance reports, and the status of vacancies and recruitment. Once a month, a 50-page (in 1992) print-out tabulates the most important data.

The system underwent many improvements between its initiation and July 14, 1992: more and more data were included, the questions that the system was able to answer became more and more numerous and complex, and the response time was drastically reduced, as in the case of the financial services, by changing from batch processing to interactive on-line communication.

In the late nineteen-eighties, several stand-alone systems, using independent ("personal") computers, were introduced, dealing with specific requirements in financial and personnel administration.

8.93 *Word Processing*. The first word processing computer system was acquired by and located in the International Bureau in 1980. It consisted of three word processors ("terminals"), a printer and a central computer. Gradually, word processors replaced, almost entirely, the use of typewriters. On July 14, 1992, there were 152 word processors in the International Bureau. These were interconnected using four central processing units which stored the inputted texts and controlled a total of 25 printing devices ("printers") providing prints on paper of the stored text. Of the 152 word processors, 41 could also operate as independent ("personal") computers.

Word processors are used for writing letters, documents and any other written items, including the writing of the manuscripts (it would be more exact to call them the computerscripts) of publications whose printing is done by outside printers. In this last case, a magnetic tape or diskette ("floppy disk"), rather than a paper printout, is made in the International Bureau of what has been inputted in the word processor and, after "coding" the inputted text with the instructions for composition (the size and kind of the type to be used for the printing,

etc.), the tape or diskette containing the coded text is sent to the printer who, with the help of the tape or diskette, makes the "masters" (films or plates) which are used in the printing machines. For certain publications, the coded text is sent direct over a telecommunication line to the printer.

8.94 *PCT Services.* The use of computers is a practical necessity in the performance of the tasks of the International Bureau in connection with the handling of the international patent applications filed under the PCT. This is so because of the great number of the applications (22,000 in the single year of 1991) and the multiplicity and complexity of the tasks of which the handling consists.

"The PCT Computer System" (as it is called in the International Bureau) started to function in 1982 and, with several, important improvements, was functioning also in 1992. The computer used is that of the International Computing Centre and the programs were written by the staff of the International Bureau and outside consultants.

Data concerning each international application received (names, serial numbers, addresses, dates, title and classification of the invention, fees received, etc.) are inputted by the staff of the International Bureau in the memory of the computer and are used for checking whether all the required data have been furnished and whether the data furnished correspond to the prescribed requirements. Furthermore, the system monitors what facts have to be notified (receipt of the application, mistakes in it, etc.) by the International Bureau and to whom (the applicant, the designated countries, the competent international searching or preliminary examining authority, etc.) and what the dates are by which the international search report should be received, and the date on which the individual application must be published, by the International Bureau. Such publication is made in the form of a pamphlet whose first page reproduces certain data, which the computer system assembles in the required form. A notice concerning each published application must be published in the fortnightly PCT Gazette of the International Bureau, and the items that each notice must contain are assembled and put in the required order with the help of the computer.

In 1992, preparations for a quantum jump in the system were well under way. The improved system (which would enrich the PCT Computer System with an optical disk system), under the name of Document Imaging and Computer-Assisted Publication System

(DICAPS), should not only be able to monitor actions and assist in the grouping of data but, after storing the entire contents, including all texts and drawings (and not only certain bibliographic data and some (short) texts) of each international application, should be able to give instructions for the automatic composition of the corresponding pamphlet and Gazette entry, the automatic printing of both, and the automatic addressing of copies to addressees who are to receive notices, pamphlets and Gazettes.

Since 1990, the European Patent Office, in cooperation with the International Bureau, has published, every second week, a CD-ROM (compact disk with "read-only memory") containing the bibliographic data and the complete image of all international applications published in pamphlet form by the International Bureau on the same date on which the CD-ROM containing them was published. The product was given the name ESPACE-WORLD.

Also on CD-ROMs, and also in cooperation with the European Patent Office, have been published, since 1988 (six times a year), the bibliographic data and complete facsimile image of the first page (that is, not the entire pamphlet as under ESPACE-WORLD, mentioned above) of each international application published during the two months preceding the publication of the particular CD-ROM. The product was named ESPACE-FIRST. It also covers European patent applications not filed *via* the PCT.

8.95 *International Trademark Registration Services.* The use of computers to assist the International Bureau in the administration of the system of international registration of marks under the Madrid Agreement started in 1982.

In the 25-year period under consideration, the International Bureau received, each month, an average of 825 international applications, with individual monthly figures doubling that number at the end of the period. With the exception of the image (if any) of the mark, everything that is stated in the international application, including the totality of the text matter appearing in it, is inputted into the computer memory. "SEMIRA" is the name given to the computer system in question, and it stands for System of *Electronic Mark Interrogation, Registration and Administration*.

In this (the SEMIRA) system, not only the contents of the international application as received by the International Bureau are

inputted, but also all the changes (e.g. change in the person of the owner of the registration, in addresses, in the country coverage of the registration (new designations, cancelling of designations, of certain countries)) in the registration and all acts concerning the registration (notifications, payment of fees, renewals, refusals, cancellations, etc.) are inputted, so that the record, stored in the computer, is, itself, the registration and the record of all its history.

The computer memory is accessible on-line. In other words, one can consult the (always completely up-to-date) International Register of Marks instantaneously using a telecommunication line.

Starting in 1988, a program was initiated to store, on optical disks, images of all the papers present in the files of the International Bureau relating to all the valid (that is, not expired because of lack of renewal or any other reason) international registrations. Each international registration has a different file. On July 14, 1992, there were some 280,000 valid international registrations and, thus, 280,000 files, each containing an average of 16 pages, so that the number of pages amounted to some 4,500,000. The optical disk system will make it unnecessary to keep the paper material. "MINOS" is the name given to that optical disk system, and it stands for the French name "*Marques internationales numérisées et optiquement stockées*" or the English name "*Mark INformation Optically Stored.*"

The SEMIRA and MINOS systems also serve for the publication, in the monthly gazette *Les Marques internationales*, of each registration, modifications and other relevant facts and for the notification, every 10 days, of the same to all interested parties, by selecting and putting together the items to be published, with their figurative elements, and producing the "masters" which are then used for the printing of the said gazette and notifications.

Since May 1992, a CD-ROM product of the International Bureau had also been available. It is a CD-ROM disk that is issued every month and covers all the—in 1992, some 280,000—valid international registrations. The information concerning each international registration shows the situation at the date of the (monthly) issue of the disk, which means that, contrary to the SEMIRA system, it does not reflect the "history" (the changes and the dates of the changes in the registration) of each registration. The system will include images of all the valid marks by 1993. The data stored may be searched in many respects, for example, one can obtain answers to the question which

are the registrations owned by a given person or legal entity, or which is the registration or which are the registrations of a given mark. This system has been given the name ROMARIN, standing for *Read-Only-memory of Madrid Actualized Registry INFORMATION*.

8.96 *Other Services*. There were, in 1992, several other services in the International Bureau which used computers in the performance of their daily tasks.

One of them serves the activities of *assistance to developing countries*. A number of interconnected personal computers store the data concerning candidates for training and study trips. Those data are used in the process of selecting the candidates and recording the data concerning the accomplishment of the training or study trips by those selected. In 1992, a similar system was under development for the selection of lecturers and other experts susceptible of being entrusted, or actually entrusted, with missions in developing countries.

Another computerized system, operational since 1983, is used for handling *subscriptions* and *sales* of WIPO-issued *publications*.

Still another computerized system processes the data of the *statistics*, in each country of the world, of the legal nature, number, origin and other data concerning applications for, and grants or registration of, industrial property titles of inventions, marks and industrial designs.

A further computerized system, operational since 1989, is that of the *library* of the International Bureau. It constitutes the catalog of the holdings of the library, searchable by subject matter, name of author, country of publication and language. It also serves for the ordering of books and periodicals and the monitoring of the receipt of any new acquisition.

Another computerized service, in existence since 1992, concerns the *International Patent Classification (IPC)*. As already stated, this Classification distinguishes between some 64,000 fields of technology, describes each by words in English and several other languages and provides each with a distinctive symbol. This classification, which is managed and updated on a computer system, was, as from 1991, made available on a CD-ROM; searching using this CD-ROM allows the finding of the place and symbol of any field by feeding into a computer work station words, freely chosen by the searcher, in English, French,

German and Spanish. Furthermore, on the screen of the work station, one can call up and see any part of the nine-volume, book-form publication of the Classification.

Finally, in 1992, several other computerized systems were under preparation: one to serve for the registering of incoming and outgoing *mail*, another to serve for the registration of *international industrial designs* under the Hague Agreement, and still another to further facilitate the operation of the "*flexi-time*" system of working hours.

9. WIPO'S RELATIONS WITH OTHER INTERGOVERNMENTAL ORGANIZATIONS

- 9.1 United Nations – 9.2 Specialized Agencies and GATT –
9.3 Regional Intergovernmental Organizations (9.31 European
Communities, 9.32 Regional Industrial Property Offices,
9.33 Other Intergovernmental Organizations)

It is indispensable for the advancement of the international protection of intellectual property that WIPO maintain working relations with all those intergovernmental organizations which have or try to have an influence on such protection.

Furthermore, it is a necessity for WIPO to maintain relations with the United Nations and WIPO's sister specialized agencies, in order to place WIPO's activities also at the disposal of the promotion of general peace and prosperity and to at least try to participate in the management of the "common system" of staff salaries (applied in 1992 by WIPO and by 11 of the 15 other specialized agencies).

This chapter deals first with the United Nations, then with specialized agencies and, finally, with regional intergovernmental organizations.

9.1 United Nations

As already stated, since December 17, 1974, an agreement has been in force between the United Nations and WIPO. The Agreement recognizes the jurisdiction, in the United Nations system of organizations, of WIPO in the field of intellectual property. It obliges WIPO to take into consideration the recommendations of the United Nations (whether coming from the General Assembly or the Economic and Social Council (ECOSOC)) directed also to the specialized agencies if not specifically to WIPO.

Such recommendations are, *de jure*, just that. Whether they are followed or not depends on the Governing Bodies of WIPO. *De facto*,

however, they are followed, if for no other reason than that they originate from bodies which have more or less the same membership (governments of the same countries) as the Governing Bodies of WIPO.

In any case, recommendations explicitly dealing with intellectual property have not, during the 18 years during which WIPO has been a specialized agency (1974 to 1992), been adopted by the United Nations.

Action in favor of certain countries or groups of countries, particularly if in distress, are taken by WIPO with or without recommendations by the United Nations but, of course, there is little, if anything, that WIPO can do to fight hunger, poverty, natural disasters or armed conflicts.

The recommendations and the attitude of the United Nations in respect of certain political questions are generally an extremely useful guide for WIPO; for example, when one has to decide which countries and which governments should, and which should not, be recognized. They spare WIPO political difficulties even though some of the attitudes have resulted in a situation where a few countries engaged an important activity—even internationally—in the field of intellectual property cannot develop their international intellectual property relations within the framework of WIPO.

The Administrative Committee on Co-ordination (ACC) is a creation of the United Nations. *De jure*, its members are the executive heads of the United Nations and specialized agencies. *De facto*, the membership is more than double.

The executive heads of the International Atomic Energy Agency (IAEA) and of the secretariat of that “non-organization,” the General Agreement on Tariffs and Trade (GATT)—neither of them being a specialized agency—are treated as full members. Since their executive heads are elected officials, like the executive heads of the United Nations and the specialized agencies, the assimilation is understandable and useful.

The situation of “organs” and “programs” set up by the United Nations is somewhat different, not only because they are not specialized agencies but also because their executive heads are

not elected officers. Yet, they are treated as members of the ACC. On July 14, 1992, there were at least 20 such organs or programs. They included the following: Economic and Social Commission for Asia and the Pacific (ESCAP), Economic and Social Commission for Western Asia (ESCWA), Economic Commission for Africa (ECA), Economic Commission for Europe (ECE), Economic Commission for Latin America and the Caribbean (ECLAC), Office of the United Nations High Commissioner for Refugees (UNHCR), Office of the United Nations Disaster Relief Coordinator (UNDRO), United Nations Centre for Human Settlements (UNCHS or Habitat), United Nations Children's Fund (UNICEF), United Nations Conference on Trade and Development (UNCTAD), United Nations Development Programme (UNDP), United Nations Drug Control Programme (UNDCP), United Nations Environment Programme (UNEP), United Nations Fund for Population Activities (UNFPA), United Nations Institute for Training and Research (UNITAR), United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), United Nations University (UNU), World Food Council (WFC), World Food Programme (WFP).

During those 18 years (from 1974 to July 14, 1992), the Administrative Committee on Co-ordination met approximately 50 times. Until 1990, there were three ordinary meetings—each lasting an average of two days—per year: one in October in New York, one around April at the headquarters of one of the specialized agencies (WIPO was host to such a meeting in 1979), and one in July in Geneva to coincide with the yearly meeting of ECOSOC. However, since 1991, what used to be the simultaneous meeting of ACC with ECOSOC has been discontinued.

The meetings are mostly chaired by the Secretary-General of the United Nations. During the above-mentioned 18 years, the incumbents were Kurt Waldheim (Austria, until December 1981), Javier Pérez de Cuellar (Peru, from January 1982 to December 1991) and Boutros Boutros-Ghali (Egypt, since January 1992).

One of the questions that the Administrative Committee on Co-ordination discussed in practically all its meetings was the inadequacy of the "common system" of salaries and other staff employment conditions. In several instances, the Committee adopted suggestions directed to the General Assembly of the United Nations and the International Civil Service Commission, the two bodies—albeit on

different levels—responsible for the common system. However, most of the time, both bodies paid little heed to the suggestions.

WIPO has a particularly close and substantial cooperation with the *United Nations Development Programme (UNDP)* which is the main multilateral funding source for the technical assistance provided by the United Nations system. The contribution of UNDP to WIPO's development cooperation program for the benefit of developing countries has been described earlier in this essay. That contribution permitted the International Bureau to far outperform the results that could have been expected without such support.

The excellent relations between the International Bureau and the secretariat of UNDP are due to the frequent, almost daily, contacts between staff members in both organizations. Those contacts take the form of attendance at formal meetings (including meetings of their respective governing bodies) organized by WIPO or UNDP, regular consultations between the two sides in Geneva and New York and telephone conversations. In addition, there are many consultations, together with the beneficiary developing countries, in the field offices of UNDP. Those field offices and their heads, called United Nations Resident Coordinators or UNDP Resident (or Regional) Representatives, definitely facilitate contact between WIPO and developing countries since WIPO itself does not maintain any field offices.

For several years preceding 1993, the International Bureau had participated in the meetings of United Nations bodies dealing with environmental questions, notably the *United Nations Environment Programme (UNEP)* and the *United Nations Conference on Environment and Development (UNCED)*. The industrial property aspects of the ownership, transfer and use of technology in the environmental context, particularly inventions pertaining to biological diversity and the ozone layer, are of direct interest to WIPO.

In 1990, WIPO organized jointly with UNEP a meeting of experts on the role of industrial property in the transfer of technology which reduces the depletion of the ozone layer.

In 1991, the International Bureau organized, together with the secretariat of UNCED, a Meeting of Experts on the Acquisition by Developing Countries of Environmentally Relevant Technology Protected as Intellectual Property.

In 1988, WIPO initiated jointly with UNEP and the Union of African Journalists (UAJ) the creation of a joint UNEP-WIPO-UAJ Award to encourage African inventors to concentrate their work on inventions useful to environmental protection in Africa. The joint prize consists of a WIPO gold medal and a certificate. Two African inventors received the Award, in 1989 and in 1990.

9.2 *Specialized Agencies and GATT*

Among the specialized agencies with which WIPO has had working relations during the whole 25-year period (1967 to 1992) are the *United Nations Educational, Scientific and Cultural Organization (Unesco)* and the *International Labour Organisation (ILO)*.

The Universal Copyright Convention of 1952 established the Intergovernmental Copyright Committee and provided that the Director of BIRPI (whose title later changed to Director General of WIPO) or his representative might attend the meetings of the Committee in an advisory capacity (in the same capacity as the Director-General of Unesco or his representative). For years—principally between 1971 and 1989—that Committee and the Executive Committee of the Berne Union held joint sessions, every second year, alternately at the headquarters of WIPO and the headquarters of Unesco (Paris). During the same period, several committees of experts or working groups, dealing with substantive copyright questions of international significance, were co-sponsored (jointly convened and serviced) by WIPO and Unesco. However, due mainly to the fact that, for various political and budgetary reasons, Unesco's input gradually became smaller, the custom of joint or co-sponsored meetings was abandoned in the late nineteen-eighties. This separation did not mean, however, that Unesco was not invited to, and was not represented at, all WIPO meetings falling within the program of the Berne Union. WIPO, too, continued to be invited to the (very few) meetings in the field of copyright that Unesco convened after the above-mentioned separation.

The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations of 1961 established an Intergovernmental Committee "to study questions concerning the application and operation of this [the Rome] Convention" and "to collect proposals and to prepare documentation for possible revision of this [the Rome] Convention" (Article 32.1).

The number of members of the Intergovernmental Committee is limited in the Convention; it had already reached the limit of 12 in 1977. The Convention provides that officials of the International Labour Office, Unesco and “the Bureau of the International Union for the Protection of Literary and Artistic Works,” designated by the heads of the three Organizations, “shall constitute the Secretariat of the Committee” (Article 32.5).

The Intergovernmental Committee started to meet in 1967 and its last meeting before July 14, 1992, was held in 1991. During that period, it met 15 times (13 times in ordinary and twice in extraordinary sessions).

During that period, there were not many questions concerning the application and operation of the Rome Convention on the agendas of the Intergovernmental Committee. Nor had any serious preparations for a possible revision of the Rome Convention started. Although it was generally recognized in 1992 that the regime provided for in the Rome Convention—which, in 1992, reached the age of 31 years—needed revision, there was a growing opinion that perhaps another framework, possibly entirely within WIPO, would be preferable. The question was, in 1992, at the center of the attention of the interested circles and of WIPO itself.

In 1986, *GATT* had decided to deal, in its so-called Uruguay Round of multilateral trade negotiations, with “the trade-related aspects” of intellectual property. By July 14, 1992, the draft of a set of rules had been produced dealing with all aspects of intellectual property, and in great detail. The draft clearly duplicates most of what is provided for in the substantive law treaties administered by WIPO. Although, during the preparation of the draft, the International Bureau was requested by *GATT* to prepare, and indeed prepared, several studies on the state of the protection of intellectual property in the world, WIPO had no part in the discussions which led to the *GATT* draft. WIPO invited *GATT* to each of its meetings dealing with substantive intellectual property law, and *GATT* was represented in almost all of them, but WIPO was invited only to *GATT* meetings of a formal kind and not to the (very numerous) meetings that discussed the substantive intellectual property questions and worked on the above-mentioned draft. This unbalanced situation flowed—almost needless to say—entirely from the will of the governments representing their countries, whether in WIPO or in *GATT*.

9.3 *Regional Intergovernmental Organizations*

9.31 *European Communities.* When WIPO became operational (1970), the European Communities (the European Coal and Steel Community, the European Atomic Energy Community, and the European Economic Community) consisted of six member States (Belgium, France, Germany, Italy, Luxembourg, the Netherlands). By July 14, 1992, there were 12 members: Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and the United Kingdom.

The Council of the European Communities may, on the proposal of the Commission of the European Communities, adopt "Regulations" and "Directives." A Regulation applies directly in the member States from its effective date, which is fixed in the Regulation itself. A Directive obliges each member State to bring into force (national) laws, regulations and administrative provisions necessary to comply with the Directive by a date which is fixed in the Directive itself.

In the field of intellectual property, no Regulation was in force, but three Directives were in force, on July 14, 1992. They were (i) the Directive "on the legal protection of topographies of semiconductor products" (87/54), (ii) the "First" Directive "to approximate the laws of the Member States relating to trade marks" (89/104) and (iii) the Directive "on the legal protection of computer programs" (91/250).

On July 14, 1992, the time limit for compliance had expired in the first, whereas the time limit for compliance with the latter two was expected to expire on December 28 and 31, 1992, respectively.

By July 14, 1992, the Council of the European Communities had adopted two Regulations. They were: (i) the Regulation concerning "the creation of a supplementary protection certificate for medicinal products" (1768/92) and (ii) the Regulation concerning "the protection of geographical indications and appellations of origin for agricultural products and foodstuffs" (2081/92). They were expected to enter into force on January 18, 1993, and July 24, 1993, respectively.

By July 14, 1992, several hearings and expert meetings were held by the Commission of the European Communities on seven planned Directives. They concerned the following subjects: (i) protection of biotechnological inventions, (ii) protection of data bases, (iii) copyright and neighboring rights applicable to satellite broadcasting and cable

retransmission, (iv) harmonization of the term of protection for copyright and certain neighboring rights, (v) protection of the right of rental and lending of authors, performing artists, phonogram producers and producers of first fixations of films, and of certain (other) rights of performing artists, phonogram producers, producers of first fixations of films, broadcasting organizations and cable distributors, (vi) home copying of sound and audiovisual recordings, (vii) harmonization of industrial design laws. The first three were, on July 14, 1992, already before the Council.

The International Bureau of WIPO had been invited to some of the above-mentioned hearings and, in an observer capacity, to some of the said expert meetings.

In the field of the registration of trademarks and industrial designs, the Commission of the European Communities was, on July 14, 1992, in the process of preparing the setting-up of a Community Trademark Office and a Community Industrial Design Office. Work on the first started in 1976, whereas on the latter, it started in 1991.

In the field of the granting of patents, the "Convention for the European Patent for the Common Market" (generally referred to as "the Community Patent Convention") was—after 20 years of preparation—adopted in a diplomatic conference of the member States held at Luxembourg in 1975. In 1989 and 1992, further diplomatic conferences dealt with measures designed to facilitate the entry into force of the Convention. However, by July 14, 1992, the Convention had not yet entered into force. WIPO was invited as an observer to the diplomatic conferences dealing with the Community Patent Convention and to the meetings of the Interim Committee which had the task of preparing the entry into force of the Convention.

As far as the participation of the European Communities in the meetings organized by WIPO is concerned, the situation was as follows. The Communities participated in the Diplomatic Conferences of Washington (on integrated circuits, 1989) and Madrid (on the Madrid Protocol, 1989), not as an observer but as a member delegation, with the same rights—except the right to be elected as officers—as delegations of States. The resulting two treaties (Washington Treaty and Madrid Protocol) make the European Communities eligible for becoming a party to the Washington Treaty and, once the Community Trade Mark Office is established, to the Madrid Protocol.

The Commission of the European Communities participated in the preparatory meetings that led to the Diplomatic Conference on the Patent Law Treaty (first part, in 1991) and the two diplomatic conferences mentioned above. It also participated, with the same status as member States, in the meetings that, in 1992, still worked on possible future treaties expected to be concluded under the aegis of WIPO, in particular the planned Treaty for the Settlement of Disputes Between States in the Field of Intellectual Property, the Treaty on the Simplification of Administrative Procedures Concerning Marks and the Protocol to the Berne Convention. As far as the planned new Treaty on the International Registration of Industrial Designs is concerned, the European Communities participated in the preparatory meetings in an observer capacity (since they had not yet legislated in the field of industrial designs).

It is to be noted that the participation of the European Communities in the capacity of a member (rather than observer delegation) in certain WIPO-organized meetings did not exclude the participation in the same meetings, and in the same capacity, of the member States of the European Communities. In certain fields of intellectual property, the legislative function is shared by the European Communities and its member States, unless such a function has been taken over by the European Communities from their member States, and this is a trend that, in 1992, appeared to be in the process of spreading. It is important, therefore, that the European Communities participate in the development of intellectual property at the global level.

9.32 Regional Industrial Property Offices. On July 14, 1992, there were five regional industrial property offices in existence and operational. Two were in Africa, and three were in Europe.

The two African offices were the *African Intellectual Property Organization (OAPI)* with 14 French-speaking African member States and the *African Regional Industrial Property Organization (ARIPO)* with 14 English-speaking African member States. Both issue patents and register industrial designs. OAPI also registers marks. The origins of OAPI go back to 1962, those of ARIPO to 1976.

The International Bureau has had close working relations with both since their foundation. They are represented in all WIPO-organized meetings of interest to them, and WIPO is represented in meetings of their governing bodies. Many of their staff members were

beneficiaries of fellowships and were invited to training courses organized by WIPO. But the two Organizations themselves received, for on-the-job training, persons from various developing countries.

The International Bureau assisted the Offices with legal advice and free-of-charge patent search, and in the case of ARIPO, examination reports, and it helped them in the computerization of their administrative procedures and the establishment of collections of patent documents of some of the industrialized countries. In 1992, in cooperation with the European Patent Office, the International Bureau started to record on CD-ROMs all the patents issued, from the beginning of its operations, by OAPI.

The three European Offices were the *European Patent Office (EPO)*—which was founded in 1973 (that is, three years later than the PCT Union) but which became operational on the same day as the PCT, that is, on June 1, 1978—and the two Benelux Offices, namely, the *Benelux Trademark Office (BBM)* (founded in 1962) and the *Benelux Designs Office (BBDM)* (founded in 1966). On July 14, 1992, the EPO had 16 member countries and each of the two Benelux Offices had three member countries. The EPO grants patents with potential effect in its member countries, whereas the two Benelux Offices register marks and industrial designs, respectively, with effect in their member countries.

WIPO's relations with the EPO are close. This is particularly necessary because of the PCT. The grant of European patents (the patents granted by the EPO) may be applied for in international applications filed under the PCT. The EPO is one of the International Searching Authorities and one of the International Preliminary Examining Authorities under the PCT. There is cooperation between the International Bureau and the EPO in the creation of various CD-ROM products containing also the text or data of international applications filed under the PCT.

There is cooperation between the International Bureau and the EPO also in their programs for assisting developing countries. In particular, the EPO allows staff members to make missions to developing countries within the programs of cooperation that the International Bureau carries out in those countries, and the EPO receives WIPO trainees from developing countries for on-the-job training or as visitors on study trips in EPO headquarters in Munich or in its branch offices in The Hague and Vienna.

The EPO is invited and regularly participates in WIPO meetings of interest to it and vice-versa. Staff members of the International Bureau and the EPO meet frequently, and the Director General of WIPO has consultations with the President of the European Patent Office whenever circumstances make consultations desirable.

The relations of WIPO with the two Benelux Offices are dominated by the fact that the registration of Benelux trademarks may be obtained via the international trademark registration (Madrid) system and that the international deposit of industrial designs, under the WIPO-administered Hague Agreement, have effect in the three Benelux countries.

The Benelux Offices regularly participate in all WIPO meetings of interest to them.

9.33 *Other Intergovernmental Organizations.* There were, on July 14, 1992, 24 intergovernmental organizations, other than those belonging to the United Nations system of organizations or the regional organizations already mentioned, which had an observer status in WIPO, mostly provided for in bilateral working agreements between WIPO, on the one hand, and each organization, on the other. These organizations participate in WIPO meetings of interest to them, and the International Bureau sends representatives to those meetings of the said organizations which are of interest to WIPO. Every region of the world is represented by such organizations, for example, Africa, by the Organization of African Unity (OAU) and the Economic Community of the Great Lakes Countries (CEPGL); the Arab region, by the League of Arab States (LAS); Latin America and the Caribbean, by the Latin American Economic System (SELA), the Permanent Secretariat of the General Treaty on Central American Economic Integration (SIECA) and the Caribbean Community (CARICOM); Asia, by the Association of South East Asian Nations (ASEAN); Europe, by the Council of Europe (CE) and the European Free Trade Association (EFTA).

10. WIPO'S RELATIONS WITH NON-GOVERNMENTAL ORGANIZATIONS

The objectives of WIPO and the activities of the International Bureau designed to realize those objectives are determined by governments, namely, the governments of the States members of WIPO and party to the treaties administered by WIPO. This is done by the Assemblies and the other Governing Bodies and at other WIPO meetings after an exchange of views between the government delegates and the Director General or the staff of the International Bureau.

However, in order to make the activities useful in practice, it is also necessary that those who represent the thinking of the users of the institution of intellectual property also participate in that exchange of views. By users are meant, first of all, authors, inventors, owners of trademarks and creators of industrial designs. Also meant are their assignees and licensees, such as publishers, organizers of concerts and theatrical performances, phonogram producers, broadcasters, anyone incorporating an invention in articles or using them in processes, firms authorized to use someone else's trademarks, including franchisees, etc. Finally, also meant are their representatives, such as attorneys and patent and trademark agents, and any member of the public.

The vast majority of users are, from an economic point of view, in the private (as distinguished from the public or government) sector. They have hundreds of associations to protect and promote their interests. Since they are not representing government views, they are called non-governmental organizations ("NGOs"), representing "the private sector."

Non-governmental organizations may be international or national. They are international when their members come from several countries; they may be global or worldwide (at least in their aspirations), regional (for example, African), or subregional (for example, South-East Asian). Non-governmental organizations are called "national" when all or most of their members are from the same country.

In 1992, there were several hundred national non-governmental organizations directly or indirectly interested in intellectual property matters. It would be difficult for WIPO to maintain contact with all of them. This is why preference is given to contacts with international non-governmental organizations, whose number—with interest in intellectual property matters and having permanent observer status in WIPO—amounted to 109 on July 14, 1992. It must, nevertheless, be noted that WIPO does maintain contact with a few national non-governmental organizations, particularly where the organization has a very large membership (thousands of members), where it has a definitive influence on its country's policy in international intellectual property matters, and where it is generally recognized, in its country—because of the number and status of its members—as being truly representative of the interests it represents.

The contacts take place mainly through mutual representation in meetings. On the one hand, the International Bureau invites non-governmental organizations to those WIPO meetings that deal with matters of interest to them. In the last years of the 25-year period (1967-1992) under consideration, there were around 70 WIPO meetings each year to which non-governmental organizations were invited, and the number of such organizations actually present in each meeting was between three and 40. On the other hand, non-governmental organizations invite WIPO to some of its meetings. For example, in 1991, WIPO was represented in some 30 meetings of non-governmental organizations.

Another form of contact consists of the exchange of documents. Non-governmental organizations receive the full documentation of every WIPO meeting of possible interest to them, and they receive them even if they are not actually represented at the meeting.

Once a year, the Director General convenes the non-governmental organizations to meet with him for half a day at WIPO's headquarters. No one else is invited. The meeting is informal (no minutes are taken). It deals with every item on WIPO's program, possible items on future WIPO programs and any other item that any of the participants wishes to deal with. The number of participants in this meeting held in 1991 was 30.

Finally, once a year, the Director General has separate private meetings with the main officers of four international non-governmental organizations: the International Association for the Protection

of Industrial Property (AIPPI), the International Federation of Industrial Property Attorneys (FICPI), the Licensing Executives Society International (LESI) and the International Literary and Artistic Association (ALAI).

All this demonstrates that the contacts between WIPO and the private sector, or between the International Bureau and non-governmental organizations, are very close. The private sector has a real and direct influence on the policy of WIPO, and the activities of the International Bureau are completely transparent for the interested circles. In these respects, WIPO is probably the most advanced among the United Nations family of organizations.

It is the task of the Governing Bodies to grant, on the proposal of the Director General, permanent observer status in WIPO to international non-governmental organizations. The number of such organizations has constantly increased during the period from 1967 to 1992. On July 14, 1992, there were 109 such organizations, 23 of them classified as interested in more than one field of intellectual property, 29 as essentially concerned with industrial property and 57 as essentially concerned with copyright and neighboring rights.

*
* *





WORLD INTELLECTUAL PROPERTY ORGANIZATION