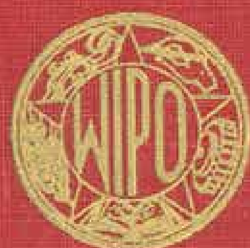
RECORDS OF THE INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM

(1967)

VOLUME II



GENEVA 1971

RECORDS OF THE INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM

WORLD INTELLECTUAL PROPERTY
ORGANIZATION
(WIPO)

RECORDS OF THE INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM

JUNE 11 to JULY 14, 1967

VOLUME II

GENEVA

1971

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SUMMARY MINUTES

PLENARY OF THE CONFERENCE

President: Mr. Herman KLING (Sweden)
First Vice-President: Mr. Torwald HESSER (Sweden)
Secretary General: Mr. Arpad BOGSCH (Deputy Director, BIRPI)
Assistant Secretary General: Mr. Claude MASOUYÉ (BIRPI)

FIRST MEETING

Monday, June 12, 1967, at 10:10 a.m.

OPENING OF THE MEETING BY THE DIRECTOR OF BIRPI

1. Mr. BODENHAUSEN (Director of BIRPI) reminded representatives that the Intellectual Property Conference of Stockholm had been opened officially on the previous evening by the Minister of Justice of Sweden, who was also Head of the Swedish Delegation to the Conference. He was sure that the representatives of all Governments and Organizations present would wish him, before opening the first working meeting, to thank the Swedish Government for the magnificent reception given in their honor after the inaugural ceremony. He declared open the first working meeting and called on the Assistant Secretary-General of the Conference to take a roll call of attendance at the meeting.

2. Mr. MASOUYÉ (BIRPI) took a roll call. The following countries were present: Algeria, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Central African Republic, Congo (Brazzaville), Congo (Kinshasa), Czechoslovakia, Denmark, Finland, France, Germany (Federal Republic), Greece, Guatemala, Holy See, Hungary, Iceland, India, Iran, Ireland, Italy, Ivory Coast, Japan, Kenya, Korea, Liechtenstein, Luxembourg, Madagascar, Mexico, Monaco, Morocco, Netherlands, Nicaragua, Niger, Norway, Peru, Poland, Portugal, Rumania, Senegal, South Africa, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Yugoslavia.

ELECTION OF THE PRESIDENT OF THE CONFERENCE

3. Mr. BODENHAUSEN (Director of BIRPI) invited representatives to elect the President of the Conference.

4. Mr. DE MENTHON (France) nominated Mr. Kling, the Minister of Justice and Head of the Delegation of Sweden. He pointed out that Sweden was the host country and had played a big part in the preparation of the proposals which the Conference was to study. A further reason for this choice was to be found in Mr. Kling's distinguished personal qualities.

5. Mr. STANESCU (Rumania) said it was customary to elect a representative of the host country as President and that, in addition, Mr. Kling's personal qualities made him particularly suitable for that office. He therefore gave full support to the proposal of the representative of France.

6. *The proposal of the representative of France was adopted by acclamation.*

7. The PRESIDENT thanked representatives for the honor they had bestowed on his country by electing him President of the Conference. The election was also an expression of confidence in him personally, and he sincerely hoped that he would be able to live up to the trust placed in him. He welcomed all delegations to the Conference, particularly those which had been unable to attend the inaugural ceremony.

ADOPTION OF THE RULES OF PROCEDURE

8. The PRESIDENT said that the text of the Draft Rules of Procedure (S/Misc./1) had been sent to States in advance of the Conference. A corrigendum (S/Misc./1/Corr./1), containing a few minor amendments, mainly of a drafting nature, had been circulated the previous day. The Secretariat had not yet received any proposals for amendments to the Draft Rules of Procedure.

9. Mr. STRNAD (Czechoslovakia) said that the Draft Rules of Procedure contained a number of provisions about voting during the Conference but they did not indicate by what majority the Rules of Procedure themselves were to be approved. That question should be decided at the outset. He also wished to enquire whether the President proposed to ask the Conference to approve the Draft as a whole or rule by rule.

10. Mr. KELLBERG (Sweden) said, in reply to the two questions raised by the representative of Czechoslovakia, that his Delegation, which had prepared the text of the Draft Rules of Procedure, had hoped that the Draft Rules of Procedure would be adopted by acclamation. As there were not yet any Rules of Procedure to which the Conference could refer for guidance, his Delegation assumed that the customary practice of adopting decisions by a simple majority would be followed.

11. Mr. STRNAD (Czechoslovakia) drew attention to the following provision of Rule 33 of the Draft Rules of Procedure: " As a general rule, no proposal shall be discussed or put to the vote in any meeting unless copies of it have been made available to the delegations concerned not later than the day before the meeting. " As a number of delegations had not submitted their proposed amendments before the Conference, a decision would have to be taken as to the time limit for submitting amendments.

12. Mr. BODENHAUSEN (Director of BIRPI) considered that it would be impossible for the Conference to hold up its work, but that the problem could easily be solved, as the work of the Conference was to be spread over a considerable period, and it would be sufficient if delegations submitted their amendments twenty-four hours in advance. In the case of proposals dealing with points which were to be discussed on the following day, delegations would be entitled to ask the President to postpone the examination of the point in question.

13. Mr. CIPPICO (Italy) said he had some questions concerning the last sentence of Rule 33. Perhaps the Conference should adopt a rule to the effect that, except in special circumstances, no texts would be discussed until a period of 24 hours had elapsed since their distribution. Furthermore, it might be advisable to provide that, in any case, delegations should be allowed at least one hour in which to examine the texts of proposals submitted to them for discussion.

14. Mr. BODENHAUSEN (Director of BIRPI) said that there might be such simple proposals on which delegations would not need to reflect. The President or Chairman should be free to decide whether a proposal could be discussed immediately or whether delegations should be allowed time for reflection. The flexibility of the rule as drafted should be maintained.

15. Mr. EKANI (African and Malagasy Industrial Property Office (OAMPI)) pointed out that certain provisions of the Draft Rules of Procedure would affect other documents; that was the case, for instance, with the provisions of Rule 36 concerning voting rights. The member countries of OAMPI had submitted proposals in that connection, and he asked for an assurance that the adoption of the Draft Rules of Procedure would not prejudice the position of the OAMPI countries in regard to the administrative provisions.

16. The PRESIDENT gave the representative of OAMPI the required assurance.

17. Mr. GOUNDIAM (Senegal) concurred with the representative of OAMPI. He also drew attention to Rule 18 of the Draft Rules of Procedure which debarred a President or Chairman from taking part in any vote. In his view, it should be made clear that a President or Chairman could vote if he vacated his seat for the purpose of voting.

18. Mr. BODENHAUSEN (Director of BIRPI) said it was obvious that if a President or Chairman wished to vote he would vacate his seat in favor of a Vice-President or Vice-Chairman and resume it after the vote.

19.1 Mr. CIPPICO (Italy) suggested with reference to Rule 10, that there should be a close working relationship between Main Committee I and Main Committee II. The subjects with which those Main Committees would be dealing were to some extent linked to each other.

19.2 He proposed the deletion of the words " and voting " which occurred three times in Rule 37(2).

20.1 Mr. BODENHAUSEN (Director of BIRPI) suggested that the decision on the question of possible combined meetings of Main Committees I and II should be left to the Coordination Committee in accordance with Rule 14(3). He thanked the Italian Delegate for drawing the attention of the Coordination Committee to the matter.

20.2 With regard to the second point raised by the Delegate of Italy, only the countries participating in a vote would be counted. " Present and voting " was the formula usually adopted in such rules, and he suggested its retention.

21. Mr. GAE (India), referring to Rule 45, said that, usually, if a vote was equally divided, the Chairman had a casting vote. He suggested the inclusion in Rule 45 of a provision to that effect.

22. Mr. BODENHAUSEN (Director of BIRPI) said that the wording of Rule 45 was the wording usually adopted by diplomatic meetings. Adoption of the suggestion by the Delegate of India would mean that the final decision on a matter would rest with the Chairman's country. He asked the Delegate of India whether he would agree to Rule 45 being retained as drafted.

23. The PRESIDENT invited the Conference to adopt the Draft Rules of Procedure as contained in documents S/Misc. 1 and S/Misc.1/Corr.1.

24. *The Draft Rules of Procedure as contained in documents S/Misc/1 and S/Misc.1/Corr.1 were unanimously adopted.*

ELECTION OF THE VICE-PRESIDENTS OF THE CONFERENCE

25. The PRESIDENT drew the attention of representatives to the proposals presented by the Delegation of Sweden (S/20) and invited them to elect a First Vice-President.

26. Mr. MAKSAREV (Soviet Union), supported by Mr. BRADERMAN (United States of America), proposed that Mr. Hesser, of the Delegation of Sweden, be elected First Vice-President of the Conference.

27. *Mr. Hesser was elected First Vice-President by acclamation.*

28. The PRESIDENT said that, in accordance with Rule 44 of the Rules of Procedure, the Swedish Government proposed that there should be 19 Vice-Presidents of the Conference and that they should be the representatives of Algeria, Argentina, Brazil, Congo (Brazzaville), Congo (Kinshasa), Finland, France, Greece, India, Iran, Italy, Japan, Kenya, Morocco, Philippines, Poland, the Soviet Union, the United Kingdom, and the United States of America.

29. *The representatives of the countries named by the President were elected Vice-Presidents.*

30. The PRESIDENT said that unless he was informed to the contrary he would assume that the heads of the delegations he had named would act as Vice-Presidents.

31. Mr. HACENE (Algeria) said that the post of Vice-President allocated to Algeria would be filled by Mr. Boulbina.

32. Mr. MULENDA (Congo (Kinshasa)) said that not all the members of his Delegation were present and that he would therefore accept the Vice-Presidency offered to his country on the understanding that the required nomination could be made at a later date.

33. The PRESIDENT said there was no objection to the proposal.

34. Mr. PINTO BASTIAN LEIVAS (Brazil) said that the post of Vice-President allocated to Brazil would be filled by Mr. Camargo.

GENERAL DISCUSSION

35.1 Mr. BRADERMAN (United States of America) said that more than 80 countries were represented at the Conference, including developing as well as developed nations from all over the world. He felt that the global character of the meeting clearly illustrated the importance most nations attached to intellectual property irrespective of the nature of their socio-economic system and the stage of their economic development. Further, the important governmental and non-governmental organizations interested in intellectual property were also represented. It was his view that the non-governmental organizations which had contributed so much to the development of intellectual property protection in the past would continue to do so in the future.

35.2 The agenda for the Conference covered substantive copyright and patent matters as well as an administrative and structural reorganization of the United International Bureaux for the Protection of Intellectual Property—BIRPI—and the treaties administered by BIRPI. There were difficult and complex problems to be solved. He was confident, however, that the nations represented fully recognized that it was in the common interest to find mutually acceptable solutions.

35.3 In copyrights, the Berne Union faced a challenge and opportunity. When modernized, the oldest and most advanced international copyright convention must meet the

continuing need for the protection of the rights of authors and at the same time adjust to the special needs of the developing countries.

35.4 He welcomed the invitation to participate as an observer in this historic meeting of the Berne Union. The United States looked towards the completion of its own efforts to revise its copyright law and to the day when it would be prepared to apply for membership in the Berne Union. Still further into the future lay the hope of merging the Berne Convention and the Universal Copyright Convention in a single international system.

35.5 The United States supported the proposed amendment of Article 4 of the Paris Convention to provide that a first application for an inventor's certificate should be recognized as a basis for affording a right of priority to a subsequent patent application filed on the same invention in another country of the Union.

35.6 It was a recognized fact that the inventor's certificate, rather than the patent, was the principal instrument by which industrial property rights were recognized in the Soviet Union and certain other socialist States, hence, the importance of inventors' certificates to those countries. That fact was also significant for other countries, especially those which held the view, as his did, that the widespread dissemination of technology through the operation of patent systems internationally was mutually beneficial to all nations of the world. For, if the inventor's certificate was the principal means for the recognition of the contributions of inventors in those countries, then the extension of its effect to other countries, and in other languages, should further promote the effective transfer of technology and serve to increase the beneficial exchange of new products and services resulting therefrom.

35.7 The administrative and structural changes proposed in the various treaties and in the status of the Secretariat were of great importance to all who wished to further substantive intellectual property protection. The United States wholeheartedly supported the administrative changes in the Paris Convention which would give legal recognition to well-established principles of international organization and to sound management practices. Its support was based on the firm belief that those changes would facilitate international cooperation, improve the efficiency of the Secretariat, and thus advance industrial property protection on a worldwide basis with corresponding benefits to developing as well as industrialized countries.

35.8 The principal structural change, of course, was the establishment of the new International Intellectual Property Organization, " IPO ". The United States strongly favored the creation of IPO. It believed that the new Organization would provide a much needed framework for administrative coordination among the various intellectual property conventions, and a forum in which the industrial property and copyright problems of developing countries could be discussed objectively by technical experts. He knew that certain questions had been raised with respect to some provisions in the Organization's structure. Happily most of those questions had been resolved in the experts' meetings that had taken place during the course of consideration of the Draft Convention. Should any issues remain, he was confident that they could be satisfactorily resolved during the deliberations of the Conference. In fact they must be, lest they lose this opportunity to advance the cause of intellectual property protection.

36.1 Mr. MAKSAREV (Soviet Union) said that the Delegation of the Soviet Union was highly appreciative of the election of a representative of the Soviet Union as a Vice-President of the Stockholm Diplomatic Conference. The question of the inclusion of inventors' certificates in the text of the Paris Convention had been raised in 1958 at the Lisbon Diplomatic Conference.

36.2 Thanks to the efforts of BIRPI, the Committees of Experts, and the Swedish Government, appropriate modification of Article 4 of the Paris Convention had been included as an item of the agenda of the Conference and he hoped that the Conference would support the proposal to include inventors' certificates in the text of the Convention. The Conference would be called upon to solve a number of important questions, including matters relating to the administrative reconstruction of the Paris, Berne, and other Unions, and also the creation of a new intellectual property organization.

36.3 He regretted the absence of the representatives of the German Democratic Republic, which was a participant of the Berne, Paris, and other Conventions. The German Democratic Republic issued patents that assigned the priority of the Convention to inventions registered in it by the Member States of the Paris Union and itself patented its inventions in the countries of the Union.

36.4 All interested States had been informed in December, 1964, by a Note of the Government of the Swiss Confederation, of the extension of the operation of the Paris Convention to the territory of the German Democratic Republic, which fulfilled all the obligations imposed on States by the Convention, including financial obligations.

36.5 The failure to invite the German Democratic Republic to the present Conference was a violation of generally accepted standards and of international practice and he would be glad therefore to see representatives of the German Democratic Republic among the participants of the Diplomatic Conference of Stockholm.

37.1 Mr. BÉNYI (Hungary) and Mr. KŘÍSTEK (Czechoslovakia) said they fully agreed with the Delegate of the Soviet Union.

37.2 Mr. KŘÍSTEK (Czechoslovakia) pointed out that the German Democratic Republic is a member of both the Paris and Berne Conventions and therefore is entitled to all rights resulting from membership in these Unions. He expressed deep regret that the German Democratic Republic was not invited to the Conference.

38.1 Mr. STANESCU (Rumania) said his country had always made a point of cooperating to the maximum with all States in technical and cultural matters, while respecting the basic principles of equal rights for all and of reciprocity in benefits.

38.2 BIRPI had done much to facilitate international collaboration in regard to the protection of literary and artistic works and industrial property. The organization was a universal one. But the principle of universality of BIRPI was seriously compromised by the fact that the German Democratic Republic was not present at the Conference. This fact was all the more inexplicable because the Government of that country had always fulfilled its obligations as a party to the Paris and Berne Conventions.

39.1 Mr. KAJZER (Poland), speaking on behalf of his Government, expressed his profound gratitude to the Swedish Government for inviting the Conference to the fair land of Sweden and for organizing, with the help of BIRPI, a gathering which was of such great importance for international cooperation and for the cultural and economic development of the world of today. He also wished to express his Government's sincere appreciation of the tremendous efforts which the authors of the various drafts had put into the preparation of the numerous texts, with all their difficulties of substance and form. The Delegation of Poland greatly appreciated the numerous commentaries accompanying those texts and the summary of the observations submitted by certain countries during the period between the second meeting of experts held at Geneva in 1966 and the present Conference.

39.2 The Polish Government had carried out a thorough study of the problem as a whole and of the results of the meetings of experts held at Geneva in 1965 and 1966, and had analyzed the draft texts submitted for the consideration of the Conference. The Delegation of Poland was authorized to state that, taking into account the opinion of the majority, Poland was prepared in principle to support the proposed

revision of the system for the protection of intellectual property by the establishment of an international intellectual property organization and to support the revision of the administrative provisions and the final clauses of the Paris and Berne Conventions and the Special Agreements. The People's Republic of Poland was also prepared to accept the proposed revision of some of the substantive provisions of the two Conventions. However, the Polish delegation would of course reserve the right to submit, in the course of the discussions, comments and proposals for the further improvement of the texts. He wished to emphasize the basic fact behind the Polish point of view—that Poland, which had suffered so grievously in the Second World War, was moving steadily along the road towards progress and speedy general development; hence Poland esteemed, supported and carefully protected all forms of intellectual activity, because human knowledge and skills must inevitably contribute to the country's development. It was also common knowledge that Poland supported peaceful international cooperation between all countries and in all spheres.

39.3 He proposed to mention a few important points among the comments and proposals which the Delegation of Poland would be submitting in the course of the discussions.

39.4 The Delegation of Poland attached great importance to the question of membership of the new Organization (Article 4 of the Draft IPO Convention; S/10). The Delegation of Poland would support alternative C in Article 4; in other words, it considered that the Convention should be universal in character so that all countries which wished to accede to the new Organization could do so. Any other solution of the problem would be unsatisfactory, because it would not be in keeping with the objective of establishing a world organization. As had been pointed out repeatedly during the preparatory discussions, and as the commentary to the Draft Convention made clear, that was precisely the objective of the efforts to establish IPO. Moreover, unless it had a universal character, the Organization would be unable effectively to carry out its task of extending the system of protection of intellectual property to the entire world.

39.5 While dealing with the question of universality, the Delegation of Poland felt bound to point out that all those countries to which the Conference was of interest had not been invited—doubtless owing to a serious mistake. The Delegation of Poland associated itself entirely with the remarks made on this subject by the representatives of the Soviet Union, Hungary, and Czechoslovakia.

39.6 In March 1967 the Ministry of Foreign Affairs of the People's Republic of Poland had entered a protest, through diplomatic channels, to the Swedish Embassy in Warsaw. In May 1967, the Polish Ministry of Foreign Affairs had submitted through the same channels a note of protest from the Ministry of Foreign Affairs of the German Democratic Republic. As those protests had not achieved the expected effect, the Delegation of Poland was compelled to draw public attention once again to the mistake which had been made in the organization of the Conference.

39.7 The Delegation of Poland failed to understand what had led the Conference organizers to overlook the just claim of the German Democratic Republic to take part in the deliberations concerning Conventions to which it was a party and in regard to which it fulfilled its obligations, including its financial obligations.

39.8 In the draft of the administrative provisions and final clauses of the Berne Convention, the Delegation of Poland would be unable to support the alternative (Article 27*bis*) which provided for the settlement of disputes between the countries of the Union through the medium of the International Court of Justice. On grounds of principle, Poland could not agree in advance to submit to compulsory arbitration in questions, the nature of which it would be unable to foresee at the time of acceding to the Convention. If, however, the other countries insisted on the compulsory jurisdiction of the Court, the Delegation of Poland might possibly be able to agree, provided that the stipulations in question were included in a separate protocol, to be ratified separately.

39.9 The Delegation of Poland was in favor of the majority of the proposed amendments to the provisions of the Paris and Berne Conventions, but it considered that Article 7 of the Berne Convention was too rigid and too strict. There were some countries whose laws, like those of Poland, granted a shorter period of copyright than the one which was proposed in the Article in question. Some of these countries would find it difficult to change their legislation, at least during the next few years, and that fact might influence them in deciding whether or not to ratify the revised text.

39.10 These preliminary comments were offered solely by way of example. The Delegation of Poland wished to assure the President of its sincere desire to make a positive contribution to the deliberations of the Conference and ensure that the texts finally adopted would be fully satisfactory and acceptable to the maximum number of interested countries.

40. Mr. GANTCHEV (Bulgaria) thanked the Swedish Government for its admirable organization of the Conference, but expressed great regret at the omission of the German Democratic Republic from the list of States invited. It was to be hoped that at a later stage, or at least at the next Conference, that country, with its particularly high level of cultural and industrial development, would be included among the Conference participants.

41. Mr. SAVIĆ (Yugoslavia) shared the views of the representative of the Soviet Union in regard to the invitation which should have been sent to the Government of the German Democratic Republic.

42.1 Mr. GARCÍA INCHAUSTEGUI (Cuba) said that the special situation of the under-developed countries had to be taken into account. Those countries were technically and economically backward because they had been exploited under the colonial system. They should therefore be given special assistance.

42.2 He associated himself with previous speakers in deploring the fact that the German Democratic Republic had not been invited to the Conference.

43.1 Mr. GABAY (United Nations), speaking at the invitation of the Chairman, said that he fully appreciated the great importance and significance of the Stockholm Conference, which had materialized, thanks to the efforts of the Swedish Government and BIRPI, and constituted a culmination of a series of meetings of experts in which the United Nations had also participated.

43.2 The United Nations had for some time been especially concerned with the issue of the role of patented and non-patented technology in furthering economic development and the industrialization of developing countries. At its latest session just concluded, the Economic and Social Council of the United Nations had reiterated that interest in " recognizing the vital importance for the developing countries of securing effective access to useful operative technology and of expanding the range of supply of such technology under conditions appropriate to the needs of the recipient developing countries. " The United Nations Advisory Committee on the Applications of Science and Technology to Development, and the United Nations General Assembly had also continued to take an active interest in development in that field.

43.3 In that connection, the fruitful cooperation between the United Nations, BIRPI, and other competent organizations, had in fact expanded in recent years to a number of projects including the United Nations report on the Role of Patents in the Transfer of Technology to Developing Countries, BIRPI's Model Law on Inventions for Developing Countries, as well as other forms of technical assistance in the field of industrial property legislation and administration.

43.4 Among the many important items on the agenda of the Conference, he wished to refer particularly to the proposal for the establishment of IPO. In his statement to the 1965 Preparatory Committee of Experts on that matter, the United Nations Observer had expressed the view that in so far as the Draft Convention served to rearrange the administrative structure of the existing conventions, it was, of course, a matter entirely up to the governments which had acceded to those conventions, and the United Nations had no comment to offer. However, the United Nations felt it necessary to point out that the subject area in which IPO would operate was already in large measure within the functions of the United Nations and its Specialized Agencies. Yet, while IPO would be operating in the same area as those organizations, it would be devoted, as stated in the Preamble of the Draft IPO Convention, specifically to the protection of intellectual and industrial property rights. That emphasis would distinguish IPO from the United Nations family of agencies which, each in its own field, focused on the general promotion of social and economic development.

43.5 The Preamble referred specifically to legal-technical assistance to be offered to developing countries. Thus the proposed new organization might be expected to continue the important and valuable work that BIRPI and other organizations had already been undertaking in providing legal-technical assistance to developing countries, in full accord with the recommendations and resolutions of the United Nations General Assembly, and the Economic and Social Council.

43.6 The strengthening and adaptation of industrial property legislation and administration were in fact of great concern to developed and developing countries alike. The direct interest of the developing countries in such proposals as the Patent Cooperation Treaty had been discussed in a recent United Nations report submitted to the Economic and Social Council (E/4319). That report also contained a specific recommendation concerning the establishment of a Training Center for Industrial Property Administrators and of Regional Patent Cooperation Centers through which developing countries could pool their technical resources and gain joint access to the vast facilities of the developed countries and the International Patent Institute (IIB) in order to permit their patent systems to be based on an effective novelty examination.

43.7 To those ends, the proposed new organization and its continued cooperation with the United Nations would provide a welcome opportunity to strengthen those efforts.

44.1 Mr. Finniss (International Patent Institute) pointed out that the Conference had a two-fold task: on the one hand it had to deal with the rights of intellectual property and make some fundamental changes to those rights; on the other hand, it had to fashion an instrument which would enable a policy for intellectual property to be put into genuine operation.

44.2 That was an extremely important task, in which the International Patent Institute wished to play a full part. It was anxious to give every support to this undertaking at the technical level, and it would assist the International Intellectual Property Organization, when established, in the task of facilitating the granting of patents and ensuring that, when issued, they were internationally valid.

The meeting rose at 12:15 p.m.

SECOND MEETING

Monday, June 12, 1967, at 2:30 p.m.

ORGANIZATION OF WORK

45.1 The First Vice-President announced that he would convene the Plenaries of the different Unions in turn, to allow each to elect its officers and to appoint representatives to the Credentials Committee.

45.2 In accordance with Rule 15(6) of the Rules of Procedure, he was required to preside over the Plenary of each Union until it had elected its own president; the newly elected president would then preside until the remaining officers of the Plenary concerned had been elected and its representatives on the Credentials Committee appointed.

45.3 The Plenary of each Union would be constituted by the member States of that Union. Other delegations, not members of the Union concerned, could, however, remain in the room as observers.

45.4 Document S/20 contained a list of candidates for the various offices proposed by the Delegation of Sweden.

The meeting rose at 2:34 p.m.

THIRD MEETING

Tuesday, July 11, 1967, at 9:35 a.m.

REPORT OF THE CREDENTIALS COMMITTEE (S/295)

46. The First Vice-President said that, in accordance with Rule 8 of the Rules of Procedure, the Credentials Committee had submitted a report in document S/295, which he invited the Chairman of the Committee to introduce.

47.1 Mr. de Menthon (France), Chairman of the Credentials Committee, said that the Committee had had no difficulty in carrying out its task. It had met three times and had adopted the report, which had been distributed as document S/295.

47.2 He wished to thank his colleagues and Mr. Masouyé and Mr. Morozov, the Secretary and Deputy Secretary respectively of the Credentials Committee.

48. The First Vice-President invited attention to paragraph 8 of document S/295, which listed the States whose credentials had been recognized as valid for the Plenary Conference.

49. *In the absence of any comment, the report of the Credentials Committee, as contained in paragraph 8 of document S/295, was approved.*

The meeting rose at 9:40 a.m.

FOURTH MEETING

Friday, July 14, 1967, at 10 a.m.

CLOSING SPEECHES

50. The President made the following speech:

" Excellencies, Ladies and Gentlemen,

The last day of the Stockholm Conference has dawned—the day when we can see the final results of our common efforts during five weeks of hard work. For reasons of State, I have unfortunately not been able intimately to follow your proceedings but I have still been close enough to the arena of your intellectual battle to have had a share in your hopes and aspirations, in your joys as well as sorrows. Because, why deny that we have not *all* got *everything* that we wanted. When so many people with sharp and keen brains as well as a deep insight in the problems meet, it is of course unavoidable that, on some issues, the final results bear witness of the differing views that delegates have held. However, I feel very strongly that the prevailing spirit during the Conference has been common sense and reasonableness and an attitude of give and take. I also feel that, in the midst of the battle,

the aims common to all of us have never been forgotten, these aims being: *to contribute to better understanding* and cooperation among peoples for their mutual benefits on the basis of respect for sovereignty and equality and *to promote the protection* of intellectual property throughout the world in order to encourage creative activity. All of you recognize the words I have just quoted. They are taken from the Preamble of the new WIPO Convention, and I think that they admirably sum up the spirit in which you have all worked and which I should like to label " the Stockholm spirit, " a spirit that you have all been instrumental in bringing about. But more important to my mind is that these words also give us a clear direction how our work shall be conducted in days to come not only at future revision conferences but also in the intervals between these conferences.

Before concluding, I should like to express, in the name of the Swedish Government and in my own name as President of the Conference, my profound gratitude to the Vice-Presidents constituting *the Bureau*, to the Presidents and Vice-Presidents of *the Plenaries* of the various Unions, to the Chairmen and Vice-Chairmen as well as the Rapporteurs of *the Main Committees*, to the Chairmen of *the Credentials and Drafting Committees* for their unselfish work for the cause of the Conference. Time does not permit me to mention by name all persons who have thus contributed to our work but I believe that you are all agreed that the heaviest burden has rested upon the Chairmen of the five Main Committees, i.e., Professor Ulmer for Main Committee I, H.E. Mr. Singh for Main Committee II, Mr. Marinete for Main Committee III, Mr. Savignon for Main Committee IV, and Mr. Braderman for Main Committee V. They have had the extremely difficult task of piloting our navy of five ships, heavily laden with goods of a delicate nature, to a safe haven. This they have done in a masterly way with a grip on the steering wheels that has never slackened but, at the same time, has been sensitive to all the changing weather conditions that they have met. Our indebtedness to them is great.

My gratitude also goes out to all *delegations* for having so heavily contributed to the success of the Conference and for having made the burden of the Host Government easy to bear through their unfailing patience with whatever deficiencies have come to light.

It is further my pleasant duty to pay tribute to all the others who have worked at the Conference and without whom we would not have been able to stage it. Here I should like to express a special thanks to the Director of BIRPI, Professor Bodenhausen, the Secretary-General, Dr. Bogsch, and the Deputy Secretary-General, Mr. Masouyé. They have, together with the Swedish administration, prepared our program, organized our work, and given us invaluable assistance during our debates. Without their untiring help, this Conference would not have succeeded in carrying out its work. They deserve our most sincere thanks.

I further address myself to all other members of the staff of *the Secretariat, the Administration, and the Archives.* Some of these staff members we have seen in the Conference halls or the corridors, others have been working behind the scenes. Many of them have come from afar to this land of Sweden with its light summer nights, and I regret, on a personal note, if they, because of a heavy work load, have only experienced those nights through the windows of the Riksdag Building, fettered as they have been to their desks, their typewriters, staplers, or printing machines, until the morning hours almost every day. Without their unfailing assistance and unmatched efficiency, we would not have been able to keep the time schedule of the Conference.

Last but not least, I address myself to the *interpreters, minute writers*, and *translators*, who, through their great skills and talents, that I never stop admiring, make a polyglot conference of this kind possible and therefore in a large measure also bear the responsibility for the outcome.

During the last five weeks, many old ties of friendship have been knitted stronger and many new relations of friendship have formed. It is therefore with sorrow in our hearts that I and the other members of the Delegation of Sweden now have to bid you farewell. But we have, all of us, rewarding memories to bring back home and, not to forget, concrete results by which we can take heart. "

51. Mr. Cippico (Italy) addressed the Plenary in the following terms: " Mr. Minister and Chairman, Excellencies, Ladies and Gentlemen, It is truly a very great honor for me that I should have been asked to speak on this occasion on behalf of all the other delegations present; this lays upon me a responsibility of which I am fully conscious, and I will endeavor to accomplish this task to the satisfaction of all.

Mr. Minister, I was also told that my reply should be in English for practical purposes. I would like you to allow me, however, to address one word in the other languages: " c'est d'adresser ici une mention et une pensée affectueuse aux autres nobles pays, aux autres nobles langues qui ont été également nos langues de travail au cours de la Conférence. Je me réfère ici naturellement à la langue française, à l'idioma castellano, et au ruski yazik. "

Mr. Chairman and Minister, this Conference is now at an end, and it is a story which has been told. It has represented essentially a memorable and positive effort in the direction of a true innovation in the field we have been considering, for five weeks, in endeavoring, in some way, to help to better bridge the yawning gap between the countries that are in greater, and those that are in lesser, need.

I think that, in this connection, we may say, and I am fully interpreting the feeling of all those present, that our thought now goes with warm and supporting friendliness to all countries and with full appreciation, and respect for the countries which have been called upon to make the greater sacrifices in all this framework. And I am not thinking only of developed countries but of some of the developing countries as well. This, in itself, I really feel commands now, and in this place, the full acknowledgement on our part which it so deserves. All this achievement which has been approved, all these instruments which have been approved by us unanimously here, are the fruits of close collaboration. One may theorize on how all this was brought about, but certainly it was the atmosphere of the Conference which was telling and, in connection with this atmosphere, I think the protagonist in bringing this about has been our friends, the Swedish Government, which, as organizers, have done so much to bring this Conference to a successful conclusion.

It is natural that we all represent here so many cultures, so many countries. Each country has a kind of conception of another which corresponds largely and inevitably to what we may term as " a cliché " and which does not always correspond to reality. I think that while it is true that there is much to be gained from reading books, much more valuable than this is the personal experience in contacting a country for the first time.

This has happened to me. I had never been to this good and friendly country before. I knew it was extremely efficient, well organized, and I also knew something of the distant background from which this fearless race of men once crossed perilous seas in little open boats. Yet, I must say that I was overwhelmed by the modern organization and warmth of the hospitality and kindness which this country so genuinely extends in welcoming its guests and foreign peoples. I think one instance alone is eloquent of this. I think it is really rather unique that this country placed entirely at our disposal for five weeks what is, in so many ways, its most noble of houses, the fountainhead of the thought that goes into the laws and rules which it gives to itself and according to which it chooses to live.

Speaking from a personal point of view, I may say that we have always been made welcome, with never an impatient glint in any eye, with an ever smiling and friendly atmosphere prevailing. This has very deeply impressed me, and I think, if I may speak now on behalf of all of us, we leave this country with a profound feeling of emotion in our hearts and of deep gratitude to this country for all it has done for us. I think this has contributed to a very large measure to the success of our work. I would also like to support what the

Minister Kling said when he referred to all the international staff of officers, clerical personnel and all the organizers of this Conference. It has been incredibly well done even down to the smallest details. What has perhaps impressed me most is the quick clearing, reading and translating of documents. This always entails considerable delays which are usually a cause for complaint on other occasions. No delays of this kind have occurred during this Conference, and so I think it is a very creditable work.

Finally, I think now of all our Swedish friends who will remain here and all of us who are foreigners, going back to our respective countries, and I wish to one and all a happy return to their homes and to their families, which is the center of human life for each one of us.

We wish them well and with our heart and all that is good. Thank you, Sir. "

52. Mr. BODENHAUSEN (Director of BIRPI) made the following statement:

" On behalf of BIRPI, now soon to become the International Bureau of Intellectual Property, I should like to express my great satisfaction with the results of this Conference, and to thank all delegations for having worked together, in a remarkable spirit of international cooperation, in order to achieve these results.

We in BIRPI believe, as you well know, that the protection of intellectual property is important for almost all countries in almost all stages of development. We have tried in the past and will try in the future, to the best of our ability and with enthusiasm, to defend and expand this protection throughout the world. For this, however, we need adequate tools.

These tools, in the form of a modern organization and the possibility of budgets adapted to the needs arising from circumstances, have been created at this Conference of Stockholm.

Also, in the more specialized fields of copyright and industrial property, the existing treaties have been adapted to modern needs and, although the gains of some may be the losses of others, it would seem that, on many points, an equitable balance has been achieved between the interests involved.

These have been decisions of historical importance which, we hope, nobody will ever regret. They have created opportunities which we must now avail ourselves of to the greatest possible extent.

We in BIRPI certainly intend to do so under the control, of course, and with the assistance, of our Member States.

We believe that the Stockholm Conference has been a milestone on the long road of development and that we can all be proud of having participated in it. "

53. Mr. SHER SINGH (India) made the following declaration:

" Mr. Chairman, Sir, Your Excellency,

I fully associate myself with the sentiments expressed by His Excellency the Ambassador of Italy who, in fact, has spoken on behalf of all the delegates present here.

I have nothing to add; however, if I may be allowed to do so, I would say that sometimes when there is sincerity of purpose, we achieve certain things which we generally consider impossible. And I say this because you have been successful even in controlling the weather. The weather has been very pleasant, and your Government and you yourself, Mr. Chairman, and all the Delegates of Sweden, have achieved all this mainly due to your spirit of accommodation, that and with them.

I again thank you, Sir, and your Government and all your Delegates for all the hospitality you have extended to us, delegates coming from far-off countries, both developing and developed. "

54. Mr. LEDOUX (Senegal) made the following declaration:

" Mr. President, Honorable Delegates,

I too wish to associate myself with what has been said. My only reason for adding a further word is my feeling that, as a representative of one of the most underdeveloped regions, a word from me may perhaps contribute to the success of the Conference.

On behalf of the African delegations, I should like to thank the delegates present here today, the Swedish Government, and all those who organized the Conference.

We have been consoled and encouraged by the good will which everyone here has shown, by the spirit of cooperation which has all the time animated the Conference and which has enabled us to reach the outcome which you know. We have been consoled, because it seems that, in the intellectual field at least, the law of the jungle is not the only law which operates. We have been encouraged, because of the conviction that the world does not ignore our intellectual output which, though still a modest one, will undoubtedly increase. We are aware of the fact that our lack of educated people is the clearest sign of our underdevelopment, and our Governments are making considerable efforts to remedy that situation. We have already made tremendous strides in this direction. You only have to consider the fact that there was not a single African representative at the Brussels Conference in 1948, not merely because there were very few independent African States at that time, but also because few African countries were in a position to send to the Conference specialists capable of following its work. Today, although all the African delegates are not present, you have at least been able to appreciate the modest contribution which we have made during this Conference. You can be sure that this contribution will be still greater at forthcoming conferences.

In conclusion, may I once again express my thanks and those of all the African delegates to the Swedish Government, which has shown such great hospitality to all of us, to the organizers and to all the honorable delegates. May I express the wish that the spirit of international cooperation which has animated us will increase with every day and in every field; that will be the clearest sign of our common progress along the road of a civilisation made by man and for man. "

55. The PRESIDENT, after reminding delegates that the official ceremony for the signature of the Stockholm Acts would take place at the Ministry of Foreign Affairs from 3 p.m. onwards, declared the International Property Conference of Stockholm closed.

The meeting rose at 11:15 a.m.

JOINT PLENARY

OF THE BERNE, PARIS AND MADRID (MARKS) UNIONS, THE MADRID AGREEMENT (FALSE INDICATIONS OF SOURCE) AND THE HAGUE, NICE AND LISBON UNIONS

President: Mr. Tristram Alvise CIPPICO (Italy)
Secretary: Mr. Arpad BOGSCH (Deputy Director, BIRPI)

FIRST MEETING

Monday, June 12, 1967, at 3:10 p.m.

OPENING OF THE MEETING

56.1 The FIRST VICE-PRESIDENT of the Conference declared open the joint Plenary of the Berne, Paris and Madrid (Marks) Unions, the Madrid Agreement (False Indications of Source) and The Hague, Nice and Lisbon Unions.

ELECTION OF THE PRESIDENT

56.2 He informed the Plenary that although no suggestion was included in document S/20 for the office of President of the joint Plenary, the Delegation of Sweden had proposed that the post should be filled by a member of the Delegation of Italy. He invited the Plenary to adopt that proposal.

57. *The proposal was adopted by acclamation.*

ELECTION OF OFFICERS OF MAIN COMMITTEE IV

58. The PRESIDENT invited the Plenary to adopt the Swedish proposal that the Chairman and Vice-Chairman of Main Committee IV be appointed from the Delegations of France and Uganda respectively.

59. *The proposal was adopted by acclamation.*

60. The PRESIDENT invited the Plenary to adopt the Swedish proposal that Mr. de Sanctis (Italy) be appointed as Rapporteur of Main Committee IV.

61. *The proposal was adopted by acclamation.*

The meeting rose at 3:14 p.m.

PLENARY OF THE BERNE UNION

President: Mr. Gordon GRANT (United Kingdom)
Secretary: Mr. Arpad BOGSCH (Deputy Director, BIRPI)

FIRST MEETING

Monday, June 12, 1967, at 2:35 p.m.

OPENING OF THE MEETING

62.1 The FIRST VICE-PRESIDENT of the Conference declared open the Plenary of the Berne Union.

ELECTION OF THE PRESIDENT

62.2 He drew attention to the Swedish proposal that the president of the Plenary should be appointed from the Delegation of the United Kingdom, which proposal he invited the Plenary to adopt.

63. *The proposal was adopted by acclamation.*

64.1 The PRESIDENT said he was honored by the Plenary's confidence and appreciated its decision.

ELECTION OF THE VICE-PRESIDENT

64.2 He then drew attention to the Swedish proposal that the Vice-President of the Plenary should be appointed from the Delegation of Belgium and invited the Plenary to adopt that proposal.

65. *The proposal was adopted by acclamation.*

ELECTION OF REPRESENTATIVES TO CREDENTIALS COMMITTEE

66. The PRESIDENT invited the Plenary to adopt the Swedish proposal that the two members selected to represent the Plenary on the Credentials Committee be appointed from the Delegations of Bulgaria and Ireland.

67. *The proposal was adopted by acclamation.*

ELECTION OF OFFICERS OF MAIN COMMITTEE I

68. The PRESIDENT invited the Plenary to adopt the Swedish proposal that the President and Vice-President of Main Committee I be appointed from the Delegations of the Federal Republic of Germany and Tunisia respectively.

69. *The proposal was adopted by acclamation.*

70. The PRESIDENT invited the Plenary to adopt the Swedish proposal that Professor Bergström (Sweden) be appointed Rapporteur of Main Committee I.

71. *The proposal was adopted by acclamation.*

ELECTION OF OFFICERS OF MAIN COMMITTEE II

72. The PRESIDENT invited the Plenary to adopt the Swedish proposal that the President and Vice-President of Main Committee II be appointed from the Delegations of India and Denmark respectively.

73. *The proposal was adopted by acclamation.*

74. Finally, the PRESIDENT invited the Plenary to adopt the Swedish proposal that Mr. Strnad (Czechoslovakia) be appointed as Rapporteur of Main Committee II.

75. *The proposal was adopted by acclamation.*

The meeting rose at 2:39 p.m.

SECOND MEETING

Tuesday, July 11, 1967, at 9:55 a.m.

REPORT OF THE CREDENTIALS COMMITTEE (S/295)

76. The PRESIDENT invited comments on paragraph 9 of document S/295, which listed the States whose credentials had been recognized as valid for the Berne Union.

77.1 Mr. BOERO-BRIAN (Uruguay) said that, shortly before the opening of the Conference, his Government had notified the Swiss Government of its accession to the Berne Union. In the light of that fact, and of the terms of Article 25 of the Convention, his Delegation had consulted the Director of BIRPI, on June 13, 1967, about its right to vote during the Berne Union's meetings and had been informed that it did have that right. Subsequently, his Delegation had voted on a number of occasions but, at the last joint meeting of Main Committees II and IV on July 4, 1967, Uruguay's vote on document S/231 had been declared invalid, on the grounds that, under the terms of Article 25 of the Convention, Uruguay's accession to the Union did not enter into effect until July 10, 1967.

77.2 The two opinions given were obviously contradictory, but his Delegation had nevertheless accepted both in the spirit of respect that had always governed the conduct of the Delegation of Uruguay. The course of events he had described required no further comment from him. Now that the Delegation of Uruguay could exercise its rights without either authorization or advice, it would do so to the full and in accordance with the established procedure.

78.1 Mr. BODENHAUSEN (Director of BIRPI) congratulated the Delegation of Uruguay on its Government's accession to the Berne Union, which had taken effect the previous day. It had, of course, participated throughout the Conference as a full member of the Paris Union.

78.2 He had informed the Delegation of Uruguay that it could indicate its opinion at the meetings of the Berne Union, firstly, because that opinion would count in the final vote and, secondly, because in Main Committee IV the final clauses of the Berne and Paris Conventions were generally discussed together—a discussion in which Uruguay could and should take part. On the specific item to which the Delegate of Uruguay had referred, however, the vote had been questioned and therefore, as Uruguay was not a full member of the Berne Union at the time, it had been necessary to discount its vote.

79. *In the absence of any further comments, the report of the Credentials Committee, as contained in paragraph 9 of document S/295, was approved.*

DECISION ON THE CEILING OF CONTRIBUTIONS (S/276)

80. The PRESIDENT drew attention to the text of a draft decision on the ceiling of contributions of member countries of the Berne Union (S/276), unanimously approved by Main Committee IV, which he invited the Plenary to adopt.

81. *The draft decision on the ceiling of contributions for the Berne Union (S/276) was unanimously adopted.*

ORGANIZATION OF WORK

82. Mr. BODENHAUSEN (Director of BIRPI) informed the Plenary that the draft revised texts for Articles 1 to 20 of the Berne Convention were not available in both English and French. He suggested, therefore, that the Plenary might be adjourned until that afternoon, and that in the meantime Main Committee I might resume consideration of its report.

83. *It was so agreed.*

The meeting rose at 10:05 a.m.

THIRD MEETING

Tuesday, July 11, 1967, at 3 p.m.

DRAFT TEXT OF THE BERNE CONVENTION (ARTICLES 1 TO 20) (S/278)

84. The PRESIDENT invited the Plenary Assembly to consider, article by article, Articles 1-20 of the Stockholm Act of the Berne Convention (S/278).

Preamble

85. *The preamble was adopted.*

Article 1

86. *Article 1 was adopted.*

Article 2

87. *Article 2 was adopted.*

Article 2bis

88. *Article* 2bis *was adopted.*

Article 3

89. *Article 3 was adopted.*

Article 4

90. Mr. WALLACE (United Kingdom) said that he reserved his position with regard to the Article pending the decision to be taken by the Plenary Assembly on Article 14*bis*.

91. The PRESIDENT suggested that consideration of Article 4 be deferred until after the Assembly had considered Article 14*bis*.

92. *It was so agreed.*

Article 5

93. *Article 5 was adopted.*

Article 6

94. *Article 6 was adopted.*

95. Mr. MASOUYÉ (BIRPI) said that a third paragraph should be added to Article 6*bis*, reproducing the text of paragraph (3) of Article 6*bis* of the Brussels Act, which had not been discussed and hence had not been amended at Stockholm. The omission of this paragraph (3) from document S/278 was entirely accidental.

96. *With that addition, Article* 6bis *was adopted.*

Article 7

97. *Article 7 was adopted.*

Article 7bis

98. *Article* 7bis *was adopted.*

Article 8

99. *Article 8 was adopted.*

Article 9

100.1 Mr. GAE (India) recalled that the Delegation of India had stated in both Main Committee I and the Drafting Committee that it favored the inclusion in the right of reproduction of a provision for compulsory licensing.

100.2 In the bilingual or multilingual countries where there were no collecting societies it was in the interest of the country as a whole that the right of reproduction should be available, subject to the payment of fair compensation to authors. Such compensation could be determined by an officially appointed competent authority, to which the author would have the right to express his views. Compulsory licensing was, in his opinion, also necessary to cover the exceptions that might be found in national legislation.

100.3 His proposal was not an innovation since provisions of the kind were included in Articles 11*bis* paragraph (2), and Article 13, paragraph (1). In countries where the need might arise, compulsory licensing was desirable to enable the competent authorities to fix the amount of the compensation it would be fair to pay to an author for the use of his work, particularly when the public interest required the reproduction of that work. Although his suggestions had not been accepted by Main Committee I, he would still like to have paragraph (2) amended to include some such provision.

100.4 In a spirit of cooperation he would abstain from voting against the Article, but he wished it to be clearly understood that in so doing he reserved the right of the Indian Government to take adequate action against the growth of monopolies and to restrict unfair or anti-social activities.

101. Mr. PALUDAN (Denmark), on a point of order, asked the President whether he was inviting the Assembly to take its decisions by vote, or without a vote. In accordance with the Rules of Procedure, if decisions were to be taken without a vote, the President, as he had been doing up till then, was required to ask whether there were any objections to the substance of each article ; if voting procedure were followed, delegates would be given the opportunity to abstain, which certain delegates might wish to do in the case of the article under consideration.

102. *On the suggestion of the President, it was decided that the Assembly should continue to take its decisions as far as possible without a vote.*

103. *Article 9 was adopted.*

Article 10

104. *Article 10 was adopted.*

*Article 10*bis

105. *Article 10*bis *was adopted.*

Article 11

106. *Article 11 was adopted.*

*Article 11*bis

107. *Article 11*bis *was adopted.*

*Article 11*ter

108. *Article 11*ter *was adopted.*

Article 12

109. *Article 12 was adopted.*

Article 13

110. *Article 13 was adopted.*

Article 14

111. Mr. HESSER (Sweden) proposed that Articles 14 and 14*bis* be discussed together, since they were together intended to replace the text of Article 14 in the Brussels Act.

112.1 Mr. GERBRANDY (Netherlands) asked that those two articles should be put to the vote paragraph by paragraph.

112.2 There were insuperable difficulties which made it impossible for his Delegation to vote for paragraph (2)(c) of Article 14*bis*. Those difficulties were purely juridical and had no political implications.

112.3 He reminded the Assembly that the Delegation of the Netherlands would have been able to accept the wording for Article 14 proposed in the Program of the Conference (S/1). As a result of objections submitted by several delegations, the Working Group concerning the regime of cinematographic works had submitted to Main Committee I a compromise proposal (S/195) which, although it did not have the full support of the Delegation of the Netherlands, was still acceptable to it. Unfortunately, that text had been substantially altered by the Drafting Committee, and Main Committee I had not taken any formal decision on the text which was now submitted to the Plenary Assembly as a definite version (S/278).

112.4 The Working Group's original text (S/195) had been altered in such a way that it was now the legislation of the country in which protection was claimed which would determine the form of the agreement, written or not, between the maker and his collaborators. From the point of view of the circulation of cinematographic works, that was a hindrance and not a help. For instance, film makers in the United States would now be required to take into account the national legislation of a very large number of countries. It was even questionable whether, if the new paragraph (2)(c) of Article 14*bis* was adopted, an agreement such as the European Agreement Concerning Programme Exchanges by Means of Television Films could still be enforced.

112.5 In those circumstances, the Delegation of the Netherlands would only be able to vote for Articles 14 and 14*bis* if subparagraph (2)(c) was deleted from the latter article. Hence it was essential to take a vote paragraph by paragraph.

113.1 Mr. KEREVER (France) said he did not intend to go over the substance of the problem again, as he had made the position of the Delegation of France sufficiently clear in Main Committee I.

113.2 There were at present two procedural proposals before the Plenary Assembly: the Delegation of Sweden was asking that Articles 14 and 14*bis* should be put to the vote together, and the Delegation of the Netherlands was asking that a vote should be taken paragraph by paragraph. It would be impossible to vote separately on subparagraphs (a)(b)(c) and (d) of Article 14*bis*(2), because they constituted a single entity. Moreover, in the view of the Delegation of France, paragraphs (2) and (3) of Article 14*bis* also formed a single whole. The only possibility would be to vote first on Article 14, then on paragraph (1) of Article 14*bis*, and finally on paragraphs (2) and (3) of Article 14*bis*.

114.1 Mr. ULMER (Federal Republic of Germany) said that if the Plenary Assembly was to adopt Article 14 and paragraphs (1) and (2)(a) and (b) of Article 14*bis*, but was unable to adopt paragraph (2)(c) of Article 14*bis* on account of the veto pronounced by the Delegation of the Netherlands, the decision would be valueless. It was impossible to delete paragraph (2)(c) alone from the main body of Article 14*bis*.

114.2 He had worked out a compromise which would overcome the objections of both the Delegation of France and the Delegation of the Netherlands. He therefore proposed that the meeting of the Plenary Assembly should be suspended and that Main Committee I should meet to consider this new compromise proposal concerning Articles 14 and 14*bis* in their entirety.

115. *It was so decided.*

The meeting was suspended at 3.45 p.m. and was resumed at 5:20 p.m.

116. Mr. GERBRANDY (Netherlands) said that in view of the changes which had been made to paragraph (2)(c) of Article 14*bis* by Main Committee I during the break in the meeting, he withdrew his proposal that the Plenary Assembly should vote on Articles 14 and 14*bis* paragraph by paragraph.

117. Mr. HESSER (Sweden) also withdrew his proposal that the Assembly should vote on Articles 14 and 14*bis* as a whole.

118. *Article 14 was adopted unanimously.*

*Article 14*bis

119. The PRESIDENT invited the Assembly to consider Article 14*bis* in document S/278 with paragraph (2)(c) replaced by the new paragraph submitted in document S/299.

120. *Article 14*bis, *thus amended, was adopted.*

Article 4

121. The PRESIDENT invited the Assembly to revert to Article 4, which had been postponed at the request of the Delegation of the United Kingdom until after the adoption of Article 14*bis*.

122. *Article 4 was adopted.*

*Article 14*ter

123. *Article 14*ter *was adopted.*

Articles 15 and 16

124. *Articles 15 and 16 were adopted.*

Article 17

125.1 Mr. KRUGER (South Africa) said that he regretted that he would be unable to accept the substantive changes to the Brussels text in the version of Article 17 submitted in document S/278.

125.2 At the same time, he wished to stress the fact that his Delegation had come to Stockholm in a spirit of goodwill, tolerance and compromise. His country had been a signatory of the Berne and Paris Conventions for many years, had regularly fulfilled its commitments and supported the financial needs of the Organization, and in particular had fully supported such measures as the OAMPI proposal for voting by proxy and the Protocol Regarding Developing Countries. It had acted in a spirit of helpfulness and goodwill towards all countries. He sincerely hoped, therefore, that the Plenary Assembly would recognize his good faith. His Delegation was a small one and his country, though not listed as such, was in its own view, a developing country.

125.3 With regard to Article 17, South Africa had never passed any legislation contrary to either the letter or the spirit of the Convention.

125.4 The Article had been included in the Convention since 1886 and no argument had been advanced in debate which would indicate a need for any substantive change in it. No authors' organization had ever demanded that it be changed nor had it ever given rise to difficulties, and there had been no change in circumstances that would warrant the new proposal.

125.5 He was reluctant, however, to vote against the Article and therefore suggested it might be amended by the addition of some such sentence as "Questions of public interest shall always be a matter for domestic legislation subject to reasonable remuneration for the author."

125.6 In the opinion of his Government, the Article as it stood would curtail the sovereign right of governments to legislate when the interests of the people demanded it, in its own territory. He could not foresee the future, but it might be necessary for a country to legislate on matters affecting authors. He could not, therefore, support any substantive change in an article which had served the Convention well for 81 years. If the Article were left as it stood in document S/278, he would have to vote against it.

126.1 Mr. ULMER (Federal Republic of Germany) thought it would be impossible to include in Article 17 of the Berne Convention a provision to meet the wish of the Delegate of South Africa. Such a provision would open the door to all kinds of abuses.

126.2 However, if South Africa was intending to veto the adoption of Article 17 in the form suggested in the draft Stockholm Act (S/278), it would be advisable to do as the Delegation of South Africa itself suggested and retain the text of Article 17 which appeared in the Brussels Act, with the proviso that the interpretation of that text which had been given during the discussions in Main Committee I should be left unchanged; according to that interpretation, the questions of censorship referred to in Article 17 were entirely a matter of administrative law. It was understood that the State was not entitled to authorize the circulation of certain works when the consent of their author was required under the provisions of the Berne Convention. That interpretation should, if necessary, be set out in the report of Main Committee I.

127. Mr. KRUGER (South Africa) said that, with all due respect to the distinguished Delegate, he would have to reserve his Delegation's position with regard to the right of interpretation as well.

128. The PRESIDENT put Article 17 to the vote.

129. The result of the vote was 40 in favor, 1 against, with 3 abstentions.

130. *Article 17 was not adopted, having failed to obtain unanimity.*

131. The PRESIDENT suggested that the Assembly consider the alternative proposal made by the Delegate of the Federal Republic of Germany to revert to the Brussels text of Article 17.

132. *Article 17, thus amended, was adopted.*

Article 18

133. *Article 18 was adopted.*

Article 19

134. *Article 19 was adopted.*

Article 20

135. *Article 20 was adopted.*

136.1 Mr. SINGH (India) said that the Delegation of India had come with great hopes to the Stockholm Conference.

136.2 It felt overwhelmed with gratitude for the thorough and conscientious preparations made by the Government of Sweden, and the extremely warm hospitality extended to delegates during the Conference.

136.3 With regard to the substantive provisions, he wished he had been in a better position to feel enthusiastic. His remark was not to be taken as a criticism of the way the Main Committee's deliberations had been carried on.

136.4 From the standpoint of the general approach, he had not always been in agreement with the philosophy adopted.

136.5 If the motion of the protection of authors' rights had been complete, the Conference should have attempted to protect not only Union authors but also non-Union authors. That stage had not been reached. So long as protection was restricted, he saw no need for protecting non-Union authors who published first or simultaneously in non-Union countries. A provision for that purpose seemed intended to protect publishers rather than authors.

136.6 He had suggested at the outset that the Convention should take into account the needs of countries that did not possess collecting societies and that the possibility of providing generally for compulsory licenses to meet such situations be considered. Unfortunately, that had not happened.

136.7 The proposal that works of folklore as such be protected had had the support of a large number of countries; while some provision had been made for the protection of those works as anonymous works, he wished that folklore as such could have been mentioned in the Convention.

136.8 It appeared odd to him that while compulsory licensing was accepted as normal in recording and broadcasting, it should evoke opposition in regard to reproduction, as proposed by his Delegation in Article 9.

136.9 It was difficult not to have the impression that publishers had been able, during many years, to secure and retain more privileges than their no less useful counterparts, the record manufacturers and broadcasters. That kind of protection might lead to the growth of monopolies and the creation of obstacles to the spread of knowledge and culture.

136.10 His Delegation's general approach to the question, which unfortunately did not seem to have been appreciated, was that the protection of authors' rights could not be considered apart from the rights of users. From the long-term point of view, it would be unwise to weaken the powers of member States, making some of them at least less able to cope with unfair trade practices and anti-social activities. He had also referred earlier to the great difficulties found in trying to trace the nationalities of authors, the dates of their death, and the first or simultaneous publication of their works. Ascertaining those dates, when they were not given on the publications in question, or elsewhere, could be extremely time-consuming and labor-consuming. No remedies had been suggested for those difficulties.

136.11 The points he had made were some of those about which his Delegation felt rather unhappy. It had not used the right of veto—as some delegations had said they might—solely in the interests of international cooperation. His unhappiness was, however, dissipated when he thought of the warmth and kindliness of the Government of Sweden and its Delegates to the Conference.

136.12 In the interests of all the countries attending the Conference, he wished to suggest that the Unions' approach to the Convention should be reorientated as soon as possible, treating it less as a trade matter and more as a question of improving the educational and cultural needs of the less fortunate users and making their existence felt in the fast-changing world.

DRAFT RESOLUTIONS ON TERM OF PROTECTION (S/296) AND ON MUSICAL SCORES (S/297)

137. The PRESIDENT reminded the Assembly that in accordance with a previous decision the draft resolutions submitted in documents S/296 and S/297 should have been called recommendations.

DRAFT RESOLUTION ON TERM OF PROTECTION (S/296)

138. *The recommendation on Term of Protection (S/296) was adopted by 24 votes in favor, none against, with 17 abstentions.*

DRAFT RESOLUTION ON MUSICAL SCORES (S/297)

139. Mr. CIPPICO (Italy) said that he supported the recommendation but wished it to be stressed in the record that BIRPI, when carrying out the recommended study, be asked to bear in mind that the subject of the study should refer mainly to works already public property that were most directly affected by the problem.

140. *The recommendation on Musical Scores (S/297) was adopted by 40 votes in favor, none against, with 5 abstentions.*

The meeting rose at 5:50 p.m.

FOURTH MEETING

Wednesday, July 12, 1967, at 9:35 a.m.

DRAFT TEXT OF THE BERNE CONVENTION (ARTICLES 21 TO 38 AND PROTOCOL)

141. The PRESIDENT invited the Plenary to continue its consideration of the draft text of the Stockholm Act (S/278).

Article 21

142.1 Mr. WALLACE (United Kingdom) stated that in view of the provision in paragraph (2) that the Protocol Regarding Developing Countries would form an integral part of the Stockholm Act, his Delegation wished to register an abstention in respect of Article 21.

142.2 His statement should be taken as applying to all the other Articles in which the Protocol was mentioned. He did not propose to raise the question in each case.

143.1 Mr. ROJAS (Mexico) reminded the Assembly that ever since the first meeting of Main Committee II the Delegation of Mexico had made its position quite clear in regard to the draft additional Protocol. On grounds of principle it had considered that the proposed solution was unsatisfactory, and its position had not changed.

143.2 It had also stated, however, that it would not oppose the adoption of a reasonably drafted Protocol if that draft met with the approval of the other delegations. Being anxious to cooperate to the full, it had played its part, both inside and outside the Conference room, in the work of drafting a document which would be acceptable to all delegations, with their frequently conflicting views.

143.3 The Delegation of Mexico had the great satisfaction of having taken an active part in drawing up the compromise draft which had been approved by Main Committee IV and which was now before the Plenary Assembly, but it could not abandon its principles. As it did not wish to place any obstacle in the way of the adoption of an international instrument which a large number of countries felt to be desirable, it would abstain in the vote on the additional Protocol and on all those Articles of the final clauses of the Berne Convention which referred to that Protocol.

144. *Article 21 was adopted.*

Article 22

145. Mr. ULMER (Federal Republic of Germany) pointed out that in paragraph (2) subparagraph (a) item (x) the reference should be to Articles 22 to 26, and not to Articles 21 to 26.

146. *It was agreed to replace the figure "21" by "22" in paragraph (2)(a), item (x).*

147. *Article 22, as amended, was adopted.*

Articles 23 to 27

148. *Articles 23, 24, 25, 26 and 27 were adopted.*

Article 28

149. Mr. HESSER (Sweden) said that in paragraph (2) subparagraph (c) the reference should be to Articles 1 to 26 and not Articles 1 to 21.

150. Mr. BODENHAUSEN (Director of BIRPI) agreed with the Delegate of Sweden.

151. Mr. SHER (Israel) said that paragraph (2) subparagraph (c) related to paragraph (1) subparagraph (c) which contained a reference to the same Article. His Delegation would abstain on Article 28 if the Swedish amendment were made, as it would render subparagraph (c) of paragraph (2) meaningless.

152.1 Miss NILSEN (United States of America) said that although the United States of America was not a party to the Berne Convention, she thought the amendment would be correct, since the same point would arise under the Paris Convention.

152.2 Paragraph (2) subparagraph (a) was concerned with the initial entry into force of Articles 1 to 21 with respect to the first group of countries depositing instruments of ratification or accession; paragraph (2), subparagraph (b), was concerned with the intial entry into

force of Articles 22 to 26; and paragraph (2), subparagraph (c), was concerned with the initial entry into force of the provisions concerning any country not in the initial group referred to in subparagraphs (a) and (b). The reference to Articles 1 and 26 in subparagraph (c) would be governed by the preceding phrase: "... subject to the provisions of paragraph (1)(b)." Since paragraph (1), subparagraph (b), provided that a country of the Union could declare that its ratification or accession did not apply to one or other of the two groups of Articles, it was clear that such countries were not bound by all of the Articles 1 to 26.

153. *It was agreed to amend the reference at the beginning of paragraph (2) subparagraph (c) to read: "Articles 1 to 26."*

154. *Article 28, as amended, was adopted.*

Articles 29 and 30

155. *Articles 29 and 30 were adopted.*

Article 31

156. Mr. Sher (Israel) stated that his Delegation would abstain on Article 31, for the reasons given in Main Committee IV.

157. Mr. Bényi (Hungary) said that his Delegation's views on Article 31 had already been made clear. Having heard the views of certain Delegations, it had decided not to oppose the Article, although maintaining its reservations.

158. Mr. Drabienko (Poland) said that his Delegation was opposed to Article 31 on principle but that, being desirous of promoting international cooperation, it would abstain from the vote on that article.

159. Mr. Stanescu (Rumania) explained that his Delegation, too, would abstain in the vote on Article 31, for reasons of a political nature which it had already made clear in Main Committee IV.

160. Mr. Koutikov (Bulgaria) said that his Delegation would abstain for the same reasons as the Delegations of Poland and Rumania.

161. Mr. Strnad (Czechoslovakia) announced that his Delegation would abstain from voting for reasons which it had already explained in the course of the discussion in Main Committee IV.

162. Mr. Fersi (Tunisia) reserved his Delegation's position in regard to Article 31 but explained that it did not intend to abstain: it would express its opinion when the time came to vote on the additional Protocol.

163. The President put to the vote the request of the Delegate of Tunisia that the decision on Article 31 should be postponed until the Assembly had considered the Protocol.

164. *The proposal was adopted and discussion on Article 31 was accordingly deferred.*

Article 32

165. Mr. Bogsch (Deputy Director, BIRPI) drew attention to a correction in paragraph (2): the reference should be to Article 28 and not Article 25.

166. *Article 32, as amended, was adopted.*

Article 33

167. Mr. Andrew (Canada) stated that his Delegation would abstain if the Article were voted on.

168. *Article 33 was adopted.*

Articles 34 to 38

169. *Articles 34, 35, 36, 37 and 38 were adopted.*

170. Mr. Gerbrandy (Netherlands) said that, before the Assembly embarked on its discussion of the additional Protocol, he would like to know why the Delegation of Tunisia had been unwilling to explain, when the vote was taken on Article 31, the reasons which had led it to reserve its position in regard to this Article. It would be interesting to know what connection the Delegation of Tunisia saw between Article 31 and the Protocol.

171. Mr. Fersi (Tunisia) said he would wait to do that until the discussion of the Protocol had begun.

DRAFT PROTOCOL REGARDING DEVELOPING COUNTRIES

172. The President informed the Plenary that the Draft Protocol would be voted on as a whole. In order not to deprive Delegates of the opportunity for discussion, however, he proposed that the Protocol should be discussed—though not voted on—article by article.

173. *It was so agreed.*

174. Mr. Fersi (Tunisia) expressed the wish that the Assembly would follow the same procedure as in the case of the Berne Convention and vote article by article, but said he would not press the point if that procedure was considered unacceptable.

175. Mr. Bodenhausen (Director of BIRPI) thought it would be difficult to meet the wishes of the Delegation of Tunisia. It had been pointed out in Main Committee II that the Protocol constituted an entity; the articles could be discussed separately, but the vote would have to be taken on the document as a whole. If that was not done, the fate of the whole Protocol could be placed in jeopardy by the deletion of a single article. It would therefore be more satisfactory to follow the procedure adopted by Main Committee II.

176. Mr. Fersi (Tunisia) said that to take a vote on the document as a whole might have very serious consequences. It might be more satisfactory to vote article by article and try to reach a compromise where divergent views were held.

177. Mr. Bodenhausen (Director of BIRPI) said he thought he understood the reasons for the attitude of the Delegation of Tunisia. It had obviously reserved its position in regard to Article 31 of the Convention because that Article ran counter to Article 6 of the Protocol. But there was no reason why it should not enter an immediate reservation in regard to Article 6, before voting on the Protocol.

178. Mr. Belinfante (Netherlands) said the connection between the Protocol and Article 31 was clear, both from the remarks of the Delegation of Tunisia and from Article 6 of the Protocol. The President had suggested that the Protocol should be discussed—but not voted on—article by article. In his opinion, however, it would be better, after discussing the Protocol, to vote on Article 31 and the Protocol as a whole, since they constituted a single proposal under the terms of Rules 37 and 41 of the Rules of Procedure.

179. The President proposed to pursue the discussion of the draft Protocol article by article and see what progress could be made.

Article 1

180. Mr. Bodenhausen (Director of BIRPI), following an observation by Mr. Gae (India), said that the reference in the opening sentence of Article 1 should be to

Article 21 and not to Article 2. The correction applied to the English text only.

181. *The amendment was approved.*

Articles 2 to 4

182. *There were no comments on Articles 2, 3 and 4.*

Article 5

183. Mr. PALUDAN (Denmark) suggested that the word "of" in paragraph (1) preceding the words "this Protocol" should be replaced by the word "by."

Article 6

184. *The amendment was adopted.*

185.1 Mr. FERSI (Tunisia) reiterated what he had already said in the Working Group and the Main Committee, that his Delegation was resolutely opposed to the inclusion of any clause with colonialist tendencies in a document intended to benefit the developing countries. Article 6 served no useful purpose in the Protocol, particularly as it covered the same ground as Article 31 of the Convention, since both of them dealt with territories which were not yet independent and for whose external relations another country was responsible.

185.2 The Delegation of Tunisia was in some perplexity now that the Conference had reached the culmination of its labors. From the very beginning it had played its part in every stage of preparation of the Draft document—from the Brazzaville Conference of August 1963 to the Geneva meeting of the Permanent Committee of the Berne Union in the previous March. It had had implicit confidence in human goodness and in international cooperation; it has spared no efforts to ensure that the final document should be acceptable to all parties, as it had been convinced of the noble aspirations of all who had taken part in the work, at every stage and every level, including BIRPI and UNESCO. Those were the reasons which had led Tunisia to believe that, with the help of all the cooperating countries, it would be possible to close the Stockholm Conference having created a tool which would be of real benefit to the developing countries.

185.3 But now, at the end of the Conference, the countries of the Union had the choice of either ratifying Articles 1 to 21 and the Protocol regarding developing countries or ratifying Articles 22 to 26. The Delegation of Tunisia wondered what those countries were going to do which had hitherto expressed an intention of aiding the developing countries. What would happen if some of them—as was their right—ratified neither the Convention nor the Protocol? Whom would the Protocol benefit? Certainly not the developing countries in their relations with each other.

185.4 The Delegation of Tunisia considered that the situation would be clarified to some extent if a compromise wording could be found for Article 6—in the drafting of which it was prepared to assist—which could secure the support of all those delegations which shared its views. If that was not done, the Delegation of Tunisia would find itself obliged to vote against that Article.

186.1 Mr. STRNAD (Czechoslovakia) said he did not wish to revert to the reservations which his Delegation had already expressed in regard to Article 31(1) and Article 6, but that he wished to draw the particular attention of the Assembly to some possible consequences of the adoption of Article 6, consequences which appeared to have been overlooked.

186.2 Ratification of the Stockholm Act could take two different forms, one covering Articles 1 to 21 and the other Articles 22 to 26, but both embracing the final provisions and hence Article 31(1). Now if the provisions of Article 6 were taken literally, countries which ratified Articles 22 to 26 only and did not ratify either the substantive articles or the additional Protocol, would nevertheless be able to give notice that the provisions of the additional Protocol applied to those countries for whose external relations they were responsible. That would be nonsensical, but neither the provisions of Article 31 nor those of Article 6 of the Protocol made application of the Protocol subject to its actual acceptance. A situation therefore arose in which a country which had not acceded to the additional Protocol under the terms of Article 28(1)(b)(i), nor accepted it under the terms of Article 32(3), nor even accepted its application under the terms of Article 28(2)(b), would be able to invoke that instrument on behalf of territories placed under its supervision.

186.3 In those circumstances, the least which the Assembly could do would be to amend Article 6 by providing that countries which were authorized to apply the Protocol in favor of territories under their administration would be required to state that they also accepted its application to the metropolitan territory.

187.1 Mr. EKANI (Cameroon) said that his Delegation fully shared the concern expressed by the Delegation of Tunisia. Article 6 would undoubtedly give rise to much disquiet. There seemed to be a regrettable confusion between the concept of the international responsibility which some countries undertook in regard to certain territories and the concept of aid to developing countries.

187.2 There was a conflict of interests between the administering power and the administered territory. The additional Protocol was intended to assist the developing countries and to reduce the privileges of the developed countries for the benefit of their dependent territories. If the administering power had a real concern for the interests of the territory under its administration, that territory would presumably have already developed, at least in the sphere now under consideration, and would have no need of the Protocol. Moreover, under the terms of Article 6, a non-autonomous territory—i.e. a colony—which, according to some arguments, was an integral part of a metropolitan territory, would be entitled to enjoy those benefits which it was intended to grant to developing countries in membership of the Unions. His Delegation therefore shared the view of the Delegation of Tunisia that Article 6 ought to be amended in accordance with the objectives laid down in the Protocol, which applied specifically to developing countries in membership of the Unions.

188. Mr. GAE (India) said he had listened carefully to the statements made and he agreed in general with the Delegation of Czechoslovakia. In order to remove any confusion, and to eliminate the possibility of a country making a declaration under Article 31(1) without having ratified or acceded to the Protocol, he proposed that the words "after ratifying or accepting the Protocol" should be inserted in Article 6 of the Protocol between the words "may" and notify."

189. Mr. STRNAD (Czechoslovakia) suggested that the meeting should be suspended to give delegates time to consider the situation.

190. The PRESIDENT said he would suspend the meeting. He suggested that the Chairman of Main Committee II should be invited to convene a small working party, consisting of the Delegates of India, Tunisia, Czechoslovakia, the United Kingdom, France and Cameroon, to meet during the suspension and endeavor to reach a compromise over Article 6.

191. *It was so agreed.*

192. Mr. STRNAD (Czechoslovakia) suggested that the Delegate of Sweden should join the Working Party.

193. *It was so agreed.*

The meeting was suspended at 10:45 a.m. and resumed at 11:25 a.m.

194.1 Mr. BODENHAUSEN (Director of BIRPI) said that the difficulty which had been brought to the attention of the Plenary was that the text of Article 6 as drafted appeared to make it possible for a country to apply the Protocol to its overseas territories while not accepting the application of the Protocol in respect of works originating in the country itself. The point had been raised by several delegates.

194.2 The Working Party of Main Committee II, which had just met, had agreed on a means of excluding that possibility, namely by the addition of the words "is bound by this provision and which" after the words "Any country which" at the beginning of Article 6 (in the French text, insertion of the words "*est lié par les dispositions du présent Protocole et*" after the words "*Tout pays qui*").

194.3 That amendment would obviously close the loophole since, in order to apply the Protocol to its overseas territories, any country must first be bound by the Protocol in order that the Protocol would also apply to works originating in that country. The Working Group had achieved an admirable result in a very short time and he thought that the Plenary would do well to adopt the amendment.

194.4 As regards the procedure to be followed, he understood that the Delegate of the Netherlands had proposed a combined vote on Article 31 and the Protocol in view of the link between them, particularly in respect of Article 6 of the Protocol. He did not agree that there was necessarily a link between the two, since the article in question was a modification of the BIRPI text of Article 31, and if the proposal were rejected, the former text would be retained—as had happened already in the case of Article 17.

194.5 In his opinion, therefore, the Plenary could vote on Article 31 and the Protocol independently without risking any unacceptable conclusions.

195. *The amendment to Article 6 was adopted unanimously.*

196. The PRESIDENT asked the Delegate of Tunisia if he maintained his request that the vote on Article 31 be deferred until after the Draft Protocol had been considered.

197. Mr. FERSI (Tunisia) said that, after hearing the explanation given by the Director of BIRPI, the Delegation of Tunisia withdrew its reservation.

DRAFT TEXT OF THE BERNE CONVENTION *(continued)*

Article 31

198. *Article 31 was adopted.*

DRAFT PROTOCOL REGARDING DEVELOPING COUNTRIES *(continued)*

199. *The Protocol was adopted.*

200. Mr. ROJAS (Mexico) said he had abstained on the Protocol as a whole.

201. Mr. BOERO-BRIAN (Uruguay) said that he, too, had abstained on the Protocol as a whole. In a spirit of cooperation, his Delegation had modified its earlier position as it did not want to obstruct the adoption of a Protocol desired by the majority.

202.1 Mr. SINGH (India) said it had been his difficult duty to adjust his functions as Chairman of Main Committee II and leader of the Delegation of India. Speaking in the first role, he wished to express his appreciation of the cooperative attitude of the Delegations of both developed and developing States. At one stage, the difficulties over paragraphs (a) and (e) of Article 1 of the Draft Protocol had seemed insuperable, and it had looked as if an agreed Protocol might never be achieved. A new effort had been made to overcome the deadlock, and further discussions in the Working Group had revealed that the differences were no longer so important. The Delegation of the United Kingdom had insisted that some compensation should be payable in all cases, even if it were paid in local currency. The Delegation of France had said it was not concerned about compensation but had wished the scope of paragraph (e) to be restricted. With the differences narrowed down, it had not been difficult to reach the draft submitted in the Draft Protocol.

202.2 It was a matter of personal gratification to him that the Main Committee had solved what appeared to be an impasse and produced a proposal which was acceptable, both to the Working Group and to Main Committee II. He thanked the delegations which had made that possible.

202.3 As leader of the Delegation of India he was not altogether happy with the Protocol, but in view of the cooperation on all sides, he accepted the Protocol and hoped that the door opened by it would enable developing countries to face their internal problems without being encumbered by commitments under international Conventions.

202.4 He believed that future historians would praise the Conference not so much for raising the level of protection in the substantive clauses, as for framing the Protocol, which represented a concerted step forward in the diffusion of knowledge and culture in areas long deprived of them. At the start of the discussions, trade considerations had seemed to prevail over moral and human considerations. It was a matter for satisfaction that wiser counsels had prevailed.

202.5 Fears had been expressed that the Protocol might weaken the Convention and that countries adopting it might find themselves in a worse position than before, since reliance on foreign books might conflict with the interests of national authors. In his view, such fears were groundless. The strength of the Convention lay in its flexibility, which was in inverse proportion to its rigidity. The developing countries which had been pressing for the Protocol should be given the credit of knowing their own needs and for protecting the interests of their own authors. The Protocol was to some extent a compromise which would enable developing countries to continue in, or accede to, the Union without unduly sacrificing the interests of their national authors to the interests of foreign authors.

202.6 It might be said, however, that the Protocol was only a half-step in the right direction, since it was not yet clear which of the developed countries would make their books available to the developing countries. He hoped that the countries of the Union would not allow the Protocol to become a mere scrap of paper. His Delegation maintained its view that once a book had been made available to the public, neither the author nor the publishers had the right to prevent its dissemination. Of course, compensation must be paid to the authors, but no country could be expected to treat foreign authors better than its national authors. In that respect, the unanimous agreement among developed countries to receive payment of such compensation in local currency was a healthy, positive and encouraging development.

202.7 He hoped that the developed countries would see to it that the Protocol came into operation as rapidly as possible—within, say, the coming two or three months. Otherwise, its adoption would be a cruel and political hoax played on the developing countries. He was sure, however, that that would not happen. One thing that had distressed him, however, in his capacity both of Chairman of Main Committee II and of leader of the Delegation of India, was the abstention by the Delegation of the United Kingdom in the final vote on the Protocol. The Delegation of the United Kingdom had played an extremely constructive role in the final stages of approving the Draft Protocol and he had expected a positive attitude in the vote. He hoped the attitude of the Delegation of the United Kingdom would become more positive in the future.

202.8 He thanked the delegations present and the Director of BIRPI and his staff for their cooperation. He also expressed his appreciation to the Delegation of Sweden for its Government's hospitality.

203. Mr. FERSI (Tunisia) said that he, like the head of the Delegation of India, was not very satisfied with the additional Protocol. He was afraid that the developed countries might not ratify the Protocol, thus withholding its benefits—if there were any benefits—from the territories placed under their control. It was to be hoped that, after the Stockholm Conference, the powers would continue to be guided by the spirit of international cooperation which had prevailed throughout the present deliberations, and thus contribute to the cultural and human advance of those developing countries which had recently acquired their independence and those which would undoubtedly acquire it one day.

204. Mr. DE MENTHON (France), speaking on behalf of his Delegation, expressed satisfaction at the adoption of the Protocol by the Assembly. The French Government knew and appreciated the difficulties which confronted the developing countries when they sought access to the spring of other cultures with a view to encouraging the growth of their own culture. The French Government was a strong support of the Berne Union and it had preferred that the search for a generally acceptable solution to these problems should be carried out within the Union. That had been done, and the very existence of the Protocol, which had been adopted after considerable effort and much give and take, testified to the spirit of international cooperation and world brotherhood which had animated the labors of Main Committee II. There could be no doubt that its adoption was an event of great importance, which would be forever linked with the name of the Stockholm Conference. The Delegation of France welcomed its adoption and could assure the Delegation of Tunisia that it need have no doubts as to the future.

205. The PRESIDENT said that the Stockholm text of the Berne Convention had now been adopted and was ready for signature. In due course it would be ratified and the Stockholm Act would come into force. The present occasion was in many ways a far more historic one than the normal adoption of a new text, because it marked the end of the special position held by the Swiss Government in relation to the Berne Convention for some 80 years—a position it had assumed when international conventions and organizations were still a new phenomenon. The Swiss Government had performed its duties faithfully and generously over the years and although, as host Government, it would still take a particular interest in the new Organization, its very special position as supervisory power would end. He was sure that everyone present would wish to join in expressing their deep appreciation to the Delegate of Switzerland for all that his Government had done in the past.

206. Mr. MORF (Switzerland) thanked Mr. de Menthon for the kind words which he had addressed to the Swiss Government and which the Assembly had greeted with applause. The Swiss Government had always considered its supervisory duties as a great honor and had always striven to exercise them with scrupulous care. Now that the time had come for a new Organization to replace the existing machinery, the Swiss Government would continue to carry out the same task during the whole of the transition period, as long as any earlier agreements binding particular countries of the Union remained in force.

RESOLUTION REGARDING PROPOSALS CONCERNING AVAILABILITY OF AUTHENTIC AND GRAPHIC COPIES OF LITERARY, DRAMATICO-MUSICAL AND MUSICAL WORKS (S/297)

207. The PRESIDENT drew attention to the draft resolution in document S/297 and read out the last part.

208. Mr. BOGSCH (Deputy Director, BIRPI) suggested that the words "of the Berne Union" in the last part be deleted, so that the resolution would be valid after the new Organization had come into existence.

209. *It was agreed to delete the words "of the Berne Union" from the last part.*

210. *The draft resolution (S/297), as amended, was adopted by 32 votes to one with 14 abstentions.*

RESOLUTION REFERRING TO APPLICATION OF THE PROTOCOL REGARDING DEVELOPING COUNTRIES (S/272)

210*bis*. *The draft resolution (S/272) was adopted.*

INVITATION FROM THE SWISS GOVERNMENT

211. Mr. VOYAME (Switzerland) said that the centenary of the signature of the Berne Convention would occur in 1986 and that the Swiss Government proposed to commemorate that date in an appropriate manner. The celebration might be held simultaneously with the next Conference for the revision of the Convention, which would normally take place in about twenty years, but which would probably have to be convened at an earlier date. Hence the Swiss Delegation could not issue any formal invitation for that occasion. It was, however, pleased to issue an invitation, on behalf of the Federal Council to all the countries of the Berne Union to meet in the Swiss capital in 1986 to celebrate the centenary of the Convention.

212. The PRESIDENT said that the response of the Plenary to the kind and generous invitation of the Swiss Government was clear from the acclamation with which the statement of the Delegate of Switzerland had been received. He hoped that the Delegate of Switzerland would convey that to his Government.

CLOSING OF THE MEETING

213.1 The PRESIDENT thanked the Delegates, the Director of BIRPI and the Secretariat for their inestimable help and support. It was gratifying that the work had been brought to a satisfactory conclusion.

213.2 He then declared the meeting of the Berne Union Plenary closed.

The meeting rose at 12:30 p.m.

PLENARY OF THE PARIS UNION

President: Mr. Y. E. MAKSAREV (Soviet Union)
Secretary: Mr. Arpad BOGSCH (Deputy Director, BIRPI)

FIRST MEETING

Monday, June 12, 1967, at 2:40 p.m.

OPENING OF THE MEETING

214.1 The FIRST VICE-PRESIDENT of the Conference declared open the Plenary of the Paris Union.

ELECTION OF THE PRESIDENT

214.2 He then drew attention to the Swedish proposal that the President of the Plenary should be appointed from the Delegation of the Soviet Union, which proposal he invited the Plenary to adopt.

215. *The proposal was adopted by acclamation.*

216.1 The PRESIDENT thanked the Plenary for its confidence.

ELECTION OF THE VICE-PRESIDENT

216.2 He drew attention to the Swedish proposal that the Vice-President of the Plenary be appointed from the Delegation of Austria and invited the Plenary to adopt that proposal.

217. *The proposal was adopted by acclamation.*

ELECTION OF REPRESENTATIVES TO CREDENTIALS COMMITTEE

218. The PRESIDENT invited the Plenary to adopt the Swedish proposal that the two representatives of the Paris Union on the Credentials Committee be appointed from the Delegations of the United States of America and the Soviet Union.

219. *The proposal was adopted by acclamation.*

ELECTION OF OFFICERS OF MAIN COMMITTEE III

220. The PRESIDENT invited the Plenary to adopt the Swedish proposal that the Chairman and Vice-Chairman of Main Committee III be appointed from the Delegations of Rumania and the Netherlands respectively.

221. *The proposal was adopted by acclamation.*

222. The PRESIDENT invited the Plenary to adopt the Swedish proposal that Mr. King, of the Delegation of Australia, be appointed Rapporteur of Main Committee III.

223. *The proposal was adopted by acclamation.*

The meeting rose at 2:44 p.m.

SECOND MEETING

Tuesday, July 11, 1967, at 9:45 a.m.

REPORT OF THE CREDENTIALS COMMITTEE (S/295)

224. Mr. BOGSCH (Deputy Director, BIRPI), speaking at the invitation of the President, said that the Chairman of the Credentials Committee had asked him to refer to the Plenary to paragraph 10 of document S/295, which listed the States whose credentials had been recognized as valid for the Paris Union.

225. *In the absence of any comment, the report of the Credentials Committee, as contained in paragraph 10 of document S/295, was approved.*

RECOMMENDATION CONCERNING A STUDY ON PRIORITY FEES (S/274)

226. The PRESIDENT invited attention to the recommendation concerning a study on priority fees, submitted in document S/274. Main Committee IV had unanimously approved the text of the recommendation, which had originally been presented by the Delegation of Spain.

227. *The recommendation concerning a study on priority fees (S/274) was adopted unanimously.*

The meeting rose at 9:49 a.m.

THIRD MEETING

Wednesday, July 12, 1967, at 2:05 p.m.

DRAFT TEXT OF THE PARIS CONVENTION (S/277)

228. Mr. BOGSCH (Deputy Director, BIRPI) drew attention to the draft text of the Stockholm Act of the Paris Convention (S/277), which existed only in French since it would be signed in that language.

Article 4-I and Articles 13 to 20

229. The PRESIDENT invited the Assembly to vote on the adoption of Article 4-I of the International Convention for the Protection of Industrial Property and on the administrative provisions and final clauses (Articles 13 to 20) as revised (S/277).

230. *Article 4-I was adopted unanimously.*

231.1 Mr. MARINETE (Rumania) said he wished to thank all the members of Main Committee III, over which he had had the honor of presiding, for their collaboration

in the preparation, in record time, of the draft which the Assembly had just adopted unanimously. He emphasized the spirit of mutual understanding which had been displayed by the members of that Committee and which had brought forth a document meeting with general approval.

231.2 He reminded the Assembly that when Article 4 had been under consideration in Main Committee III the Delegation of the United Kingdom had proposed that Article 1 (2) should be amended in conformity with Article 4 (S/14). The Main Committee had thought it wiser not to examine at the present Conference any proposals other than proposals for amending Article 4 which were on the agenda, and it had preferred to refer such other proposals to a group of experts in preparation for the next revision Conference in Vienna. As the Director of BIRPI had stated officially that the question would be given more careful consideration by BIRPI and would be included in the agenda for the forthcoming Vienna Conference, the Main Committee had felt that no useful purpose would be served by submitting a special resolution on that point. He would like to know if the arrangement suggested by Main Committee III met with the approval of the Assembly. He himself considered that the declaration made by BIRPI was sufficient.

232. Mr. BODENHAUSEN (Director of BIRPI) confirmed the statement which he had made in Main Committee III to the effect that BIRPI would continue to study the question of the insertion of the words "inventors' certificates" in certain provisions of the Paris Convention, a matter which would be settled when that Convention was revised in Vienna.

233. Mr. NORDENSON (Sweden), referring to paragraph (2)(a)(xiii), reminded the Assembly that Main Committee V had decided to replace the word "établissant" by "instituant" and that the present document ought to be brought in line with that decision.

234. Mr. BOGSCH (Deputy Director, BIRPI) said that that amendment was quite acceptable.

235. *Article 13, thus amended, was adopted unanimously.*

236. *Articles 14, 15, 16, 17, 18 and 19, were adopted unanimously.*

Article 20

237. Miss NILSEN (United States of America) pointed out that the Articles referred to in Article 20 (3) should be "Articles 18 to 30" and not "Articles 18 to 29."

238. The PRESIDENT agreed with the Delegate of the United States that the text should read "Articles 18 to 30."

239. *Article 20, thus amended, was adopted unanimously.*

Articles 21 to 23

240. *Articles 21 to 23 were adopted unanimously.*

Article 24

241. Mr. ARTEMIEV (Soviet Union) stated that the Delegation of the Soviet Union as it had already explained in Main Committee IV, was opposed to the clause in its present form. The provisions of the Article ran counter to the spirit of the resolution of the United Nations General Assembly on the granting of independence to colonial countries and peoples. Hence the Delegation of the Soviet Union would abstain from the vote.

242. Mr. STRNAD (Czechoslovakia) said that his Delegation, too, was opposed to the inclusion of the Article but that, as a gesture of conciliation, it would not vote against the Article but would abstain from the vote.

243. Mr. PÁLOS (Hungary) said his Delegation regarded the provision as an anachronism which was incompatible with the interests of the developing countries. It would not insist on its deletion, however, and it, too, would abstain from the vote.

244. Mrs. RATUSZNIAK (Poland) stated that her Delegation was opposed to the Article in principle but would abstain in a vote.

245. Mr. TORRES SANTIESTEBAN (Cuba) stated that his Delegation was opposed to the substance of the Article but would abstain in order not to impede the work of the Conference.

246. Mr. BOULBINA (Algeria) said his Delegation had made such comments as it considered necessary in regard to the Article at the appropriate time, and he announced that it would abstain from voting.

247. Mr. SAVIĆ (Yugoslavia) said his Delegation, like the other delegations of socialist countries, would abstain from voting.

248. Mr. STANESCU (Rumania) said his Delegation, too, would abstain from voting.

249. Mr. KOUTIKOV (Bulgaria) said his Delegation would also abstain.

250. *Article 24 was adopted unanimously with 10 abstentions.*

Articles 25 to 27

251. *Articles 25, 26 and 27 were adopted unanimously.*

Article 28

252. Mr. ANDREW (Canada) said that, as in the case of the corresponding article in the Berne Convention, his Delegation would abstain in any vote.

253. *Article 28 was adopted unanimously with one abstention.*

Articles 29 and 30

254. *Articles 29 and 30 were adopted unanimously.*

CLOSING OF THE MEETING

255. The PRESIDENT expressed satisfaction at the unanimous vote by the Assembly on all the articles amending the Paris Convention, and said that unanimity had been achieved as a result of the atmosphere of understanding and conciliation which had prevailed throughout all the deliberations of the Conference. He expressed his particular thanks to the Swedish Government and the Swiss Government for the hard work which they had put into the task of preparing for the Conference, and to Mr. Kling and Mr. Hesser. He went on to mention the sustained efforts of BIRPI, and particularly of Mr. Bodenhausen, Mr. Bogsch, and their staff in the Secretariat, together with the experts whose preparatory work had made a substantial contribution to the adoption of the drafts. He also expressed his thanks to the members of Main Committee III, to its President, Mr. Marinete, and its Vice-President, Mr. van Benthem, to the Chairman of the Drafting Committee, Mr. Brenner, and the Rapporteur, Mr. King. Thanks were also due to the members of Main Committee IV, to its President, Mr. Savignon, and its Vice-President, Mr. Lule, to the Chairman of the Drafting Committee, Mr. Labry, and to the Rapporteur, Mr. De Sanctis. The combined efforts of all the participants had made its possible to solve all the problems within the allotted span of time. Finally, he wished to thank everyone for the confidence which had been placed in him in his capacity as President of the Assembly of the Paris Convention.

The meeting rose at 3 p.m.

CONFERENCE OF PLENIPOTENTIARIES OF THE PARIS UNION

President: Mr. Hans MORF (Switzerland)
Secretary: Mr. Arpad BOGSCH (Deputy Director, BIRPI)

FIRST MEETING

Tuesday, July 11, 1967, at 9:50 a.m.

OPENING OF THE MEETING

256. Mr. BOGSCH (Deputy Director, BIRPI) said that the Conference of Plenipotentiaries of the Paris Union had been convened by the Government of Switzerland in compliance with paragraph (5)(b) of Article 14 of the Paris Convention. As stated in paragraph 3 of document S/275, it was proposed that the Conference should be presided over by a representative of the Government of Switzerland.

ELECTION OF THE PRESIDENT

257. Mr. VON ZWEIGBERGK (Sweden), speaking on behalf of his Delegation, formally moved that the Conference be presided over by a representative of the Government of Switzerland.

258. *The proposal was unanimously adopted.*

259.1 The PRESIDENT thanked the Delegation of Sweden and the Assembly for the honor which they had done to his country by appointing him President of that short meeting.

DECISION ON THE CEILING OF CONTRIBUTIONS (S/275)

259.2 He invited the Conference to adopt the proposed decision on the ceiling for the contributions of member countries of the Paris Union (S/275).

260. Mr. BOERO-BRIAN (Uruguay) said that as he had not received formal instructions from his government he would be unable to take part in the vote.

261. *The proposed decision on the ceiling for contributions by member countries of the Paris Union was adopted unanimously, with one abstention.*

The meeting rose at 9:54 a.m.

PLENARY OF THE MADRID AGREEMENT (FALSE INDICATIONS OF SOURCE)

President: Mr. Michitoshi TAKAHASHI (Japan)
Secretary: Mr. Arpad BOGSCH (Deputy Director, BIRPI)

FIRST MEETING

Monday, June 12, 1967, at 2:50 p.m.

OPENING OF THE MEETING

262.1 The FIRST VICE-PRESIDENT of the Conference declared open the Plenary of the Madrid Agreement (False Indications of Source).

ELECTION OF THE PRESIDENT

262.2 He drew attention to the Swedish proposal that the President of the Plenary be appointed from the Delegation of Japan, which proposal he invited the Plenary to adopt.

263. *The proposal was adopted by acclamation.*

264.1 The PRESIDENT thanked the Plenary for the honor conferred upon him.

ELECTION OF THE VICE-PRESIDENT

264.2 He drew attention to the Swedish proposal that the Vice-President of the Plenary be appointed from the Delegation of Turkey and invited the Plenary to adopt that proposal.

265. *The proposal was adopted by acclamation.*

ELECTION OF REPRESENTATIVE TO THE CREDENTIALS COMMITTEE

266. The PRESIDENT invited the Plenary to adopt the Swedish proposal that the representative of the Madrid Agreement (False Indications of Source) on the Credentials Committee be appointed from the Delegation of Japan.

267. *The proposal was adopted by acclamation.*

The meeting rose at 2:54 p.m.

SECOND MEETING

Wednesday, July 12, 1967, at 3:25 p.m.

REPORT OF THE CREDENTIALS COMMITTEE (S/295)

268. The PRESIDENT invited the Plenary to approve paragraph 12 of document S/295, which listed the States whose credentials had been recognized as valid for the Plenary Conference.

269. *The report of the Credentials Committee, as contained in paragraph 12 of document S/295, was approved.*

DRAFT TEXT OF THE ADDITIONAL ACT OF STOCKHOLM OF THE MADRID AGREEMENT (FALSE INDICATIONS OF SOURCE) (S/280)

270. The PRESIDENT invited the Plenary to adopt the Additional Act of Stockholm of the Madrid Agreement (False Indications of Source) (S/280). He suggested that the proposed Act be dealt with article by article.

271. *It was so agreed.*

Articles 1 to 4

272. *Articles 1 to 4 were adopted without opposition.*

Article 5

273. Mr. NORDENSON (Sweden) repeated the proposal which he had made in regard to Article 13 of the Paris Convention to substitute the word "*instituant*" for the word "*établissant,*" in accordance with the decision taken by Main Committee V in regard to the name of the new Convention.

274. *That proposal was adopted.*

275. *Article 5, thus amended, was adopted.*

Articles 6 and 7 and closing words

276. *Article 6 and 7 and the closing words were adopted without opposition.*

277. *The Additional Act of Stockholm 1967 of the Madrid Agreement (False Indications of Source) was adopted in its entirety as amended.*

CLOSING OF THE MEETING

278.1 The PRESIDENT paid tribute to the spirit of cooperation which Delegates had displayed in their work on the Agreement and to the valuable assistance rendered by BIRPI and the Swedish Government.

278.2 He declared the meeting of the Plenary of the Madrid Agreement (False Indications of Source) closed.

The meeting rose at 3:35 p.m.

PLENARY OF THE MADRID UNION (MARKS)

President: Mr. József BÉNYI (Hungary)
Secretary: Mr. Arpad BOGSCH (Deputy Director, BIRPI)

FIRST MEETING

Monday, June 12, 1967, at 2:45 p.m.

OPENING OF THE MEETING

279.1 The FIRST VICE-PRESIDENT of the Conference declared open the Plenary of the Madrid Union (Marks).

ELECTION OF THE PRESIDENT

279.2 He drew attention to the Swedish proposal that the president of the Plenary be appointed from the Delegation of Hungary, which proposal he invited the Plenary to adopt.

280. *The proposal was adopted by acclamation.*

281.1 The PRESIDENT expressed his appreciation for the confidence placed in him. He regarded his appointment as a tribute to his country which had always participated actively, and in a spirit of cooperation and understanding, in the work of the Madrid Union (Marks).

ELECTION OF THE VICE-PRESIDENT

281.2 He drew attention to the Swedish proposal that the Vice-President of the Plenary be appointed from the Delegation of Portugal and invited the Plenary to adopt that proposal.

282. *The proposal was adopted by acclamation.*

ELECTION OF REPRESENTATIVE TO THE CREDENTIALS COMMITTEE

283. The PRESIDENT invited the Plenary to adopt the Swedish proposal that the representative of the Madrid Union (Marks) on the Credentials Committee be appointed from the Delegation of France.

284. *The proposal was adopted by acclamation.*

The meeting rose at 2:49 p.m.

SECOND MEETING

Wednesday, July 12, 1967, at 3:05 p.m.

REPORT OF THE CREDENTIALS COMMITTEE (S/295)

285. The PRESIDENT invited the Plenary to approve paragraph 11 of document S/295, which listed the States whose credentials had been recognized as valid for the Plenary Conference.

286. *The report of the Credentials Committee, as contained in paragraph 11 of document S/295, was approved.*

DRAFT TEXT OF THE ACT OF STOCKHOLM OF THE MADRID AGREEMENT (MARKS) (S/279)

287. The PRESIDENT invited the Plenary to adopt the Act of Stockholm 1967 of the Madrid Agreement (Marks) (S/279) and drew its attention to the provisions of Rules 3(1) and 51 of the Rules of Procedure of the Conference. He suggested that the proposed Act be dealt with article by article.

288. *It was so agreed.*

Articles 1 to 13

289. *Articles 1 to 13 were adopted without opposition.*

Article 14

290. Mr. PÁLOS (Hungary) said that the Delegation of Hungary had already expressed a reservation concerning Article 24 of the Paris Convention. It was therefore against the inclusion of similar provisions in the Act under consideration and would oppose the adoption of Article 14 if it was put to the vote.

291. The PRESIDENT said that the statement of the Delegation of Hungary would be noted in the summary record of the meeting of the Plenary.

292. Mr. KŘÍSTEK (Czechoslovakia) drew attention to the observations his Delegation had made on the subject in Main Committee IV and asked that they be recorded.

293. The PRESIDENT said that the fact that the Delegate of Czechoslovakia had made observations on the subject would be noted in the summary record of the meeting of the Plenary.

294. *Article 14 was adopted.*

Articles 15 to 18 and closing words

295. *Articles 15 to 18 and the closing words were adopted without opposition.*

296. *The Act of Stockholm 1967 of the Madrid Agreement (Marks) was adopted in its entirety, subject to the comments of the Delegations of Hungary and Czechoslovakia in respect of Article 14.*

CLOSING OF THE MEETING

297.1 The PRESIDENT paid tribute to the work of the officers of Main Committee IV, its Drafting Committee and BIRPI and warmly thanked the Swedish Government and the Delegation of Sweden for its cordial hospitality and for the excellent organization of the Conference.

297.2 He declared the meeting of the Plenary of the Madrid Union (Marks) closed.

The meeting rose at 3:20 p.m.

PLENARY OF THE HAGUE UNION

President: Mr. Mostafa TAWFIK (United Arab Republic)
Secretary: Mr. Arpad BOGSCH (Deputy Director, BIRPI)

FIRST MEETING

Monday, June 12, 1967, at 2:55 p.m.

OPENING OF THE MEETING

298.1 The FIRST VICE-PRESIDENT of the Conference declared open the Plenary of The Hague Union.

ELECTION OF THE PRESIDENT

298.2 He drew attention to the Swedish proposal that the president of the Plenary should be appointed from the Delegation of the United Arab Republic, which proposal he invited the Plenary to adopt.

299. *The proposal was adopted by acclamation.*

300.1 The PRESIDENT expressed appreciation for the confidence shown both to him and his country.

ELECTION OF THE VICE-PRESIDENT

300.2 He drew attention to the Swedish proposal that the Vice-President of the Plenary be appointed from the Delegation of Monaco and invited the Plenary to adopt that proposal.

301. *The proposal was adopted by acclamation.*

ELECTION OF REPRESENTATIVES TO THE CREDENTIALS COMMITTEE

302. The PRESIDENT invited the Plenary to adopt the Swedish proposal that the representative of the Hague Union on the Credentials Committee be appointed from the Delegation of the Netherlands.

303. *The proposal was adopted by acclamation.*

The meeting rose at 2:59 p.m.

SECOND MEETING

Wednesday, July 12, 1967, at 3:40 p.m.

In the absence of the President, Mr. TAWFIK *(United Arab Republic), the Vice-President,* Mr. NOTARI *(Monaco) took the chair.*

REPORT OF THE CREDENTIALS COMMITTEE (S/295)

304. The VICE-PRESIDENT invited the Assembly to approve paragraph 13 of document S/295, which listed those States whose credentials had been found to be in order.

305. *The report of the Credentials Committee (paragraph 13 of document S/295) was adopted unanimously.*

DRAFT TEXT OF THE COMPLEMENTARY ACT OF STOCKHOLM OF THE HAGUE AGREEMENT (S/281)

306. The VICE-PRESIDENT invited the Assembly to examine the Complementary Act of Stockholm 1967 of the Hague Agreement (S/281) article by article.

Articles 1 and 2

307. *Articles 1 and 2 were adopted.*

Article 3

308. Mr. GAJAC (France) proposed the deletion of the words referring to "other than the Articles 2 to 5" at the end of paragraph (3)(a), in view of the fact that all the substantive provisions appeared in the Agreement and not in the Additional Act.

309. *That proposal was adopted, with the approval of the International Bureau for Intellectual Property.*

310. *Article 3, thus amended, was adopted.*

Articles 4 to 6

311. *Articles 4 and 5 were adopted.*

312. Mr. GAJAC (France) thought it would be advisable to replace the words in brackets in Article 6 (1)(c) and paragraph (2)(a) by a more traditional phrase, such as "in accordance with the procedure laid down in Article 2(2)(a)(iii) and (3)(d) of the present Act."

313. Mr. BOGSCH (Deputy Director, BIRPI) said he had no objection to the amendment proposed by the Delegation of France. He wondered, however, whether it would not involve some slight rewording of Article 5.

314. Mr. GAJAC (France) agreed.

315. *It was agreed to make the requisite amendments to Article 5.*

316. *Articles 5 and 6, thus amended, were adopted.*

Articles 7 to 12

317. *Articles 7 to 12 were adopted.*

318. *The Complementary Act of Stockholm (Hague Agreement) was adopted in its entirety without opposition.*

CLOSING OF THE MEETING

319. The VICE-PRESIDENT declared the meeting of the Plenary Assembly of the Hague Union closed.

The meeting rose at 3:55 p.m.

PLENARY OF THE NICE UNION

President: Mr. Antonio MAZARAMBROZ (Spain)
Secretary: Mr. Arpad BOGSCH (Deputy Director, BIRPI)

FIRST MEETING

Monday, June 12, 1967, at 3 p.m.

OPENING OF THE MEETING

320.1 The FIRST VICE-PRESIDENT of the Conference declared open the Plenary of the Nice Union.

ELECTION OF THE PRESIDENT

320.2 He drew attention to the Swedish proposal that the President of the Plenary be appointed from the Delegation of Spain, which proposal he invited the Plenary to adopt.

321. *The proposal was adopted by acclamation.*

322.1 The PRESIDENT, on behalf of the Spanish Government, thanked the Swedish Government for the confidence which it had shown in him. He was very conscious of the honor which had been done to him and he assured the Assembly that he would spare no effort in guiding its labours.

ELECTION OF THE VICE-PRESIDENT

322.2 He proposed that, in accordance with the suggestion made by the Swedish Government, the Vice-President should be appointed from the Delegation of Norway.

323. *The proposal was adopted by acclamation.*

ELECTION OF REPRESENTATIVE TO THE CREDENTIALS COMMITTEE

324. The PRESIDENT proposed that, in accordance with the suggestion made by the Swedish Government, the Delegation of Italy should be invited to appoint one of its members to serve on the Credentials Committee.

325. *The proposal was adopted by acclamation.*

The meeting rose at 3:04 p.m.

SECOND MEETING

Wednesday, July 12, 1967, at 4 p.m.

REPORT OF THE CREDENTIALS COMMITTEE (S/295)

326. The PRESIDENT invited the Plenary to approve paragraph 14 of document S/295, which listed the States whose credentials had been recognized as valid for the Plenary Conference.

327. *The report of the Credentials Committee, as contained in paragraph 14 of document S/295, was approved.*

DRAFT TEXT OF THE ACT OF STOCKHOLM OF THE NICE AGREEMENT (S/282)

328. The PRESIDENT invited the Plenary to adopt the Act of Stockholm 1967 of the Nice Agreement (S/282). He suggested that the proposed Act be dealt with article by article.

329. *It was so agreed.*

Articles 1 to 16 and closing words

330. *Articles 1 to 16 and the closing words were adopted without opposition.*

331. *The Act of Stockholm 1967 of the Nice Agreement was adopted in its entirety without opposition.*

CLOSING OF THE MEETING

332.1 The PRESIDENT thanked the delegates for their cooperation and paid tribute to the work of the Chairman and Rapporteur of Main Committee IV and to the efforts of its Drafting Committee. He thanked the Director and staff of BIRPI for their assistance and the Swedish Government for its valuable organization and for the provision of such excellent resources for the work of the Union.

332.2 He then declared the meeting of the Plenary of the Nice Union closed.

The meeting rose at 4:10 p.m.

PLENARY OF THE LISBON UNION

President: Mr. Ernesto ROJAS (Mexico)
Secretary: Mr. Arpad BOGSCH (Deputy Director, BIRPI)

FIRST MEETING

Monday, June 12, 1967, at 3:05 p.m.

OPENING OF THE MEETING

333.1 The FIRST VICE-PRESIDENT of the Conference declared open the Plenary of the Lisbon Union.

ELECTION OF THE PRESIDENT

333.2 He drew attention to the Swedish proposal that the President of the Plenary be appointed from the Delegation of Mexico, which proposal he invited the Plenary to adopt.

334. *The proposal was adopted by acclamation.*

335.1 The PRESIDENT on behalf of his Government and on his own behalf, thanked the Swedish Government and the Assembly for selecting him to guide the discussions of the Lisbon Union. He would devote his best efforts to the accomplishment of that task.

ELECTION OF THE VICE-PRESIDENT

335.2 He proposed that, in accordance with the suggestions made by the Swedish Government, the Vice-President should be appointed from the Delegation of Israel.

336. *The proposal was adopted by acclamation.*

ELECTION OF REPRESENTATIVE TO THE CREDENTIALS COMMITTEE

337. The PRESIDENT proposed that, in accordance with the suggestion of the Swedish Government, the Delegation of Mexico should be invited to appoint one of its members to serve on the Credentials Committee.

338. *The proposal was adopted by acclamation.*

The meeting rose at 3:09 p.m.

SECOND MEETING

Wednesday, July 12, 1967, at 4:15 p.m.

REPORT OF THE CREDENTIALS COMMITTEE (S/295)

339. The PRESIDENT invited the Plenary to approve paragraph 15 of document S/295, which listed the States whose credentials had been recognized as valid for the Plenary Conference.

340. *The Report of the Credentials Committee, as contained in paragraph 15 of document S/295, was approved.*

DRAFT TEXT OF THE ACT OF STOCKHOLM OF THE LISBON AGREEMENT (S/283)

341. The PRESIDENT invited the Plenary to adopt the Act of Stockholm 1967 of the Lisbon Agreement (S/283). He suggested that the Act be dealt with article by article.

342. *It was so agreed.*

Articles 1 to 18 and closing words

343. *Articles 1 to 18 and closing words were adopted without opposition.*

344. *The Act of Stockholm 1967 of the Lisbon Agreement was adopted in its entirety without opposition.*

CLOSING OF THE MEETING

345.1 The PRESIDENT paid tribute to the work of the Chairman and Rapporteur of Main Committee IV and to the assistance it had received from BIRPI. He thanked the Swedish Government and the Delegation of Sweden for their warm hospitality and for their excellent work in preparing the Conference.

345.2 He then declared the meeting of the Plenary of the Lisbon Union closed.

The meeting rose at 4:25 p.m.

PLENARY OF THE WORLD INTELLECTUAL PROPERTY ORGANIZATION

President: Mr. Hans MORF (Switzerland)
Secretary: Mr. Arpad BOGSCH (Deputy Director, BIRPI)

FIRST MEETING

Monday, June 12, 1967, at 3:15 p.m.

OPENING OF THE MEETING

346.1 The FIRST VICE-PRESIDENT of the Conference declared open the WIPO Plenary.

ELECTION OF THE PRESIDENT

346.2 He drew attention to the Swedish proposal that the President of the Plenary be appointed from the Delegation of Switzerland, which proposal he invited the Plenary to adopt.

347. *The proposal was adopted by acclamation.*

348.1 The PRESIDENT, speaking on behalf of his country, thanked the Swedish Government and the Assembly for the honor which they had done him.

ELECTION OF THE VICE-PRESIDENT

348.2 The Swedish Government had proposed that the Vice-President should be appointed from the Delegation of Canada. That Delegation had felt itself unable to accept the invitation, and he therefore wished to inquire if the Delegation of Sweden had another proposal to put forward.

349. Mr. KELLBERG (Sweden) said that it had unfortunately not been possible to persuade the Delegation of Canada to agree to one of its members being appointed as Vice-President of the Plenary. Having held further consultations on the matter, the Delegation of Sweden now proposed that the Vice-President should be appointed from the Delegation of Uruguay.

350. The PRESIDENT invited the Assembly to adopt the Swedish Government's proposal and appoint the Vice-President from the Delegation of Uruguay.

351. *The proposal was adopted by acclamation.*

ELECTION OF REPRESENTATIVE TO THE CREDENTIALS COMMITTEE

352. The PRESIDENT proposed that, in accordance with the suggestion of the Swedish Government, the Delegaiton of Venezuela should be invited to appoint one of its members to serve on the Credentials Committee.

353. *The proposal was adopted by acclamation.*

ELECTION OF OFFICERS OF MAIN COMMITTEE V

354. The PRESIDENT pointed out that the Swedish Government had proposed that the Chairman of Main Committee V should be appointed from the Delegation of the United States. He invited the Assembly to adopt that proposal.

355. *The proposal was adopted by acclamation.*

356. The PRESIDENT proposed that, in accordance with the suggestion of the Swedish Government, the Vice-President of Main Committee V should be appointed from the Delegation of Cameroon.

357. *The proposal was adopted by acclamation.*

358. The PRESIDENT proposed that, in accordance with the suggestion of the Swedish Government, Mr. Voyame (Switzerland) should be elected Rapporteur of Main Committee V.

359. *The proposal was adopted by acclamation.*

The meeting rose at 3:20 p.m.

SECOND MEETING

Wednesday, July 12, 1967, at 4:30 p.m.

REPORT OF THE CREDENTIALS COMMITTEE (S/295)

360. The PRESIDENT invited the Assembly to approve the report of the Credentials Committee (paragraphs 16, 17, and 18, of document S/295).

361. *The report of the Credentials Committee (paragraphs 16, 17 and 18 of document S/295) was adopted unanimously.*

DRAFT TEXT OF THE WIPO CONVENTION (S/284)

362. The PRESIDENT invited the Assembly to examine the Draft text of the WIPO Convention (S/284) article by article.

Preamble

363. Mr. EKANI (Cameroon) said he only wished to point out that the symbol chosen for the new Organization was liable to cause confusion owing to its remarkable resemblance to the symbol of the African and Malagasy Industrial Property Office.

364. *The Preamble was adopted.*

Article 1

365. *Article 1 was adopted.*

Article 2

366. Mr. STRASCHNOV (Monaco) said that under the Rome Convention of 1961, to which reference was made in the second section of Article 2(viii), protection was

granted not to broadcast programs but to broadcast transmissions. He therefore proposed that the word " programmes " in the French text should be replaced by the word " émissions, " which would have the further advantage of being a better translation, in his view, of the term " broadcasts " used in the English version.

367. *That proposal was adopted.*

368. *Article 2, thus amended, was adopted.*

Articles 3 and 4

369. *Articles 3 and 4 were adopted.*

Article 5

370. Mr. KŘÍSTEK (Czechoslovakia) drew attention to the reservations on the subject expressed by the Delegation of Czechoslovakia in Main Committee V and said that in view of those reservations his Delegation would abstain if the Article was put to the vote.

371. *Subject to that declaration, Article 5 was adopted.*

Articles 6 and 7

372. *Articles 6 and 7 were adopted.*

Article 8

373. Mr. BOULBINA (Algeria) considered that the sentence featured in paragraph (3)(vi) would be better balanced if drafted as follows : " nomme un Directeur général par intérim... si une vacance du poste de Directeur général survient entre deux sessions de l'Assemblée générale. "

374. Mr. KELLBERG (Sweden), speaking as Chairman of the Drafting Committee of Main Committee V, said he understood that the text of the draft Convention had already been examined in detail from the linguistic aspect and approved by the Delegation of France.

375. Mr. BODENHAUSEN (Director of BIRPI) thought it would be more satisfactory to retain the text as it was, in order to keep subparagraphs (v) and (vi) in line with each other.

376. The PRESIDENT proposed that the existing text of paragraph (3)(vi) of Article 8 should be retained.

377. *It was so agreed.*

378. *Article 8 was adopted.*

Article 9

379. Mr. EKANI (Cameroon) said he reserved the right to revert to Article 9(7) when the time came to consider the joint statement of developing countries (S/300).

380. *Article 9 was adopted.*

Articles 10 and 11

381. *Articles 10 and 11 were adopted.*

Article 12

382. The PRESIDENT said that in the French text of paragraph (4) the word " conclut " should be replaced by " conclure. "

383. Mr. BOGSCH (Deputy Director, BIRPI) said that if amended in that way the French text might not correspond exactly to the English text, in which the use of the word " may " and, then, of " shall, " indicated clearly that freedom of choice was restricted to the negotiating stage.

384. Mr. DESBOIS (France) also thought that the text formulated by the Drafting Committee accurately reflected the result of the negotiations. He therefore proposed that the draft should be retained, with a change in the position of the comma. Paragraph (4) would thus become: "Le Directeur général peut négocier et, après approbation du Comité de coordination, conclut les accords visés aux alinéas 2) et 3). "

385. Mr. BELINFANTE (Netherlands) wondered whether the term " conclude " was correct, as it was clear that the Director General could only conclude an agreement where the State in question was or continued to be prepared to sign an agreement.

386. Mr. DESBOIS (France) said he found it difficult to understand the comment made by the Delegate of the Netherlands; obviously, when it was said that the Director General concluded agreements, that did not mean that he could impose his will on the other party to the agreement.

387. Mr. KOUTIKOV (Bulgaria) suggested that the term " conclude " should be replaced by the term " sign. "

388. Mr. DESBOIS (France) thought that would make no difference, because the act of signing indicated that an agreement had been concluded. The important thing was that the Director General should sign. Besides, the verb " conclude " already appeared in paragraphs (2) and (3) of the Article, and it would be better to use the same term in paragraph (4). The Delegation of France could, however, accept the wording proposed by the Delegate of Bulgaria.

389. Mr. BELINFANTE (Netherlands) said he still thought it would be more correct to say that the Director General should " sign " the agreements referred to in paragraphs (2) and (3).

390. The PRESIDENT proposed that the word " conclude " should be replaced by the word " sign. "

391. Mr. ROGGE (Federal Republic of Germany) recalled that the consensus in the Drafting Committee had been in favor of a provision to the effect that the Director General could not perfect an agreement in such a way as to present the General Assembly of the Organization with a *fait accompli.*

392. Mr. DESBOIS (France) said that the phrase preceding the word "conclude" was in fact intended to ensure that, after the Director General had concluded an agreement, there should be no period of uncertainty about the fate of the agreement. He therefore shared the view of the Delegate of the Federal Republic of Germany on that point.

393. Mr. DE SANCTIS (Italy) said that it was part of the normal duties of the Director General to sign agreements, in his capacity as representative of the Organization. Hence, there was no need to specify in Article 12 that the Director General was authorized to sign such agreements. Paragraph (4) was concerned with quite a different matter, namely, whether the Director General should or should not be able to confront the Coordination Committee with a *fait accompli.* Hence the Delegation of Italy was entirely in agreement with the interpretation given by the Delegate of the Federal Republic of Germany.

394. Mr. BRADERMAN (United States of America) supported the proposal of the Delegate of France to alter the punctuation and said that the change would be equally appropriate in the English text. He proposed solving the problem of the Director General's duties by adding the words " and sign on behalf of the Organization " after the word "conclude."

395. Mr. Desbois (France) supported the proposal of the Delegation of the United States.

396. The President proposed that the Secretariat should be asked to carry out the drafting amendment to Article 12(4) proposed by the Delegation of the United States.

397. *It was so agreed.*

398. *Subject to that amendment, Article 12 was adopted.*

Articles 13 to 21

399. *Articles 13 to 21 were adopted.*

400. *The text of the WIPO Convention, as a whole, was adopted without opposition.*

CLOSING REMARKS

401. Mr. Maksarev (Soviet Union) said that his Delegation had noted with satisfaction the joint effort which has resulted in the text of the WIPO Convention. The new Organization should help to develop mankind's creative activities and accelerate technical progress, the spread of culture and the raising of living standards throughout the world. It represented an admirable balance between the individuality of the various Unions and the universal coordination of intellectual property activities. His Delegation welcomed its universality and the prospect of worldwide cooperation between all States, whether becoming Members of the new Organization immediately or in the future. Such cooperation was not only possible under the Convention but also necessary if the aims of the Organization were to be achieved. His Delegation had therefore had no hesitation in supporting the Convention.

402.1 Mr. Braderman (United States of America) drew attention to the efforts which each delegation had made, during the period of nearly five weeks for which the Conference had lasted, to bring constructive solutions to the problems of its fellow delegations. By dint of goodwill, all those problems had been solved. The essence of the Conference had been the spirit of international cooperation which had characterized its work. Both he and his Delegation considered that the new Convention would bring benefits to all nations from the continuance and expansion of cooperation between developed and developing countries in the field of intellectual property. The Convention should prove to be a milestone in the history of intellectual property protection.

402.2 He expressed his Government's sincere appreciation to all those who had contributed to the success of the Conference: to the Swedish Government for its technical arrangements and its generosity as a host, to BIRPI for its outstanding preparatory work, and to the Conference staff for their invaluable efforts. Delegates would leave Stockholm with a sense of achievement, both in the present and for the future.

403. Mr. Cippico (Italy) said the occasion was one of immense significance. He recalled with satisfaction how a climate of doubt about the new Organization had given way to the fruitful atmosphere which had enabled it to become a reality based on unanimous support. Speaking not only for his own Delegation but for others, including that of France, he wished the new Organization success in its high task of diffusing and further protecting every creation of the human spirit. He endorsed the tribute which the Delegate of the United States had paid to the Swedish Government, BIRPI, and the staff of the Conference.

404.1 Mr. Gantchev (Bulgaria) expressed the gratitude of his Delegation to the Swedish Government and the officers of the Conference, whose hard work had paved the way to the unanimous decision which had just been taken.

404.2 His Delegation wished to emphasize the fact that the first essential for solving the problems of protecting intellectual property was to ensure that the new Organization was universal in character. For that reason the Delegation of Bulgaria hoped that steps would be taken to enable the German Democratic Republic to accede to the new Convention.

405. Mr. Haertel (Federal Republic of Germany), replying to the comments of certain delegations, said his Government was convinced that political problems should be kept out of the work of WIPO. In that connection, his Government regretted that the United Kingdom proposal to include in the Convention a provision concerning entitlement to membership had not been adopted. Replying to statements made by certain delegations concerning the signing of and accession to the WIPO Convention, his Delegation wished to point out that the attitude of the Government of the Federal Republic of Germany in regard to the legal status of the other part of Germany was well known and remained unaltered.

406. Mr. Takahashi (Japan) said his Government regarded the Stockholm Conference as an epoch-making event in the history of international cooperation in intellectual property matters, and especially so for its having adopted the WIPO Convention. The Japanese Government had always been aware of the need for a fresh institutional framework for such cooperation and would give all its support to the future activities of the new Organization. He too was highly appreciative of the contribution made by the Swedish Government and the officers and staff of BIRPI to the result of the Conference.

407. Mr. Kajzer (Poland) considered that it would be the task of the newly established World Intellectual Property Organization to continue the work of the Paris and Berne Unions and of the relevant Agreements, and to expand them. Moreover, the Organization would make it easier for many countries to cooperate internationally in the field of intellectual property. In that connection, his Delegation hoped that WIPO would be a truly worldwide Organization and that all those countries which wished to do so would be able to join it.

408.1 Mr. Stanescu (Rumania) said that what had been achieved at the Stockholm Conference would certainly have considerable repercussions on the future development of the various Unions and on international collaboration in the sphere of intellectual property.

408.2 The Delegation of Rumania was pleased that several of its proposals had been adopted by the Conference ; they included a proposal concerning inventors' certificates, the inclusion in the various Conventions and Agreements of provisions concerning the structural and administrative reform of the Unions, and the beginning of the Preamble of the Convention establishing the World Intellectual Property Organization. The Delegation of Rumania was glad to note the universal character of the new Organization, evidence of which was provided both by the title chosen for it and by the provisions concerning membership.

408.3 Finally, the Delegation of Rumania wished to thank the Swedish Government and BIRPI for their efficient organization of the Conference.

409. Mr. Garcia Tejedor (Spain) associated himself with the views of previous speakers. His country was very satisfied that the new Organization had come into being ; by ensuring universality and yet maintaining the

independence of the various Unions, it would be a valuable instrument of coordination. The new form which BIRPI would eventually take would further increase the efficiency of that body. He thanked the Swedish Government for its hospitality and organizational efforts and paid tribute to the work of all those who had contributed to the foundation of the new Organization, to whose future he looked forward with confidence.

410.1 Mr. H'SSAINE (Morocco) expressed the thanks of his Delegation to the Swedish Government and, more generally, to all those who had contributed to the success of the Conference.

410.2 In the view of the Delegation of Morocco, the establishment of the new World Intellectual Property Organization had been rendered possible by the spirit of understanding manifested by the Conference participants.

411.1 Mr. JELIĆ (Yugoslavia) associated himself with the thanks which had been expressed to the Swedish Government and to BIRPI.

411.2 It was the hope of his Delegation that the new World Intellectual Property Organization would prove in practice to be the world body which its name implied.

JOINT STATEMENT OF DEVELOPING COUNTRIES (S/300)

412. The PRESIDENT drew the attention of the Plenary to document S/300 and invited the Delegate of Brazil to speak on it.

413.1 Mr. RIBEIRO (Brazil) said the reason why certain delegations had presented the statement contained in document S/300 was that they wished to participate in the universality towards which the Organization would tend. They therefore wanted their nationals to be employed in the International Bureau. The wish they had expressed in paragraph 2 of the document concerning training reflected their awareness of the problems of qualification which that involved.

413.2 He quoted two examples of the type of action which the developing countries represented at the Stockholm Conference visualized. Firstly, with regard to paragraph 2 of their statement, they hoped that BIRPI would convene a seminar to study the implementation of the Protocol Regarding Developing Countries. Secondly, in respect of paragraph 3, they thought that BIRPI should send a representative to the UNIDO seminar on industrial development to be held in Athens in December 1967, the reason being that the Athens meeting would deal with questions of transfer of technology.

414.1 Mr. EKANI (Cameroon) joined with the previous speakers in thanking the Swedish Government and BIRPI.

414.2 In regard to the Convention establishing the World Intellectual Property Organization, his Delegation considered that the value of that document would be determined primarily by what it achieved.

414.3 It was for that reason that a number of the developing countries had thought fit to draw the attention of the International Bureau, in a joint declaration (S/300) to certain provisions which were of particular concern to them. The developing countries were particularly anxious about the method of recruiting the staff required for the implementation of the Convention, that is Article 9(7). In the view of his Delegation, the principle of technical competence should be applied with due regard to the criterion of equitable geographical distribution. Quite apart from the legal aspect of the question, that was the only way in which the developing countries could have the assurance that due regard would be paid to their interests in the Organization.

414.4 Moreover, it was important that the technical assistance referred to in paragraph 2 of the Statement should be a basic part of the Organization's work, i.e., that the technical assistance program should be financed from the regular budget of the Organization.

415. Mr. BODENHAUSEN (Director of BIRPI) said that all the principles expressed in document S/300 were acceptable to BIRPI, which had already partly fulfilled or was in the process of fulfilling the wishes stated by the developing countries. He pointed out that BIRPI was a specialized organization and found it difficult to recruit suitable staff from distant areas, although it had never refused a suitable candidate from a non-European country. It would certainly strive to achieve a more equitable geographical distribution in its staffing. With regard to training, it had held three seminars and would be convening a fourth and possibly others. It also awarded a number of scholarships each year to government officials of developing countries. On the question of cooperation with other international organizations, BIRPI realized the importance of collaborating with United Nations agencies and in fact maintained close contacts with them. Its representatives to the Athens seminar had already been appointed.

CLOSING OF MEETING

416.1 The PRESIDENT paid tribute to the contribution made by all the participants in the negotiations concerning the WIPO Convention and to the spirit of mutual understanding which they had displayed. The document which had been drawn up was the product of careful reflection, but it could be still further improved in time to come, in the light of experience, if the spirit of international cooperation which had been a feature of the Stockholm Conference was nurtured and strengthened.

416.2 He closed by expressing his thanks to the Swedish Government.

The meeting rose at 5:45 p.m.

CREDENTIALS COMMITTEE

Chairman: Mr. Bernard DE MENTHON (France)
Secretary: Mr. Claude MASOUYÉ (BIRPI)

FIRST MEETING

Saturday, June 17, 1967, at 10:20 a.m.

OPENING OF THE MEETING

417. Mr. BODENHAUSEN (Director of BIRPI), acting Chairman, invited the Secretary to call the roll of the members of the Credentials Committee.

418. Mr. MASOUYÉ (BIRPI) said that the representatives of Ireland and Mexico had sent their apologies. The representative of Bulgaria was absent. The United States was represented by Miss Nilsen, France by Mr. de Menthon, Italy by Mr. Angel-Pulsinelli, Japan by Mr. Takahashi, the Netherlands by Mr. Maas Geesteranus, Sweden by Mr. Reuterswärd, Switzerland by Mr. Voyame, the Soviet Union by Mr. Artemiev and Venezuela was spoken for by Mr. Sanso.

ELECTION OF THE CHAIRMAN

419. Mr. BODENHAUSEN (Director of BIRPI) invited the Committee to elect its Chairman.

420. Mr. ANGEL-PULSINELLI (Italy), supported by Mr. Maas Geesteranus (Netherlands) and Mr. Artemiev (Soviet Union), proposed the name of Mr. de Menthon (France).

421. *Mr. de Menthon (France) was elected Chairman by acclamation.*

ELECTION OF THE VICE-CHAIRMAN

422. The CHAIRMAN thanked the members of the Committee for the honor which they had given him and invited them to elect a Vice-Chairman.

423. Miss NILSEN (United States of America), supported by Mr. Reuterswärd (Sweden) and Mr. Artemiev (Soviet Union), proposed Mr. Takahashi (Japan) as Vice-Chairman.

424. *Mr. Takahashi (Japan) was elected Vice-Chairman by acclamation.*

EXAMINATION OF CREDENTIALS

425. The CHAIRMAN invited the Committee to proceed to an examination of credentials. After pointing out that, under the terms of Rule 6 of the Rules of Procedure, credentials had to be signed either by the Head of the State or Head of Government or by the Minister for Foreign Affairs, he proposed that the Secretary should read out the list of credentials which had been received, in alphabetical order by countries, and that those credentials should be examined one by one.

426. Mr. MAAS GEESTERANUS (Netherlands) said that it might be advisable to indicate whether delegations were empowered only with the right of representation, or also with the right of signature, since in international practice a distinction was generally made between the two.

427. Mr. BODENHAUSEN (Director of BIRPI) said that in principle, unless there was an express reservation, powers of representation implied the right of signature. In any case, it would be better to leave it to each delegation to interpret the scope of its credentials, and it would be sufficient if the Committee was informed of the way in which they were drawn up.

428. Mr. ARTEMIEV (Soviet Union) agreed with Mr. Bodenhausen.

429.1 The CHAIRMAN said that the Secretariat wished to draw the attention of delegations to the importance of avoiding any misunderstandings ; to that end, delegations could seek from their Governments any clarifications which might prove to be necessary.

429.2 He invited the Secretary to outline the present situation of the delegations, indicating whether the credentials which had been deposited expressly mentioned the right of signature.

430.1 Mr. MASOUYÉ (BIRPI) advised the Committee as follows:

430.2 Afghanistan was not represented.

430.3 The Delegation of South Africa had deposited powers of representation signed by the Minister for Foreign Affairs.

430.4 Albania was not represented.

430.5 The Delegation of Algeria had deposited powers of representation signed by the Minister for Foreign Affairs.

430.6 The Delegation of the Federal Republic of Germany had deposited powers of representation and signature signed jointly by the President of the Republic and the Minister for Foreign Affairs.

430.7 Saudi Arabia was not represented.

430.8 The Delegation of Argentina had not yet deposited its credentials.

430.9 The Delegation of Australia had deposited powers of representation, signed by the Minister for Foreign Affairs.

430.10 The Delegation of Austria had deposited powers of representation and signature signed by the President of the Republic.

430.11 Barbados was not represented.

430.12 The Delegation of Belgium deposited powers of representation signed by the Minister for Foreign Affairs.

430.13 Burma was not represented.

430.14 Bolivia was not represented.

430.15 Botswana was not represented.

430.16 The Delegation of Brazil had deposited powers of representation and signature, signed by the Minister for Foreign Affairs.

430.17 The Delegation of Bulgaria had deposited powers of representation, signed by the Minister for Foreign Affairs.

430.18 Burundi was not represented.

430.19 Cambodia was not represented.

430.20 The Delegation of Canada had deposited powers of representation signed by the Minister for Foreign Affairs.

430.21 Ceylon was not represented.

430.22 Chile was not represented.

430.23 Cyprus was not represented.

430.24 Colombia was not represented.

430.25 The Delegation of the Congo (Brazzaville) had deposited powers of representation and signature, signed by the Minister for Foreign Affairs and countersigned in the name of the President of the Republic.

430.26 The Delegation of the Congo (Kinshasa) had not yet deposited credentials.

430.27 The Delegation of Korea had not yet deposited credentials.

430.28 Costa Rica was not represented.

430.29 The Delegation of the Ivory Coast had deposited powers of representation, signed on behalf of the President of the Republic by the Minister for Foreign Affairs.

430.30 The Delegation of Cuba had deposited powers of representation signed by the Minister for Foreign Affairs.

430.31 Dahomey was not represented.

430.32 The Delegation of Denmark had deposited powers of representation and signature, signed by the King.

430.33 El Salvador was not represented.

430.34 The Delegation of Ecuador had not yet deposited credentials.

430.35 The Delegation of Spain had deposited powers of representation and signature, signed by the Minister for Foreign Affairs.

430.36 The Delegation of the United States of America had deposited powers of representation signed by the Secretary of State for Foreign Affairs and indicating that the names of the Delegates empowered to sign would be communicated subsequently.

430.37 Ethiopia was not represented.

430.38 The Delegation of Finland had deposited powers of representation signed by the Minister for Foreign Affairs.

430.39 The Delegation of France had deposited powers of representation and signature, signed by the Minister for Foreign Affairs.

430.40 The Delegation of Gabon had not yet deposited credentials.

430.41 Gambia was not represented.

430.42 Ghana was not represented.

430.43 The Embassy of Greece in Stockholm had transmitted to the Conference Secretariat a copy of a telegram from the Minister for Foreign Affairs giving the names of the members of the Delegation. The Secretariat proposed to draw the attention of the Delegation of Greece to the terms of Rule 6 of the Rules of Procedure and to invite it to arrange for proper credentials to be issued to it by the Minister for Foreign Affairs.

430.44 The Delegation of Guatemala had deposited powers of representation signed by the Minister for Foreign Affairs.

430.45 Guinea was not represented.

430.46 Guyana was not represented.

430.47 Haiti was not represented.

430.48 Honduras was not represented.

430.49 Upper Volta was not represented.

430.50 The Delegation of Hungary had deposited powers of representation and signature, signed by the First Deputy to the Ministry for Foreign Affairs. The question arose as to whether those powers were valid, as they were not signed by the Minister for Foreign Affairs himself.

431. Mr. ARTEMIEV (Soviet Union) said it was the practice in Hungary for the Foreign Minister's First Deputy to sign on behalf of the Minister, in the event of the latter's absence. The credentials of the Delegation of Hungary could therefore be considered in order.

432. *The Committee decided to regard the credentials deposited by the Delegation of Hungary as being in order.*

433.1 Mr. MASOUYÉ (BIRPI) continued his statement.

433.2 The Maldive Islands were not represented.

433.3 The Delegation of India had deposited powers of representation signed by the Minister for Foreign Affairs.

433.4 The Secretariat had received a telegram from the Minister for Foreign Affairs of Indonesia, giving the composition of the Delegation of Indonesia and stating that its credentials would be submitted later.

433.5 Iraq was not represented.

433.6 The Delegation of Iran had not yet deposited credentials.

433.7 The Delegation of Ireland had deposited powers of representation and signature, signed by the Minister for Foreign Affairs.

433.8 The Delegation of Iceland had not yet deposited credentials.

433.9 The Delegation of Israel had announced that it was coming but had not yet arrived.

433.10 The Delegation of Italy had deposited powers of representation and signature, signed by the President of the Republic.

433.11 Jamaica was not represented.

433.12 The Delegation of Japan had deposited powers of representation signed by the Minister for Foreign Affairs.

433.13 Jordan was not represented.

433.14 The Delegation of Kenya had deposited powers of representation signed by the Minister for Foreign Affairs.

433.15 Kuwait was not represented.

433.16 Laos was not represented.

433.17 Liberia was not represented.

433.18 Libya was not represented.

433.19 The Delegation of Liechtenstein had deposited powers of representation and signature, signed by the Prince Regnant.

433.20 The Delegation of Luxembourg had deposited powers of representation and signature, signed by the Grand Duke.

433.21 The Delegation of Madagascar had deposited powers of representation and signature, signed by the Minister for Foreign Affairs.

433.22 Malaysia was not represented.

433.23 Malawi was not represented.

433.24 Mali was not represented.

433.25 Malta was not represented.

433.26 The Delegation of Morocco had deposited powers of representation and signature, signed by the Minister for Foreign Affairs.

433.27 The Minister for Foreign Affairs of Mauritania had provided the Head of the Delegation of Senegal with a proxy authorising him to represent Mauritania at the Conference. Rule 36 of the Rules of Procedure laid it down that a delegation could only represent its own government and could only vote on behalf of its own government, and it therefore seemed that the proxy could not be regarded as valid.

434. After an exchange of views in which the Chairman and Messrs. Bodenhausen, Maas Geesteranus and Sanso took part, the Committee *decided* to invite the Secretariat to draw the attention of the head of the Delegation of Senegal to the fact that the credentials which had been delegated to him by the Minister for Foreign Affairs of Mauritania could not be regarded as valid for purposes of representation nor, a fortiori, of signature.

435.1 Mr. MASOUYÉ (BIRPI) continued his report.

435.2 The Delegation of Mexico had deposited powers of representation signed by the Minister for Foreign Affairs.

435.3 The Delegation of Monaco had deposited powers of representation and signature, signed by the Minister for Foreign Affairs.

435.4 Mongolia was not represented.

435.5 Nepal was not represented.

435.6 Nicaragua was not represented.

435.7 The Delegation of Niger had not deposited credentials.

435.8 Nigeria was not represented.

435.9 The Delegation of Norway had deposited powers of representation signed by the Minister for Foreign Affairs.

435.10 New Zealand was not represented.

435.11 The Delegation of Uganda, the coming of which had been announced, had not yet arrived .

435.12 Pakistan was not represented.

435.13 Panama was not represented.

435.14 Paraguay was not represented.

435.15 The Delegation of the Netherlands had deposited powers of representation signed by the Minister for Foreign Affairs.

435.16 The Delegation of Peru had not yet deposited credentials.

435.17 The Delegation of the Philippines, the coming of which had been announced, had not yet arrived.

435.18 The Delegation of Poland had deposited powers of representation and signature, signed jointly by the Chairman of the Council of Ministers and the Minister for Foreign Affairs.

435.19 The Delegation of Portugal had deposited powers of representation and signature, signed by the Minister for Foreign Affairs.

435.20 The Delegation of the United Arab Republic had not yet deposited credentials.

435.21 The Central African Republic had not yet deposited credentials.

435.22 The Dominican Republic was not represented.

435.23 Viet-Nam was not represented.

435.24 The Delegation of Byelorussia had deposited powers of representation and signature, signed by the Minister for Foreign Affairs.

435.25 The Delegation of Ukraine had deposited powers of representation signed by the Minister for Foreign Affairs.

435.26 The Delegation of Rumania had deposited powers of representation and signature, signed by the Minister for Foreign Affairs.

435.27 The Delegation of the United Kingdom of Great Britain and Northern Ireland had deposited powers of representation signed by the Minister for Foreign Affairs.

435.28 Rwanda was not represented.

435.29 San Marino was not represented.

435.30 The Delegation of the Holy See had deposited powers of representation and signature, signed by the Secretary of State of His Holiness.

435.31 Western Samoa was not represented.

435.32 The Delegation of Senegal had deposited powers of representation signed by the Minister for Foreign Affairs.

435.33 Sierra Leone was not represented.

435.34 Singapore was not represented.

435.35 Somalia was not represented.

435.36 Sudan was not represented.

435.37 The Delegation of Sweden had deposited powers of representation signed by the Minister for Foreign Affairs.

435.38 The Delegation of Switzerland had deposited powers of representation and signature, signed jointly by the President and the Chancellor of the Swiss Confederation.

435.39 Syria was not represented.

435.40 Tanzania was not represented.

435.41 Chad was not represented.

435.42 The Delegation of Czechoslovakia had deposited powers of representation signed by the Minister for Foreign Affairs.

435.43 The Delegation of Thailand had not yet deposited credentials.

435.44 Togo was not represented.

435.45 Trinitad and Tobago were not represented.

435.46 The Delegation of Tunisia had not yet deposited credentials.

435.47 The Delegation of Turkey had not yet deposited credentials.

435.48 The Delegation of the Soviet Union had deposited powers of representation signed by the Minister for Foreign Affairs.

435.49 The Delegation of Uruguay had not yet deposited credentials.

435.50 The Delegation of Venezuela had deposited powers of representation and signature, signed by the Minister for Foreign Affairs.

435.51 The Delegation of Yugoslavia had deposited powers of representation and signature, signed by the Minister for Foreign Affairs.

435.52 Zambia was not represented.

436.1 The CHAIRMAN thanked the Secretary.

436.2 He reminded members that a second meeting of the Credentials Committee was due to be held on Saturday, 1 July. The meeting would only take place on that date, of course, if a sufficient number of new credentials had been deposited.

437. Mr. ARTEMIEV (Soviet Union) said that it was a matter of great regret to his delegation that the German Democratic Republic—a member of both the Berne and the Paris Unions—had not been invited to the Conference. He asked that his remark in that connection should be included in the Committee's report.

438. The CHAIRMAN assured Mr. Artemiev that this statement would be recorded in the minutes.

The meeting rose at 11:30 a.m.

SECOND MEETING

Thursday, July 6, 1967, at 5:30 p.m.

EXAMINATION OF CREDENTIALS *(continued)*

439. The CHAIRMAN requested the Secretary to inform the Commitee which countries had deposited credentials since the previous meeting.

440.1 Mr. MASOUYÉ (BIRPI) said that since the previous meeting the following countries had deposited credentials with the Secretariat of the Conference.

440.2 The Government of Argentina had sent a letter, signed by the Minister for Foreign Affairs, empowering His Excellency Mr. Pardo, the Argentine Ambassador in Stockholm, to represent Argentina at the Conference.

440.3 The Government of Cameroon had sent a letter, signed by the Minister for Foreign Affairs, empowering Mr. Ekani, Director General of the *Office Africain et Malgache de la Propriété industrielle* (OAMPI) to represent Cameroon at the Conference.

440.4 The Government of the Central African Republic had sent a letter, signed by the Minister for Foreign Affairs, empowering Mr. Gamba to represent the Central African Republic at the Conference.

440.5 The Government of the Congo (Kinshasa) had sent a letter, signed by the Minister for Foreign Affairs, empowering Mr. Mulenda to represent the Congo (Kinshasa) at the Conference.

440.6 The Government of Ecuador had sent a letter, signed by the Minister for Foreign Affairs, empowering Dr. Sanchez Barona, the Ecuadorian Chargé d'Affaires in Stockholm, to represent Ecuador at the Conference.

440.7 The Government of the Republic of Gabon had sent a letter, signed by the President of the Republic of Gabon, empowering Mr. Otoué to represent the Republic of Gabon at the Conference.

440.8 The Government of Greece had sent a letter, signed by the Minister for Foreign Affairs, giving the Delegation of Greece full powers to represent Greece at the Conference, to participate in votes and to sign the instruments adopted by the Conference.

440.9 The Government of Indonesia had sent a letter, signed by the Minister for Foreign Affairs, empowering Mr. Jasin, Second Secretary at the Indonesian Embassy in Stockholm, to attend the Conference as Delegate for Indonesia. The letter was written in the Indonesian language but was accompanied by an English translation, which had also been signed by the Minister for Foreign Affairs.

440.10 The Government of Iran had sent a letter, signed by the Minister for Foreign Affairs, empowering Mr. Daraï, Iranian Ambassador in Stockholm, to represent Iran at the Conference, to participate in votes and to sign the instruments adopted by the Conference, subject to their ratification.

440.11 The Government of Israel had sent a letter, signed and sealed by the Minister for Foreign Affairs, empowering the Delegation of Israel to represent that country at the Conference.

440.12 The Government of the Republic of Korea had sent a letter, signed by the Minister for Foreign Affairs, empowering Mr. Lee Sang Chin, Second Secretary and Consul at the Korean Embassy in Stockholm, to attend the Conference as Observer for the Republic of Korea. The letter was written in the Korean language but was accompanied by an official translation in English which, in the opinion of the Secretariat, was acceptable.

440.13 The Government of Monaco had, at the beginning of the Conference and as reported in the summary record of the first meeting of the Credentials Committee, sent a letter, signed by the Minister for Foreign Affairs, empowering Mr. Straschnov to represent Monaco at the Conference. The Committee had recognized those credentials as valid. Subsequently, the Government of Monaco had sent another letter naming the second member of its Delegation. In the opinion of the Secretariat, the second letter was for information purposes only and there was no need for the Committee to revise the decision it had reached at its first meeting.

440.14 The Government of Nicaragua had sent a letter, signed by the Minister for Foreign Affairs and giving the text of the President's decree authorizing representation at the Conference, empowering Mr. Lindvall, Consul General of Nicaragua in Stockholm, to represent Nicaragua at the Conference.

440.15 The Government of the Republic of Niger had sent a letter, signed by the President of the Republic of Niger, empowering Mr. Wright to represent Niger at the Conference, participate in votes and sign the instruments adopted by the Conference, subject to their ratification.

440.16 The Peruvian Embassy in Stockholm had sent a letter empowering Mr. Fernandez Davila, Peruvian Ambassador in Stockholm, to represent Peru at the Conference.

440.17 The Government of the Philippines had sent a letter, signed by the Secretary of State for Foreign Affairs, empowering the Vice-Consul of the Philippines in London to represent the Philippines at the Conference.

440.18 The Government of Thailand had sent a letter, signed by the Minister for Foreign Affairs, empowering Mr. Hansavesa, Ambassador of Thailand in Stockholm, to represent Thailand at the Conference and to sign any Convention or Protocol which might be adopted.

440.19 The Government of Tunisia had sent a letter, signed by Mr. Bourguiba, Jnr., Minister of State at the Ministry of Foreign Affairs, containing the credentials of the Delegation of Tunisia. The letter was in Arabic but was accompanied by a French translation which had also been signed by Mr. Bourguiba, Jnr.

440.20 The Government of the Republic of Uruguay had sent a letter, signed by the President of the Republic, containing the credentials of the Delegation of Uruguay.

441. The CHAIRMAN asked if there were any countries which had not yet deposited credentials.

442.1 Mr. MASOUYÉ (BIRPI) (Secretary of the Committee) said that the Governments of Iceland, Togo and Turkey had not yet deposited the credentials of their representatives. The Embassy of the United Arab Republic in Stockholm had sent a letter saying that Mr. Tawfik, Ambassador of the United Arab Republic in Stockholm, would act as the Head of the Delegation but that owing to current circumstances his credentials had not yet been received; they would be forwarded to the Secretariat as soon as possible.

442.2 He suggested that the Delegations of Iceland, Togo, Turkey and the United Arab Republic should be requested to ensure that their credentials were deposited as soon as possible.

443. *It was so agreed.*

444. The CHAIRMAN asked if the Secretariat had encountered any other difficulties in the matter of credentials.

445.1 Mr. MASOUYÉ (BIRPI) said that the Government of Lebanon had said it was sending a Delegation to the Conference. The Delegation had not yet arrived, however, nor had its credentials been received.

445.2 The Government of Uganda had been represented at the Conference until the previous week. Before leaving, the Delegate of that country had said that it was unlikely that Uganda would be represented at the end of the Conference when the instruments would be signed. If, however, Uganda were to decide to send a representative to sign the instruments and participate in the votes, that representative would arrive with valid credentials.

445.3 He suggested that the cases of Lebanon and Uganda be left open until the end of the Conference.

446. *It was so agreed.*

447. Mr. MAAS GEESTERANUS (Netherlands) said that all the countries invited to the Conference, except Lesotho, had been mentioned at either the first or the second meeting of the Committee. It should be stated in the summary record of the meeting that Lesotho was not represented at the Conference.

448. *It was so agreed.*

449. Mr. MAAS GEESTERANUS (Netherlands) referred to the summary record of the first meeting of the Committee (paragraph 434) and said that he could not, for reasons of public international law, subscribe to the use of the words "nor, a fortiori of signature." While it was true that a delegation could vote for its own Government only, any sovereign State could, in his opinion, empower any person of any nationality to sign a convention. That possibility could not be limited by the Rules of Procedure of a Conference.

450. The CHAIRMAN concurred.

451.1 Mr. MASOUYÉ (BIRPI) said that the comment of the Delegation of the Netherlands would be reported in the summary record of the meeting.

451.2 Referring to the question of the representation of Mauritania by Senegal, he said that he had explained to the Head of the Delegation of Senegal that in accordance with the Rules of Procedure, a delegation could vote for its own Government only. The Head of the Delegation of Senegal had said that he understood the situation and had made no difficulties.

452. Mr. SVIADOSTS (Soviet Union) said that he had been authorized to say that the Head of the Delegation of the Soviet Union had received credentials, signed by the Minister for Foreign Affairs, empowering him to sign the Final Act of the Conference.

453. Mr. ROJAS (Mexico) said with reference to the summary record of the first meeting that he had seen a Delegate of Chile at a meeting of Main Committee V.

454. Mr. MASOUYÉ (BIRPI) said that he would request the Delegation of Chile to regularize the situation.

455. The CHAIRMAN said that the Committee would have to meet again in order to adopt its report. The report would be prepared and circulated in sufficient time to enable members to study it before the final meeting.

The meeting rose at 6 p.m.

THIRD MEETING

Monday, July 10, 1967, at 5:40 p.m.

EXAMINATION OF CREDENTIALS (continued)

456.1 The CHAIRMAN reminded members that at the previous meeting the Credentials Committee had noted that as of July 5, 1967, ten countries participating in the Conference had not yet deposited credentials. They were: Chile, Colombia, Dominican Republic, Ethiopia, Iceland, Lebanon, Turkey, Togo, Uganda, United Arab Republic.

456.2 Three of those countries, however, Chile, the Dominican Republic and Ethiopia were only taking part in the Conference as Observers and were therefore not required to deposit credentials in due and proper form.

457.1 Mr. MASOUYÉ (BIRPI) said that of the States mentioned by the Chairman which, as of July 5, 1967, had not yet deposited credentials, Turkey had subsequently deposited credentials in due and proper form, signed by the Minister for Foreign Affairs. Hence Turkey was now included among the countries in the Plenary Assembly of the Conference whose credentials could have been found by the Committee to be in order.

457.2 In addition, the Head of the Delegation of Uganda had submitted to the Secretariat a letter stating that, after taking part in the work of the Conference during the first weeks, he had unfortunately had to return to Uganda before the end of the Conference. He said that Uganda hoped to be able to sign the WIPO Convention. He thought that, if the signature of this Convention took place at the end of the Conference, a representative of Uganda, provided with full powers, ought to be able to take part in the ceremony. In that connection, the Secretary pointed out that the final clauses of the Convention allowed a period of six months for signature, and that countries which had not signed the Convention on July 14, 1967, would be able to do so up to January 13, 1968.

457.3 The Committee would therefore have to report that six countries had registered as participants in the Conference without having deposited their credentials: Colombia, Iceland, Lebanon, Togo, Uganda, United Arab Republic.

DRAFT REPORTS OF THE CREDENTIALS COMMITTEE (S/295)

457.4 In regard to the draft reports of the Committee to the Plenary Assemblies (S/295) which were to be held on July 11, 1967, he had had to present the document in the form of several separate reports for submission to the various Plenary Assemblies, in accordance with the provision of the Rules of Procedure, because the President of each Assembly would have to announce which countries' credentials were in order and which were not.

458. Mr. KOUTIKOV (Bulgaria), supported by the CHAIRMAN thought that the membership of the Committee should be indicated in the first paragraph of the draft reports.

459. *It was so agreed.*

460. Mr. KOUTIKOV (Bulgaria) wondered whether it was appropriate, in the draft reports, to mention Chile, the Dominican Republic and Ethiopia among the States which had not deposited credentials, when it was also stated that those three States were only participating in the Conference in the capacity of Observers and that they were therefore not required to deposit credentials.

461. Mr. MASOUYÉ (BIRPI) agreed that it would be more logical to reverse the order of those two paragraphs in the draft report, indicating in the first paragraph that Chile, the Dominican Republic and Ethiopia had not deposited credentials but were not required to do so because they were only participating in the Conference in the capacity of Observers, and then, in the following paragraph, listing the six States which had in fact participated in the Conference without having deposited their credentials.

462. *It was so agreed.*

463. *The draft of the Credential Committee's reports, as a whole and as amended, was adopted.*

The meeting rose at 5:50 p.m.

MAIN COMMITTEE I

Chairman: Mr. Eugen ULMER (Federal Republic of Germany)
Secretary: Mr. Claude MASOUYÉ (BIRPI)
Rapporteur: Mr. Svante BERGSTRÖM (Sweden)

FIRST MEETING

Tuesday, June 13, 1967, at 9:40 a.m.

ORGANIZATION OF THE WORK OF MAIN COMMITTEE I

464. The CHAIRMAN, in opening the meeting, expressed the hope that the Stockholm Conference would yield results as profitable as those of previous conferences. He informed the members of the Committee that during the next few days he would be presenting suggestions concerning the composition of the Drafting Committee.

465. Mr. MASOUYÉ (BIRPI) recalled that Rule 10(1)(i) of the Rules of Procedure of the Conference established the competence of Main Committee I. He drew the attention of participants in the meeting to the fact that document S/1, except for all matters concerning the establishment of a Protocol Regarding Developing Countries, constituted the basic proposals for discussion. He also pointed out that the observations of Governments were contained in documents S/13 and S/17 and that a summary of those observations had been presented in document S/18.

466. The CHAIRMAN called upon the Delegate of Sweden to present document S/1 that had been prepared by the Government of Sweden with the assistance of BIRPI.

PRESENTATION OF THE PREPARATORY DOCUMENTATION (S/1)

467.1 Mr. HESSER (Sweden) said that Main Committee I might be regarded as *primus inter pares*. Its task, which was to revise the substantive copyright provisions (Articles 1 to 20) of the Berne Convention, was a continuation of the work of the Paris, Berlin, Rome, and Brussels Conferences of 1896, 1908, 1928, and 1948, respectively. He hoped the Committee would achieve the high level of cooperation which had characterized the activities of its predecessors.

467.2 After outlining the origin and development of the Program for revising Articles 1 to 20 of the Convention submitted to the Conference by the Swedish Government (S/1), he described the contribution by his Government, BIRPI, and national and international experts, respectively in formulating the proposals of which that Program consisted. The latter were based on a thorough examination of the questions involved. In their final form they were truly international, although they naturally reflected the view of the Swedish Government with some accuracy.

467.3 In the opinion of those who drafted the Program, the purpose of revising the Convention was to enlarge the rights granted to authors and to extend its field of application as much as possible, with the aim of ensuring that copyright rules reflected the conditions of a modern technological society.

467.4 There were four major innovations in document S/1. Firstly, with regard to the application of the Convention, it was proposed that the so-called principle of nationality should be observed *in toto*. It was proposed further that authors who were domiciled in a country of the Union should be assimilated to nationals of that country. Both those proposals would result in greater protection for authors.

467.5 Secondly, it was proposed to have the Convention incorporate provisions which defined a general right of reproduction.

467.6 Another extension of copyright contained in the Program concerned the protection of moral rights. It was proposed that the duration of mandatory protection in that field should be extended to incorporate the posthumous portion of the protective period granted to authors' economic rights.

467.7 Lastly, for a special category of works which were of enormous social and economic importance, namely cinematographic works, a number of important innovations were proposed. New criteria of eligibility for protection were suggested which would make the Convention applicable to new groups of films. The status of television programs was regulated, which in many countries would result in greater protection for such programs. The duration of protection of films was prolonged and would normally be the same as for literary and artistic works in general. It was proposed to introduce into the Convention provisions on the interpretation of film contracts which would create greater legal security and thus promote the international circulation of films to the benefit of both authors and film producers.

467.8 Those were the essential points of the Swedish proposals and the Delegation of Sweden submitted them for the favorable consideration of the Committee.

ORGANIZATION OF THE WORK OF MAIN COMMITTEE I (continued)

468.1 The CHAIRMAN invited Main Committee I to decide in what order the questions within its competence should be dealt with. In his opinion, the Program of the Conference comprised two main elements, namely the incorporation in the Convention of rules on the general right of reproduction (proposed Article 9) and provisions relating to cinematographic rights (Articles 2 and 14).

468.2 It did not appear expedient to deal with the study of the various articles in numerical order, nor to start with the most thorny questions. The Chairman suggested, therefore, that the Main Committee should first examine the proposals for revision concerning eligibility criteria and country of origin (Articles 4, 5, and 6), the proposals relating to Articles 6*bis* and 7, the proposals relating to Articles 9 and 10, and finally Articles 14 and 2, after which the other articles could be studied in numerical order.

469. Mr. KEREVER (France) approved in principle the formula proposed by the Chairman. Perhaps it would be more rational, however, in view of the obvious connection existing between Articles 4, 5 and 6 on the one hand, and Articles 14 and 2 on the other hand, to deal with questions relating to cinematographic works (Articles 14 and 2) immediately after the discussion of Articles 4, 5, and 6, and then proceed to consider Articles 6bis, 7, 9, and 10. While it was not expedient to start with the most thorny questions, it would be equally dangerous to delay too long the study of questions likely to lead to the most heated discussions.

470. Mr. BODENHAUSEN (Director of BIRPI) proposed a compromise solution which would consist in studying the proposals relating to Articles 4, 5, and 6, while reserving everything that related to cinematographic works. He maintained that for purely practical reasons the formula proposed by the Chairman appeared preferable in so far as it would make it possible to clear the ground somewhat before dealing with the most difficult question, namely that of cinematographic copyright.

471. Mr. KEREVER (France) pointed out that if the Committee decided to defer everything concerning cinematographic works when considering Articles 4, 5, and 6, there would remain very little to discuss. It was for that reason that he continued to consider that the order proposed by the Delegation of France would be more logical. In any event, if insurmountable differences of opinion arose during the discussion of the proposals relating to Articles 14 and 2, the Committee would be afforded the possibility, in accordance with the Rules of Procedure, to adjourn or suspend discussion and to return to it later. The Delegation of France did not, however, intend to prolong the debate, and if the Main Committee was not in favor of its proposal, it would support the formula proposed by the Chairman.

472. Mr. WALLACE (United Kingdom) said that it was a question of choice as to whether or not the French view was taken ; either approach was sensible, but he personally supported the Chairman's plan.

473. The CHAIRMAN then proposed that the members of the Main Committee should adopt the order he had suggested for the discussion of the proposals relating to the various articles, on the understanding that when it came to considering Articles 4, 5, and 6, the Main Committee would defer discussion of all matters concerning cinematographic works.

474. *It was so decided.*

GENERAL DISCUSSION

475. The CHAIRMAN asked the delegations whether they had any general statements to make before beginning the examination of the various articles.

476.1 Mr. H'SSAINE (Morocco) said that for the first time since achieving its independence, Morocco had the privilege of participating in a Revision Conference of the Berne Convention. The Delegation of Morocco, therefore, felt some pride in participating in the discussions of the Conference.

476.2 In Morocco, which had always respected intellectual prerogatives, legislation proclaiming the international character of intellectual property had been in force for the last 50 years. In particular, the law on artistic and literary property applied to all intellectual works, regardless of the nationality of the author. That principle was scrupulously observed in the agreements concluded by the Moroccan Copyright Office with foreign societies, despite the considerable expense thereby incurred by a State like Morocco which was highly dependent upon its imports of protected works.

476.3 In conclusion, Mr. H'ssaine, in the name of the Delegation of Morocco, thanked the Swedish Government for its hospitality and paid tribute to the quality of the work jointly accomplished by the Swedish Study Group and the BIRPI experts.

477.1 Mr. KRISHNAMURTI (India) said that it was important that the revision should aim not only at improving the articles of the Convention technically but also at producing a simple instrument whose provisions the Governments of developing countries could act on without having to divert financial or personnel resources.

477.2 The copyright rules should also ensure that it was a simple matter to make use of intellectual works. The more advanced countries had professional copyright societies for that purpose, but developing countries could not afford such societies ; their resources had to be conserved for essentials such as food and agriculture. Also, in countries like India with multilingual problems, a single copyright society might not be practicable. Further, developing countries often had difficulty in ascertaining copyright details such as the dates and places of publication of works and the addresses of authors and publishers. They could not afford to embark on costly inquiries as a prelude to obtaining permission to use a particular work. He therefore hoped that provisions could be included in the Convention for making such information available to prospective users of intellectual property.

477.3 The Indian Government was interested in protecting folklore. At the recent East Asian Seminar on Copyright at New Delhi it had been agreed that folklore should be protected at the international level. The Delegation of India would be submitting proposals to that effect in due course.

477.4 The protection of intellectual property on a worldwide basis was an ideal, but that ideal had not yet been reached, nor was it proposed in the Conference Program. The Indian Government was therefore opposed to the protection of authors of non-Union countries, irrespective of whether they published inside or outside a Union country.

478. Mr. STRNAD (Czechoslovakia) emphasized that profound changes had occurred since the last Revision Conference owing to the participation of countries with different social systems and of countries which had recently become independent. On behalf of all the older Members of the Berne Convention, he welcomed the newcomers.

479.1 Mr. MALAPLATE (International Confederation of Societies of Authors and Composers (CISAC)), speaking at the invitation of the Chairman, stated on behalf of the various international organizations which he represented, namely the International Confederation of Societies of Authors and Composers, the International Writers' Guild, the International Federation of Actors, the International Federation of Variety Artists, the International Federation of Musicians, the International Publishers Association, and the International Bureau for Mechanical Reproduction, that at the time when the Stockholm Conference began its work, those organizations had thought fit to make jointly and severally a supreme appeal which their representative proposed to read.

479.2 For various reasons—some disputable (such as the alleged necessity to facilitate the distribution of cinematographic films and television broadcasts), others perfectly legitimate (such as the desire to help certain countries to complete their cultural development)—the Program of the Conference proposed to incorporate in the Berne Convention provisions likely to disrupt completely the system of protection of intellectual works as it had existed for eighty years.

479.3 For example, in introducing into the Convention rules of interpretation which in fact abolished the contractual freedom of creators or in permitting States which so wished to restrict protection when they liked, there was a tendency, which conflicted with the very purpose of the Berne Union, to place authors at the mercy of the film makers and, more particularly, of broadcasting and television organizations.

479.4 The argument that the public interest, the right of peoples to culture, the transformation of technical means of diffusion demanded such a departure from traditional principles was, however attractive it might appear at first sight, entirely false if considered with an eye to the future. Experience had shown that the existence of a high level of protection was the *conditio sine qua non* for all cultural development, and it might be affirmed that the measures contemplated, by discouraging vocations, by reducing the number of authors in countries which had them and in preventing them from emerging in countries without them, would have consequences directly opposed to the real interests of nations and of peoples.

479.5 It should be added that the concern which appeared to dominate the Program of the Conference as a whole, namely to bring about at all costs the geographical expansion of the Berne Union by multiplying to the maximum the possibilities of not applying the Convention rules, would inevitably lead to a levelling downward which could not fail, sooner or later, to deprive the Berne Convention of its content and of its raison d'être.

479.6 It might, therefore, be concluded that the real issue involved in the present Conference was a question of choice: either to maintain almost intact—the sole contingency permitting its survival—an instrument of high civilization, the existence of which had largely contributed to the enrichment of the literary and artistic heritage of mankind, or by allowing it to perish, to compromise the whole future of that heritage for reasons of facility and temporary self-interest.

479.7 The organizations concerned expressed the hope that in the course of the work which was now beginning, countries would be fully aware of the seriousness of such a choice and the responsibility which is implied.

480. Mr. KAMINSTEIN (United States of America), speaking at the invitation of the Chairman, said that the United States was grateful to the Swedish Government and BIRPI for allowing it to participate in the Conference as an Observer. It had followed with interest the preparations for the Conference, particularly in view of the revision of copyright legislation currently in progress in the United States. He hoped that the United States would join the Berne Union in the very near future and expressed the view that the Berne Convention and the Universal Copyright Convention could be, at a later date, combined in a single Convention. The late Indian Prime Minister Nehru had pointed out that much is said of the world of conflicts in which we live but little is noted of the vast amount of cooperation of nations and individuals which enables us to exist. The Conference was an admirable example of international cooperation, and he hoped it would succeed in ensuring that those who inspire us were adequately rewarded for their efforts; mere praise was not enough.

481. Mr. CIAMPI (Italy) wished to make some preliminary observations concerning the interpretation of the Preamble and of Article 24 of the Berne Convention before the Main Committee began to examine the provisions on material rights in that Convention. It should be emphasized that every change designed to simplify the application of the Convention rules could be considered as an improvement only in so far as it did not involve any diminution of the system of protection in force.

482. Mr. STRASCHNOV (Monaco) wished to know whether the proposed amendments contained in the observations of the Governments should again be submitted in writing to the Secretary of Main Committee I.

483.1 The CHAIRMAN confirmed that all proposals, whether they had already been submitted by the Governments or not, should be submitted in writing in accordance with Rule 33 of the Rules of Procedure.

483.2 Before discussing the revision proposals concerning Article 4 it was perhaps worth noting that at a revision conference practical importance generally prevailed over considerations of method; experience had shown that there was still some confusion—for example, within the framework of Article 4—between the concept of the eligibility criterion and that of the country of origin. He proposed that the Drafting Committee should be instructed to express its views on any improvements that might be made in the systematic presentation of Articles 4, 5, and 6, of the Berne Convention.

484. *That proposal was adopted.*

CRITERION OF NATIONALITY (ARTICLE 4(1))[1]

485. Mr. VOYAME (Switzerland) recalled that Switzerland, in accordance with its observations in document S/17, would be prepared to widen still further the scope of the principle of the author's nationality. That would also have the advantage of considerably simplifying the application of Articles 4, 5, and 6, and of avoiding confusion in their interpretation. Realizing that such an initiative would be contrary to well established tradition, the Delegation of Switzerland would not insist on the point, but would like to know the attitude of other delegations.

486. The CHAIRMAN considered that the proposal of the Delegation of Switzerland did not in any way affect the concept of the eligibility criterion, it would only change the concept of the country of origin. He therefore proposed to revert to that question when Article 4(4) was discussed.

487. Mr. ASCENSÃO (Portugal) stated that the order adopted for the discussion of the various elements of the Program of the Conference which concerned Main Committee I placed Portugal in a difficult position. Without raising any objection in principle as regards the suggested amplification of Article 4(1), the Delegation of Portugal considered that its task would be complicated by the fact that that paragraph was discussed before other proposals which were bound up with it, and which Portugal in its present economic and social situation would not be able to support. It would be different if other terms of protection analogous to those of the Universal Copyright Convention would have been utilized.

488. The CHAIRMAN suggested that a vote be taken on the text proposed for Article 4(1), on the understanding that the Main Committee might subsequently try to reach a joint position.

489. *The proposed text was adopted unanimously on a provisional basis.*

CRITERION OF DOMICILE (ARTICLE 4(2))

490. The CHAIRMAN noted that certain proposals submitted by the Governments with regard to paragraph (2) were designed to replace the concept of domicile by that of habitual residence.

[1] The numbers of the articles referred to in the captions are those of the text submitted in the Program of the Conference, document S/1.

491. Mr. KEREVER (France) stated that those proposals were based on the statement of reasons contained in document S/1 where the term " domicile " had the meaning of permanent residence. If that were so, the term " *domiciliés* " (domiciled) which in French law had a very specific legal meaning that might differ from the concept of residence, did not appear to be very suitable. In order to prevent any excessive departure from the proposed text, the Main Committee might restrict itself to replacing the term " *domiciliés* " by the words " *effectivement domiciliés* " (effectively domiciled).

492. The CHAIRMAN pointed out that if the term "habitual residence " was used, the entire Additional Protocol concerning the Protection of the Works of Stateless Persons and Refugees would become pointless. It was obvious that the concept of domicile differed from one country to another, especially in English-speaking countries and in French-speaking countries. That was why the Austrian proposal (S/13) regarding the question whether a person had a domicile in a given place should be governed by the law of that same place deserved to be retained, because it would enable certain misunderstandings to be avoided.

493. Mr. WALLACE (United Kingdom) stressed that the meaning of the term " domiciled " differed from one country to another. In the United Kingdom, it implied not only the fact that a person had his residence in a given country but also his intention to keep it there. The Delegation of the United Kingdom would therefore prefer the expression " habitually resident," which was also the term used in the Universal Copyright Convention.

494. Mr. GAE (India) also referred to differing interpretations of the term " domiciled." He therefore supported the suggestion that the expression " habitually resident " should replace " domiciled." It had three advantages: it was a question of fact, it was simple, and it was defined in other international instruments.

495. Mr. CURTIS (Australia) said that he agreed with the views of the Delegates of the United Kingdom and India. It was preferable to replace a complex legal term by one which was a question of fact. If the change meant doing away with the Protocol on stateless persons, the Australian Government would have no objection.

496. Mr. DE SAN (Belgium) was also of the opinion that the term " habitual residence " would be more suitable since the legal concept of domicile varied from one country to another.

497. Mr. BELINFANTE (Netherlands) supported the proposal to substitute the concept of habitual residence for that of domicile. He pointed out, however, that the interpretation of that Article raised certain difficulties. Should " habitual residence " in fact be understood to mean the residence at the time of publication of a given work or at the time when protection was requested ? According to the reasons advanced, the proposed text would have a retroactive effect, since it was stated that if an author adopted a country of the Union as his habitual residence, every work published before his establishment in that country would benefit from protection. To the contrary, Article 18 of the Convention provided that if a work was not protected at the time of its publication, it would not be protected later. It would therefore be important to settle that point or at least to adopt a joint position in the matter.

498. The CHAIRMAN suggested that the Main Committee should at present restrict itself to the study of the proposed terms, and return later to the question raised by the Delegate of the Netherlands.

499. Mr. STRNAD (Czechoslovakia) wondered what would happen in the case where an author had several habitual residences. If one of those residences was situated in a country of the Union, it should be specified that that residence should prevail. Furthermore, if several habitual residences of an author were situated in countries of the Union, it would be necessary to decide which residence should take precedence. Where there was a precise legal distinction between the concept of domicile and that of habitual residence, it would then be necessary to consider also the multiplicity of that criterion.

500. Mr. KOUTIKOV (Bulgaria) was in favor of the formula proposed in the Program as the concept of domicile appeared to him to be more specific than that of residence. He wished, however, to emphasize that the Committee should find some means of specifying that the term " domicile " should always be understood in the sense given to it in the legislation in force in the country where protection was claimed.

501. Mr. KRISHNAMURTI (India) thought that Article 4, paragraph (2), might be unnecessary. If an author was domiciled or habitually resident in a Union country and published there, he was automatically protected under Article 4, paragraph (1), so there was no need for the extra provision in the case of published works. In the case of unpublished works, he was unprotected anyway. If Article 4, paragraph (2), were to be included in the Convention, however, it would be preferable to alter the word " shall " to " may. "

502. Mr. GANDZADI (Congo (Brazzaville)) noted that the discussion was concerned with the relative importance which French-speaking countries and English-speaking countries attributed legally to the concepts of domicile or residence. In French law, the concept of domicile was much more important than that of residence; it was therefore necessary to decide whether the protection which it was intended to grant should be wide or restricted. In the first case, it would be appropriate to retain the term " domiciled " qualifying it by the adverb " effectively " in order to define its meaning, and those words might be followed by the expression " habitual residence " in brackets so as to satisfy all points of view.

503. Mr. HESSER (Sweden) pointed out that one reason for the extension of the protection provided in Article 4, paragraph (2), was to ensure conformity with the provisions of the Universal Copyright Convention. Article II of that Convention contained the term " domiciled," and its first Protocol, dealing with protection for the works of stateless persons, used the expression " have their habitual residence in. " He thought it was advisable to keep the two Conventions strictly in line. In any case, it was presumably the function of the country where protection was claimed to interpret the term " domiciled " in accordance with its own laws. He did not think that countries preferring the term " habitually resident " would have great difficulty in practice in working on the basis of " domiciled. "

504. Mr. GOUNDIAM (Senegal) would be inclined to choose the formula " habitual residence " subject to the addition of the word " principal " so as to take account of the observations made by the Delegate of Czechoslovakia.

505. Mr. ADACHI (Japan) preferred the term of domicile and at the same time agreed with the Austrian proposal.

506. Mr. REIMER (Federal Republic of Germany) was in favor of the Austrian proposal, according to which the legislation of the country in which domicile was claimed should be decisive on the subject. He wondered however whether it might not be sufficient to state "... who have either their domicile or habitual residence in one of the countries of the Union. "

507. Mr. GANDZADI (Congo (Brazzaville)) considered that in using the term "principal habitual residence" the concept of domicile would in fact be defined. His Delegation was, therefore, in favor of the formula proposed in document S/1, but continued to think it preferable to specify "effectively domiciled."

508.1 Mr. KEREVER (France) was prepared to accept the formula "habitual residence" which had received the support of many delegations.

508.2 As regards the Austrian proposal, which was very interesting *per se*, it was evident that in order to facilitate the application of the Convention it should refer to a uniform concept; that would not be the case, however, if the decision were left to the legislation of the country concerned. In any event, it would undoubtedly be preferable to specify that it was for the judiciary of the country where protection was claimed under the Convention, and not the judiciary of the country where domicile was claimed, to apply national legislation to the definition of domicile.

509. The CHAIRMAN noted that the majority of the delegations appeared to favor the replacement of the concept of domicile by that of habitual residence which was clearer since it was found in all countries. Furthermore, the use of that term would make the Additional Protocol unnecessary, and that would simplify matters. He therefore invited Members of Main Committee I to state their views regarding the proposed substitution, without prejudice of course to the formula that would be adopted by the Drafting Committee.

510. *By 20 votes to 16, with 5 abstentions, the proposal was adopted.*

511. The CHAIRMAN recalled that the Delegate of the Netherlands had raised the question at what point the author should have his domicile or his habitual residence in the countries of the Union. As regards published works, the predominant opinion was that the author should be a national of a country of the Union at the time of publication; in such a case, the work would remain protected even if the author subsequently lost that nationality. The situation was complicated in the case of unpublished works as it was always difficult to prove the time of their creation. In his opinion, the Conference might restrict itself to dealing with that question in its report without attempting to solve it in the actual text of the Convention, in view of the difficulties which such a procedure would involve.

512. Mr. BELINFANTE (Netherlands) did not in any way underestimate the difficulties raised by his proposal. He would nevertheless like to know the attitude of the various delegations present in the hope that a joint position might be reached.

513. Mr. KRISHNAMURTI (India) recalled his earlier objection to Article 4, paragraph (2), on the ground that it was unnecessary. He also pointed out that the question of when an author became domiciled in a country would give rise to a complicated situation and thus make it difficult to apply the Convention, because it would be necessary to consider six categories of works, namely works published before, during and after the author's period of domicile in the country concerned and unpublished works created before, during and after that period. It would be easier to provide for the assimilation of the authors in question to the nationals of the country concerned under the municipal law of that country.

514. The CHAIRMAN considered that so far as published works were concerned, there would be no difficulty if the first publication took place in a country of the Union. In the contrary case, the author would have to be a national of a country of the Union at the time of publication. He asked the Director of BIRPI to express his opinion on that point.

515. Mr. BODENHAUSEN (Director of BIRPI) considered that it was for the countries and especially the national judiciaries and not for BIRPI to express an opinion as to what interpretation should appropriately be given to the Convention.

516. Mr. IOANNOU (Greece) pointed out that under Article 4(2), which developed to some extent the concept contained in paragraph (1), it was only the domicile at the time of publication which was important in the case of published works. As regards unpublished works, it was practically impossible to know for certain what the time of creation was; in that case it would be necessary to take into account the time when protection was requested.

517. The CHAIRMAN proposed to conclude the discussion on that point, taking note of the attitude adopted by the various countries.

The meeting rose at 12:30 p.m.

SECOND MEETING

Tuesday, June 13, 1967, at 2:40 p.m.

COUNTRY OF ORIGIN (ARTICLE 4(4))

518. The CHAIRMAN noted that no amendment had been proposed to Article 4(3). In relation to Article 4(4), which referred to the definition of the country of origin, he invited the Main Committee to consider a proposal of the Delegation of Switzerland by which the country of the Union of which the author was a national should be regarded as the country of origin for his published or unpublished works. That proposal, which was of undoubted interest, would introduce an essential change into the rules of the Convention. Thus, if an author who was a national of Switzerland first published a work for the first time in Germany, the term of protection after his death would be 70 years under the existing rule and only 50 years if the proposal of Switzerland were to be adopted.

519. Mr. WALLACE (United Kingdom) said that the United Kingdom made no rules concerning reciprocity with respect to the term of protection and was not, therefore, interested in determining the country of origin of a work. It had in the past suggested the elimination of the country of origin conception because it led to misunderstandings and its removal would result in simplification of the Convention. His Delegation therefore supported the Swiss proposal. He doubted, however, that it would be possible, during the current session, to make the considerable modifications to the Convention that would be required if the Swiss proposal were adopted.

520. Mr. STRNAD (Czechoslovakia) admitted that the definition proposed by Switzerland would be likely to simplify the system of the Berne Convention, but it would have a bearing on other articles of the Convention and on a tradition that had been established for 80 years. Although its object was to enlarge the protection of the authors' rights, it ran the risk of restricting that protection in certain cases, in particular for authors who were nationals of a country outside the Union but who resided in a country of the Union. Consequently, the Delegation of Czechoslovakia was against the proposal.

521. Mr. BELINFANTE (Netherlands) in principle supported the proposal of Switzerland, which would be a simplification, but before accepting it he wished to know whether it would entail changes in other articles. At all

events, if that proposal were to be adopted, an author would enjoy the protection granted by his own country, whatever the country of publication.

522. Mr. GAE (India) said that his Delegation's proposals concerning paragraphs (4), (5), and (6) of Article 4 had been handed in to the Secretariat and would be circulated to the Main Committee later. India supported the Swiss proposal, the substance of which was very similar to the Indian proposal regarding paragraph (4). Under the existing definition of country of origin, authors from countries in which the period of protection was relatively short had an incentive to publish in countries where the period of protection was longer. That meant that a more developed country might be able, because it offered a longer term of protection, to lure an author away from a less developed country. It would be better if the country of the Union of which the author was a national were the sole country of origin of all his works.

523. Mr. HESSER (Sweden) said that although the Delegation of Sweden had proposed that the principle of nationality should be applied fully in the Convention, it was not prepared to accept the Swiss proposal. Adoption of the proposal would result in a simplification of the wording of the Convetion, but it would also lead to a number of practical difficulties. It would, for instance, be difficult to determine the country of origin of a work produced by several authors of different nationalities, of a work produced by an author of dual nationality, and of a work produced by an author who subsequently changed his nationality. It would seem better, therefore, to adhere to the system in force.

524. The CHAIRMAN recalled that the problem was a very old one and that, from the outset, it had been decided to determine the country of origin in relation to the place of publication of the work and not in relation to the country of which the author was a national; that decision had been motivated by the desire to make the term of protection of 50 years apply when publication took place in a country of the Union

525. Mr. KEREVER (France) took a favorable view of the proposal of Switzerland, which had the merit of being simple and of eliminating certain problems that had been of concern to the Delegation of France but its consequences should be weighed. It would be advisable to eliminate completely the concept of publication in the determination of the country of origin. In view of the considerable scope of the proposed change, Mr. Kerever suggested that the Main Committee should not decide until after a period of reflection.

526. The CHAIRMAN proposed that consideration of the question of the country of origin should be deferred.

527. *It was so agreed.*

DEFINITION OF "PUBLISHED WORKS" (ARTICLE 4(5))

528. The CHAIRMAN recalled that several amendments had been proposed by Governments to paragraph (5) of Article 4, for which the Programme envisaged minor changes. The question that had arisen was whether "published works" meant lawfully published works or, as the United Kingdom had proposed, works published with the consent of their authors. In the former case, the definition would also apply to works published under the régime of the compulsory license without the consent of their authors, whereas in the latter case that would not be possible.

529. Mr. WALLACE (United Kingdom) said the question was whether a work was to be considered as published, and therefore protected by the Convention, if its publication was a result of compulsory license. To the United Kingdom it seemed right in principle to speak of the consent of the author. United Kingdom law considered publication to be publication with the author's consent, and defined publication in that way. It did not take account of publication by means of a compulsory license. The question was also of practical importance when considering the term of copyright because the expressions "lawfully published" and "lawfully made available" were used in later articles relating to the time of commencement of the period of protection. It was important that the period of protection should not start before the date of publication with the author's consent.

530. Mr. STRASCHNOV (Monaco) recalled that when the 1965 Committee of Governmental Experts had studied that aspect of the matter, it had thought it preferable to use the expression "works lawfully published." In the case of an author who was a national of a country outside the Union, it was obviously of interest that the work should be considered as published as soon as possible. If the work of a national of a country outside the Union had been published as a phonograph record in countries of the Union without the consent of the author, that work would remain as "unpublished" and would not be protected. That was why the Delegate of Monaco was against the introduction of the idea of the author's consent in Articles 4 and 6. There were, however, numerous cases where the Convention permitted publication without the consent of authors. For instance, Article 10*bis* referred to the use of works heard or seen for the purpose of reporting current events. The Delegate of Monaco was therefore in favor of the text of paragraph (5) proposed by Sweden.

531. Mr. GAE (India) said that he did not think there would be any great difference in practice whether the term "lawfully published" or the term "published with the author's consent" were used. In the case of a published work, the term of copyright would, in most countries, expire 50 years after the author's death and in the case of cinematographic and photographic works the term of copyright would expire after the prescribed length of the time from the date of making. The author of a published work should be entitled to protection from the date on which he made his work available to the public. In the case of cinematographic and photographic works, the period of protection should start on the date on which the work was made.

532. Mr. CURTIS (Australia) said that his Delegation supported the amendment proposed by the United Kingdom. The fact that a work could be lawfully published in a country of the Union without the consent of the author ought not to affect the existence of copyright in the work, the term of protection of the work, or the country of origin of the work for the purposes of the Convention. To suggest that any of those matters could be affected without the author's consent would seem to deprive the author of a right to which he was entitled. The United Kingdom amendment would give the author control over his own work.

533. *The amendment proposed by the United Kingdom was adopted by 22 votes to 12, with 2 abstentions.*

534. The CHAIRMAN called the attention of the Committee to the meaning to be attached to the words: "...and made available in sufficient quantities to the public." It could be regarded as a necessary condition that a sufficient number of copies should be distributed to the public, or it could be considered that the simple fact of distribution was sufficient. Some countries, for example South Africa and Luxembourg, had declared themselves in favor of a definition by which "published works" would designate works lawfully published, whatever the mode of manufacture of the copies.

535. Mr. STRASCHNOV (Monaco) pointed out that that concept was based on the statement of reasons in document S/1, where modern means of dissemination were taken into consideration, but he thought that the actual definition of publication no longer corresponded to modern means of dissemination. When an author of a country outside the Union first published a work in a country of the Union, it was in his interest that his work should be regarded as published as rapidly as possible. The Article under consideration should therefore be amended to take account of present-day techniques. That was why the Delegation of Monaco was in favor of the proposed change.

536. The CHAIRMAN pointed out that where scores or films were concerned, they were made available to the public by intermediaries. The objection that had just been raised therefore seemed to him to be justified.

537. Mr. DE SAN (Belgium) shared the views of the Chairman and the Delegate of Monaco. The criterion to be maintained was that of availability to the public. Belgium had asked that the idea of "in sufficient quantities" should be deleted, but wished to see the definition proposed by South Africa and Luxembourg adopted.

538. Mr. KEREVER (France) recalled that the Delegation of France had proposed an amendment to paragraph (5) concerning the definition of publication of a cinematographic work; since consideration of matters relating to cinematographic works had been deferred to another stage in the discussion, he reserved the right to return to that amendment later. In relation to the amendments proposed by Monaco and Belgium, he was struck by the analogy between the situation of the works under consideration and that of cinematographic works, and he wondered whether there were not grounds for deferring the discussion on musical works until the case of cinematographic works was to be considered.

539. The CHAIRMAN pointed out, in that regard, that the problem was fundamentally the same for the various works referred to in paragraph (5).

540. Mr. REIMER (Federal Republic of Germany) thought that, in principle, the proposal of South Africa was justified. Nevertheless, he pointed out that there could be distribution without publication in certain instances, for example when a publisher distributed to booksellers a work that was subsequently banned. The wording proposed by South Africa should therefore be amended as follows: "The expression 'published works' means works lawfully published, whatever may be the means of manufacture of the copies, provided that the distribution of such copies *shall have had the effect* of making the work available to the public."

541. Mr. KRISHNAMURTI (India) said that his Delegation recommended the deletion of the words "in sufficient quantities" from the definition of published works given in paragraph (5) of Article 4.

542. Mr. BELINFANTE (Netherlands) thought, like the Delegate of India, that the words "in sufficient quantities" could have different meanings according to the case. Although the legislation in force in the Netherlands did not contain any precise stipulation in that respect, no difficulty had ever arisen from the fact of the publication of a small number of copies. He therefore supported the proposal of India.

543. The CHAIRMAN pointed out that the deletion of the words "in sufficient quantities" proposed by India would not suffice to resolve the problems raised by the wording of that paragraph, since in the case of cinematographic, musical or dramatic works, copies of those works were made available not to the public but to users (cinemas, concert halls, theaters), which made them available to the public. As a vote could be taken only on written proposals, he suggested that the Delegate of the Federal Republic of Germany should confer with the representatives of the countries that had proposed other amendments with a view to the production of a joint proposal.

544. Mr. KAMINSTEIN (United States of America), speaking at the invitation of the Chairman, said that the rapid advances in computer technology had given rise to legal difficulties in the United States. It had been found that some of the old definitions were no longer applicable, since a work could be placed in a computer system and no further copies of it made until they were required. He urged representatives to take that matter into consideration in their deliberations.

545. The CHAIRMAN proposed to adjourn the remainder of the discussion until the following day.

546. *It was so agreed.*

CRITERION OF TERRITORIALITY (ARTICLE 5)

547. *The text of Article 5, as given in the Program of the Conference, was unanimously accepted.*

CRITERION OF PUBLICATION (ARTICLE 6(1))

548. *The text of Article 6, paragraph (1), as given in the Program of the Conference, was unanimously accepted.*

CRITERION OF PUBLICATION : WORKS OF ARCHITECTURE, GRAPHIC AND THREE-DIMENSIONAL WORKS (ARTICLE 6(3))

549. The CHAIRMAN recalled, with reference to the new wording proposed for paragraph (3) of Article 6, that under the terms of the sole provision existing hitherto, the country where the building to which the work was affixed was situated was regarded as the country of origin when the work was protected under the rules of the Convention. Under the terms of the paragraph proposed in the Program, authors who were not nationals, of one of the countries of the Union would enjoy for their works of architecture or graphic and three-dimensional works affixed to land or to a building, in the country of the Union where those works had been erected or so affixed, the same rights as national authors and, in the other countries of the Union, the rights granted by the Convention. It was therefore an extension of the protection granted by the Convention that was concerned.

550. Mr. LENNON (Ireland) said that his Delegation was not in favor of the extension of protection. If, however, the majority of delegations favored such extension, the Delegation of Ireland would not oppose it. It would be preferable if adoption of the principle of extension of protection were not made a condition for ratification of the Convention because a certain time limit would have to elapse before the necessary legislation could be enacted.

551. Mr. WALLACE (United Kingdom) endorsed the opinions expressed by the representative of Ireland. The extension of protection would necessitate a change in United Kingdom law, for which there was no great demand in his country. If, however, the majority of countries were in favor of the extension of protection, the United Kingdom would not oppose it.

552. Mr. STRASCHNOV (Monaco) first stated that he was not against the proposed provision, but he pointed to the significant divergence that existed between paragraphs (1) and (3) of Article 6. Paragraph (1) stipulated that an author who was not a national of a country of the Union was protected when he first published a work in a country of the Union. It should be stated whether or not the provisions of paragraph (3) would be applicable even in the case of an author who was a national of a State outside the Union had created a three-dimensional work of which the original was affixed to a building in a country outside the Union and of which the only copy was subsequently affixed to a building in a country of the Union.

553. The CHAIRMAN observed that that was a drafting point, and that he had already proposed a wording that would resolve that difficulty. He thought that it could be left to the Drafting Committee to make the necessary alterations, and he invited the Main Committee to decide on the principle of paragraph (3) of Article 6.

554. Mr. CURTIS (Australia) said that his Delegation had no objection to the inclusion in the Convention of a provision for the protection of a work of architecture erected in a country of the Union. Difficulties might arise, however, in connection with graphic and three-dimensional works affixed to land or to a building. The degree of permanence of those works was not the same as that of a work of architecture. It might be advisable to defer a decision on paragraph (3) until the text had been carefully examined by the Drafting Committee.

555. *The principle of paragraph (3) of Article 6 was approved unanimously with one abstention.*

CRITERION OF DOMICILE (continued) (ARTICLE 6(2) AND 6(4))

556. Mr. DE SAN (Belgium) pointed out that there had been no question of substituting the concept of habitual residence for that of domicile in paragraph (2) of Article 6. If that substitution were to be made, it would be necessary to make a similar change to paragraph (4) of Article 6.

The meeting rose at 4:35 p.m.

THIRD MEETING

Wednesday, June 14, 1967, at 9:30 a.m.

ORGANIZATION OF THE WORK OF MAIN COMMITTEE 1 (continued)

557. Mr. MASOUYÉ (BIRPI) drew the attention of members of the Main Committee to the working document S/INF/5 which had been adopted on the previous day and which contained the general work program. For Articles 4, 5, and 6, of the Berne Convention, the following documents were before the Main Committee :

Article 4 to 6 : S/44, General proposals by the Chairman; Article 4(2) : S/26, France; S/22, Austria; Article 4(4) : S/27, France; S/41, India; Article 4(5) : S/27, France; S/41, India; S/42, United Kingdom; S/49, Netherlands; S/53, South Africa; Article 4(6) : S/42, United Kingdom; S/43, Hungary and Poland; Article 6(2) : S/28, France; S/42, United Kingdom; Article 6(3) : S/52, Australia.

558. The CHAIRMAN reminded the Main Committee that Articles 4, 5, and 6 had been given partial consideration on the previous day. In regard to Article 6(3) the representative of Australia had submitted a proposal (S/52) which had been accepted in principle, but required further explanation.

CRITERION OF PUBLICATION: WORKS OF ARCHITECTURE, GRAPHIC AND THREE-DIMENSIONAL WORKS (continued)

559.1 Mr. CURTIS (Australia) said that on the previous day he had indicated certain difficulties he had with the text of the proposed new paragraph (3) of Article 6 (S/1), in particular the difficulty of determining the meaning of fixation to land of sculpture or three-dimensional works.

559.2 In his opinion, there would be substantial support for the principle of protection for works of architecture erected in a country of the Union, since such works were clearly intended to be permanent. His Delegation's proposals were intended to restrict paragraph (3) to architecture only.

559.3 There was a difference between works of architecture and other graphic works to which Article 6, paragraph (3), might apply, which rendered special provisions for the former desirable. Works of architecture were not capable of being published in the normal way, since only very exceptionally were models of buildings produced and sold to the public.

560.1 Mr. WALLACE (United Kingdom) agreed with the views of the Delegate of Australia.

560.2 To illustrate possible difficulties : if a picture painted by a national of a country not a member of the Convention were bought by a gallery in the United Kingdom and displayed in that gallery, the question of protection under the Convention would not arise. However, if on the following day the same artist produced a sculpture which was then bought and placed on a plinth outside the gallery, the sculpture would—unless the paragraph in question were restricted to architecture—be protected. Clearly that was illogical.

561. Mr. REIMER (Federal Republic of Germany) said he was not in favor of the Australian proposal. It was true that Article 6(3) gave rise to difficulties of interpretation, but those difficulties did not justify the deletion of the words "or graphic and three-dimensional works affixed to land or to a building." The question arose whether, under those conditions, protection would have to be given to works published in countries other than countries of the Union. The Delegation of the Federal Republic of Germany thought that this should be done, and it proposed that the Drafting Committee should be asked to find a form of words which would satisfy everyone.

562.1 Mr. HESSER (Sweden) said the principle underlying the proposal in document S/1 was not new. It had been indicated at the Brussels Conference that fixation of sculpture in a permanent way would constitute a link between the country of origin and the work, which would be of importance as regards copyright. The Brussels Conference had considered that the existence of such a link made the country in question the country of origin (Article 4, paragraph (5), second sentence).

562.2 Under the proposed new provision in Article 6, such a link would also constitute a criterion of eligibility for protection. That was particularly interesting, since some two years previously the Swedish proposal had been considered superfluous, the works concerned being, according to the Brussels Conference, protected by virtue of fixation.

562.3 In his opinion, where fixation in a permanent way to a building in a country of the Union provided protection for the author, it should do the same for the owner of the building as the person who had fixed the work in a permanent way. A picture hung in a gallery, for instance, could easily be removed, and the link was consequently very weak; however his Delegation considered it reasonable that a permanent piece of architecture in a country of the Berne Union should be granted protection.

563. Mr. STRNAD (Czechoslovakia) wondered whether, in view of what had been said in support of the Australian proposal, a work of art displayed in a gallery in a country of the Union might not be deprived of protection, whereas a statue affixed to land or incorporated in a building would be protected. Such a situation appeared to him illogical. The rule in question did not apply to works of art placed provisionally in a gallery, but it was possible to conceive of works of art requiring protection which were incorporated in a building—mosaics, frescos, etc.

564. Mr. SCHOEMAN (South Africa) favored inclusion of the proposed new provision. The works of art affixed to the walls of the Swedish Parliament building deserved protection. If the paragraph were to be referred to the Drafting Committee, consideration might be given to using the formula "permanently affixed to land or a building in a country of the Union." The use of such a formula might help to overcome difficulties of interpretation.

565. The CHAIRMAN said that the case might arise of a copy of a work of art carried out in a country outside the Union, which was published or incorporated in a building in a country of the Union. It could be protected in accordance with the rules of the Berne Convention. Moreover, why should protection be limited to works of architecture? A formula would have to be found which covered graphic and three-dimensional arts. Perhaps it would have to be indicated that the works concerned were originally intended to be incorporated in a building. All those questions could be studied by the Drafting Committee, which would endeavor to find a solution acceptable to all.

566.1 Mr. CURTIS (Australia) said his Delegation was concerned with achieving acceptable compromises. The reference by the Delegate of Sweden to Article 4, paragraph (5), suggested a possible compromise which might unite all points of view.

566.2 He thought that, given ample opportunity to consider the text produced by the Drafting Committee after it had taken account of the morning's discussion, an acceptable result could probably be obtained.

567. The CHAIRMAN said that the Drafting Committee would submit a proposal to the Main Committee.

568. Mr. STRASCHNOV (Monaco) approved the procedure suggested by the Chairman. Under Article 6(1), the work of a national of a country outside the Union, which was incorporated in a building in a country of the Union but was not being published for the first time, would not enjoy protection. But Article 6(3) granted protection to authors who were not nationals of a country of the Union, as soon as the work was erected in a country of the Union, even if it had already been published in a country outside the Union. Hence there was some contradiction between Article 6(1) and Article 6(3).

569.1 The CHAIRMAN said that everything affecting the structure of the Article, and all the problems which it raised, would be considered by the Drafting Committee.

COUNTRY OF ORIGIN (continued)

569.2 He reminded the Delegation of Switzerland that it was to submit to the Secretariat a document on the definition of a country of origin (Article 4(4)).

570. Mr. CAVIN (Switzerland) informed the Chairman that the document would be submitted in the course of the morning.

DEFINITION OF "PUBLISHED WORKS" (continued).

571. The CHAIRMAN, referring to the definition of published works (Article 4(5)(S/1)), reminded the Main Committee that the majority of members had been in favor of replacing the word "lawfully" by the term "with the consent of their authors." In connection with that text, it had been made clear that being made available to the public meant being made available to the manager of a concert hall or cinema and that the work was subsequently rendered public through the intermediary of the theater and cinema. On that subject, the following documents were before the Main Committee: S/49 (Netherlands), S/53 (South Africa), and S/60 (Delegations of South Africa, Germany (Fed. Rep.), Luxembourg, and Monaco), the text of which would be distributed later. All those proposals were similar. Finally, the proposal of France (S/27) suggested the insertion in paragraph (5) of a special provision dealing with the conditions under which a cinematographic work could be considered as having been published.

572. Mr. STRASCHNOV (Monaco) thought it essential that the definition of publication should be capable of application to all works, as in the existing system of the Berne Convention. There was no essential difference between the method of distribution of cinematographic works and the methods of distribution of musical and dramatico-musical works; copies or scores were offered for hire, in two or three copies only, which was fewer than in the case of cinematographic works. The definition proposed by the Delegation of France would create difficulties for musical and cinematographic works. The work was to be regarded as having been published as from the date on which one or more copies had been distributed with a view to public performance, but it was obvious that the day of distribution was not the same as the day of public performance. It should therefore be considered that publication took place on the day of distribution, as it seemed dangerous to introduce the idea of public performance, a new concept which could be applied equally well to the cinema and to television and which did not belong to the terminology of the Berne Convention. Hence he felt that caution was necessary. The principle contained in the French proposal was acceptable, but the wording of the proposal should be changed.

573. Mr. TOUZERY (France) said he would prefer the Main Committee to defer a decision on the question of the publication of cinematographic works. The reason for the amendments which had been tabled to Article 4 was that the existing text of the Berne Convention was no longer adapted to modern thought forms. He proposed that the Main Commission should take a decision on documents S/53 and S/49 and he reserved the right to speak again when a solution had been found to the problem of a general definition of published works.

574.1 Mr. HESSER (Sweden) favored maintaining the existing text. It had been repeatedly mentioned that the making of one or two copies constituted publication, but it must be remembered that there were cases where hundreds, even thousands of copies must be distributed before publication could be assumed.

574.2 The notion of sufficient quantities had been adopted at the Brussels Conference to prevent "back door" access to the Berne Union. Prior to that Conference, a publisher outside the Union had, after distributing only ten or 20 copies of the work in countries of the Berne Union, been able to claim the protection of the Berne Convention. The requirement "in sufficient quantities" had been added at the Brussels Conference to prevent such occurrences.

574.3 In his opinion, the adoption of a text stating that one, two, or three copies sufficed to constitute publication would reopen the "back door." Furthermore, he thought the proposal by South Africa would have the same effect, since ten copies of a book placed in a public library in a Union country would mean that the book was accessible to the public. Various cases, ranging from hundreds of copies in the case of books to one or two copies in the case of films, must be covered: the compromise formula reached by the Brussels Conference was sufficiently flexible for the purpose. If reasonably construed, "sufficient quantities" should mean "sufficient for the purpose under consideration."

575. Mr. REIMER (Federal Republic of Germany) supported the Delegate of Monaco. The question was a general one, and a formula would have to be found which applied to all cases. The discussion had shown that in some cases film copies were distributed in a small number to theater managers, and that musical scores were distributed to a few orchestras, which was sufficient to constitute publication. Moreover, a clear distinction must be maintained between making a work available to the public and other actions such as the performance of a musical work, the broadcasting of that work, etc. He suggested that the Main Committee should come back to the question when the relevant document was available.

576. Mr. TOUZERY (France) said that in principle his Delegation would support the text proposed by the Delegation of the Netherlands (S/49), which it considered to be the best drafted proposal. The phrase "satisfy the requirements of the public" (S60) was somewhat subjective and vague. He preferred the wording "make the work accessible to the public."

577. Mr. BELINFANTE (Netherlands) said that the text submitted by his Delegation was in fact based on a suggestion by the Chairman. Its purpose was to eliminate the idea of "sufficient quantity" contained in the text of document S/1, because those words provided no guarantee from the legal point of view. The Berne Convention adopted a liberal attitude towards authors from countries outside the Union, but it had to be admitted that the concept of publication could give rise to abuses. Hence it was essential to avoid an intransigent attitude which would involve protecting only works published in countries of the Union.

578.1 Mr. WEINCKE (Denmark) said his Delegation agreed in principle that a single formula was needed to cover all cases of publication.

578.2 He was opposed to the proposal by the Delegations of Luxembourg and South Africa and to the proposal by the Delegation of the Netherlands, since he feared they might result in the conclusion that the making and distribution of very few copies constituted publication and entitled a work to protection under the Convention.

578.3 He agreed with the Delegation of the Netherlands that the words "in sufficient quantities" were the cause of certain difficulties, and supported the proposal made orally the previous day by the Delegate of India that the words be deleted from the proposed text despite the fact that they had originally been included in Article 4 to prevent fictitious publication. If it was not found possible to delete the words from Article 4, paragraph (5), he hoped their inclusion in the Convention would be restricted to Articles 4 to 6; their inclusion in Article 7 was superfluous. His Delegation favored adoption of the proposed text with the deletion of "in sufficient quantities."

579.1 Mr. GAE (India) said he had pointed out on the previous day that the essential criterion of publication was whether copies had been issued and made available to the public. Once that had been done, his Delegation considered that a work should be treated as published. The words "in sufficient quantities" were unnecessary and liable to cause confusion, which was why he had proposed that they be deleted.

579.2 As regards the question of how a film could be considered available unless published in sufficient quantities, which had been raised at the previous meeting, he considered that sale or hire or offer for sale or hire or the availability of copies to the public constituted proof of publication.

580.1 Mr. HESSER (Sweden) said the Netherlands proposal might be taken to mean that any copy made available and exhibited to the public constituted publication. Thus public sculptures, paintings and buildings would be published, since the public could see them.

580.2 The word "availability" was unclear since it was not specified to whom the works were made available. It could not, for example, mean available to an operator of a film company showing a film for the first time. Could it mean available to part of a film company or to some other body? The formula was too wide and provided the possibility for protection to be obtained from the Berne Union by parties not having the slightest connection with it.

581. Mr. STRNAD (Czechoslovakia) thought that the idea of making a work available to the public was a traditional one in the publishing field; it was easy to determine when it had taken place. If making a work available to the public was sufficient to constitute publication, what period was involved and when was the work made available? This was not merely a legal question but a practical one, and it arose in the case of simultaneous editions, for instance. It was essential to establish the moment at which the work was made available, and any uncertainty on that point would prevent a threat to important interests.

582. Mr. IOANNOU (Greece) found the proposal of the Delegation of the Netherlands interesting. He suggested that in the proposed text the words "in such a manner as to make" should be replaced by the words "with the object of making," in order to indicate that the work was accessible to the public, and hence published at the wish of the author.

583.1 The CHAIRMAN thought it might be useful to summarize the discussion which had taken place so far. The majority of delegates had shown a preference for a general definition of publication, which would include cinematographic works. The Delegation of France had expressed itself in favor of a special definition of such works. The Main Committee was seeking a general formula which could be applied to cinematographic works. The text proposed in document S/1 had been felt to be inadequate in regard to the concept of making works available to the public, a concept which assumed different forms when applied to books, theatrical, musical or cinematographic works, but which was at the basis of all communications to the public. The Main Committee would have to search for the best formula to settle this problem.

583.2 The joint proposal (S/60) introduced the concept of "requirements of the public." The value of this concept could be seen from the following example: supposing that a single copy of a cinematographic work was sent to Cannes for showing before a restricted public. In that case, the condition of publication would not be fulfilled, as the requirements of the public would not have been met. It was therefore necessary to find a form of words which would be as flexible as possible.

583.3 The CHAIRMAN invited discussion on the joint proposal.

584. Mr. HESSER (Sweden) said that subject to drafting amendments his Delegation was prepared to accept the amendment proposed by the Delegations of South Africa, Germany (Fed. Rep.), Luxembourg, and Monaco (S/60), as a compromise.

585. Mr. WALLACE (United Kingdom) remarked that it was difficult to decide which formula was likely to be the most successful; he favored the one suggested in document S/60. He proposed, however, that in the text set out in that document, the word "reasonable" be inserted before the word "requirements" and that the words "having regard to the nature of the work" be added at the end of the sentence, to show clearly that different kinds of publication applying to different circumstances were envisaged.

586. Mr. TOUZERY (France) agreed that to make a work accessible to a limited public did not constitute publication. He suggested the use of the expression "public in general" which appeared in the International Telecommunications Convention. That would solve the problem of a limited or specialized public, of private showings, etc.

587. Mr. BELINFANTE (Netherlands) suggested that a working group should be set up, as he had some comments to make on document S/60.

588. Mr. CIAMPI (Italy) supported that proposal.

589. Mr. DE SAN (Belgium) thought that the Netherlands proposal and the joint proposal were both equally attractive, provided that they were redrafted.

590.1 The CHAIRMAN accepted the suggestion that a working group should be established, but asked the Main Committee to state first of all which text it preferred.

590.2 He put to the vote the joint proposal (S/60), which was the furthest removed from the proposal in document S/1.

591. *The proposal was adopted by 26 votes to 6, with 9 abstentions.*

592. Mr. STRNAD (Czechoslovakia) said he had abstained from voting because the concept of putting a work at the disposal of the public seemed to him to be too vague and hence to jeopardize the whole text.

593. Mr. VAUGHAN (International Federation of Musicians) said he would be grateful if in the definition and study of the publication of works, and elsewhere, the mere hiring of works were not considered as "making available." As had been shown in the International Federation of Musicians' document, scores and orchestral works must be available for purchase, not only by organizations but by individuals. Performances had often had to be abandoned because a work was not available, since hiring fees were prohibitive, especially for smaller organizations.

The meeting rose at 12:30 p.m.

FOURTH MEETING

Wednesday, June 14, 1967, at 2:40 p.m.

CRITERIA OF ELIGIBILITY:
SWISS PROPOSAL (S/63)

594. The CHAIRMAN invited the Delegate of Switzerland to introduce his Delegation's proposed amendment (S/63).

595.1 Mr. VOYAME (Switzerland) said that his Delegation had kept as far as possible to the text of document S/1 and had not endeavored to improve the drafting, which was the function of the Drafting Committee. It had obviously not been possible to take account of the discussions which had taken place since the opening of the Conference, but the Delegation of Switzerland had already replaced the concept of domicile by that of habitual residence. Finally, in order to bring out more clearly the substance of the proposed amendments, the Delegation of Switzerland had not taken into account the Chairman's proposal for rearrangement; there again, the Drafting Committee would be able to make the necessary changes.

595.2 The only major alterations which were proposed concerned Article 4. It might perhaps be possible to delete Article 5, and part of the existing Article 4 might be added to Article 6.

595.3 In Article 4(1), which laid down the conditions under which protection was granted, and the basis and extent of that protection, it was proposed to insert a new paragraph clarifying the first of these two points and enabling exceptions to be made to the provisions of paragraph (3).

595.4 Paragraph (2) would be retained unchanged, apart from the fact that the concept of domicile would be replaced by that of habitual residence.

595.5 Paragraph (3), which would correspond to some extent to paragraph (4) in document S/1, would provide for two exceptions to the provisions of paragraph (1) concerning the basis and scope of protection: (a) in the case of cinematographic works, the country of origin would be not the place of publication but the country of the maker. (As the concept of the maker of a film appeared here for the first time in the Convention, it would be defined in a subparagraph); (b) in the case of works of architecture or graphic and three-dimensional works affixed to land or to a building, the country of origin would be the country in which the work was situated.

595.6 Paragraph (4) would indicate that in case of plural nationality the last nationality acquired would prevail; that would have to be made clear owing to the new importance attached to the criterion of nationality.

595.7 Finally, paragraph (5) would reproduce the existing paragraph (3), except that the words "country of origin of the work" would be replaced by "country of origin," as that concept had been adequately explained in the preceding paragraphs.

595.8 The definition of publication and of simultaneous publication would no longer be included in Article 4, but would be incorporated in Article 6.

595.9 As had already been mentioned, Article 5 would be deleted.

595.10 In regard to Article 6, the only change would be the insertion of a new paragraph, taken from the existing Article 4, defining the concepts of publication and simultaneous publication.

595.11 In the view of the Delegation of Switzerland, those changes would not only simplify the regulations considerably but would also offer a number of substantive advantages. In particular, the treatment of a work would cease to be governed by its place of publication but would depend, basically, on the nationality of the author, which was a more reliable criterion; in that way, all the works of a particular author would be treated identically.

595.12 He would like to forestall certain objections which might be raised. To those who feared that the interests of authors might be endangered, he would point out that the only disadvantage would be that an author who was a national of one of the countries of the Union would no longer enjoy the advantage of being able to publish a work for the first time in a country in which he would enjoy a longer term of protection; in order to avoid that drawback, it would only be necessary to put foreign authors on exactly the same footing as nationals, deleting the exception provided for in Article 7(7). As far as the interests of publishers were concerned, there would be no change in the case of authors who were not nationals of a country of the Union, as they would be perfectly free to publish their works for the first time in a country of the Union; as regards authors who were nationals of a country of the Union, it should be noted that the present system benefited publishers in certain countries of the Union at the expense of those in other countries of the Union, and that the new regulation would give equality of treatment to all the publishers in the countries of the Union.

596.1 Mr. Reimer (Federal Republic of Germany) reminded the Main Committee that, from the earliest days of the Berne Convention, a careful distinction had been drawn between the criterion of nationality and the criterion of territoriality, and that it had been decided to regard the country of first publication as the country of origin. It should also be noted that the place of first publication was normally the "cultural center" of the author, and that the work was generally conceived and brought to birth in that place.

596.2 Moreover, the author ought to have the possibility of choosing the country of origin of his work himself; he ought to be free to choose his publisher and to have his work published for the first time in a country which would ensure him a longer term of protection.

596.3 Further, it was easy to determine the place of first publication, but it was not always easy to determine the author's nationality.

596.4 Finally, for an author who was not a national of a country of the Union, the place of first publication was the sole criterion applied, and it was therefore absolutely indispensable. Hence the principle should be retained of considering as the country of origin the country in which the work was first published.

596.5 For those reasons, the Delegation of the Federal Republic of Germany regretted that it could not support the proposal of the Delegation of Switzerland.

597.1 Mr. Kerever (France) congratulated the Delegate of Switzerland on the lucidity of his statement.

597.2 From the point of view of clarity, the text proposed by the Delegation of Switzerland offered undeniable advantages, particularly because it eliminated any contradictions between paragraph (1) and paragraph (4).

597.3 Nevertheless, it would be unwise to abandon the criterion of the place of origin in favor of the criterion of nationality alone. As the Delegate of the Federal Republic of Germany pointed out, that would have the effect of preventing an author from choosing the place of first publication of his work; moreover, it would have repercussions on Article 7(7); to replace the concept of domicile by that of habitual residence would not make up for that serious drawback. In addition, the situation in regard to the term of protection would become extremely complex in the case of multiple authorship.

597.4 Hence the Delegation of France felt that it ought not to approve the amendments put forward by the Delegation of Switzerland.

598.1 Mr. Krishnamurti (India) said that he fully supported the Swiss amendment to paragraph (1) of Article 4 which was in agreement with the opinion expressed by his own Delegation in document S/41.

598.2 He appealed to the Delegates of the Federal Republic of Germany and France to reconsider their position for, in his opinion, the adoption of the Swiss proposal would increase, rather than diminish, the protection given to authors' works. Obviously, in the absence of any provision for the protection of the works of Union authors published in countries outside the Union, the criterion for protection had had to be the country of first publication. Since, however, it was now proposed that a Union author should be able to publish in any country without losing his rights, it would be more appropriate if the criterion were the author's nationality.

598.3 He pointed out that, under the existing arrangement, the works of an Indian author published in Germany, for example, would enjoy a 70-year *post mortem* period of protection, as compared with only 50 years if published in India. Conversely, the works of a German author published in India—for much research on India and India languages was carried out in Germany—would have a *post mortem* period of protection of only 50 years.

598.4 A further advantage in adopting the author's nationality as the criterion for protection was that nationality was easy to identify. Only if the author's country offered a lower term of protection than the country of publication might there be some difficulty; but, in that case, the principle of comparison of terms could be applied. Even if, with the application of that principle, the author received less protection for his works than that prevailing in the country of publication, it would still be no less than in his own country; and such cases should act as an incentive to Governments to ensure that the level of protection for the works of their authors when published in other countries was raised.

598.5 Lastly, the Swiss proposal would not only afford greater protection for authors' works and be more practicable but would also render more effective the principle of assimilation of foreign authors to nationals.

599.1 Mr. Hesser (Sweden) said that, while there was merit in the Swiss proposal, his Delegation found difficulty in supporting it. Although the proposed new text of Article 4 was shorter than the existing version, Article 6, as now proposed, was longer, since two paragraphs from Article 4 had been incorporated in it.

599.2 The real point at issue was whether the author's country or the country of publication should determine the period of protection. If the Union wishes to retain the notion of comparison of terms of duration, then the notion of country of origin would also have to stand. The one could not be deleted without the other.

599.3 In his view, the Swiss proposal would work to the detriment of authors, depriving those whose countries had shorter terms of protection of the advantages of publishing their works in countries with longer terms. It would thus also impede the efforts to increase protection through the whole Union, since countries with favorable terms of protection served as an example to others.

599.4 Furthermore, the Swiss proposal, if adopted, would result in a more complicated situation from the procedural point of view. It was easy to ascertain where a work had been published—such information was always provided with the work concerned—but that was not so in the case of an author's nationality or habitual residence. He was thinking, for example, of authors who published their works internationally, of authors who were living in a country other than their own but who had not yet established habitual residence there, of authors with a common name or, in the case of articles in the press, of anonymous authors.

599.5 Another consequence of the Swiss proposal would be that an author from a non-Union country publishing his work in a Union country would receive a long term of protection under Article 6 of the Convention. But if that author's country subsequently acceded to the Convention, the author would then be able to appeal only to the law of his own country.

599.6 Lastly, he saw no reason for changing an arrangement which had worked well for 80 years.

600.1 Mr. STRNAD (Czechoslovakia) said that, if the Swiss proposal was adopted, the provisions of Article 15 of the Convention concerning anonymous and pseudonymous works would have to be revised.

600.2 In addition, Article 6 did not provide any protection for the works of an author who was not a national of a country of the Union unless those works were published in a country of the Union. If the Swiss proposal was adopted, an author who was not a national of a country of the Union would have to take up residence in a country of the Union in order to enjoy protection.

600.3 Finally, the regulation would not necessarily be simplified, because it was not yet known whether all the countries which had acceded to the Berne Convention would ratify the Stockholm Convention.

600.4 His Delegation would therefore be compelled to vote against the adoption of the Swiss proposal.

601. Mr. GODENHIELM (Finland) endorsed the views expressed by the Delegate of Sweden. He too felt it essential to maintain a dual criterion based both on the nationality of the author and on the country of origin of the work.

602. Mr. DITTRICH (Austria) said that he shared the views of the Delegate of Czechoslovakia.

603.1 Mr. KOUTIKOV (Bulgaria) congratulated the Delegation of Switzerland on its attempt to solve the problems raised by Article 4.

603.2 He considered, however, that the proposed solution would disrupt both the functioning of the Convention and the Program of the Conference, and he wondered whether it might not be wiser to adjourn the debate.

604.1 Mr. BELINFANTE (Netherlands) said that the Swiss proposal called for careful study and discussion; unfortunately, the Main Committee had not sufficient time available for that.

604.2 In order that such a valuable proposal should not be rejected *in toto*, he suggested that the Delegation of Switzerland should withdraw it.

605.1 Mr. VOYAME (Switzerland) thanked the various speakers for their comments and observations, particularly the representative of the Netherlands.

605.2 In order not to hold up the work of the Conference, the Delegation of Switzerland would withdraw its proposal, but would reserve the right to submit it again, possibly in more complete form, at a future conference.

606.1 The CHAIRMAN thanked the Delegate of Switzerland and congratulated him on setting an example of international cooperation.

COUNTRY OF ORIGIN (continued):
INDIAN PROPOSAL (S/41)

606.2 He reminded the Main Committee that the Delegation of India had submitted a draft amendment which was contained in document S/41. As the draft sought to amend Article 4(4) on the same lines as the Swiss proposal, he would ask the Delegate of India whether he also wished to withdraw his proposal.

607. Mr. GAE (India) said that his Delegation was willing to withdraw its amendment to paragraph (4), as submitted in document S/41, but wished its proposal concerning Article 6 to stand. Having refrained from commenting on the matter until document S/41 had been circulated, he now requested permission to revert to Article 6.

CRITERION OF PUBLICATION (continued):
INDIAN PROPOSAL (S/41)

608.1 The CHAIRMAN said he was prepared to allow discussion of paragraph (1) of Article 6, in view of the fact that paragraphs (2) and (3), dealing with cinematographic works and with works of architecture or graphic and three-dimensional works affixed to land or to a building, respectively, would be studied separately.

608.2 After pointing out that the deletion of Article 6 would constitute a radical amendment, he put to the vote the Indian proposal concerning Article 6, paragraph (1).

609. *The proposal of the Delegation of India (S/41) was rejected with one dissenting vote and one abstention.*

610. Mr. WALLACE (United Kingdom) said that his Delegation had abstained from the vote since, in principle, it favored the deletion from the Convention of all references to reciprocity of the term of protection—which was not applied in the United Kingdom—and consequently, to the country of origin.

COUNTRY OF ORIGIN (ARTICLE 4(4))
(continued)

611.1 The CHAIRMAN invited the Main Committee to vote, subparagraph by subparagraph, on the new version of Article 4(4), as set out in document S/1.

611.2 He put to the vote subparagraph (a).

612. *Subparagraph* (a) *was adopted unanimously*.

613. The CHAIRMAN put to the vote subparagraph (b).

614. *Subparagraph* (b) *was adopted unanimously.*

615. The CHAIRMAN reminded the Main Committee that subparagraph (c)(i), which referred to cinematographic works, would be considered later, and also that the Main Committee had decided to instruct the Drafting Committee to produce a better wording for all the clauses dealing with works of architecture and graphic and three-dimensional works of art affixed to land or to a building. He would therefore put to the vote subparagraph (c)(ii), subject to any drafting amendments which might be suggested by the Drafting Committee.

616. *Subparagraph (c)(ii) was adopted unanimously, subject to any drafting changes which might be suggested by the Drafting Committee.*

617. The CHAIRMAN put to the vote subparagraph (c)(iii).

618. *Subparagraph* (c)*(iii) was adopted unanimously.*

619. The CHAIRMAN put to the vote Article 4(4) as a whole, with the exception of subparagraph (c)(i).

620. *Article 4(4), with the exception of subparagraph (c)(i), was adopted unanimously.*

621. Mr. GAE (India) said that there were two points to which the Drafting Committee should give its attention: first, the word "domicile," in Article 4(4)(c)(i), would, presumably, be replaced by the words "habitual residence," in accordance with the Main Committee's discussion the previous day. Secondly, if, as he assumed, the word "headquarters," in the same paragraph, was intended to mean the place of business of a body corporate or corporation, it should be made clear in the text.

622.1 The CHAIRMAN said that the Main Committee had already decided to replace the term "domicile" by the expression "habitual residence," and that the Drafting Committee would therefore amend all those clauses in which it appeared.

622.2 He also pointed out that the word "headquarters" occurred only in subparagraph (c)(i), discussion of which had been adjourned.

623. Mr. ASCENSÃO (Portugal) said that, in his opinion, the definition of simultaneous publication contained in paragraph (4) should be contained in a new paragraph (5) and that the Drafting Committee should consider this question.

COMPOSITION OF THE DRAFTING COMMITTEE

624.1 The CHAIRMAN assured the Delegate of Portugal that the Drafting Committee would take his useful suggestion into account.

624.2 It would be desirable for the Drafting Committee to meet on the following morning, and for the Main Committee to proceed forthwith to elect the members of that body. After recalling that the officers were members *ex-officio*, he proposed that the following nine members should be appointed: Australia, France, India, Mexico, Netherlands, Rumania, Senegal, Sweden, and the United Kingdom. He also proposed that the United Kingdom should take the chair.

625. Mr. ZAKÁR (Hungary) proposed that the Delegate of Czechoslovakia should be appointed to the Drafting Committee.

626. Mr. KOUTIKOV (Bulgaria) supported the proposal of the Delegation of Hungary.

627. Mr. CIAMPI (Italy), on the other hand, wondered whether it might not be better to reduce the number of members of the Drafting Committee, in order to avoid a repetition in that body of the discussions which had already taken place in the Main Committee itself.

628. The CHAIRMAN put to the vote the proposals of the Delegation of Hungary.

629. *The proposal was adopted by 11 votes to 4 with 24 abstentions.*

CRITERIA OF ELIGIBILITY (continued): PROPOSAL BY THE CHAIRMAN OF MAIN COMMITTEE I (S/44)

630.1 The CHAIRMAN drew the attention of the Main Committee to document S/44, containing his own proposal for the drafting of the clauses of eligibility and the country of origin.

630.2 One of the weaknesses of the present text arose from the fact that the rules concerning the criteria of eligibility were confused with those dealing with the country of origin. For that reason, he had thought fit to propose a more systematic arrangement; Article 3 would deal only with the criteria of eligibility, Article 4 would cover special cases (works of architecture and possibly cinematographic works), Article 5 would introduce the idea of the country of origin, while Article 6 would set out the well-known regulations concerning retaliatory measures.

630.3 He invited the members of the Main Committee to comment on the proposal before it was referred to the Drafting Committee.

631. Mr. STRASCHNOV (Monaco) expressed his satisfaction at having before him for the first time a text which was completely intelligible even for those who had not had an opportunity to familiarize themselves with these questions. He congratulated the Chairman on having submitted such a clear and logical draft.

632. Mr. VOYAME (Switzerland) associated himself with the remarks of the Delegate of Monaco. The Delegation of Switzerland greatly appreciated the Chairman's work, for which it was extremely grateful.

633. Mr. KEREVER (France) also congratulated the Chairman. The Delegation of France considered that the Chairman's draft was far superior to the former version.

634. Mr. DITTRICH (Austria) agreed with previous speakers that the wording proposed by the Chairman was an improvement upon the existing text.

635. Mr. GAE (India) said that his Delegation considered that the text proposed by the Chairman would be of great help to the Drafting Committee.

636. The CHAIRMAN thanked the delegates for their kind expressions of appreciation. As he understood it, it was the view of the Main Committee that document S/44 could serve as a basis for the work of the Drafting Committee.

637. Mr. CIAMPI (Italy) wondered whether it might not be advisable, in view of the importance of the document, for the Main Committee to study it more thoroughly before referring it to the Drafting Committee. The suggested amendments seemed to him to involve a structurally different concept of the "country of origin."

638.1 Mr. BELINFANTE (Netherlands) agreed that the Main Committee ought to give careful consideration to the text submitted by the Chairman. He pointed out that a Drafting Committee was not a Working Group, and that in principle it should not deal with a text until it had been discussed, if not adopted.

638.2 He would also like to point out that the Delegation of the Netherlands wished to submit some amendments, which it was not in a position to do during the present meeting.

639. Mr. KEREVER (France) also feared that it was premature to refer the text to the Drafting Committee, which might well have to settle questions of substance lying outside its terms of reference.

640. Mr. WALLACE (United Kingdom) said that his personal view was that the text proposed by the Chairman was an improvement on the existing one. In the interests, however, of ensuring the best conditions for the Drafting Committee to carry out its work he considered, as the Chairman of that Committee, that a vote might be taken to ascertain on which of the two texts the Main Committee should base its work.

641. After an exchange of views, in which the Chairman and the Delegates of the Federal Republic of Germany, France, Italy and the Netherlands took part, the Main Committee *decided that the Drafting Committee should meet at 9.30 on the following morning to prepare a definition of published works and review the provision concerning works of architecture and graphic and three-dimensional works of art affixed to land or to a building.*

The meeting rose at 5:10 p.m.

FIFTH MEETING

Thursday, June 15, 1967, at 2:35 p.m.

RIGHT OF REPRODUCTION (ARTICLE 9(1))

642.1 The CHAIRMAN invited the members of the Main Committee to discuss the general question of whether it was desirable to introduce into the Berne Convention the principle of a right of reproduction as provided for in Article 9(1) of the Program of the Conference (S/1).

642.2 At the Brussels Conference, following an Austrian proposal, consideration had been given to the question of recognizing the right of reproduction in the text of the Convention. It had not proved possible to adopt the proposal. As the right of reproduction was of great importance in the world today, he hoped that the Stockholm Conference would achieve some progress in this matter.

643.1 Mr. REIMER (Federal Republic of Germany) said he was particularly glad to note that the Program of the Conference provided for the recognition, in the text of the Convention, of the fundamental right of reproduction. The suggested phrase "in any manner or form" was satisfactory, because it covered all possibilities of reproduction. The Federal Republic of Germany considered, however, that it would be useful to include a general definition dealing expressly with reproduction by mechanical instruments (S/67). That would make it possible to delete Article 13(1), which dealt solely with the reproduction of musical works by mechanical instruments, as the required definition would already be included in Article 9(1).

643.2 The Delegation of the Federal Republic of Germany had no objection to the Austrian proposal (S/38) to clarify the meaning of Article 9(1) by citing various examples.

643.3 Nor had the Federal Republic of Germany any objection to the United Kingdom proposal (S/42). By adding to paragraph (1) the word "or any substantial part thereof," the United Kingdom was seeking to specify what parts of a work should be protected. But opinion varied from country to country on this point, and it would perhaps be better to continue to seek a solution to the problem within the legal systems of the countries of the Union.

644.1 Mr. WEINCKE (Denmark) said that he welcomed the proposal to include in the Berne Convention a provision covering the general right of reproduction. At the same time, since the right of reproduction was a basic element of copyright, the Conference, when specifying the exceptions it allowed to the general rule, should be careful to avoid any risk of weakening rather than strengthening the position of the creative artist.

644.2 There was no need for the draft amendments proposed by the Delegates of Germany and Austria in documents S/67, and S/38, respectively, but they should be mentioned in the general report.

645. Mr. DITTRICH (Austria) explained that the draft amendment submitted by his Delegation was intended: firstly, to make it clear that the notion of reproduction did not include lectures or public performances, and, secondly, to remove any doubt that reproduction by means of recorded sounds or images was included. The wording of the proposed amendment was identical with that of Article 17 of the French Act of March 11, 1957.

646. Mr. ZAKÁR (Hungary) said that he supported the new text for paragraphs (1) and (2) of Article 9 submitted in document S/1.

647. Mr. LENNON (Ireland) said that since every country had its own exceptions to the general right of reproduction, it would only be possible to indicate vaguely the full range of permitted exceptions which might do more harm than good. It would, therefore, be safer to omit the general right of reproduction from the Convention.

648.1 Mr. WALLACE (United Kingdom) said that he would welcome the incorporation in the Convention of the general right of reproduction provided that a satisfactory formula covering the exceptions could be found. The right was in any case subject to the exceptions indicated in other Articles, such as paragraph (3) of Article 11*bis*, and paragraph (2) of Article 13. Although he agreed with the Delegate of Austria on the need to stress the fact that reproduction was a matter of fixation and the making of copies and did not include performance, the text submitted in document S/38 was not satisfactory and it would be better to deal with the question by a statement in the report.

648.2 Although the suggestion put forward by his Delegation in document S/42 referred to "such works or substantial parts thereof," he did not think that United Kingdom legislation differed greatly from German legislation. Since, however, the absence of the same words in other corresponding Articles of the Convention might be misleading, he would not press for their retention in his amendment.

649.1 Mr. ASCENSÃO (Portugal) said he could not accept the idea that a general right of reproduction should be written into the Convention itself. Copyright was partly a moral right and partly an economic right to exploit a work. A general right of reproduction was incompatible

with both these fundamental aspects of copyright. Once a work was published, it could naturally be used by anyone and it could therefore be reproduced.

649.2 Moreover, as a general definition necessarily had to be worded vaguely, there was a risk that copyright protection might be weakened if the text proposed in the Conference Program was adopted. He therefore hoped that the wording of the Convention as adopted at Brussels would be retained, particularly as there was no practical justification for amending the existing text.

650. Mr. CAMARGO (Brazil) entirely agreed with the Delegate of Portugal that the existing wording should not be altered.

651. Mr. KORDAČ (Czechoslovakia) said that he supported the Austrian proposal in defining the term reproduction in the Convention, *expressis verbis*, but that the proposed definition was too broad. He expressed the opinion that the mechanical recording of the performance of the work should not be treated as reproduction.

652. Mr. ADACHI (Japan) said that although he welcomed the incorporation in the Convention of the general right of reproduction he could not support the Austrian proposal because he considered that the meaning of the term "reproduction" was self-evident. He was in favor of the United Kingdom proposal for the inclusion in Article 8(1) of the words "and any substantial part thereof."

653.1 Mr. PREDA (Rumania) thought it advisable to include all the general provisions concerning the right of reproduction in Article 9. It was important that the authors of literary and artistic works should be protected against any unfair exploitation by those engaged in the reproduction and distribution of their works.

653.2 The Delegation of Rumania proposed that the provisions at present contained in Article 11*bis*(2) should be transferred to Article 9(2). In the interests of authors, those provisions should be applied to the reproduction of all works and not merely to broadcasting by radio or other means of communication.

653.3 It would also serve the interests of authors if the provisions at present contained in the second sentence of Article 14(4) appeared in a third paragraph of Article 9, so that the practice of signing a written agreement should apply to all reproductions and not merely to cinematographic reproductions.

653.4 In addition, in order to give more effective protection to authors, it should be stated explicitly in the Convention that written agreements should specify the period within which reproduction or publication should take place. If those periods were not observed, the agreements would be rendered null and void and the author would be free again to exploit his work through other channels. That provision would be very important in cases where authors, whose financial situation was often difficult, were obliged to assign their rights for very long or even unlimited periods on unfair terms of remuneration, and their assignees were subsequently able to make substantial profits. The Delegation of Rumania wished to add some further provisions to Article 9 so that this Article would then consist of four paragraphs, which would have to be numbered as indicated in document S/75.

654. Mr. SINGH (India) said that although the Brussels text did not specifically grant authors the general right of reproduction, no difficulties had been created in that connection in the 80 years during which that text had been in force. He feared that the incorporation of the general right in the Convention by the proposed new text, even if it were amended in accordance with the United Kingdom proposal, would not cover the general provisions on copyright contained in national legislations. In his view, it would be better to retain the Brussels text.

655.1 Mr. KEREVER (France) said he was pleased to note that it was proposed to introduce a general right of reproduction into the text of the Convention. He considered it inadvisable, however, to mention in the first paragraph of Article 9 the various methods of reproduction which were envisaged—such as recording—or to list them.

655.2 On the other hand, it was important that the conditions under which the right of reproduction could be exercised should be clearly stated, and his Delegation reserved the right to submit an amendment on that subject in due course.

655.3 The greatest caution should be exercised in dealing with exceptions to the right of reproduction in the Convention. There again, his Delegation reserved the right to submit an amendment if it found itself unable to support any existing amendment on the same lines.

656. Mr. DRABIENKO (Poland) favored the wording of Article 9(1) set out in the Program of the Conference. He said he would comment later on the draft of paragraph (2) dealing with exceptions to the right of reproduction.

657. The CHAIRMAN invited the Main Committee to vote on the question of including the right of reproduction in the Convention. Obviously, the Main Committee would be unable to take a final decision in that connection until agreement had been reached on the exceptions to be allowed to paragraph (2).

658. *The Main Committee decided, by 32 votes to 5 with 3 abstentions, to mention the right of reproduction in the text of the Convention.*

659.1 The CHAIRMAN asked the Main Committee to consider the various amendments submitted by delegations to the definition of the right of reproduction given in the Program of the Conference (S/1).

659.2 The United Kingdom proposed that the words "or any substantial part thereof" should be added to the Article 9(1) (S/42). It should be noted that the rights recognized by the Convention applied, by definition, to the whole of a work or to its various parts. As none of the relevant articles of the Convention expressly mentioned this point, it would be dangerous to mention it solely in connection with the right of reproduction. It might form the basis for an argument *a contrario* in regard to the application of other rights.

660. Mr. WALLACE (United Kingdom) withdrew the draft amendment of his Delegation.

661.1 The CHAIRMAN said that in regard to Article 9(1) the Main Committee also had before it an Austrian proposal (S/38) to enumerate all the means of reproduction. Such an addition would doubtless be acceptable in domestic law, but the list would be too long for the Convention.

661.2 Moreover, it might be dangerous to redefine the fixation of a work as a process enabling it to be communicated indirectly to the public, because that wording was now out of date, as it failed to take account of such processes as photocopying for industrial purposes.

661.3 It would be useful, however, to state that the reproduction of a work differed from its representation or execution. That distinction might not be evident *a priori*. It should also be stated, as the Federal Republic

of Germany had asked, that recording was a form of reproduction.

661.4 In view of the various problems involved, it might be advisable to state, in the definition of the right of reproduction, that it applied to the fixation of a work; the Drafting Committee could then be asked to find a suitable wording.

662. Mr. CURTIS (Australia) said that since the use of the word "reproduction" in the Article under consideration was unlikely to give rise to confusion, he would prefer not to have any extensive definition of reproduction included in the Convention. The term would, of course, include recording by mechanical instruments, but that aspect of the question would be better dealt with separately in an article on literary and artistic works.

663. Mr. DITTRICH (Austria) withdrew his draft amendment on condition that the two ideas embodied in it, which he had already indicated, appeared in the report.

664. Mr. RAYA MARIO (Spain) said he would not have been able to accept the Austrian proposal (S/38); everyone knew what was meant by reproduction, and it would be dangerous to give too precise a definition.

665.1 Mr. CIAMPI (Italy) said he was particularly pleased to see the right of reproduction recognized in the Convention for the first time, but he shared the view of those delegations which were reluctant to define that right too closely.

665.2 He reminded the Main Committee that the Delegation of Italy had associated itself with the Delegations of Austria and Morocco in proposing (S/72) that the right of reproduction should be coupled, in the text of the Convention, with the right of circulation.

666. The CHAIRMAN said that, as several amendments had been withdrawn, the Main Committee now had a choice between the definition of the right of reproduction as it was proposed in the Program of the Conference (S/1) and the French proposal (S/70) to add at the end of the definition proposed in the Program the words "and for any purpose."

667.1 Mr. STRASCHNOV (Monaco) thought that the wording proposed in the Program of the Conference was sufficiently wide. Moreover, it would be illogical to mention the "purpose" of a work in Article 9(1), because it might happen that an author would make his own reproduction, so that no copyright would be involved.

667.2 Further, the concept of purpose was not very far removed from the concept of circulation which the Main Committee would have to study when it came to examine the amendment submitted jointly by the Delegations of Austria, Italy, and Morocco (S/72); as that would give rise to a right other than the right of reproduction, it would prevent Article 9(1) from gaining the required support.

668. Mr. WALLACE (United Kingdom) said that although the words "for any purpose" were not strictly necessary, because the idea they expressed was always understood, they could be usefully included, however, because Article 9 was subject to provisions in other Articles modifying authors' rights.

669. Mr. STRÖMHOLM (Sweden) shared the view of the Delegate of Monaco. To introduce the idea of the purpose of the reproduction of the work into the definition of the right of reproduction would prejudge the right of circulation, and that was something which should be avoided.

670. Mr. ROJAS (Mexico), like the Delegate of Monaco, found himself unable to support the French proposal. Moreover, the other French amendments (S/70) would seriously alter the nature of Article 9, particularly if Article 9(2) was incorporated in Article 10.

671.1 Mr. KEREVER (France), replying to the Delegate of Mexico, said that the French proposal to incorporate Article 9(2) into Article 10 was solely a drafting amendment and did not affect the substance of the Article.

671.2 In regard to the right of circulation and the purpose of the reproduction, as the joint amendment (S/72) had been tabled subsequently to the French amendment (S/70), it might be better to consider it first.

672. Mr. KOUTIKOV (Bulgaria) thought that the Main Committee should restrict itself for the present to the definition of the right of reproduction which was contained in the Program of the Conference, as this was the first time that the right of reproduction was being recognized and was to be applied. His Delegation would vote for the wording proposed by the Swedish Government and BIRPI (S/1).

673. Mr. GAE (India) and Mr. ADACHI (Japan) supported the Delegate of Monaco.

674. Mr. DITTRICH (Austria) said that although he had no objection to the French proposal, there was no need for it.

675. Mr. CURTIS (Australia) suggested that since no question of principle was involved the wording of the paragraph be left to the Drafting Committee.

676.1 Mr. CIAMPI (Italy) explained why his Delegation had thought it advisable to join with the Delegations of Austria and Morocco in proposing the addition to Article 9(1), after the word "reproduction," of the words "and circulation" (S/72).

676.2 While it was against an excessively detailed definition of the right of reproduction in paragraph (1), the Delegation of Italy considered it essential to avoid any difficulties of interpretation of the Convention arising from the development of national laws. In proposing that the Convention should grant the right of circulation, his Delegation had based itself on the most recent legislation on this subject, including that of South Africa, the Federal Republic of Germany, the German Democratic Republic, Denmark, Finland, France, and Sweden. In the view of his Delegation, it was essential to recognize the general principle of circulation in the Convention.

677.1 The CHAIRMAN thought that the Italian proposal was an interesting one, particularly as the right of circulation was already applied to cinematographic works (Article 14 of the Convention).

677.2 He wondered, however, whether it was advisable to recognize a general right of circulation. Moreover, if the Main Committee adopted that right, it would be necessary to make provision for different exceptions from those required in the case of the right of reproduction. No preparatory work had been done on the whole question and it would doubtless be difficult to find a solution straight away which would be acceptable to all.

678. Mr. WALLACE (United Kingdom) said that insofar as he understood the notion of the "right of circulation" he feared that his Government would be unable to accept the inclusion of that right in the Convention. The idea was new and had not been studied by either the Expert Committee or by Governments. He felt that it would be most unwise to incorporate it in the Convention at that stage.

679.1 Mr. GERBRANDY (Netherlands) fully supported the comments of the Delegate of the United Kingdom.

Article 9 would only be acceptable if agreement was reached on a form of words which satisfied all concerned, either in regard to the substantive regulations contained in paragraph (1) or to the exceptions set out in paragraph (2).

679.2 His Delegation shared the doubts of several other delegations concerning the joint proposal (S/72); nevertheless, his Delegation wondered whether, if the Convention gave authors a right of reproduction which was not coupled with a right of circulation, it might not be giving them a right which was already shorn of much of its value. He would quote an example taken from the Dutch courts: A German dealer had a stock of reproductions for which he held the copyright. Several thousand copies had come into the hands of a Dutch dealer who had begun to sell them, in good faith, thinking that he was the owner under Dutch civil law. When the German dealer protested, the Dutch dealer replied that he was the owner of the reproductions which, incidentally, were perfectly lawful. The German dealer then pointed out that he also held the rights of circulation, and the Netherlands Supreme Court had decided in his favor on that point.

679.3 There was also the case of authors who might wish to assign the right of reproduction to a particular company and the right of circulation to another company.

679.4 Again, international practice required that certain editions should not be sold in particular countries. All the weight of argument was in favor of recognition of the right of circulation.

679.5 While admitting the validity of the joint proposal (S/72), he shared the doubts expressed by the Delegate of the United Kingdom. An author ought to enjoy certain secondary prerogatives alongside the right of reproduction, but there was a risk of going too far in attempting to take account of those prerogatives by granting a blanket right of "circulation."

680. Mr. DITTRICH (Austria) observed that the right of circulation was particularly valuable in the case of reproductions imported from countries where authors had no protection.

681. Mr. CURTIS (Australia) said that he sympathized with the idea of a general right of circulation, but such a right would raise similar difficulties over exceptions as in the case of the right of reproduction. He would like more time to study the right and the scope of the exceptions to it and suggested that the question be deferred and submitted to the next revision conference.

682.1 Mr. STRASCHNOV (Monaco) felt, like the Delegate of the United Kingdom, that it would be extremely difficult to open a discussion on the right of circulation, because the question had not been prepared and had not even been raised in the 1965 Committee of Experts. In any event, he had received instructions not to vote for the recognition of such a right in the Convention.

682.2 In the examples which had been quoted, those delegations which favored the inclusion of the right of circulation in the Convention had laid particular stress on reproductions which crossed frontiers. The problems arising in this connection could be settled merely by strengthening Article 16 of the Berne Convention and saying that States were "required" to seize reproductions in those countries of the Union in which the original work was entitled to protection.

682.3 It must also be borne in mind that the legislation of the countries quoted by the Delegate of Italy regulated the right of circulation in such a way as to preserve a necessary balance. Thus, Article 17 of the Law in the Federal Republic of Germany counterbalanced the right of circulation by stipulating that it could not be exercised with regard to copies which had been lawfully acquired. A regulation of that nature would be absolutely essential if it was proposed to deal with the right of circulation in the Convention.

682.4 The Delegate of the Netherlands had stated that an author might wish to assign the two rights—of reproduction, and of circulation, respectively—to different firms. That would have extremely onerous consequences for the gramophone record and radio industries which, for instance, would have to ask for two separate approvals, one under the terms of the right of reproduction and the other under the terms of the right of circulation, to which should be added also for radio, the approval under the terms of the right of performance. This succession of approvals would aggravate, to an unjustifiable extent, the charges for users of intellectual works.

683. Mr. REIMER (Federal Republic of Germany) favored, in principle, the inclusion of the right of circulation in the Convention. Although the right of reproduction provided an adequate basis for legal action in the majority of cases of infringement of copyright, no protection was given when copies lawfully produced in a country outside the Union were imported into a country of the Union. It ought to be possible to take legal action on the grounds that such copies were being circulated in a country of the Union. Replying to the Delegate of Monaco, he mentioned that Article 16 of the Convention applied only to unlawful reproductions. Admittedly, the right of circulation brought with it certain dangers, and it was for that reason that German legislation contained a provision under which the right of circulation expired when copies were put into circulation with the consent of the author or his assignees. Circulation then became free, and that was perhaps the way to prevent abuses.

684. Mr. GODENHIELM (Finland) agreed that there was much of interest in the joint proposal (S/72), but said that it would be difficult to adopt the proposal without solving the numerous problems which it raised. Hence it would be better to refer the question of the right of circulation to the next Conference, as had been suggested by the Delegate of Australia.

685.1 Mr. CIAMPI (Italy) agreed that the question was a difficult one, but said that it could not be solved straight away at the practical level by means of examples. A decision would have to be taken on the substance of the question and one essential principle would have to be adopted: while the right of reproduction was linked to books and records, the right of circulation was closely linked to all the other means of reproduction which were a feature of the present-day world and that would call for a complete reshaping of the definition of copyright.

685.2 The question had already been considered by the Brussels Conference, so that the Delegation of Italy was not breaking new ground in submitting the proposal (S/72). It was anxious, however, that the question should not be regularly referred to subsequent conferences. Those delegations which had expressed reservations should remember that the Bureau of the Union had pointed out, at the Brussels Conference, that recognition of the right of circulation would protect authors against any infringement of their rights. In fact, it provided a more effective legal safeguard than that provided by an agreement.

685.3 He would urge the Main Committee not to reject his proposal out of hand. If it should prove impossible to find a compromise solution in regard to the actual principle of this right, the question should be linked with the exceptions for which provision was made in Article 9(2), in order to ensure that copyright was not

regularly infringed by the use of mechanical processes of reproduction.

686.1 The CHAIRMAN agreed that the lack of a right of circulation constituted a gap in copyright protection, and that the question was not a new one. But, in the absence of adequate preparation, the question could not be settled quickly, particularly in regard to the vital exceptions.

686.2 He suggested that the Main Committee should postpone any decision on the joint proposal (S/72) to the following meeting.

687. *It was so decided.*

DEFINITION OF "PUBLISHED WORKS" (continued): PROPOSAL OF THE DRAFTING COMMITTEE (S/88)

688. Mr. WALLACE (United Kingdom), as Chairman of the Drafting Committee, introducing document S/88, said that the first proposal regarding Article 4, paragraph (5), in the document was for a definition of "published works" based on the proposals that had commanded the support of the majority of the members at the Main Committee, with three modifications: for reasons of style, the word "sufficient" had been replaced by the words "such as"; the word "reasonable" had been inserted immediately before the word "requirements," and to clarify the notion of reasonable requirements, the words "having regard to the nature of the work" had been added at the end of the first sentence of Article 4(5).

689. The CHAIRMAN expressed approval of the wording proposed by the Drafting Committee, which was flexible and applied equally to books, films, records, etc.

690. Mr. STRASCHNOV (Monaco) favored the Drafting Committee's wording, which he found excellent.

691. Mr. CIAMPI (Italy) also considered the Drafting Committee's proposed sentence excellent, but wished to know exactly what was meant by "the nature of the work."

692. Mr. WALLACE (United Kingdom) observed that when the Courts had to decide on the genuineness of a "publication," they took into account the kind of work, the type of audience for which the work was intended, and similar considerations.

693. Mr. REIMER (Federal Republic of Germany) unreservedly accepted the wording proposed by the Drafting Committee.

694. *The wording proposed by the Drafting Committee for the first sentence of Article 4(5) (S/88) was accepted unanimously.*

CRITERION OF PUBLICATION: WORKS OF ARCHITECTURE, GRAPHIC AND THREE-DIMENSIONAL WORKS (continued). PROPOSAL OF THE DRAFTING COMMITTEE (S/88)

695.1 Mr. WALLACE (United Kingdom), as Chairman of the Drafting Committee, introduced the draft amendment to the English version of Article 6(3) contained in document S/88 and said that the initial proposal had referred only to architectural works but the meeting thought that more was required. In the course of the discussion, it had been observed that the English text did not tally with the French. The Drafting Committee had therefore prepared a new English version, which appeared to that Committee a faithful though not a literal rendering of the French.

695.2 During the same meeting of the Main Committee, the Delegate of Monaco had pointed out that paragraph (2) of Article 6 referred to works published for the first time, and paragraph (3) of Article 6 referred to works incorporated in architectural works. Paragraph (3) of Article 6, like paragraph (2), was intended to afford protection only for previously unpublished works, and not for works published separately before being incorporated in architectural structures. However, no attempt had been made to remove the discrepancy between the two paragraphs pending the Main Committee's decision as to which of the two documents, S/1 or S/44, was to be used for its further work. In the document submitted by the Chairman (S/44), the question of unpublished works was dealt with satisfactorily.

696. The CHAIRMAN said that several delegations had expressed concern as to what would happen if a work of art, such as a statue, which had been executed in a country outside the Union was copied and incorporated in that form in a building in a country of the Union. As the terms of the existing Convention did not protect such a work, those delegations would have liked to see a closer definition, in Article 6(3), of the words "graphic and three-dimensional works." Works, within the meaning of those provisions, were obviously not copies, but nor were they intangible property. The provisions referred to the original work of architecture intended to be affixed to a building. As it would be difficult to cover that point in the actual text of the Convention, it would be included in the Main Committee's report.

697. *The text submitted by the Drafting Committee for the English version of Article 6(3) (S/88) was approved unanimously.*

CRITERIA OF ELIGIBILITY (continued) (S/44)

698. The CHAIRMAN asked the members of the Main Committee to decide whether the Drafting Committee should continue to work on the text of the Program of the Conference (S/1) or on his own draft (S/44), as the Chairman of the Drafting Committee had requested.

699. Mr. CAVIN (Switzerland) said that the Chairman's proposal (S/44) provided a very useful rearrangement of Articles 4 to 6 of the Program of the Conference, without in any way altering the substance. It was therefore desirable that the Drafting Committee should base its work on document S/44.

700. Mr. RAYA MARIO (Spain) and Mr. IOANNOU (Greece) shared the view of the Delegate of Switzerland.

701.1 Mr. KEREVER (France) considered that the drafting of document S/44 was undoubtedly much better than that of document S/1. Moreover, as the new draft did not contain the slightest change of substance, the Drafting Committee could well base itself on document S/44.

701.2 The Main Committee would have to decide, however, from what point the Drafting Committee could start to take document S/44 as the basis for its work. He himself considered that the Drafting Committee ought to continue to work on the basis of the Program of the Conference (S/1), until decisions had been taken on the substance of all the questions affecting Articles 4 to 6 on which the Main Committee had reserved its conclusions.

702. Mr. CIAMPI (Italy) saw no objection to the Drafting Committee taking the Chairman's proposals (S/44) as a basis for its work.

703. Mr. WALLACE (United Kingdom) said that the Drafting Committee had started work on the basis of document S/1. If the Main Committee were going to have to follow the order of document S/44, the sooner a decision to that effect were taken the better. He suggested that the Secretariat should prepare a new copy of S/44 incorporating the two amendments that had just been approved; further discussion of the Article could then be held on the basis of the revised version of document S/44.

704. Mr. KEREVER (France) referring to the comments of the Chairman of the Drafting Committee, said that, from the practical point of view, it would be better for the Main Committee itself to continue to study the reserved items in Articles 4 to 6 on the basis of the Program of the Conference (S/1), with the arrangement of which it was familiar. Only the Drafting Committee should take document S/44 as a basis for its work.

705. *The Main Committee unanimously agreed to authorize the Drafting Committee to work on the basis of the Chairman's proposal (S/44).*

706. Mr. CIAMPI (Italy) inquired whether the regulations allowed delegations to submit directly to the Drafting Committee working proposals which had not been previously considered by the Main Committee.

707. The CHAIRMAN said that the Drafting Committee would certainly take account of any drafting proposals submitted to it.

The meeting rose at 5:25 p.m.

SIXTH MEETING

Friday, June 16, 1967, at 9:40 a.m.

RIGHT OF REPRODUCTION (continued) (S/72)

708. As a conclusion to the previous meeting's discussion, the CHAIRMAN invited the members of the Main Committee to vote on the proposed amendment submitted jointly by the Delegations of Austria, Italy, and Morocco (S/72).

709. *The proposal was rejected by 17 votes to 7 with 8 abstentions.*

710. The CHAIRMAN reminded the Main Committee of the draft amendments submitted by the Delegation of France which affected Articles 9 and 10 (S/70).

711.1 Mr. KEREVER (France) said that, while the draft amendment submitted by the Delegation of France was based on the same considerations as the one which the Main Committee had just rejected, it had very different consequences. The joint amendment would have instituted a separate, independent right: the right of circulation. On the other hand, the French amendment merely defined more clearly the conditions under which the right of reproduction could be exercised. The Delegation of France had been opposed to the joint amendment because it saw no need, at least at the present stage, to dissociate those two rights, a procedure which, as the Delegate of the Netherlands had observed, might give rise to complications, because each of the two rights would then become negotiable independently of the other.

711.2 The only object of the French amendment was to introduce a concept of purpose into the right of reproduction enjoyed by authors, as it was defined in Article 9. It was clear that when an author negotiated an agreement on reproduction rights, consideration had to be given to the nature of the users or owners of the reproduction right, as the author had to be in a position to determine the geographical area covered by the copyright, and the amount of royalty payable would have to vary, depending on whether the work was destined for public or private use.

711.3 To underline the importance of the concept of purpose, which was recognized in French legislation (Article 31 of the Law of 11 March 1967), he would remind the Main Committee of the statement made by the Delegate of Monaco that a special royalty was payable when records were used in juke-boxes. To quote the expression used by the Delegate of the Netherlands, the French amendment sought to determine the auxiliary prerogatives of the author enjoying the right of reproduction.

711.4 Replying to objections raised by various delegations, the Delegation of France, wished to point out, for the benefit of India in particular, that the form and manner of reproduction of a work constituted a technical aspect of the question, whereas the concept of purpose suggested in the French amendment introduced an idea of quality. In regard to the comments of the Delegate of the United Kingdom, who considered that the idea was implicit in the wording suggested in the Program of the Conference, it should be borne in mind that the reason why the purpose was not expressly mentioned was because it was less important. Finally, to all those who considered that the introduction of this concept in Article 9(1) would *ipso facto* involve amendments to Article 9(2) and to Articles 10 and 11, he would only reply that the Delegation of France was ready to consider at an appropriate time whether any exceptions should be allowed to this right of purpose which, he would stress, should be regarded as being an integral part of the right of reproduction.

712. Mr. STRASCHNOV (Monaco) said that if the draft amendment submitted by the Delegation of France merely meant that an author could limit or determine in the contract dealing with reproduction rights, the purpose to which his work was to be put, the amendment was superfluous because it was obvious that when negotiating an agreement the author could attach any kind of restriction to the right of reproduction. On the other hand, if the amendment was attempting, as his Delegation feared, to introduce an opposable right *erga omnes* comparable in every respect to the right of circulation—a right which the Main Committee had just rejected—the Delegation of Monaco would be obliged to oppose it.

713. *The amendment submitted by the Delegation of France (S/10) was rejected by 17 votes to 4 with 14 abstentions.*

714. The various draft amendments having been rejected, the CHAIRMAN suggested that the Main Committee should adopt the text of Article 9(1) as it appeared in the Program of the Conference (S/1).

715. *The text of Article 9(1) set out in document S/1 was adopted unanimously.*

LIMITATIONS ON RIGHT OF REPRODUCTION (Article 9(2))

716.1 The CHAIRMAN suggested that certain proposals concerning paragraph (2), including those submitted by the Delegations of France (S/70) and Monaco (S/66), should be submitted directly to the Drafting Committee.

716.2 Turning to the other proposals affecting Article 9(2), he suggested that the Main Committee should begin with those which were furthest from the text proposed in the Program of the Conference, namely the proposals of India (S/86) and Rumania (S/75).

717. Mr. STRASCHNOV (Monaco) said that his Delegation, while reserving its position concerning the Protocol Regarding Developing Countries, could in no circumstances agree to the inclusion in the actual text of the Convention of a written contractual obligation which was liable seriously to affect the interests of the graphic publishers of the Principality.

718. Mr. STRNAD (Czechoslovakia) agreed that there was a connection between the proposal under examination and the provisions of the Protocol Regarding Developing Countries. It should not be forgotten, however, that the situation envisaged in Article 9 affected other countries too.

719. Mr. REIMER (Federal Republic of Germany) opposed the proposal of the Delegation of India, which, in his view, would have the effect of weakening the traditional right of every author to refuse to allow reproduction of his work.

720. Mr. FRISOLI (Italy) said he was opposed to the idea of introducing a general exception to the right of reproduction, adding that the question was quite distinct from the one dealt with in the Protocol Regarding Developing Countries. He also pointed out that it would be strange, to say the least, if the Conference, having introduced the right of reproduction into the Convention, should hedge it around with exceptions which existed in no other field and which would have the effect of disrupting the whole Convention.

721. Mr. KEREVER (France) thought that paragraph (2) should apply only in exceptional cases. The Delegation of France would not be opposed to the insertion of a general clause into Article 9(2).

722. *The proposals of India (S/86) and Rumania (S/75) were rejected by 28 votes to 2 with 3 abstensions.*

723. The CHAIRMAN invited the members of the Main Committee to express their views on the other proposals referring to Article 9(2) (documents S/42, S/56, S/66, S/67, S/70, and S/81).

724. Mr. FRISOLI (Italy) drew the attention of the Main Committee to the nature of the reservations for which provision was made in Article 9(2), reservations which would make the right of reproduction contained in the preceding paragraph meaningless. It was undeniable that the right to reproduce works without the assent of the author in " certain particular cases "—an excessively vague phrase—would adversely affect the legitimate interests of the author and constitute a violation of the Berne Convention. Hence the Delegation of Italy considered that the exceptions provided for in paragraph (2) should be limited to really exceptional cases and clearly specified purposes, as reproduction should never run counter to the legitimate interests of the author and detract from the normal exploitation of the work.

725. Mr. STRASCHNOV (Monaco) said he had no objection to the replacement, in paragraph (2)(a), of the words " private use " by the words " individual or family use, " in accordance with the French proposal (S/70), the latter concept being recognized by the legislation of all the countries of the Union. The basic problem, however, was to decide whether the clause applied to a reproduction executed personally by the licensee, or whether the exception could be extended to commercial firms or to businesses which reproduced particular works for the use of their customers.

726. Mr. WEINCKE (Denmark) said that the Delegation of Denmark was prepared to support any proposal designed to ensure a more precise formulation in a restrictive sense, of the exceptions enumerated in Article 9, paragraphs (2)(a) and (b). He thought the best way to achieve that was simply to omit subparagraphs (a) and (b). His Government was opposed to formulating any exceptions which could be construed as authorizing a compulsory licensing system. It was also dangerous to include the expression " private use " in the text, because it was capable of too broad an interpretation. The Delegation of Denmark therefore strongly supported the United Kingdom amendment (S/42), which had the merit of covering all possible exceptions in a single formula.

727.1 The CHAIRMAN considered that the Main Committee should be flexible in its listing of the exceptions to the exclusive right of reproduction. In regard to the right to make photocopies, for instance, it might be considered that the consent of the author was essential in the case of industrial firms but not in the case of scientific institutes.

727.2 Nevertheless, the Main Committee would have to choose between retaining the subparagraphs (a), (b), (c), appearing in the Program of the Conference, or adopting a single phrase. He himself favored the first solution, but he wondered whether it might not be better to set up a Working Group to study Article 9(2) together with Articles 10 and 10*bis*.

728.1 Mr. WALLACE (United Kingdom) said that the inclusion in the Convention of a general right of reproduction was only acceptable if the exceptions to it were expressed in terms which, whilst remaining broad enough to cover at least the reasonable exceptions already provided for in domestic laws, were nevertheless sufficiently restrictive to ensure that the author was not worse off than he would have been if the general right of reproduction had never been introduced. The Delegation of the United Kingdom thought that such a result would be better achieved with a general formula than by specifying exceptions. The danger with the terms " private use " and " administrative purposes " proposed in document S/1 was that they could be interpreted too widely.

728.2 The CHAIRMAN had referred to the reproduction of single copies. The difficulty was that libraries could issue what would cumulatively amount to a large number of single photostat copies.

728.3 He pointed out that the United Kingdom amendment (S/42) should be read without the words " or substantial parts thereof. "

728.4 The general idea of the United Kingdom amendment was that there should be no licensing in cases in which the author normally exploited the work himself. With libraries, however, a compulsory licensing system might be desirable, provided that it would not prejudice the author's legitimate interests. If it did, the author should be remunerated.

729.1 Mr. SINGH (India) said that the amendment proposed by his Delegation (S/86) was due to India's desire to ensure that no monopolistic interests could ever hamper the dissemination of education and culture. To some extent the Indian amendment was a provision for compulsory licensing, but such provisions were to be found elsewhere in the Convention. The Indian Government was second to none in recognizing that an author was entitled to remuneration, but neither the author nor his publisher should be allowed to prevent the diffusion of his work once he had made it lawfully available to the public.

729.2 His Delegation had already spoken of the need to make protected works easily accessible to users; methods suitable for countries with established collecting societies might not be appropriate for countries like India. Machinery must be provided to make copyright works available to users on a pre-established basis where col-

lecting societies were not available. Merely providing for compulsory licensing acted as a check and enabled contractual licensing to expand. The Delegation of India insisted that the question of compulsory licensing should be considered.

730. Mr. HESSER (Sweden) noted that delegations had criticized the Program proposals for Article 9, paragraph (2). The Swedish Government itself had doubts on the subject and agreed with the Delegate of Denmark that it would be preferable to adopt a general formula, as the Study Group had originally proposed in 1963. It therefore supported the amendment contained in document S/42, which afforded good protection for authors' interests. It also provided a sound basis for national legislation. The making of copies for private use seemed to be covered by the United Kingdom formula.

731. Mr. STRNAD (Czechoslovakia) said that after hearing the arguments put forward by the preceding speakers he wondered whether it might not be advisable to include in the text proposed by the Program of the Conference the idea that the proposed exceptions applied only to works which the author had already published or made public. It would be well to make specific provisions for the particular case of phonograph records and printed reproductions, making allowances for the legislation in force in certain countries.

732. Mr. DE SANCTIS (Italy) supported the Chairman's proposal to set up a Working Group which would choose between the various possibilities before the Main Committee for the wording of Article 9(2). The Delegation of Italy inclined towards a compromise solution which would involve finding a general formula, as proposed by the Delegations of the United Kingdom and Sweden, while making provision for certain exceptions which would allow reproduction for judicial or administrative purposes and, where applicable, for the internal use of libraries and record libraries and for private use.

733.1 Mr. GERBRANDY (Netherlands) pointed out that, owing to a typing error in the English text of the Netherlands proposal (S/81), the last clause of paragraph (a), beginning with the words "provided that..." had not been separated from the preceding clause as it should have been in order to emphasize that the words applied to the paragraph as a whole.

733.2 The Delegation of the Netherlands was in favor of the establishment of the Working Group suggested by the Chairman. It considered that the draft contained in the Program of the Conference had the defect of putting the exceptions in the form of reservations applying to the countries of the Union. But it might well be that an exception which was recognized by the legislation of one country might be regarded as unacceptable by the legislation of another country of the Union. Hence the object of the Netherlands proposal was to ensure that a judge hearing a case of infringement should not be in the position of having to recognize that the legislation of his country was defective and should merely have to decide whether or not the actions of the defendant fulfilled certain conditions.

733.3 It was obvious, as the Delegate of Monaco had pointed out, that the question of photocopies made by third parties was a very difficult one, but he wondered whether it was absolutely essential that this aspect of the question should be dealt with in the actual text of the Convention.

733.4 Finally, he considered that the concept contained in the United Kingdom proposal (S/42) was too typically British to be easily understood by judges in continental countries.

734.1 Mr. KEREVER (France) said that the purpose of the French proposal (S/70) was to determine the exact scope of the exception provided for in subparagraph (a). It was clear that the phrase "private use" would cover corporate bodies, which would perhaps be going too far.

734.2 The position which the Delegation of France would adopt in regard to Article 13 would depend on what the Main Committee did with Article 9(2). The Delegation of France would be prepared to support the general formula suggested by the United Kingdom (S/42), provided that the Delegation of the United Kingdom could explain very clearly why it had departed from the Swedish Government's text and adopted the phrase "unreasonably prejudice"; in particular, the Delegation of France would like to know what meaning was to be attached to the word "unreasonably."

734.3 The Delegation of France considered that the draft put forward by the Netherlands (S/81) was perhaps more precise than that contained in the Program of the Conference because misunderstandings were always liable to arise when it was left to national legislations to authorize exceptions to the application of the regulations of a Convention.

734.4 Finally, in regard to the procedure suggested by the Chairman, the Delegation of France felt that the Main Committee might vote first on the United Kingdom proposal, which seemed to have been favorably received by a number of delegations, on the understanding that the questions which had been left in suspense—particularly the use of the word "unreasonably" in the United Kingdom amendment and of the word "expressly" in the Netherlands proposal, would be subsequently referred to a Working Group.

735. Mr. ADACHI (Japan) said that his Government supported the text proposed in document S/1, which had been endorsed almost unanimously by the 1965 Committee of Governmental Experts. It was understood that the wording was broad enough to cover the various exceptions provided for in domestic laws. If a Working Group was set up to study a new version for Article 9, paragraph (2), the Delegation of Japan thought it should use the wording proposed in document S/1 as a basis for its deliberations.

736. Mr. HENNEBERG (Yugoslavia) said it was always a delicate task to draft specific exceptions to an international convention, and the Conference ought to use terms with a very precise meaning. The Delegation of Yugoslavia considered that the text proposed in the Program of the Conference might with advantage be slightly amended; for instance, the expression "private use" might be replaced by "individual use" or "personal use," in accordance with the terminology used in the legislation of the German Democratic Republic, the Federal Republic of Germany, and Czechoslovakia, or by restricting the number of copies authorized, as in French legislation.

ESTABLISHMENT OF A WORKING GROUP TO CONSIDER ARTICLE 9(2)

737. The CHAIRMAN proposed that the Working Group should be made up of the following countries: Austria, Czechoslovakia, France, Italy, Ivory Coast, Japan, Sweden, United Kingdom, the chairmanship being held by the representative of Italy.

738. *That proposal was adopted unanimously.*

739. The CHAIRMAN invited the Committee to give some guidance to the Working Group in its discussions by choosing between the retention of subparagraphs (a), (b) and (c) and the inclusion of a single general clause.

740. *The principle of including a single general clause was adopted by 22 votes to 7 with 8 abstentions.*

RETENTION OF ARTICLE 9(2) OF THE BRUSSELS TEXT (S/51 AND S/80)

741. The CHAIRMAN reminded the Main Committee that according to the Program of the Conference the provisions contained in Article 9(2) of the Brussels text which authorized the reproduction of certain articles by the press, were to be deleted. It was clear however that there was a substantial difference between that concept and the concept of "lawful borrowings" which was contained in Article 10(2). He therefore invited the Main Committee to vote on the inclusion or deletion of the existing Article 9(2), in accordance with the proposal of the Delegations of Czechoslovakia, Hungary, and Poland (S/51).

742. Mr. TIMÁR (Hungary) stressed the importance of the free flow of information in promoting a spirit of peaceful coexistence in international relations. The Hungarian press made full use of the possibilities of reproduction provided by the present Article 9(2) in order to keep the public informed of trends in the world press. In regard to the right of reproduction, it was essential to draw a clear distinction between literary and artistic works on the one hand, and press articles on current affairs on the other. The Delegation of Hungary therefore proposed that the existing text of the Convention should be retained but adapted to meet present-day needs.

743.1 Mr. DRABIENKO (Poland) shared the view of the Delegate of Hungary.

743.2 He went on to point out the great similarity between the two information media of radio and press. In the circumstances, it was difficult to see why the idea of a compulsory license, which public opinion appeared to have accepted in regard to the press, could not be extended to cover broadcasting.

743.3 Finally, the Delegation of Poland had felt obliged to introduce the words "even in translation" into Article 9 (S/51) because under the terms of the Convention translation was considered as an adaptation. It therefore seemed advisable to state explicitly that the right of reproduction included translation.

744. The CHAIRMAN asked the sponsors of the proposal contained in document S/51 whether they intended to authorize the reproduction of articles in their entirety or only of extracts from such articles.

745. Mr. STRNAD (Czechoslovakia) said that the question of reproduction *in toto* did not arise in the case of long articles dealing with economic, political or religious affairs. On the other hand, there were certain economic and political statements which had to be reproduced in full in order to avoid distorting the meaning. It was therefore difficult to make a hard and fast rule stating that the articles in question could be reproduced in their entirety or in part.

746.1 Mr. WEINCKE (Denmark) said that the Delegation of Denmark was strongly in favor of deleting the present Article 9, paragraph (2). The corresponding provisions in Danish legislation had been abolished in 1962; since that date, it had been impossible for newspapers to borrow entire articles without permission. There was nothing to show that such a situation had adversely affected the availability of information or standards of reporting. It was unnecessary to deprive journalists of their rights, even partially. He hoped the Conference would accept the Program proposals for Article 9, paragraph (2), and not adopt any half-way solution.

746.2 He pointed out, however, that the deletion of the Brussels text of Article 9(2) was closely connected with the Program proposals for Article 10(1) concerning the right of quotation. If the Conference decided to adopt a very restrictive provision on that point, it would be less easy to make the deletion than if it accepted the Program proposals on the right of quotation as they stood, as he hoped it would.

747. Mr. ADACHI (Japan) said that his Government wished the existing Article 9, paragraph (2), to be retained as in the amendment proposed by the Delegation of Japan in document S/80, which extended the exceptions in favor of the press to broadcasting. It was still necessary to allow the press to reproduce articles on current topics in full, and the Program proposals for Article 10, paragraph (1), might not thoroughly satisfy that need. Moreover, the existing provisions fully safeguarded the rights of authors in cases where the reproduction of articles on current topics was expressly reserved. It was only logical that the exception in favor of the press should be extended to broadcasting.

748. Mr. TOUZERY (France) said that the Delegation of France recognized the validity of the arguments put forward by the Delegation of Hungary. Moreover there was every ground for satisfaction in the progress which had recently been achieved in regard to the free circulation of newspapers. The question at issue, however, was whether a newspaper had the right to reproduce *in toto* the text of an article which had appeared in another paper; as was stated in the explanatory notes to the Program of the Conference, such action was not compatible with the moral principles recognized by the press. While it was useful for a newspaper to be able to inform its readers about the opinion of other newspapers, the borrower was under certain obligations; in particular, he must secure the permission of the copyright holder, which could always be done on payment of a fee. There was some doubt, too, as to whether it was essential to reproduce borrowed articles in their entirety. Where that was not done, the borrowing was covered by the right of quotation which, in the view of the Delegation of France, was perfectly adequate. France would therefore oppose the suggested amendment (S/51), which went further than was obviously necessary.

749.1 Mr. ASCENSÃO (Portugal) said that the Delegation of Portugal had not submitted any proposal on this subject, but the preliminary observations of the Portuguese Government were on the lines of those put forward by the Delegation of Japan (S/80) and by the Delegation of Czechoslovakia, Hungary, and Poland (S/51). It was still very necessary that articles on current economic, political or religious topics should be made public, particularly in isolated areas, and the need could not be met solely by press reviews and quotations. It should be noted, incidentally, that the Convention already excluded those cases in which reproduction was expressly reserved.

749.2 For the Portuguese Government, the real problem was whether or not that regulation should be extended to broadcasting. The Delegation of Portugal considered that there were a number of reasons in favor of such an extension and it would therefore support the proposed amendments, subject to certain points of drafting. It was essential, however, that the proposed text should constitute an exception which must be expressly included in national legislation.

750.1 Mr. STRNAD (Czechoslovakia), replying to various comments, said that the object of the joint amendment was not to restrict the rights of journalists: it was obvious that statements on economic, political or religious matters were generally made by public figures.

750.2 The argument had also been put forward that it would be better to open frontiers so as to allow free circulation of newspapers; that was a good point, but only to the extent that the public could read articles in their original version. If the public was to be kept informed, it was essential that newspapers should be in a position to reproduce and translate articles taken from foreign newspapers.

750.3 Finally, although it was always theoretically possible for newspapers to apply directly to the author to obtain his consent, in practice it was often difficult to carry out this formality before the article lost its topicality.

751. Mr. CAMARGO (Brazil) proposed that the following phrase should be added at the end of paragraph (2): "this reservation shall not in any circumstances be prejudicial to the right of the author to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority."

752. Mr. STRASCHNOV (Monaco) recognized the cogency of the arguments which had been put forward in favor of the right of reproduction for articles on current affairs in the press. But if the wording adopted for Article 10 concerning the permissibility of quotations was sufficiently wide in scope, i.e., if the quotations covered by that Article were not specified, and if mention was made of translation, the Delegation of Monaco would be prepared to accept the deletion of the existing Article 9(2).

753. The CHAIRMAN suggested that the Main Committee should vote solely on the principle of the two amendments which were before it (S/51 and S/80), that is, on the retention of the existing Article 9(2) and on its extension to radio broadcasting.

754. *The principle of retaining Article 9(2) and widening its scope was adopted by 24 votes to 8 with 7 abstentions.*

EXTENSION OF ARTICLE 9(2) OF THE BRUSSELS TEXT TO TRANSLATIONS (S/51)

755. The CHAIRMAN suggested that the final drafting of the paragraph should be entrusted to the Drafting Committee.

756. Mr. WALLACE (United Kingdom) suggested that it might be advisable to include the idea of permission to translate in the Drafting Committee's text.

757. The CHAIRMAN suggested that the Main Committee should decide whether or not the Drafting Committee should deal with the question of translation, which was raised in the amendment S/51.

758.1 Mr. HESSER (Sweden) said that his Government considered that any provision of the Convention stipulating an exception automatically implied the possibility of borrowing in translation. That was certainly true, for example, of Article 10, paragraph (1). The Swedish Government's opinion on the point was clearly stated in document S/1 in connection with the Protocol Regarding Developing Countries. It took the same view of Article 9, paragraph (2), and did not think it necessary for the right to reproduce in translation to be expressly specified in the text of the Convention.

758.2 If the Conference decided to retain the existing Article 9, paragraph (2), and extend it to broadcasting, the provisions in question should become a separate article, since an exception covering both the press and broadcasting was more general than one concerning the press alone.

759. Mr. ADACHI (Japan) agreed with the Delegate of Sweden on the question of permission to translate.

760. *The extension of the existing Article 9(2) to cover translation was approved by 22 votes to 7 with 10 abstentions.*

The meeting rose at 12:15 p.m.

SEVENTH MEETING

Friday, June 16, 1967, at 2:30 p.m.

LAWFUL QUOTATIONS (ARTICLE 10(1)) (S/68)

761. Mr. CAVIN (Switzerland) said that his Delegation approved the principle of introducing into the Convention a right of quotation covering all the categories of protected works, but the resulting exception should be made more restrictive, mainly because the Main Committee had decided to retain Article 9(2) of the Brussels text. That decision automatically excluded the right of reproduction of works not covered by the paragraphs under consideration; but quotation was clearly a form of reproduction. The Swiss proposal (S/68) was to reintroduce the "short quotations" formula of the Brussels text; that was the logical outcome of the decision which had been taken to retain the existing Article 9(2). The proposal also sought to define the purpose of the quotation; the Study Group had rejected the idea of such a definition, fearing that a list of purposes might be incomplete, but in the text which had been submitted to it the purpose mentioned was that of the context in which the quotation would be placed. There was no longer any basis for apprehension when the purpose of the quotation was determined by the context.

762. Mr. TOUZERY (France) said that the text proposed in the Program was open to criticism because the word "quotation" did not necessarily involve the idea of brevity. An article of any length could be quoted in its entirety. It was therefore essential to qualify the term "quotation"; an attempt had been made to do this in the proposed text by saying that quotations should be compatible with fair practice—a term which was inadequate because it was too vague—and made to the extent justified by the purpose, without any further definition of the extent or the purpose. The Delegation of France asked that the adjective "short" should be inserted before the word "quotation" in order to make it easier for the courts to interpret the Article and to give a clearer meaning to the phrase "compatible with fair practice" and "to the extent justified by the purpose." The Delegation of France was happy to note that in the amendment proposed by Switzerland the list of purposes had been replaced by the concept of finality. The Delegation of France would therefore vote for that amendment if it was put to the vote before the French amendment.

763. Mr. TIMÁR (Hungary) supported the Swiss proposal.

764. Mr. WALLACE (United Kingdom) said that the words "provided they are compatible with fair practice" provided the real safeguard for authors. It was conceivable that a quotation which was not short could nevertheless be regarded as compatible with fair practice. The United Kingdom would prefer, therefore, to leave the text as drafted by the Swedish/BIRPI Study Group.

765. Mr. REIMER (Federal Republic of Germany) said his country could not support the proposal to insert the adjective "short" before the word "quotations," because cases occurred in which quotations were permissible even when they were not short; Article 51 of the Law which was in force in Germany was drafted on those lines and it placed no restriction on quotations in scientific or literary works, for instance, or on quotations from musical works. The Delegation of the Federal Republic of Germany thought it should be possible to delete the phrase "compatible with fair practice" or to replace it by some other phrase corresponding to the English term "fair use" or "fair dealing."

766. Mr. DITTRICH (Austria) endorsed the opinions expressed by the Delegates of the Federal Republic of Germany and the United Kingdom.

767. Mr. HESSER (Sweden) said that in so far as the introduction of the word "short" was concerned, his Delegation endorsed the opinions expressed by the Delegate of the United Kingdom. In a scientific debate it might be necessary, in order to be in position to discuss the matter thoroughly, to make long quotations. The Swiss proposal did not enumerate sufficient purposes for which quotation would be justified. Modern poets and novelists, for instance, inserted quotations in their works solely for artistic effect. That practice would be forbidden if the Swiss proposal were adopted. As the Delegate of the United Kingdom had said, the reference to "fair practice" provided the main safeguard for authors.

768. Mr. GERBRANDY (Netherlands) thought the Swiss proposal was a valid one. He drew the attention of the Drafting Committee to the fact that, in the proposed text, Article 10(1) contained the expression "which has already been lawfully made available to the public," whereas Article 4(5) referred to the author's consent.

769. Mr. STRASCHNOV (Monaco) thought it would be undesirable to insert the adjective "short" before the word "quotation," because Article 10(1) would also apply to artistic works; it would not be possible, for instance, to show parts of a picture on television without infringing the moral right of the painter who was the author. Hence the Delegation of Monaco was in favor of retaining the text proposed in the Program.

770. Mr. DE SANCTIS (Italy) agreed that the objections levelled against the adjective "short" were not without foundation, but pointed out that the same adjective was used in the Berne Convention, and that, from the authors' point of view it would be advisable to retain it, even if the concept of brevity was elastic, because it was important to avoid giving the impression that one of the objects of the Stockholm Conference was to reduce the rights of authors in that connection. The prime task of the Conference was to revise the existing articles and not to draw up new ones.

771. Mr. WALLACE (United Kingdom) referring to the comment of the Delegate of the Netherlands on the use of the word "lawfully," said that the United Kingdom had deliberately not proposed the change because the circumstances provided for in Article 10(1) were slightly different from those provided for in Article 4(5). A person wishing to make a quotation might have difficulty in determining whether the original work had been published under compulsory license or with the author's consent. He suggested, therefore, that the matter be further discussed by the Drafting Committee before a decision was taken in the Main Committee.

772. Mr. TOUZERY (France) entirely agreed with the Delegate of Italy that no problems had ever arisen from the presence of the adjective "short" in the Brussels text; the paragraph obviously had to be interpreted with common sense; it could not apply to such items as the showing of parts of a picture on television. In regard to the criticisms put forward by the Delegate of Sweden concerning the purpose of the quotation, it would be advisable to mention a few of those purposes so as to evoke an idea of finality, as was done in the amendment proposed by Switzerland; to avoid any restrictive interpretations it would be sufficient to use the term "such as."

773. Mr. LAKHDAR (Tunisia) said that if those States which needed culture were to be allowed to obtain it, they must be given every latitude in regard to quotations; for that reason he was against the reintroduction of the adjective "short" in Article 10(1).

774. Mr. GAE (India) said that in the opinion of his Delegation the text proposed by the Swedish/BIRPI Study Group should be adopted. It might not always be easy to decide whether a quotation was short or long.

775. Mr. O'HANNRACHÁIN (Ireland) said he thought that the text proposed by the Swedish/BIRPI Study Group should be adopted. The use of the phrase "provided they are compatible with fair practice" would make the addition of the word "short" quite unnecessary. He hoped that the Drafting Committee would be able to improve on the phrase "and to the extent justified by the purpose." Those words did not seem to reflect very accurately the French text and it would be difficult to translate them into legislation.

776. Mr. STRNAD (Czechoslovakia) said that, as a correlation had been established between the decision to retain the existing Article 9(2) and the need to reintroduce the adjective "short" in Article 10(1), it was necessary to point out the differences between the two texts: Article 9(2) dealt with articles on current economic, political, or religious topics, while Article 10 had a more general application; moreover, Article 9 stipulated that reproduction was permitted unless expressly reserved, and that was a restriction which might make Article 10(1) inapplicable. Hence the decision which had been taken on Article 9 could not be quoted in regard to Article 10, and he was in favor of the text of the latter Article as set out in the Program.

777. The CHAIRMAN invited the members of the Main Committee to vote on the Swiss amendment.

778. *The amendment was rejected by 27 votes to 10 with 2 abstentions.*

779. Mr. TOUZERY (France) withdrew the French amendment, as he considered that the question had been settled by the vote which had just been taken.

780. The CHAIRMAN invited the members of the Main Committee to vote on the proposed text for Article 10(1), it being understood that the Drafting Committee would make the necessary drafting changes, including the addition of the words "even in translation" after the words "make quotations," as proposed by the Delegations of Czechoslovakia, Hungary, and Poland, in document S/51.

781. *The proposed text was provisionally adopted by a unanimous vote.*

EXCERPTS FROM PROTECTED WORKS (ARTICLE 10(2)) (S/83)

782. Mr. KOUTIKOV (Bulgaria) explained that his country was a joint sponsor of the proposal (S/83) to insert the following words in the Brussels text: "radio and television broadcasts and phonograms." Those technical media were being increasingly used in secondary and university education, because they had a quicker action than the printed word, they were appreciated by young people and they made teaching more efficient; it was important, therefore, to ensure that those new techniques were not relegated to second place as a result of restrictions on their use.

783.1 The CHAIRMAN said that the problem of translation had already been raised by the Delegation of Sweden at the preceding meeting. The Drafting Committee would have to harmonize the various paragraphs and add the words "even in translation" wherever necessary.

783.2 Replying to a request for clarification from the Delegate of Tunisia, the Chairman explained that the purpose to which reference was made in Article 10(2) was basically the promotion of education, and that the word "*licitement*" represented a reservation affecting those countries of the Union which allowed borrowings from literary or artistic works.

784. Mr. WALLACE (United Kingdom) urged the Main Committee to exercise caution in accepting Article 10(2), the provisions of which made wide inroads on authors' rights. He suspected that the word "borrowings," which had been used to translate the French word "*emprunts,*" might mean not only excerpts but the whole work. The safeguard provided by the words "compatible with fair practice" did not appear in Article 10(2). The paragraph spoke of publications intended for teaching or having a scientific character. He doubted, having regard to other articles being inserted in the Convention, that there was any longer a need for Article 10(2) and suggested that the Main Committee should consider deleting it rather than widening its scope.

785. Mr. CURTIS (Australia), referring to the joint amendment submitted by four Delegations (S/83), said that the use of educational broadcasting was being extended considerably in many countries, particularly in isolated countries. His Delegation agreed, therefore, that radio and television broadcasts and phonograms intended for teaching or having a scientific character should enjoy the same benefits as publications intended for the same purposes. He wished, however, to make two qualifications. Firstly, he doubted that Article 10 was the most appropriate article in which to include a provision relating to radio and television broadcasts and phonograms. Secondly, the Main Committee should beware of widening the exceptions permitted by the Convention to a point at which inroads would be made on the rights of authors, particularly of authors writing for educational or scientific purposes. The English text proposed by the Swedish/BIRPI Study Group differed in substance, not merely in form, from the Brussels text. The matter should be examined by the Drafting Committee if, as was stated in document S/1, no change of substance was proposed.

786. Mr. GERBRANDY (Netherlands) thought that Article 10(2) had been overtaken by events; in his view, the production of school text books was now a commercial business and authors should not be deprived of their rightful share in the business. He agreed with the Delegate of the United Kingdom that paragraph (2) could be deleted without any disadvantage; if it was to be retained, it should be retained for literary and scientific works.

787. Mr. ADACHI (Japan) said that his Delegation had some doubts about the joint amendment submitted by four Delegations which, if adopted, would be prejudicial to the reproduction rights granted to the author.

788. Mr. TOUZERY (France) said that quite apart from the amendment proposed by Bulgaria, Czechoslovakia, Poland, and Rumania, suggestions had been made to the effect that the paragraph should be simply deleted; if those suggestions reflected the opinion of the majority, it would be pointless to continue the discussion. If a majority was in favor of retaining the paragraph, it should be noted that the amendment which had previously been rejected would have defined copyright more clearly; here they were dealing not with the substantive question of copyright but with the technical media by which the author expressed his thoughts; in that connection the Brussels text was out of date, because it referred only to publication; for that reason, he favored the joint amendment which would have the effect of modernizing the clause. With regard to the remarks of the Delegate of the United Kingdom concerning the word "borrowing," he agreed that if an entire work was "borrowed" the question would no longer be one of technical media but of copyright; it might perhaps be better to speak of "to permit the lawful borrowing of extracts."

789. Mr. SINGH (India) said that India fully supported the joint amendment. In international relations the spirit of give and take should prevail. The use of the word "borrowings" was therefore very appropriate. It would be impossible to advance in education or science if countries were unable to borrow knowledge from, or the results of research done by, other countries. His Delegation considered, therefore, that the text proposed by the Swedish/BIRPI Study Group, as amended by Bulgaria, Czechoslovakia, Poland, and Rumania, should be adopted.

790. Mr. STRNAD (Czechoslovakia) agreed with the Delegate of the Netherlands that Article 10(2) was out of date in view of the technical advances which had been made, so that the paragraph restricted the possibilities of using works for educational purposes. As for the comment of the Delegate of the Netherlands concerning the financial benefits accruing from the production of text books, such benefits could not be justified, as it was essential that many countries should be allowed to improve their educational systems.

791. The CHAIRMAN proposed that the Working Group should be instructed to make a more careful study of the text of paragraph (2), together with the proposals submitted by Bulgaria, Czechoslovakia, Poland, and Rumania and the suggestions put forward by France and the United Kingdom.

792. *It was so decided.*

REQUIREMENT OF ACKNOWLEDGEMENT IN QUOTATIONS AND EXCERPTS (ARTICLE 10(3))

793. The CHAIRMAN noted that no amendment had been proposed to this paragraph and that it called for no comment.

USE OF PROTECTED WORKS IN REPORTING CURRENT EVENTS (ARTICLE 10*bis*) (S/76)

794. Mr. STRASCHNOV (Monaco) said that the proposal put forward by his country in document S/76 affected the form of the Article rather than the substance; the term "communication to the public" had been replaced by the phrase "made available to the public" because the latter was wider in scope, whereas the idea of "communication to the public" appeared in the Convention only in connection with Article 11*bis*.

795. The CHAIRMAN suggested that it should be left to the Drafting Committee to settle that point and he invited the Main Committee to vote on the substance of Article 10*bis*.

796. *The substance of Article 10*bis*, in the proposed text, was accepted unanimously.*

RIGHT OF REPRODUCTION (continued) (S/13)

797. Mr. DITTRICH (Austria) said that Austria withdrew its proposal (S/13) that a further paragraph be added to Article 9. The Delegation of Austria had changed its view on this point on the basis of further information received from Austrian publishing circles.

The meeting rose at 5:30 p.m.

EIGHTH MEETING

Monday, June 19, 1967, at 10:40 a.m.

CINEMATOGRAPHIC WORKS AND WORKS PRODUCED BY AN ANALOGOUS PROCESS (ARTICLE 2(2))

798. The CHAIRMAN suggested that the Committee should proceed to a general discussion on the articles dealing with cinematographic works, i.e., Article 2(2) and, possibly, Article 2(1) and Article 14(1), before any questions were referred to the Working Group.

799. *It was so decided.*

800. The CHAIRMAN invited the Committee to vote on the principle of the Bulgarian amendment (S/89) which sought to insert the words "televisual works" after the words "cinematographic works" in Article 2(1), with the consequent deletion of paragraph (2).

801.1 Mr. KOUTIKOV (Bulgaria) said that the rapid expansion of television and the increased exchanges of television programs made it necessary to establish an international legal régime for televisual works.

801.2 Under the terms of Article 2(2), as drafted in the Program of the Conference, only those televisual works which were fixed in some material form would be protected by the Convention. But that was not strictly in conformity with the system of protection laid down by the Convention, because by virtue of Article 2(1) protection was to be given to "every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression..." Since televisual works fulfilled the general criteria set out in the first paragraph, they should *ipso facto* be protected. That interpretation was confirmed by the fact that the requirement concerning a written acting form for choreographic works and entertainment in dumb show had been deleted from Article 2(1); in the circumstances, it would seem more logical to delete the requirement of material fixation for televisual works.

801.3 Those were the reasons which had led the Delegation of Bulgaria to put forward its proposed amendment (S/89).

802.1 Mr. GERBRANDY (Netherlands) said he regretted that he must make some criticisms of the text prepared by the Swedish Government and BIRPI. In the first place, the wording suggested in the Program of the Conference introduced an arbitrary concept of "works expressed by a process producing visual effects analogous to those of cinematography," whereas the effect of a work on the public could not be regarded as decisive in regard to copyright, which was based solely on the act of creation, the achievement of that act in a particular form and the means adopted by the author to move from the thought to the form.

802.2 Secondly, Article 2 had previously contained a neutral and non-limitative list of the works protected, but had not defined the extent, duration, type, and limits, of the protection granted; it might therefore be asked whether it was reasonable to change the whole nature of Article 2 by introducing rules concerning the form of protection.

802.3 Thirdly, while the reasons invoked in support of the phrase concerning works "fixed in some material form" were quite acceptable, having regard to the national legislation of some countries in which assimilation was only possible when there was fixation, the principle thus laid down was still a bad one and ran counter to the spirit of the Berne Convention.

802.4 Finally, Article 2(2) spoke of works being considered to be cinematographic works, yet the régime for the latter had not yet been defined.

802.5 Hence, the Delegation of the Netherlands considered that the Conference should begin by deciding what régime of protection should be granted to cinematographic works and should then decide whether certain works should be considered to be cinematographic works, and, if so, which and to what extent.

803.1 Mr. JELIĆ (Yugoslavia) explained the proposed amendment submitted by the Delegation of Yugoslavia (S/107). In the view of that Delegation, the sole reason for assimilating televisual works to cinematographic works in the proposed paragraph (2) was that there was a resemblance between the technical processes employed. But, in the case of literary and artistic works, what mattered was the similarity of the intellectual processes, not the technical processes involved. The Delegation of Yugoslavia could see no such resemblance between a cinematographic and a televisual work, and it could see no justification for regarding them as identical. The question was not merely a theoretical one, because, under Yugoslav legislation, if the two forms were regarded as identical that would involve granting the status of author to persons who had not contributed any creative element to the production of a television program.

803.2 On the other hand, the requirement that a televisual work must be fixed in some material form if it was to be considered as a cinematographic work would deprive directly transmitted works of all protection, even though they might be highly literary or artistic productions.

804.1 Mr. STRASCHNOV (Monaco) said that the Conference would have to decide whether the amendments made to the Berne Convention at the Berlin Conference of 1908 could again be retained in spite of the technical revolution which had taken place since that time in this field.

804.2 In regard to the proposals submitted by the Delegations of Bulgaria and of Yugoslavia (S/89 and S/107), it should be pointed out straight away that the mention of televisual works in Article 2(1) raised an entirely new question which deserved very careful study. Such a study would probably lead to the conclusion that to mention televisual works in paragraph (1) would have unfortunate consequences because an "unfixed" televisual work generally merged into one or another of the categories already referred to in the Convention, and because, if it was fixed and fell in a separate category, it was liable to be subject to different rules depending upon whether it was regarded as a cinematographic work *stricto sensu* or as a televisual work.

804.3 As things were at present, there was no distinction between a fixed televisual work and a cinematographic work, whether in regard to the purpose for which it was to be used, the process employed or the aesthetic characteristics. Moreover, the two types of works were used interchangeably and the techniques employed by the cinema and television were becoming more and more similar; for instance, certain film producers sometimes made use of electronic processes and producers of televisual works made use of optical processes. Hence it was easy to visualize the confusion which would result if televisual works were simply added to Article 2(1).

804.4 A still more serious consequence was that it would become impossible to determine the status of a televisual work in law, as the definition would vary in accordance

with national legislation. Serious difficulties would arise in exchanges of television programs which were multiplying at an unprecedented rate in this epoch of telecommunication satellites.

804.5 For those reasons, the Delegation of Monaco was opposed to the inclusion of televisual works in paragraph (1) of Article 2 and to the deletion of the proposed paragraph (2), which would involve the creation of a category of works without any uniform status in law.

805.1 Mr. CURTIS (Australia) said that the discussion was about two separate although related points: firstly, should the Conference include in the Convention a requirement that a class of works not fixed in some material medium should be protected? And secondly, should the Convention distinguish between cinematographic works and a new and as yet undefined class of works called televisual works?

805.2 On the first point, the discussion showed that those in favor of protecting televisual works without requiring them to be fixed in some material form based their argument on the proposal to delete from the Convention the requirement for description in writing in respect of choreographic works. That was not a valid reason, however, since the Conference had not yet decided to delete the requirement, and his Delegation would oppose such a step. The advocates of protection for television programs also appeared to claim that the creative effort involved in producing them deserved protection whether or not they had been committed to tape or film. But the proper place for such protection was the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, and not the Berne Convention, the purpose of which had always been to protect fixed works only. The Delegation of Australia could not support a proposal to protect unfixed works, primarily because of the practical need to have some evidence whether words on paper, images on film or an electronic record on a magnetic tape, enabling the protected work to be identified.

805.3 Secondly, the question whether the Convention should distinguish between television and cinematographic works had been expertly reviewed by the Delegate of Monaco. The position could be summarized by saying that at the present stage the distinction seemed a technological one, and as such out of place in the Berne Convention. For example, it frequently happened in the film industry that directors switched from cinematographic to television cameras when making a film. Consequently, the inclusion in the Convention of a distinction based on those two technological processes would cut across current practice. The main element which needed protection under the Berne Convention was not the way in which the work was fixed but the merit of the work itself, although the Delegation of Australia insisted that the work must be fixed in order to deserve that protection.

806. The CHAIRMAN proposed that the Committee should leave the question of fixation for the present, as it was a general question which applied equally to choreographic and other works, and decide whether televisual works should or should not be considered to be cinematographic works as defined in Article 2(1).

807. Mr. WALLACE (United Kingdom) said that his Delegation was in favor of assimilation, but only for fixed television programs. The Delegate of Australia had already referred to the Rome Convention. If the Conference were to extend the protection of the Berne Convention to unfixed television programs, it would be encroaching on a sphere already dealt with in the Rome Convention and, on a regional basis, in the European Agreement on the Protection of Television Broadcasts. On the other hand, there was no logical difference between a film made by a commercial company and one made by a broadcasting organization. In essence, both were a series of fixed images. The idea that something unfixed could be protected as a cinematographic film would be incomprehensible in the United Kingdom. His Delegation therefore strongly supported the first sentence of the Program proposal for Article 2, paragraph (2). As to the second sentence, it would suggest a minor amendment at a later stage.

808.1 Mr. HESSER (Sweden) said that the protection afforded by the Rome Convention and the European Agreement disregarded the artistic value of a program. It only covered the broadcast itself. Protection under those instruments was often of short duration and did not extend to adaptation or plagiarism.

808.2 The Program proposal was based on the simple fact that the production of television programs involved broadly the same techniques and personnel as cinematographic works and led to the same result, and it was therefore logical that, as a general rule, both types of work should be governed by the same rules. The Program proposals also included electronic tapes, which, as the Delegate of Australia had rightly pointed out, were used in both film and television production.

809. Mr. SPAIĆ (Yugoslavia) reminded the Committee that his Delegation had already raised the question of the distinction between cinematographic and televisual works at the meeting of the 1965 Committee of Governmental Experts.

810. Mr. DITTRICH (Austria) pointed out, with reference to the remarks of the Delegate of Sweden that the Berne Convention applied exclusively to works resulting from individual intellectual activity. The mention, in document S/1, of televised broadcasts of current events seemed to indicate a departure from that principle. Such broadcasts did not always constitute cinematographic works, and it should therefore be made clear by a remark in the general report that television recordings would only enjoy the protection accorded to cinematographic works to the extent that they represented the fruit of a creative activity.

811. Mr. KOUTIKOV (Bulgaria) said he had not been convinced by the arguments put forward by the Delegate of Monaco in favor of retaining Article 2(2). In the opinion of the Delegation of Bulgaria, the problem should be studied more thoroughly in a Working Group.

812. Mr. ROHMER (France) said that the principle of treating televisual works as cinematographic works was a completely new concept which required time for reflection, although the French Government had approved the idea in advance. In view of the arguments put forward on both sides, the Delegation of France wondered whether, from a legal as well as from an aesthetic point of view, there was any more difference between a cinematographic work and a televisual work than between a water color painting and an oil painting, for instance. Moreover, the consequences of adopting the Swedish Government's thesis on the one hand, and of deciding to make a fundamental distinction between cinematographic and televisual works on the other, would be very different, in practice as well as in theory, because the decision taken would determine the final wording of Article 14. Hence, the Delegation of France considered that the Committee should either attempt to solve the question forthwith, which would be difficult, or reserve the legal aspect of the problem and turn to Article 14 which would, in practice, determine the position of delegations.

813. Mr. FERSI (Tunisia) agreed with the Delegation of France on the question of treating televisual works as cinematographic works. The Delegation of Tunisia was

in favor of the principle of assimilation, partly because the technical differences between the two forms of expression were tending to disappear and partly because it was undesirable that the developing countries should retain a distinction between the two forms of expression which had been established arbitrarily by the developed countries.

814. Mr. STRNAD (Czechoslovakia) said television was of such importance at the present time that it would be impossible to ignore televisual works in the revision of the Berne Convention. As the question of assimilation could not be decided solely on a legal basis, the Committee might perhaps restrict itself to including televisual works in paragraph (1) while allowing for the possibility of reverting to the question of the assimilation of cinematographic works in connection with the discussion of Article 14 or possibly in connection with a new Article 14*bis* or 14*ter*.

815. The CHAIRMAN suggested that the Committee should vote provisionally on the principle of treating televisual works as cinematographic works, it being understood that a Working Group would subsequently be set up to consider the question.

816. *The principle of treating televisual works as cinematographic works was accepted by 22 votes to 9 with 7 abstentions.*

817. Mr. ROHMER (France) emphasized the provisional nature of the vote which the Committee had just taken. While the Delegation of France had agreed to the principle of treating televisual works as cinematographic works, its position would depend ultimately on any new factors which might emerge during discussion. It should also be pointed out that, if the Conference decided to mention televisual works in the text of the Convention, the question of fixation would acquire a new importance, as it was difficult to assume the actual conditions when a work which was not fixed in any material form could be protected by the Berne Convention. In any case, this would pose new problems.

818. Mr. GALTIERI (Italy) regretted that he had not had the possibility of explaining the position of the Delegation of Italy before the Committee voted. At the meeting of the Committee of Experts, the Delegation of Italy had expressed its opposition to this suggested text of Article 2(2) of the Berne Convention, on the grounds that, while the proposed amendment might seem to be justified from the technical point of view, there was no justification for it from the point of view of the legal status of cinematographic works. The amendment was fraught with risks, in view of the fact that some national legislations applied to cinematographic works the very special régime of legal assignment. Hence, the Delegation of Italy was opposed to the assimilation of televisual works to cinematographic works, even when they were fixed in some material form.

CINEMATOGRAPHIC WORKS: RIGHTS IN PRE-EXISTING WORKS (ARTICLE 14(1)) (S/92)

819. The CHAIRMAN said he wondered whether the word "scientific" could not be deleted from Article 14(1), as the definition of the expression "literary and artistic works" contained in Article 2 included works in the scientific field.

820. Mr. GAE (India) pointed out, with reference to the words "literary, scientific or artistic" in the Program proposals for Article 14, paragraphs (1) and (3), that as defined in Article 2, paragraph (1), the expression "literary and artistic works" included "every production in the literary, scientific and artistic domain." Since it was therefore unnecessary to repeat the word "scientific," he suggested that it should be deleted everywhere in the Convention except in that definition.

821. The CHAIRMAN proposed that the word "scientific" should be deleted from Article 14(1) and, in general, whenever it appeared in the text of the Convention.

822. *It was so decided.*

823. The CHAIRMAN drew the attention of the Committee to the amendment submitted by the Delegation of the Federal Republic of Germany (S/92) which would introduce the idea of broadcasting into Article 14(1). Possibly the Main Committee might simply refer the point to the Drafting Committee.

824. Mr. WALLACE (United Kingdom) maintained that a matter of substance was involved, namely in relation to the application of Article 11*bis*. His Delegation could not agree to insert the words "communication to the public by wire" in Article 14, paragraph (1), unless Article 11*bis* was regarded as applying. His Delegation considered that it governed all broadcasting questions, including the situation in which cinematographic films were broadcast and the broadcast was communicated by wire. Consequently, the Delegation of the United Kingdom could not support the proposal in document S/92, paragraph (7), that the provisions of Article 11*bis*, paragraph (2), should not apply.

825. Mr. STRASCHNOV (Monaco) said he was in full agreement with the Delegate of the United Kingdom. Under the existing system, all questions affecting broadcasting and secondary uses of broadcasting were governed by Article 11*bis* of the Convention, and it would be unwise to make an exception in Article 14 which would inevitably bring others in its train. To say in Article 14 that the provisions of Article 11*bis*(2) should not apply was tantamount to refusing countries of the Union the right to introduce compulsory licenses for films. At a time when there was a rapid increase in intercontinental broadcast programs, the content of which was not always known to the relaying stations, the proposal of the Delegation of the Federal Republic of Germany would effectively deprive States of the possibility of resorting to compulsory licenses, even in the case of live broadcasts which might be assimilated to cinematographic works. The Delegation of Monaco was therefore opposed to the proposal of the Delegation of the Federal Republic of Germany.

826. The CHAIRMAN wondered whether provision should be made for a system of compulsory licenses for the reproduction of cinematographic works by broadcasting, extending the former Article 11*bis* to cinematographic works, or whether, on the contrary, its application should be restricted to secondary uses.

827. Mr. WALLACE (United Kingdom) said that his Delegation was opposed to compulsory licenses for broadcasting organizations to broadcast films, but it was in favor of the possibility of compulsory licenses where a film was broadcast with permission and the broadcast was disseminated to the public by a wire relay organization. That was why his Delegation considered it important that Article 11*bis*, paragraph (2), should continue to apply.

828. Mr. HESSER (Sweden) pointed out that from the technical point of view the proposal in document S/1 to insert the words "communication to the public by wire" in Article 14, paragraph (1), was simply intended to cover communication having no broadcast element. That was clear by analogy with the words "communication to the public by wire or by rebroadcasting of the broadcast of the work" in Article 11*bis*, paragraph (1). Article 14, paragraph (1), was meant to cover the cabling of pro-

grams direct to subscribers by wire enterprises, including the relaying of programs over a large area for advertising purposes. He wished to make it absolutely clear that there was no intention to cover any kind of broadcasting in Article 14.

829. The CHAIRMAN confirmed that he personally interpreted the text as implying that "communication to the public by wire" was not covered by Article 11*bis*, as the process employed was not broadcasting.

830. Mr. GAE (India) said that the Committee, in considering cinematographic works, should bear in mind the two amendments to Article 2, paragraph (1), proposed by the Delegation of India in document S/73.

831. Mr. CURTIS (Australia), reverting to the proposal of the Delegation of the Federal Republic of Germany to include a reference to broadcasting in Article 14, paragraph (1), (S/92), said the flexibility of the Convention would suffer if broadcasting were dealt with in any article other than Article 11*bis*. The Delegation of Australia was therefore opposed to the insertion of such a reference.

832. Mr. REIMER (Federal Republic of Germany) said it was obvious that the compulsory license for which provision was made in Article 11*bis*(2) would in no circumstances apply to cinematographic works. It was easy to visualize the disastrous consequences for cinematographic works of a provision which allowed broadcasting authorities to use films without the consent of the producer.

833. Mr. ROHMER (France) supported the proposal of the Delegation of the Federal Republic of Germany which seemed to him to give more cohesion to the text.

834.1 The CHAIRMAN pointed out that only one question of substance was actually under discussion, as the definition of broadcasting could not cover transmission to the public by wire. It was for the Committee to decide whether it was advisable to make no provision for compulsory licenses for films, as proposed by the Delegation of the Federal Republic of Germany, or whether provision should be made for the possibility of resorting to a compulsory license for cinematographic works as proposed in the Program of the Conference and supported by the Delegation of Monaco, or whether, finally, provision should be made for a compulsory license restricted to secondary uses of cinematographic works, excluding broadcasting—an intermediate solution advocated by the United Kingdom.

834.2 Replying to the comments of the Delegate of India, the Chairman explained that the question of protecting works of folklore would be dealt with at a later point in the discussion of Article 2, as that question did not fall within the scope of Article 14 of the Convention.

835. Mr. STRASCHNOV (Monaco) said his Delegation had contented itself with recommending the retention of Article 11*bis*, that is the retention of the possibility of resorting to compulsory licenses for films. Moreover, it should be borne in mind that the Conference had not yet defined a cinematographic work, and it would be inadvisable to take the retrograde step of depriving television of certain prerogatives which national legislations could confer upon it.

836. Mr. STRNAD (Czechoslovakai) inquired whether, according to the United Kingdom thesis, secondary uses included retransmission.

837.1 The CHAIRMAN confirmed that retransmission did fall within the definition of secondary uses.

837.2 He suggested that the Main Committee should vote first on the proposal which was furthest from the text contained in the Program of the Conference, namely, that of the Federal Republic of Germany (S/92), and then on the United Kingdom proposal, before referring the question to the Working Group.

838. *The German proposal (S/92) was rejected by 18 votes to 10 with 11 abstentions.*

839. *The United Kingdom proposal was accepted by 19 votes to 7 with 13 abstentions.*

840. Mr. CURTIS (Australia) said with reference to the acceptance of the United Kingdom proposal that Australian legislation did not provide for the granting of compulsory licenses for broadcasting, nor were such provisions contemplated. He thought that delegates, by putting the question interms of granting compulsory licenses, had misrepresented the effect of continuing to apply the existing provisions of Article 11*bis* to all broadcasting matters. The Australian Government also attached great importance to the power to legislate on monopoly rights.

CINEMATOGRAPHIC WORKS: SPECIFICATION OF AUTHORS' RIGHTS (ARTICLE 14(2))

841. *The text proposed in the Program of the Conference was adopted unanimously.*

CINEMATOGRAPHIC WORKS: ADAPTATION OF PRE-EXISTING WORK (ARTICLE 14(3))

842. *The text proposed in the Program of the Conference was adopted unanimously, with the deletion of the word "scientific."*

CINEMATOGRAPHIC WORKS: PRESUMPTION OF ASSIGNMENT (ARTICLE 14(4) TO (7))

843. The CHAIRMAN suggested that, before opening the general debate on the question of "presumption of assignment," it would be useful to have the views of the observers of the various international organizations.

844.1 Mr. FERNAY (International Writers Guild), speaking at the invitation of the Chairman, said that the authors whom he represented, although they came from countries with very varying legislations, had nevertheless been unanimous in their opposition to the text of Article 14(4) as set out in the Program of the Conference. He did not wish to cast doubt on the motives of those who had prepared the draft, but it was to be feared that the introduction into the Berne Convention of a rule of interpretation for agreements would upset the relations between authors and producers in the majority of countries of the world. Those relations were at present governed by a freely negotiated agreement, even in the United Kingdom, where, despite the system of "film copyright," before a film was produced contracts were negotiated with the authors concerned setting out in detail the conditions for the assignment of rights. It should be recognized that the inclusion in the Berne Convention of a rule of interpretation setting out in advance the rights which the author was presumed to assign to the producer would inevitably lead to the gradual disappearance of agreements, particularly as the courts would accept it as a general rule that the author retained all those rights which were not expressly mentioned in the contract of assignment.

844.2 Under the proposed new system the situation would be reversed: it would be to the interest of the maker to keep his agreements as laconic as possible, or even to dispense with them if the law so allowed, and authors would be dispossessed or would have no redress.

844.3 Moreover, the observations submitted by Governments on document S/1 showed that the adoption of the proposed provisions for Article 14(4) to (7) would not contribute in any way to achieving the object in view, namely the unification of the rules of protection, as witness the observations of the British Government which wished it to be made clear that the rule of interpretation for agreements would not be applicable in those countries in which the maker was regarded as the author of the film. That would give rise to a fantastic situation: a French author would not be able to object to the showing of his film on television in his own country, whereas he could do so in Great Britain; on the other hand, there would be nothing to prevent an English director, regarded as a mere technician by English law, from claiming the benefits which French law granted to authors, if his film was exported to France.

844.4 Considering that Italy intended to retain its system of legal assignment, that a number of countries wished to exclude existing works from the scope of the rule of interpretation, and that others, on the contrary, wished to include them, it could be said that the adoption of the provisions proposed for Article 14(4) to (7), far from leading to unification, would further complicate the legal situation.

844.5 Finally, it was questionable whether makers would secure the expected benefits from the introduction of a rule of interpretation which, moreover, was not acceptable to authors. It seemed to the International Writers Guild that the makers did not think so or at least no longer thought so.

844.6 The International Writers Guild strongly urged the Conference to consider whether the wisest solution, failing a compromise which was acceptable to all, would not be to retain Article 14 in its present wording, while leaving the interested parties to settle among themselves, in the framework of their professional agreements, the relatively minor problems arising from the circulation and exploitation of cinematographic works.

845.1 Mr. MALAPLATE (International Confederation of Societies of Authors and Composers (CISAC)), speaking at the invitation of the Chairman, associated himself entirely, on behalf of the 80 societies of authors which he represented, with the comments made by the representative of the International Writers Guild.

845.2 CISAC wished to make it clear, particularly since it had the honor of taking part in the Authors' Consultative Committee whose advice had been very rarely accepted, that the rules of interpretation which the Conference proposed to include in Article (14) were out of place in an international convention whose functions consisted on the one hand in assimilating the rights of foreign authors to those of national authors and on the other hand to ensuring a minimum of protection in countries of the Union other than the country of origin. Furthermore the reasons which had been adduced to justify those rules were without foundation, as the international circulation of films was fully assured by the normal operation of agreements between makers and authors; and even some of the delegations considered that the uniform system which the amendments sought to achieve was unrealisable in the near future. In effect, the texts proposed confirmed the existence of five different systems. Finally, the comments submitted by the International Federation of Film Producers' Associations (FIAPF) showed that film makers themselves were no longer prepared to accept the rules of interpretation proposed in the Program of the Conference.

845.3 In those circumstances, authors thought it would be wise to abandon those rules, which they regarded as dangerous.

846.1 Mr. FERRARA SANTAMARIA (International Federation of Film Producers' Associations (FIAPF)), speaking at the invitation of the Chairman, said that he was also expressing the views of the International Federation of Film Distributors' Associations (FIAD). On the subject of the assimilation of televisual works to cinematographic works, he explained that, whenever there was a televisual work there was automatically a cinematographic work. In the case of a theatrical performance broadcast by television, with or without recording, no adaptation or artistic creation was involved, and the work was exactly the same literary work which it had been before. In such a case, the work of the producer was of the same nature as that of a stage producer. When a novel or short story was adapted as a play, it was the play which constituted the new work. In the case of a live outside broadcast, no cinematographic, literary or artistic work in the true sense of the terms was created, even when it was recorded on video-tape or film. In the case of a televised revue, it might be possible to speak of a televisual work in order to stress the fact that the work had been created expressly for television, but here again, the difference was purely technical. On the other hand, a television film was undoubtedly a cinematographic work, produced and staged in accordance with techniques proper to the art of cinematography.

846.2 In the view of FIAPF, it would be illogical to conclude from a consideration of a part of the effects of a work that it should be regarded as qualifying for the highest level of legal protection. Hence FIAPF proposed that the wording of the Brussels text should be retained: "cinematographic works and works produced by a process analogous to cinematography."

846.3 In regard to Article 14, FIAPF wished to make it clear that presumption of assignment and the rules of interpretation were calculated to facilitate the free circulation of cinematographic works. Such a system would have no point, however, unless it also covered pre-existing works. To exclude such works would involve defining them, which would be particularly difficult as far as cinematographic works were concerned. For instance, should that concept be extended to film scripts which had not been immediately accepted by a film maker? The proposed text of Article 14(5) would hamper the free circulation of cinematographic works by obliging those who were exploiting a film to allocate a part of the receipts to the authors, although the latter had had full freedom to look after their own interests at the time when they assigned their rights.

846.4 Finally, an international convention should not make recommendations on contractual questions to the countries which were parties to it. Whatever happened, in order to safeguard the position of those countries of the Union which applied the system of film copyright or legal assignment, the Convention should include the supplementary or "transitional" provisions which had been proposed by the Study Group.

846.5 FIAPF felt bound to oppose a draft which did not even take account of a provision proposed at Geneva in 1965 to restrict the exercise of moral rights "to an extent that takes equitable account of the interests of the other authors and those of the maker of the film." It should be remembered that the system of presumption of assignment had been rejected by a majority of only one vote, the authors being afraid that the system might

be extended to the whole field of television. Hence FIAPF found itself obliged to resume its freedom of action, but it was ready to examine the question again with the national associations of film producers if new amendments were envisaged.

847.1 Mr. HANDL (International Union of Cinematograph Exhibitors), speaking at the invitation of the Chairman, said that as regards Article 14(4) and (5), his organization was of the opinion that authors, who have authorized the cinematographic adaptation or reproduction of their works, or authors, who have undertaken to bring literary or artistic contributions to the making of a cinematographic work, were able to contract with the maker what is to be considered the value of their contribution.

847.2 On the other hand, the completed film does not represent the sum or entity of the values of individual contributions but an entirely new value. This means that the partnership of an author in the exploitation of this new value never corresponds with the proportion of his own contribution. Therefore, it does not seem justified to overestimate each of these individual contributions in a manner as provided for in the new wording. Therefore, appeal was made to the delegates to delete them.

847.3 If, however, the Conference adopts the proposed provision of paragraph (5) in document S/1 it should be emphasized that it is absolutely necessary to provide—*expressis verbis*—that the participation in proceeds shall be limited to the receipts of the film maker. It does not seem justified to calculate such a share on the increased value which results from the activity of the distribution and exploitation, as that was also unusual in other fields of copyright.

The meeting rose at 12:30 p.m.

NINTH MEETING

Monday, June 19, 1967, at 2:30 p.m.

CINEMATOGRAPHIC WORKS:
PRESUMPTION OF ASSIGNMENT (continued) (S/107)

848. The CHAIRMAN invited the Main Committee to open a general debate on the system known as "presumption of assignment" and on the exceptions to that system.

849. Mr. GALTIERI (Italy) said his Delegation was in favor of any measures which would facilitate the international circulation of cinematographic works, in the strict sense of the term, excluding televisual works. In view of the result, provisional though it was, of the vote on Article 2(2), to which the Delegation of Italy was still opposed, it would reserve its position in regard to any modifications which might be proposed to Article 14 and vote for the principle of retaining the existing Brussels text. The only other possible solution, in the view of the Delegation of Italy, would be to keep to Article 2(1) of the Brussels text, with or without mention of televisual works.

850. Mr. RAYA MARIO (Spain) said it was understandable that, in view of the existing divergences between the countries of the Union, many objections should have been raised to the introduction into the Convention of provisions governing the treatment of cinematographic works. As a compromise solution was necessary, he would explain the system adopted in Spanish law: Law No. 17/1966 of May 31, 1966, gave the maker or his assignees the exclusive right to the economic exploitation of the cinematographic work, safeguarded all the moral rights of the intellectual creators of the film, together with such economic rights as were stipulated in the agreement and a right which cannot be given up to a 1.5% participation in the receipts. Spain could not accept any solution on this point which ran counter to those legal provisions.

851. Mr. JELIĆ (Yugoslavia) said that his Delegation had submitted a proposal for the deletion of paragraphs (4) to (7) of Article 14 (S/107) and he expressed himself in favor of the retention of the existing Brussels text. If, as was stated in document S/1, the proposed system was intended to facilitate the international circulation of cinematographic works, it might well be asked whether that solution, praiseworthy enough in itself, was compatible with the spirit of the Convention. By laying down rules in the field of contract, the Convention would be encroaching on the field of national legislations and on the independence of contracting parties. Under the proposed solution, where the contract said nothing on the subject, it would always be construed as being favorable to the maker at the expense of the intellectual authors. National legislation would not accept such a solution unless it maintained a balance between the interests of authors and producers by some other means. To introduce the system of presumption of assignment into legal systems where it had not previously existed would involve a revision of all the means of protecting copyright. In Yugoslavia, copyright could only be assigned by an express clause in the contract, and Yugoslavia could not endorse the revision of Articles 1 to 20 if the proposed rule was obligatory.

852. Mr. TIMÁR (Hungary) said that his Delegation was opposed in principle to the inclusion in the Convention of general obligatory rules for the interpretation of agreements between the makers and authors of cinematographic works. Such regulations were the prerogative of national legislations. He therefore suggested that the proposals concerning paragraphs (4) to (7) of Article 14 should be rejected.

853. Mr. CAMARGO (Brazil) shared the views of the Delegates of Yugoslavia and Hungary.

854.1 Mr. ADACHI (Japan) said that Japan supported the introduction into the Convention of a rule of interpretation concerning contracts between makers of cinematographic works and so-called modern authors. There was, however, no need for such a rule in the case of contracts between makers of cinematographic works and so-called classical authors. In the latter case, lack of rule of interpretation would not impede the smooth exploitation of cinematographic works but its existence would tend to limit unduly the rights of classical authors.

854.2 The Delegation of Japan supported the principle of assimilation accepted at the previous meeting. So-called ephemeral recordings should not, however, because of the purpose for which they were used and the intention of the parties concerned in their making, be subjected to the same régime as cinematographic works or be regarded as such. A statement to that effect should be included in the general report or an appropriate provision inserted in the Convention, the decision in the matter being left to the proposed Working Group or to the Drafting Committee.

854.3 He drew attention to his Delegation's proposed amendment to Article 11*bis*(3) (S/112).

855. Mr. WALLACE (United Kingdom) said that in countries which had the film copyright system there was no need to create any presumptions in favor of the maker of the work. The latter was able, by contract, to acquire from the authors of the literary and artistic works incorporated in the film the rights he found necessary to allow him to exploit the film. That included not only works in existence before the decision was taken to make the film but also works, within the meaning of the other Articles of the Convention, which came into existence during the making of the film, e.g., the script. The film maker was aware of what could be considered a work enjoying a separate copyright and hence knew the individuals with whom he had to contract. The situation might be different in countries which gave rights not to the film maker but to artistic contributors. In such cases, presumptions might provide a theoretical advantage in relation to those works which came into existence during the making of the film but there was no justification for them in relation to pre-existing works. The Delegation of the United Kingdom was unable to agree, therefore, that its law should contain any presumptions in favor of film makers who, under its system, were quite capable of looking after themselves. It had, therefore, submitted an amendment (S/101) to Article 14(7). On the assumption that the amendment was acceptable, the Delegation of the United Kingdom considered that the question, and scope, of presumptions were matters for those countries which wished to have them.

856.1 Mr. HESSER (Sweden) said that cinematographic works differed from most other works. Films were dependent on the contributions of several authors of varying degrees of importance and also on contributions of an organizational, economic and technical nature which were in no way connected with copyright. It was, therefore, necessary to have a special régime for cinematographic works. Indeed, countries with a film industry always included in their copyright legislation special regulations on film copyright. The purpose of those regulations was to facilitate the circulation of films and to safeguard legal security in such circulation. Regulations were perhaps unnecessary in the case of famous authors but there were many persons with whom it was difficult to know what type of contract to conclude. The conception of copyright differed from country to country and a person who was not regarded as an author in one country might be regarded as such in another. Similarly, a contribution might be copyrightable in one country but not in another. An author making only a very minor contribution to a film might be able to prevent the work being shown in another country.

856.2 The provisions of Article 14 were in no way new or revolutionary. They merely attempted to codify, at the international level, regulations already existing in countries with a film industry and to provide a model law for countries which had not yet encountered any difficulties but which would do so as soon as they established their own film industries. It had been suggested that any international regulations drawn up should be included in other instruments besides the Berne Convention. In view of the fact, however, that copyright was affected, the obvious place for such regulations was the Berne Convention.

857. Mr. STRNAD (Czechoslovakia) drew the attention of the Main Committee to a contradiction which he had noted in Article 14: paragraph (1) stated that the authors of literary or artistic works had the exclusive right of authorizing the cinematographic adaptation and reproduction of those works, while paragraph (4) implied a presumption of assignment even if that was not expressly mentioned in a written contract. The Delegation of Czechoslovakia considered it essential to eleminate that contradiction, and it would reserve its position until the end of the general debate. The Main Committee should either revise the text in question or instruct a special committee to prepare a synthesis of the views expressed.

858.1 Mr. STRASCHNOV (Monaco) said the Delegate of Japan was mistaken in thinking that the presumption of assignment for which provision was made in Article 14(4) applied to ephemeral recordings, as these were always made without the consent of the authors and that was sufficient, under the terms of Article 14, to exclude them from the application of the interpretative rule.

858.2 Replying to the Delegate of Italy, who had urged that the system of presumption should be applied only to cinematographic works, he pointed out that the Main Committee, when it had decided at the previous meeting to retain Article 2(1) unchanged, had assimilated televisual works to cinematographic works, because "analogous technical processes" were involved.

858.3 Turning to the proposal contained in document S/115, he explained that it was an attempt at synthesis. The interpretative rule obviously assumed the existence of an agreement, but the validity of the first agreement could not depend on the rules in force in the country of origin of the cinematographic work. As a result of the decisions which had already been taken, the concept of publication had become somewhat wide, and the country of which the author was a national was no longer the sole country of origin; in addition, the country in which the agreement was concluded was not always the country of origin of the cinematographic work. Films were often shot in the country in which the agreement was signed, and then put into circulation elsewhere, and some other country became the country of origin; what was needed, therefore, was a sufficiently flexible formula and it might be possible, for instance, to speak of a valid agreement, "duly drawn up." The Delegations of the Federal Republic of Germany and Switzerland had drawn attention to the question of the effect which the interpretative rule would have when an author who authorized the cinematographic adaptation of his work had already assigned his copyright; that was an extremely important question because, if it was not laid down in paragraph (4) that the author was still free to dispose of his rights vis-à-vis the maker, even in a case like that, it would be very easy to evade the interpretative rule by a prior assignment of the rights of exploitation. In regard to musical works, it was difficult to see why composers should be singled out for exemption from the interpretative rule, for historical reasons, and thus be able to prevent the exploitation of the work; hence he had not incorporated paragraph (6) of the Swedish Government's proposals. Under paragraph (5), as proposed by the Delegation of Monaco, the interpretative rule would not be applicable in those countries in which the regulations in force had similar effects; hence it would not be mandatory in countries such as Italy and Austria. As regards pre-existing works, the difficulty arose from the fact that it was clearly impossible to define them internationally. Paragraph (6), in the proposal of the Delegation of Monaco, would allow countries like the Federal Republic of Germany to retain their existing regulations. Paragraph (7) of the Monaco draft, which dealt with those countries in which the system of film copyright operated, stipulated that such countries would not be required to apply the interpretative rule to "modern works": Article 7(2) exempted them from the obligation to apply it even in the case of pre-existing works. Finally, paragraph (9) had been inserted to enable the maker of a cinematographic work to carry out such alterations as might be necessary for its exploitation, subject to the safeguarding of the author's moral rights.

859. Mr. ELMAN (Israel) said that it appeared from the discussion that the standard form of contract prevailed for many of the activities under discussion. That was a far cry from freedom of contract. Indeed, in other

spheres of life, the standard form of agreement had become a source of concern to various legislatures; it had been dealt with by the legislature of Israel in a very comprehensive manner. Apart from that, the fact that there were standard forms of agreement made it futile to speak of an attack upon freedom of contract. Both sides to the contract were well organized and it was quite easy for them to conform to a certain international form. The national form of contract in various national legislations imposed many legal conditions on contractors but nobody complained that those conditions restricted so-called contractual freedom. The contracting parties were aware of the situation and drew up their contracts accordingly.

860. Mr. ROHMER (France) said that Article 14 had given rise to numerous objections in France, based mainly on the fact that French law contained a presumption of assignment subject moreover to special conditions, as a written contract was expressly required; in addition, it was recalled that the very idea of an interpretative rule went beyond the limits of the Convention and that the onus of proof passed from the maker to the author; finally, it was argued that no serious conflict had arisen between makers and authors during the lifetime of the Berne Convention. The French draft which had been submitted two years previously had represented a concession on the part of France, and it had expressly mentioned written contracts; but that was not the case with the text in the Program. By accepting that text, France would in effect be making a further concession, and that she could not do. Finally, he would point out that Article 14 was the item which revealed the full force of the divergences between those countries which applied the system of copyright, those which employed the system of legal assignment, and those which made a distinction between pre-existing and modern works. The Delegate of Monaco had endeavored to find a solution which would be acceptable to everyone, but France, too, wished to retain its own system, and although some States had given up hope of seeing any satisfactory text adopted and were in favor of deleting paragraphs (6) and (7), he himself hoped that new efforts would be made to achieve a satisfactory formula.

861. Mr. REIMER (Federal Republic of Germany) said his Government was in favor of introducing into the Convention an interpretative rule which would facilitate the free circulation of films without infringing the legitimate interests of authors; nevertheless, the question had to be asked whether an interpretative rule of such wide scope as that proposed in the Program was justified. The Delegate of the United Kingdom had said that under the system of film copyright the maker had to acquire the rights to pre-existing works, but Mr. Reimer wondered what the situation was in regard to contributions made during the shooting of the film. English law grouped all the rights in the hands of the maker; but an interpretative rule was required in this field, because the actors, the director, etc., who were not bound by the contract, could prevent the free circulation of the film. He did not agree with the Delegations of Monaco and France in regard to the need for a written agreement, as agreements concluded in that way would most probably contain provisions concerning the assignment of rights, and that would make the regulation in the proposed text purposeless. It was for individual countries to settle the question of the need for agreements, and the views held by some countries should not be imposed on all the others.

862. Mr. GERBRANDY (Netherlands) thought that the proposed text marked a great step forward, despite the criticisms to which it gave rise. Nevertheless, if provisions such as those contained in Article 14(4) were to be included in the Convention, the wording must be beyond all reproach. The difficulties which arose involved comparative international law and private international law. As some States would always be opposed to the application of the Berne Convention, provision should be made in the Convention for reservations. Will the reservations relate to the country of origin, the country in which protection was claimed, or the country whose laws governed the agreements between authors and makers? He wondered whether it was really necessary to include Article 14(4) in the Convention, because the television authorities of a relatively small country like the Netherlands concluded between 100,000 and 200,000 written agreements every year, and large film makers would certainly conclude as many as that. Finally, in view of the recent tendency to have less and less to do with authors' rights, the time might perhaps have come to abandon all regulations and trust to free discussion between the parties concerned.

863. Mr. IOANNOU (Greece) favored the deletion of paragraphs (4) to (7) and the maintenance of Article 14 of the Brussels text, as the system of written contracts, which operated in his country, had never given rise to any difficulties.

864. Mr. CAVIN (Switzerland), while appreciating the efforts which had been made to achieve a compromise, was reluctant to approve the suggested provisions for paragraph (4) because they would impose an obligation on States in a field which belonged to national legislation, that of the interpretation of contracts. Several delegations had stressed the fact that this interference on the part of international legislation was a new development; this had been highlighted by the Delegate of Sweden when he had spoken of a codification of national regulations. A possible means of solving the problem would be to give makers the right to represent third parties, similar to that provided for in Article 15(2) in regard to anonymous works; that solution would have the advantage of leaving untouched the legal position of the author vis-à-vis the maker. He agreed with the Delegate of Germany on the question of requiring a written contract, and he emphasized that the solution which he had mentioned was merely a suggestion for consideration by a Working Group.

865. Mr. FERSI (Tunisia) agreed with the Delegate of Netherlands and urged that paragraphs (4) to (7) of Article 14 should be deleted.

866. The CHAIRMAN suggested that, in view of the difficulty of reaching agreement, a Working Group should be set up, representing all shades of opinion. Such a group might be composed of the following 15 countries: Belgium, Brazil, Bulgaria, Congo (Kinshasa), Czechoslovakia, Denmark, France, Federal Republic of Germany, Italy, Japan, Monaco, Spain, Sweden, Switzerland and the United Kingdom.

867. Mr. FERSI (Tunisia) pointed out that the proposal submitted by the Delegation of Yugoslavia in document S/107 had been supported by other countries and he requested that it should be put to the vote without further delay.

868. Mr. H'SSAINE (Morocco) said he was opposed to paragraphs (4) to (7) because, in the developing countries there were authors and few makers, therefore the presumption would work against the authors to the benefit of the makers of the developed country, who were already better equipped to protect their interests. In return, Morocco could, by appropriate legislative measures, regulate the contracts between makers and authors.

869. The CHAIRMAN invited the Main Committee to vote on the Yugoslav proposal (S/107).

870. *The Yugoslav proposal was rejected by 20 votes to 17 with 2 abstentions.*

WORKING GROUP ON CINEMATOGRAPHIC WORKS

871. The CHAIRMAN invited the Main Committee to vote on the composition of the Working Group which he had suggested.

872. *The Chairman's proposal was accepted unanimously.*

873. The CHAIRMAN invited the Main Committee to vote on Mr. Masouyé's proposal that he (the Chairman) should assume the Chairmanship of the Working Group.

874. *The Chairman of Main Committee I was unanimously appointed Chairman of the Working Group.*

875.1 The CHAIRMAN said that in view of the problems which confronted the Main Committee and of the substantial minority which opposed the paragraphs under consideration, it was essential to exercise caution in laying down the terms of reference of the Working Group. The most important thing was to attempt to achieve a harmonization of the various legislations; the difficulty arose from the fact that no one knew who was the author of a cinematographic work and who owned the copyright. Some progress would be achieved if they could narrow the existing gap between the different systems (film copyright, as employed in the United Kingdom; legal assignment, as employed in Italy and Austria; rights of the artistic and intellectual creator, as in the other continental countries). It would be a good thing if a system of presumption was applied in the continental countries, because that would bring them nearer to the countries employing film copyright and legal assignment, but in the continental countries it would, of course, still always be possible to make a provision to the contrary, whereas that would not be the case in the United Kingdom, Italy, and Austria.

875.2 In regard to the question of deciding the ownership of copyright in a cinematographic work, they could state that the decision was a matter for the legislation in the country in which protection was claimed—which would satisfy the "film copyright" and "legal assignment" countries—and add a reservation to the effect that in the continental countries all those who contributed to the creation of the film were included among the copyright holders and those persons who were contractually linked to the makers could not, in the absence of any contrary stipulation, object to the reproduction and distribution of the cinematographic work. That would be a first step towards a system of presumption. As the Delegate of Switzerland had said, there was no presumption of assignment, but possibly only a presumption of legitimation for the maker. It remained to be seen whether that presumption could be extended to pre-existing works. That question was a very important one from the point of view of the cinema and of television. Under the English system, there was no presumption of that kind. The film copyright applied only to contributions made by other persons during the shooting of the film. As the Delegate of the United Kingdom had intimated that it would be impossible to change the legislation in force in his country and introduce the system of presumption, it might be possible, in the interests of harmonization, to abandon the idea of extending it to pre-existing works and merely declare that the decision on that point was a matter for national legislation.

875.3 Turning to the question of the written agreement, he said it was clear that a contract would be very useful if the system of presumption was adopted and applied to pre-existing works, but that it was not clear whether the other persons involved in the production of a cinematographic work (the photographer, the producer, etc.) were regarded as co-authors in the other countries. In those circumstances, he suggested that the Working Group should be given a modest objective—to deal with the application of the system of presumption in regard to persons contributing to the production of a cinematographic work—and that the Main Committee should postpone until later the question of extending this system to the holders of copyright in pre-existing works and the question of the written contract.

876. *It was so decided.*

The meeting rose at 4:45 p.m.

TENTH MEETING

Tuesday, June 20, 1967, at 9:35 a.m.

CINEMATOGRAPHIC WORKS (continued)

877.1 The CHAIRMAN invited the Main Committee to consider three questions concerning cinematographic works: the definition of the maker (Article 4(6)), the criterion of eligibility (Article 6(2)) and the term of protection (Article 7(2)).

CINEMATOGRAPHIC WORKS: DEFINITION OF THE MAKER (ARTICLE 4(6)) (S/27)

877.2 Turning to the definition of the maker, the Chairman reminded the Main Committee that it was proposed that the maker of a cinematographic work should mean "the person or body corporate who has taken the initiative in, and responsibility for, the making of the work." The question arose, however, as to whether it was essential that the Convention should contain a definition of the maker, when it did not give any definition of an author or a publisher. Hence the Delegation of France, in document S/27, and the Delegation of Hungary and Poland, in document S/43, proposed the deletion of paragraph (6). The Delegation of the United Kingdom (S/42) and the Delegation of India (S/73) had proposed amendments to the definition. He invited the Committee to begin by considering the French proposal.

878. Mr. TIMÁR (Hungary) said that, in the view of his Delegation, each State should be left to give its own definition of a maker. As the Chairman had pointed out, it was difficult to understand why the Convention should define that term, when it did not define either an author or a publisher.

879. Mr. DRABIENKO (Poland) also felt that a definition of a maker was not called for in an international convention. He also pointed out that the proposed text was far from clear, as it did not define what was meant by "initiative" (which might be shared between several persons—actors, director, etc.) nor state what kind of responsibility was involved (it might be artistic, financial, or moral).

880.1 Mr. STRASCHNOV (Monaco) pointed out that the term "maker" was already defined in Article 2(2) of the European Agreement Concerning Programme Exchanges by Means of Television Films, which had been signed on December 15, 1958, and ratified by 11 Member States of the Council of Europe. Incidentally, that text was very close to the one proposed in document S/1.

880.2 The principle of an interpretative rule, which had been adopted on the previous day, would cease to be applicable if it was admitted that every State could have a different conception of a maker.

881. Mr. SPAIĆ (Yugoslavia) thought it unnecessary to define the maker, who only played an auxiliary part in the creation of the film, when no definition was given of the author. Moreover, the suggested definition seemed to him to be incorrect and even dangerous; what exactly was meant by "responsibility?" There was no such thing as responsibility, in law, without a legal act. But what was the legal act in this case? Was it the agreement?

882.1 Mr. STRNAD (Czechoslovakia) said his Delegation had already indicated in the preliminary observations, reproduced in document S/13, that it found the proposed definition unsatisfactory.

882.2 He would also point out to Mr. Straschnov that the definition was so vague that it was capable of as many interpretations as there were concepts of the maker.

883.1 Mr. ASCENSÃO (Portugal) feared that the proposed definition in document S/1 might perpetuate some serious ambiguities. It actually seemed to apply to the producer, more than anyone else, and, in view of the diversity of national legislations, there was a risk that the status defined by the Convention might be applied to various different persons.

883.2 For that reason, the Delegation of Portugal had proposed, in document S/152, that "the maker of a cinematographic work means the person or body corporate who has been entrusted with the organization of the means essential to the making of the work, whether from the technical or the financial aspect."

884. Mr. IOANNOU (Greece) said his Delegation would vote in favor of the deletion of paragraph (6).

885.1 Mr. WALLACE (United Kingdom) said that, while he shared the views of the Delegate of Monaco, he also agreed with the Delegate of Czechoslovakia that the text proposed in document S/1 was somewhat vague. His Delegation considered that the text it had submitted in document S/42 was a better formulation.

885.2 His Delegation was reasonably flexible in its attitude to the question, provided it was made abundantly clear in the Convention that a country was free to vest the rights of protection for a cinematographic work in the body corporate—the maker, in the normal sense of the word—and it was for that reason that he favored the inclusion of the definition in the Convention.

886.1 Mr. GAE (India) said he thought there should be as few definitions as possible in the Convention. The definition of the maker of a cinematographic work in document S/1 was not clear, and his Delegation was opposed to its adoption. The term should be interpreted in a flexible way, and it would be better for each individual country to determine how it should be defined.

886.2 Adoption of the definition as proposed could lead to difficulties if the person who had taken the initiative in the making of a work and the person who had the responsibility therefor were not one and the same. In any case the words "or body corporate" would have to be deleted to remove any doubts about the meaning of the word "person" when used elsewhere in the Convention. In the domestic law of many countries, and especially in English law, "person" included the body corporate or corporation.

887. Mr. KOUTIKOV (Bulgaria) said he would prefer to see paragraph (6) deleted, as there was likely to be great difficulty in putting it into application.

888.1 Mr. BELINFANTE (Netherlands) regretted that the suggested definition was not more satisfactory. He pointed out that the two criteria which were mentioned—initiative and responsibility—were not necessarily combined in the same person.

888.2 He still considered it desirable, however, to include a definition of the maker, and he would support the United Kingdom proposal, which seemed to him clearer than that of the Delegation of Portugal.

889. Mr. FERSI (Tunisia) said that the proposed definition was so vague that it could be applied to the director just as well as to the maker. The Delegation of Tunisia would not oppose the definition of the concept of a maker, but it was essential that the wording which was adopted should not give rise to any ambiguity.

890. Mr. ROHMER (France) said his Delegation had proposed the deletion of paragraph (6) for general reasons; it considered that there was no call to define the concept of a maker in a Convention which did not define that of an author or of a publisher. On the other hand, the Delegation of France was more inclined to accept the proposed definition because it was very close to the one employed in French legislation.

891. Mr. FERRARA SANTAMARIA (Italy) thought it desirable to include in the Convention if not an actual definition of the maker, then at least an indication of what was to be understood by that term. He therefore proposed that paragraph (6) should be worded as follows: "(6) The maker of a cinematographic work shall be presumed to be the person indicated as such in the credit titles of the film."

892. Mr. H'SSAINE (Morocco) thought it unnecessary to include a definition of the maker, as the Convention did not define an author or a publisher.

893.1 The CHAIRMAN suggested that the Main Committee should first decide whether or not to include in the Convention a definition of a maker, after which it could, if necessary, examine the various proposed amendments, including the interesting suggestion put forward by the Delegation of Italy which would, however, have to be submitted in writing.

893.2 He put to the vote the French proposal to delete Article 4(6).

894. *The proposal was adopted by 19 votes to 16 with 6 abstentions.*

CINEMATOGRAPHIC WORKS: CRITERION OF ELIGIBILITY (ARTICLE 6(2))

895. The CHAIRMAN invited the Main Committee to consider Article 6(2), which dealt with authors who were not nationals of one of the countries of the Union, and whose cinematographic works were unpublished or were not first or simultaneously published in a country of the Union, but the maker of which was a national of one of the countries of the Union or had his domicile or headquarters in that country. It was proposed that those authors should enjoy the same rights in that country as national authors and, in the other countries of the Union, the rights granted by the Convention. Thus the nationality of the maker was introduced as an additional criterion of eligibility for cinematographic works.

896.1 Mr. SPAIĆ (Yugoslavia) thought it undesirable to provide a special régime for cinematographic works; the decision should be left to individual States.

896.2 He also wondered how the criterion of nationality of the maker could be applied in the case of co-productions.

897. Mr. STRASCHNOV (Monaco) feared that the proposed text, though excellent in itself, could not be applied unless there was a definition of a maker. The same work would be protected in a country in which the maker was regarded as having his headquarters or domicile in a country of the Union, and would not be protected in another country where the headquarters or domicile of the maker had not been adopted as a criterion of eligibility. Hence, as the attempt to define a maker had been abandoned, it would seem only logical to delete the new provision.

898. Mr. O'HANNRACHÁIN (Ireland) pointed out that the words "author" and "maker" were not necessarily synonymous. The fact that the Main Committee had not adopted the definition of "the maker" did not mean that the proposed text for paragraph (2) of Article 6 had also to be rejected.

899. Mr. WALLACE (United Kingdom) said that if the proposed text were not adopted, broadcasting organizations in Union countries would be unable to afford protection for their televised films when the artists and contributors concerned were nationals of countries outside the Union. That would obviously be undesirable, and he failed to understand why the Delegate of Monaco could not support the amendment.

900.1 Mr. HESSER (Sweden) said that at the time of the Berne Union's creation in 1886 when the main category of works had been books, publication within a Union country had been the natural criterion for protection—which the author enjoyed whether he was a national of a Union country or not.

900.2 Provision for the protection of cinematographic works had been introduced into the Convention in 1908; since then films had assumed ever increasing importance. The Swedish Government considered that the time had now come to introduce the country of the maker as an additional criterion for eligibility for protection so that all films, whether from a Union or from a non-Union country, would be protected. Such wider protection would be in the interests of both makers and authors, and he recommended the adoption of the new criterion to the Main Committee.

901. Mr. STRNAD (Czechoslovakia) said that the purpose of the new paragraph (2) was to extend the benefit of protection to authors who were not nationals of one of the countries of the Union or did not publish their work there for the first time. It was therefore a question of protecting the author, not the maker.

902. The CHAIRMAN said that it was left to each national legislation to decide who was the copyright owner. In some cases it might be the author and his collaborators, and in other cases it might be the maker.

903.1 Mr. CURTIS (Australia) said that in the light of the remarks by the Delegate of the United Kingdom his Delegation would support the proposed text for Article 6, paragraph (2). There seemed to be a need for such a provision, since it would ensure that television films commissioned by a broadcasting organization in a Union country and enjoying the copyright protection prevailing in that country, would have the same rights in countries without "film copyright" protection.

903.2 He agreed with the Chairman that the fact that there were different systems of protection was irrelevant. Any difficulties that might arise would be met by the inclusion in the Convention of the provision proposed by the Delegation of the United Kingdom in document S/42.

904.1 Mr. ROHMER (France) wondered whether it was in accordance with the spirit of the Berne Convention to extend protection to authors who were not nationals of one of the countries of the Union.

904.2 The Delegation of France had proposed the deletion of paragraph (2) as part of a coherent policy; it had considered that the idea of publication could have been widened so as to include cinematographic works. It was prepared, however, to abide by the opinion of the Main Committee and it would not insist on its proposal being taken into consideration.

905. Mr. ADACHI (Japan) expressed his support for the proposed text of Article 6, paragraph (2). His Delegation did not consider that the paragraph was affected by the Main Committee's decision to reject the definition proposed for the maker of a cinematographic work in document S/1.

906. Mr. REIMER (Federal Republic of Germany) said his Delegation would vote for the proposed draft. The introduction of a new criterion of eligibility marked a considerable advance, as it extended protection to a greater number of works.

907.1 The CHAIRMAN drew the Main Committee's attention to the practical advantages of adopting the draft, in view of the divergences between national legislations, such as that which existed between United Kingdom legislation and the legislations of continental European countries.

907.2 The proposal furthest removed from the original text sought to delete Article 6(2), and he therefore put to the vote the principle of retaining that paragraph.

908. *The principle of retaining paragraph (2) was adopted unanimously with 7 abstentions.*

CINEMATOGRAPHIC WORKS: JOINT MAKERS

909. The CHAIRMAN suggested that the question of co-production should be settled before the Main Committee considered the proposed amendments. In his view, joint makers could be placed on the same footing as co-authors, and he suggested that the Main Committee, without taking any formal decision, should note in its report that, in the case of a joint production, it would be sufficient if one of the joint makers had his headquarters or his domicile in one of the countries of the Union.

910. *That proposal was adopted unanimously.*

CINEMATOGRAPHIC WORKS: CRITERION OF NATIONALITY OF THE MAKER

911. The CHAIRMAN invited the Main Committee to decide whether it wished to include in the Convention the criterion of nationality of the maker—which he himself felt to be of little value—or to mention only the headquarters or domicile of the maker.

912. Mr. ASCENSÃO (Portugal) agreed with the Chairman that the nationality of the maker was not a very important factor.

913. Mr. HESSER (Sweden) said that, since makers were generally corporate bodies whose headquarters would be the determining factor, he would not oppose the deletion of the reference to nationality.

914. The CHAIRMAN proposed that the paragraph should be worded as follows: "(2) Authors who are not nationals of one of the countries of the Union shall enjoy for their cinematographic works . . . but the maker of which has his headquarters or, failing a headquarters, his domicile, in one of countries of the Union, the same rights in that country as national authors and, in the other countries of the Union, the rights granted by this Convention."

915. Mr. ROHMER (France) said they would have to make quite clear what the difference was intended to be between headquarters and domicile, as the word "failing" might lead to confusion.

916. The CHAIRMAN said that the word "headquarters" was used in the case of a corporate body and the word "domicile" in the case of an individual person.

917. Mr. ROHMER (France) thought it would be enough to say "the maker of which has his headquarters or domicile in one of the countries of the Union."

918. Mr. CAVIN (Switzerland) agreed with Mr. Rohmer that it would be better to omit the words "failing that", as they introduced a subsidiary idea which the Chairman had certainly not intended.

919. Mr. WALLACE (United Kingdom) said that he had no objection to the addition of the words "failing that," nor to the French proposal, but he considered that the words "habitual residence" which the Committee had already adopted was preferable to the word "domicile."

920. The CHAIRMAN suggested that the final wording should be left to the Working Group on cinematographic works and he put his own proposal to the vote, subject to drafting changes.

921. *The text of Article 6(2), as modified by the Chairman's proposal, was adopted by 36 votes to 1 with 2 abstentions, subject to such drafting changes as might be made by the Working Group on cinematographic works.*

CINEMATOGRAPHIC WORKS: COUNTRY OF ORIGIN (ARTICLE 4(4)(c)(i))

922. The CHAIRMAN reminded the Main Committee that Article 4(4)(c)(i), dealing with the criterion of eligibility of cinematographic works, had not yet been adopted. He put it to the vote, subject to such drafting changes as might be required to harmonize it with Article 6(2).

923. *Article 4(4)(c)(i) was adopted, subject to harmonization with Article 6(2).*

CINEMATOGRAPHIC WORKS: TERM OF PROTECTION (ARTICLE 7(2)) (S/42)

924.1 The CHAIRMAN invited the Main Committee to consider the question of the term of protection for cinematographic works, and he read out the proposed text for Article 7(2).

924.2 He also reminded the Main Committee that Portugal had submitted a draft for that paragraph (S/152) and that two amendments submitted by the Delegation of the United Kingdom and the Delegation of Hungary respectively were to be found in documents S/42 and S/91.

925. Mr. MULENDA (Congo (Kinshasa)) said he would be willing to accept the Portuguese proposal, provided that a limit was set to the latitude which was to be allowed to national legislations in fixing the term of protection. It might perhaps be possible to combine the two texts and say that national legislations could fix a term of protection of more than 50 years.

926.1 Mr. TIMÁR (Hungary) said experience had shown that the financial interests involved in the exploitation of a cinematographic work expired in less than 50 years and that the majority of legislations fixed a shorter term. He would consider a term of 25 years to be more reasonable.

926.2 He therefore proposed that paragraph (2) should be deleted and that the provisions of paragraph (4) should be extended to cinematographic works; that paragraph would read as follows: "(4) It shall be a matter for legislation in countries of the Union to determine the term of protection of cinematographic and photographic works and that of works of applied arts in so far as they are protected as artistic works"; the remainder of the paragraph remaining unchanged.

927.1 Mr. ASCENSÃO (Portugal) said that the reasons which had led his Government to propose a text differing from that in the Program were set out in document S/13.

927.2 The exploitation of a cinematographic work and, *a fortiori*, of a televisual work, was, by its very nature, ephemeral: after a limited number of years the work became a museum-piece. The only criterion which should be applicable was an economic criterion, and the work should be protected for as long as was necessary to secure a fair return on the investment made. But techniques were changing so rapidly that it was impossible to fix an exact term.

927.3 Moreover, provision should be made for the possibility that the work might not be shown until long after production. The Portuguese Government had considered that it would be advisable to introduce into the Convention provisions similar to those of the Italian law of April 22, 1941, which provided that, if the film was not shown within five years from its making, the term of protection should begin from the making.

928. Mr. STRASCHNOV (Monaco) said that the United Kingdom amendment to replace the words "after first publication, public performance or broadcast" by the words "after the work has been made available to the public with the consent of the author" was a considerable improvement on the text proposed in document S/1. He hoped that this proposal would be adopted.

929.1 The CHAIRMAN said that two questions were involved: there was the question of the term of protection, which it was proposed should be fixed at 50 years or at 25 years or not fixed at all, and there was the question of the date from which the term should start to run.

929.2 In that connection, he would like to know whether the Delegation of the United Kingdom wished to retain the part of paragraph (2) following the phrase which it proposed to amend.

930. Mr. WALLACE (United Kingdom) said that his Delegation would have no objection to the retention of those words.

931. The CHAIRMAN put to the vote the amendment proposed by the Delegation of the United Kingdom.

932. *The amendment proposed by the Delegation of the United Kingdom was adopted unanimously.*

933. The CHAIRMAN invited the Main Committee to consider the question of the term of protection.

934.1 Mr. STRNAD (Czechoslovakia) said that at Geneva in 1965 his Delegation had tried in vain to secure a shortening of the maximum term of protection for cinematographic works.

934.2 The Delegation of Czechoslovakia was therefore happy to support the Hungarian proposal to reduce that term to 25 years.

935. Mr. DRABIENKO (Poland) also supported the proposal of the Delegation of Hungary.

936. Mr. KAMINSTEIN (United States of America), said that listening to the Main Committee's discussion, he had been somewhat surprised at the tendency to place motion pictures in a separate category. In his opinion, they could be just as creative as any other literary work and should be treated in a similar way. Under the terms of a proposed new law in his own country, provision was being made for a 75-year period of protection from the date of publication for motion pictures—which was equivalent to a life plus 50-year period in other cases.

937.1 The CHAIRMAN said the Main Committee was only concerned with fixing a minimum term, and there was therefore no possibility of its decision clashing with the legislation in force in the United States.

937.2 The Main Committee had three separate proposals before it: (a) to fix the minimum term of protection at 50 years (as proposed in the Program of the Conference); (b) to fix that period at 25 years (as proposed by the Delegation of Hungary supported by the Delegations of Czechoslovakia and Poland); (c) not to fix any precise term, but to leave national legislations to decide the matter so as "to secure a fair return on the investment made" (as proposed by the Delegation of Portugal).

937.3 As the proposal of the Delegation of Portugal was furthest removed from the original proposal, he would put that proposal to the vote.

938. *The proposal of the Delegation of Portugal was rejected by 21 votes to 3 with 9 abstentions.*

939. The CHAIRMAN put to the vote the proposal of the Delegation of Hungary subject to final redrafting.

940. *The proposal of the Delegation of Hungary was rejected by 21 votes to 16 with 2 abstentions.*

941. The CHAIRMAN put to the vote the text proposed in document S/1.

942. *The text of Article 7(2) contained in document S/1 was adopted by 21 votes to 11 with 5 abstentions.*

943. The CHAIRMAN said that a substantial minority had voted in favor of a minimum term of 25 years. He sincerely hoped that a day would come when it would be possible to secure unanimity on such an important point.

944. Mr. ASCENSÃO (Portugal) reminded the Main Committee that his Delegation had proposed not only that the term should begin "from the first publication, public performance or visual broadcast," but that "if these take place more than five years after the making of the work" the term should run from the date of making.

945. The CHAIRMAN said that the first point had been settled by the Main Committee, which had unanimously adopted the amendment proposed by the Delegation of the United Kingdom. In regard to the second point, he agreed that the possibility of a considerable delay in divulgation of the work had not been considered.

946. Mr. STRASCHNOV (Monaco) said that if the last part of the Portuguese proposal was adopted now, when the 50-year term had been accepted, a work which had not been publicly performed five years after it had been made would be protected for 55 years, which was obviously not what the Portuguese Government had intended.

947.1 Mr. ASCENSÃO (Portugal) said that, under the present system, a work which for example was not shown until ten years after it had been made would be protected for sixty years.

947.2 He suggested that the Working Group on cinematographic works should study the question more closely.

948. The CHAIRMAN said that the question would be referred to the Working Group.

The meeting rose at 12:25 p.m.

ELEVENTH MEETING

Tuesday, June 20, 1967, at 2:40 p.m.

RESERVATIONS IN REGARD TO TRANSLATIONS (ARTICLE 25*ter*) (S/98)

949. The CHAIRMAN said that hitherto, under the terms of Article 25, the countries of the Union had had the possibility of reserving the application of the right of translation. Main Committee IV was to be asked to examine a BIRPI proposal (S/9) which would deprive them of that possibility, but that was a substantive question, the solution of which would have repercussions on the consideration of the Protocol Regarding Developing Countries. The competent Main Committee would therefore wish to know whether or not Main Committee I favored the retention in the Convention of the existing exceptions in regard to translation.

950. Mr. ADACHI (Japan) said that under the proposal in document S/9 for Article 25*ter*, paragraph (2), of the Berne Convention, Union countries accepting the substantive provisions of the Stockholm Act would be deprived of the benefit of earlier reservations. That constituted a departure from the long tradition of the Convention. The Delegation of Japan disagreed with the proposal because the new system would force Japan to abandon its earlier reservations on the right of translation. Union countries should be free to decide whether or not they wished to abandon the benefit of earlier reservations. That was why the Delegation of Japan had submitted a proposal (S/98) to amend Article 25*ter*, paragraph (2), as formulated in document S/9.

951. Mr. STRNAD (Czechoslovakia) said that his country had never had recourse to the reservation concerning the right of translation, so that his Delegation had no axe to grind. It was a tradition of the Berne Convention that States should be allowed to reserve the application of the right of translation as long as they deemed it necessary, but the number of countries making use of that reservation was diminishing, and that diminution had taken place without the need for any outside pressure. He wondered, therefore, whether it would be good policy to take this option away from those few countries which still made use of it. The Delegation of Czechoslovakia favored the retention of the provision in question in the Berne Convention, particularly as no firm decision had yet been taken in regard to the definition of developing countries and the nature of the reservations which those countries would be able to make under the terms of the additional Protocol.

952.1 Mr. FERSI (Tunisia) thought that the question of Article 25*ter*(2) should be held over until the Protocol Regarding Developing Countries had been finalized.

952.2 If, however, the Main Committee decided to take a decision on the question immediately, the Delegation of Tunisia would vote in favor of keeping the reservations.

953. Mr. SPAIĆ (Yugoslavia) associated himself with the statements of the Delegations of Japan and Czechoslovakia and mentioned that Yugoslav legislation made use of the reservations.

954. Mr. REIMER (Federal Republic of Germany) said that his Delegation was opposed, in principle, to the retention of the right of reservation granted to countries of the Union in regard to translations. It might be, however, that developing countries should be allowed to reserve that right for a limited period.

955. Mr. H'SSAINE (Morocco) supported the statement of the Delegation of Tunisia.

956. Mr. STRASCHNOV (Monaco) thought that the expansion of the Berne Union might be seriously hindered if the possibility of reserving the application of the right of translation was restricted solely to developing countries benefiting under the additional Protocol. A country like the Soviet Union, for example, would not be able to accede if it wished to limit the right of translation. The Delegation of Monaco would therefore vote in favor of the retention in the Berne Convention of the right to make reservations in regard to translation.

957. Mr. GAE (India) said his Delegation regarded the question of reservations on the right of translation as a very important issue for developing countries. The matter also directly concerned the Protocol on developing countries. He thought the reservation on the right of translation should be maintained, but that the Main Committee should defer its consideration of the question until that Protocol had been debated by Main Committee II and the results of the latter's deliberations were known. He agreed with the views of the Delegates of Tunisia and Czechoslovakia on the subject.

958. Mr. AYITER (Turkey) favored the retention of the right to make reservations in regard to translations.

959. Mr. DITTRICH (Austria) said that for the time being he fully supported the view of the Delegation of the Federal Republic of Germany, but he was prepared to alter his opinion if there was a serious chance of the Soviet Union joining the Berne Convention.

960. Mr. DRABIENKO (Poland) entirely agreed with the Delegation of Czechoslovakia.

961.1 The CHAIRMAN emphasized the importance of the question under consideration. While it was preferable, in principle, to avoid numerous reservations in the text of the Convention, the fact remained that the reservation concerning translation was one of long standing.

961.2 The question as to what reservations could be made by developing countries would be considered by Main Committee II, but it would be useful if Main Committee I expressed a view on the subject of the extension of that right to all the countries which were members of the Berne Union. He therefore invited the Main Committee to decide whether the reservations in regard to translation in the Berne Convention should be retained or deleted.

962. *The retention of the reservation in regard to translation was approved by 29 votes to 1 with 11 abstentions.*

UNION OF COUNTRIES (ARTICLE 1)

963. *Article 1 was adopted unanimously.*

WORKS OF FOLKLORE: INDIAN PROPOSAL (S/73)

964. The CHAIRMAN said that the Main Committee had before it an Indian proposal (S/73) to include works of folklore in the list of works entitled to protection under the Berne Convention.

965.1 Mr. FERSI (Tunisia) said that the idea of including in the Convention special provisions to safeguard the interests of the developing countries in the field of folklore had come from the Brazzaville meeting of 1963. The Delegation of Tunisia had therefore been very interested to note the Indian proposal (S/73).

965.2 The same idea was found in Article 1 of the Tunisian Copyright Law of February 14, 1966; in order to prevent exclusive rights in works inspired by folklore from falling into the hands of third parties who might wish to exploit them for commercial purposes, the law stated that total or partial assignment of copyright in such works required the approval of the Tunisian Government. Obviously, however, the Tunisian law had no jurisdiction outside the country. To remedy that defect, the Conference might perhaps provide, in a third paragraph of Article 15, for instance, that where the copyright in any works inspired by folklore had been vested in the State in a country of the Union, that vesting should be recognized in the other countries of the Union.

966.1 Mr. GAE (India) said that the question of protection for folklore had already been discussed at the East Asian Seminar on Copyright in 1967, which had decided that works of folklore might represent the creative efforts of a number of unidentified indigenous authors. They were therefore not only anonymous works in the sense of the Brussels text of Article 7(4) of the Berne Convention, but also joint works, since in nearly all cases they were unfixed and represented a constantly changing pattern produced by successive performers and authors.

966.2 The Delegation of India attributed great importance to folklore and thought it should be protected by the Berne Convention. It therefore considered that works of folklore should be specifically enumerated in Article 2(1), as it had proposed in document S/73. The Delegation of India had also proposed a related amendment to the Program text of Article 7(3), in document S/73. The precise point in Article 2(1) at which works of folklore were to be mentioned could be left for the Drafting Committee to decide.

967. Mr. CURTIS (Australia) said that his Delegation sympathized with the aim of the Delegation of India in seeking the protection of the Berne Convention for works of folklore. He wondered, however, whether the amendment proposed by the Delegation of India or indeed any amendment of the Convention, would serve the purpose. The whole structure of the Convention was designed to protect the rights of identifiable authors. With a work of folklore there was no such author, so it was difficult to see how most of the provisions of the Convention could apply. It was certainly desirable to protect folklore, but a special régime rather than the Berne Convention was the appropriate place for doing so.

968.1 Mr. ELMAN (Israel) reiterated the support which its Delegation's representative had given at the East Asian Seminar on Copyright to the idea that folklore should be included in the Berne Convention. There were difficulties, however, and the Delegation of Australia had pointed out a major one.

968.2 The Delegation of Israel suggested that a possible solution would be to include in the Convention some form of wording indicating that although no State could

prevent the collection, recording or publication of its folklore, it should be entitled to receive a reasonable fee from any persons engaging in those activities.

969.1 Mr. STRNAD (Czechoslovakia) traced the history of the proposal to include works of folklore among the works protected under the Convention.

969.2 He pointed out that there was nothing to distinguish works of folklore from other works protected under Article 2 of the Convention, apart from the fact that the authorship was often unknown. As a matter of fact, it was doubtful whether protection could be refused to works of folklore, even under the present Convention, for 50 years following the date of their creation. The demand of the developing countries, in which folklore was still very much alive, was fully justified from the legal point of view, because protection had to be given even to the works of anonymous authors.

969.3 The Delegation of Czechoslovakia supported the Tunisian proposal concerning the most appropriate place for the inclusion of the provisions concerning the protection of works of folklore. His Delegation also drew the attention of the Main Committee to the practical importance of Article 18(4) for works of this type; that transitional provision ought to apply also to works of folklore as from the time when they were granted protection under the terms of a Convention or by national legislation.

970.1 Mr. ROHMER (France) drew attention to certain legal consequences of extending protection to works of folklore which France approved in principle. If it was considered that the State was the heir of the authors of works of folklore, it would be advisable to determine under what conditions the State could put obstacles in the way of scientific research into folklore. In the view of the Delegation of France, therefore, it was essential, in the interest of the countries concerned, to provide certain guarantees for persons carrying out research which should not present great difficulties.

970.2 Moreover, in regard to the question of including works of folklore in Article 2 of the Convention, the Delegation of France wondered whether such works formed an entity which was sufficiently clearly distinguishable from all the works entitled to protection to justify such inclusion.

971. Mr. CAMARGO (Brazil) entirely agreed with the Delegation of France.

972. Mr. IOANNOU (Greece) supported the Indian proposal. In his view, works of folklore could be protected by the operation of moral rights.

973. Mr. AMON D'ABY (Ivory Coast) said he was pleased to note the favorable reception which the majority of delegations had given to the Indian proposal. Even the more reserved position adopted by the Delegation of France did not amount to categoric opposition. The Delegation of the Ivory Coast, therefore, hoped that the Conference would find a solution to this problem.

974. The CHAIRMAN said it was generally agreed that protection applied not to style but to the work itself. Moreover, works of folklore, while indisputably works of art, were often of very distant origin, whereas the Convention only protected relatively recent works. He suggested that the Main Committee should set up a special Working Group to decide what would be the most suitable place in the Convention for a provision dealing with works of folklore.

975. *It was so decided.*

WORKING GROUP ON FOLKLORE: COMPOSITION

976. The CHAIRMAN proposed that the special Working Group on folklore should be made up of the following countries: Congo (Brazzaville), Czechoslovakia, France, India, Ivory Coast, Monaco, Netherlands, Sweden, Tunisia, United Kingdom, and Yugoslavia, with the Delegate of Czechoslovakia as Chairman.

977. Mr. SPAIĆ (Yugoslavia) said he must decline nomination.

978.1 Mr. FERSI (Tunisia), while regretting the decision of Yugoslavia, proposed that its place should be taken by Greece.

978.2 In his view, it would be useful if the Main Committee continued its discussion of the question and reached a decision on the principle of including works of folklore in the list of protected works, in order to give guidance to the Working Group.

979. Mr. ASCENSÃO (Portugal) suggested that Brazil should be invited to represent Latin America in the Working Group.

980. *It was so decided.*

981. *The membership of the Working Group, thus amended, was approved.*

WORKS OF FOLKLORE (continued)

982. The CHAIRMAN asked for the views of the Main Committee on the suggestion of the Delegation of Tunisia that discussion of the question should be continued. In his view, a general discussion, without preparation and without documents, could only have a limited value.

983.1 Mr. WALLACE (United Kingdom) supported the Chairman's view that it would be pointless to proceed further on the subject of folklore at the present stage.

983.2 He added that it would be difficult to incorporate provisions on folklore into United Kingdom law, although he fully understood the desire of the developing countries to have something of their own culture which they could sell.

984. Mr. STRNAD (Czechoslovakia) said it was normal to take a token vote before referring a question to a Working Group, in order to give some guidance to the smaller group in its work. It was therefore desirable that the Main Committee should reach a prior decision on the principle of including works of folklore in the list of works to be protected.

985. The CHAIRMAN said that the setting-up of a Working Group was in itself sufficient indication of the interest shown by the Main Committee in the Indian proposal. To ensure that the general debate asked for by the Delegates of Tunisia and Czechoslovakia was not unprofitable, he proposed that discussion should be resumed at a subsequent meeting, but before the Working Group met; the Chairman of the Group could then indicate what directives he proposed to give to the Group.

986. *It was so decided.*

987. Mr. SHARP (Canada) said that he had been unable to speak earlier on the question of folklore. His country had a very considerable body of folklore, which it had always regarded as falling within the public domain. Canada was therefore opposed to any action likely to restrict the public use of folklore material. His Delegation was extremely unwilling to enter into a discussion

as to who owned or was entitled to use such material. He hoped the new Working Group would bear his remarks in mind, since the matter was of great concern to his Delegation.

DELETION OF FIXATION REQUIREMENT FOR ACTING FORM OF CHOREOGRAPHIC WORKS AND ENTERTAINMENTS IN DUMB SHOW (ARTICLE 2(1))

988. The CHAIRMAN said that the Program of the Conference proposed the deletion from Article 2(1) of the requirement that the acting form of choreographic works and entertainments in dumb show should be fixed in writing or otherwise.

989.1 Mr. BERGSTRÖM (Sweden) said that the proposal in document S/1, to extend protection to unfixed choreographic works and entertainments in dumb show had not been received so favorably in Governments' replies as most other proposals. He therefore thought that further explanation was necessary on the subject. Instead of repeating the arguments in document S/1 as they stood, he would endeavor to put them in a slightly different way. To simplify the explanation he would concentrate on the main category of choreographic works and regard entertainments in dumb show as automatically following the same path.

989.2 His first point was of an introductory nature. What was the real problem involved? It was not whether fixation should in general be a condition for protection, which was the approach of the common law countries. The problem was whether there were valid reasons for countries which in principle protected unfixed works to exclude only unfixed choreographic works from protection. For the common law countries it could be said to be preferable for the existing condition of fixation for choreographic works to disappear from the Berne Convention. With the existing text it could be argued *a contrario* that a Berne Union country must protect all unfixed works except choreographic works. If the text were changed, it could be said that nothing in the text suggested that it was incompatible with the Convention to deny protection for unfixed works in general.

989.3 His second question was whether unfixed choreographic works deserved protection less than any other unfixed works such as songs, poems, or speeches, either improvised or performed only from memory. A special reason for protecting choreographic works was that there were few works which remained unfixed throughout their life as often as choreographic works. They remained unfixed because it was very difficult to put them in writing and it could be expensive to fix them otherwise, i.e., on film or tape. Instead of being noted down, a ballet was often created step by step in accordance with a general idea. Such an unfixed form was a common form of the work and should therefore be protected. It had also been said that fixation in writing could be defined somewhat liberally for a choreographic work, which could, for instance, be regarded as fixed and thus protected as soon as there was a libretto giving the outline of the action, but that idea did not satisfy choreographers. Furthermore, the recent development of abstract ballet had resulted in a form which could not be satisfactorily described in a libretto. It therefore seemed less fatal not to protect an unfixed song or speech that could easily be fixed and seldom remained unfixed.

989.4 An unfixed ballet also needed protection because it was not infrequently stolen by other choreographers or by dancers. There was therefore a practical need for protection.

989.5 His third point was in connection with the often-quoted argument that it was more difficult to protect unfixed choreographic works than other unfixed works. In his opinion, the difficulties were less than with other unfixed works and did not therefore justify specifically excluding unfixed choreographic works from protection.

989.6 It had been said that it was difficult to prove the existence and contents of an unfixed choreographic work. The normal procedure seemed to be for a choreographer to instruct the dancers either directly or through an assistant. The assistant or the dancers could prove the existence and the contents of the work. A ballet critic could also say whether or not plagiarism had taken place. In other cases, for example with songs or speeches, it could often be more difficult to prove the contents of the work because only the author knew what those contents were.

989.7 It had also been held that it was difficult to distinguish between the work of the author and the performance of the artist. He did not, however, regard those difficulties as any greater in the choreographic field than elsewhere. In most cases, the author was the instructor and the artist the instructed, which provided a very clear distinction.

989.8 In that connection, he pointed out an important consequence of the existing text of the Berne Convention that had only appeared after the adoption of the Rome Convention on neighboring rights. If the unfixed ballet was a work, and there were good reasons for believing that it was, the performing artist would be protected for his performance whereas the author himself would not be protected for his work. That was certainly contrary to all the principles of the Berne Convention and the protection of authors.

989.9 In conclusion, he said that the Berne Union could be likened to a fine building that had been erected over a period of eighty years but still contained one room which had not yet been furnished. That room was the home of the unfixed choreographic work, and he proposed that it should now be furnished with a suitable legal basis.

990.1 The CHAIRMAN said that, on the whole, Governments had shown little enthusiasm for the deletion proposed in the Program of the Conference. In that connection, it should be recalled that the problem of the fixation of the acting form applied not only to choreographic works and entertainments in dumb show but also to televisual and cinematographic works. But it seemed that under British law and under the legislation of the United States, whose accession to the Berne Union seemed to be confirmed, fixation was an indispensable condition of protection for all works. If such was the case, to specify the requirement of fixation of the acting form solely for choreographic works and entertainments in dumb show would be liable to be interpreted *a contrario* as implying that other works were protected even when they were not fixed.

990.2 In those circumstances, it would perhaps be preferable not to mention the fixation of the acting form in Article 2 and to state in a separate paragraph that it should be a matter for national legislations as to whether or not fixation was a requirement for protection.

991. Mr. STRNAD (Czechoslovakia) gave unqualified support to the proposal of the Delegation of Sweden.

992.1 Mr. WEINCKE (Denmark) said he had found the Chairman's remarks of great interest, but the Delegation of Denmark still supported the deletion proposed in document S/1. He associated himself with the explanations given by the Delegate of Sweden. The importance of the change was that it was wrong in principle and

illogical to retain the fixation requirement for a single category of works only. On the previous day a delegate had said, on the subject of cinematographic works, that unfixed works such as improvised music, drama and speeches were not protected in his country. There were no provisions in the Convention, however, to permit such a limitation on authors' rights, except in respect of political speeches in Article 2*bis*.

992.2 Why was it so important to retain the fixation requirement for choreographic works if it was possible to do without it for music, drama and speeches? Obviously an author must prove the existence of a work and his authorship of it, but in the opinion of the Delegation of Denmark the question of proof had nothing to do with copyright. Substantive copyright and the practical enforcement of protection in judicial infringement proceedings were two separate questions. Each country should be allowed to adopt its own definition of what constituted a work ; it could then, in the absence of fixation, say that no work had been created.

993. Mr. ROHMER (France) said he regretted that the enthusiasm of the Delegation of Sweden had not succeeded in convincing him of the advantages of deleting the requirement of fixation for choreographic works and entertainments in dumb show. The Delegation of France was still opposed to that deletion since, in its view, to say that a ballet should be protected even if nothing remained after the public performance, would amount to protecting a fleeting image, an idea, or even a method. A philosophic discovery, which was nevertheless a work of the mind, was only protected in so far as it was expressed in a body of fixed writing; the theory itself was not protected.

994. Mr. SPAIĆ (Yugoslavia) favored the retention of the existing wording of the Convention, since, in his view, some form of fixation was essential for the identification of a choreographic work.

995. Mr. GOUNDIAM (Senegal) said that, as a delegate of a developing country, he was naturally inclined to approve the deletion suggested by the Delegation of Sweden. But the educational advances which had been made in Senegal gave reason to think that it would soon be possible to require a written or other fixation, and that led him to support the retention of this condition. It seemed, in fact, that fixation was the only means of making a distinction between a creator or adaptor and a mere performer and thus of avoiding abuses.

996.1 Mr. STRASCHNOV (Monaco) thought that adoption of the Swedish proposal would give rise to contradictions in the terms of Article 2. An attempt was being made to delete the requirement of fixation in paragraph (1) for choreographic works and entertainments in dumb show, while at the same time it was being introduced in paragraph (2) for televisual works.

996.2 In the second place, a number of countries laid down that condition in their national legislation, and it would be regrettable if ratification of the Stockholm Act was delayed owing to the need to bring national legislations into line with minor modifications to the Berne Convention.

996.3 Finally, contrary to what the Delegation of Sweden had stated, there was no contradiction between the existing text of the Berne Convention and the Rome Convention on "neighboring rights," as the performer was only protected by the latter Convention if he performed a copyrightable work.

997. Mr. RAYA MARIO (Spain) said that, after listening to the various arguments for and against the retention of the requirement of fixation, he supported the position adopted by the Delegation of France, which, it appeared, would leave the decision to the countries of the Union.

998. Mr. BERGSTRÖM (Sweden) said he thought the Delegate of Monaco had misinterpreted the intention behind the fixation requirement in the proposed text of Article 2, paragraph (2), when he said that it was illogical to insert such a requirement there and delete it elsewhere. Article 2, paragraph (2), had nothing to do with the protection of a work, only with its classification. It classified certain fixed works as cinematographic works; unfixed works, in the opinion of the Swedish Government, were protected as some other form of work.

999.1 Mr. WALLACE (United Kingdom) said that he had much sympathy for the Swedish case, which had been eloquently presented. The Chairman had said that fixation was a condition for protection in the United Kingdom, but that was not quite accurate; under United Kingdom law a work was considered to be made on the date when it was first reduced to writing or other material form. Consequently, it might possibly be held in the United Kingdom that fixation of a work by a third person created a copyright in favor of its author.

999.2 The main fear of the Delegation of the United Kingdom, as had been pointed out in the observations submitted by the United Kingdom on document S/1, was that the effect of the proposed deletion might be to extend the protection of the Berne Convention to the performer. Since that danger was far greater with entertainments in dumb show than with choreographic work, he suggested as a possible compromise that fixation might be retained for the former and abolished for the latter. Such a step might be coupled with the insertion of wording of the kind suggested by the Chairman and, in document S/73, by the Delegation of India. His own Delegation, however, would prefer such an insertion to read: "It shall, however, be a matter for legislation in the countries of the Union to prescribe that works in general or any specified categories of works shall not be considered as having been made until they have been fixed in some material form."

1000. Mr. GAE (India) said he had listened with interest to the discussion, especially the explanations of the Delegate of Sweden and the Chairman's remarks on fixation. The argument in favor of the proposal to delete the fixation requirement for choreographic works and entertainments in dumb show seemed to be that it was anomalous to retain it for one category only. The argument against deletion appeared to be that it was difficult to prove the existence of an unfixed work in infringement proceedings and therefore difficult to protect it in practice. The very notion of a work implied a fixed form; furthermore, fixation was a requirement of the domestic laws of some countries for certain types of work. The Delegation of India therefore favored the retention of the Brussels text subject to the insertion of the wording it had proposed in document S/73. The exact form of that wording was a question for the Drafting Committee, and in that connection he found the text suggested by the Delegate of the United Kingdom very interesting. The essential point was that the Convention should enable States to provide for fixation in their domestic legislation.

1001. Mr. KAMINSTEIN (United States of America) said he would confine himself to the general question of fixation. The United States, because of its copyright background, had the same problem as the United Kingdom. The new proposed federal law on copyright would require a work to be fixed in a tangible medium of expression. The fixation would be sufficient if the work could be perceived, reproduced or otherwise communicated either directly or with the aid of a machine or a device. An unfixed work of authorship, for example an unrecorded choreographic work, a performance, or a broadcast, would continue, as at present, to be subject to protection under common law or statutes in individual States, but not under the federal statute.

1002. The CHAIRMAN proposed that the vote on this question should be postponed in order to give the members of the Main Committee time to study the United Kingdom proposal.

1003. *It was so decided.*

The meeting rose at 5:10 p.m.

TWELFTH MEETING

Thursday, June 22, 1967, at 9:10 a.m.

DELETION OF FIXATION REQUIREMENT FOR ACTING FORM OF CHOREOGRAPHIC WORKS AND ENTERTAINMENTS IN DUMB SHOW (continued) (S/191)

1004.1 The CHAIRMAN suggested that the Main Committee should settle the various questions concerning Article 2 which had been left in suspense, before studying the conclusions of the Working Group on the right of reproduction.

1004.2 The Main Committee had before it a new amendment submitted by the United Kingdom (S/191) concerning the deletion of the fixation of a work as a condition for the protection of choreographic works and entertainments in dumb show which was included in the Program of the Conference. He himself considered that the two parts of the United Kingdom amendment were mutually exclusive. If the Main Committee decided to include the second part of the amendment at the end of Article 2(1), he failed to see why it should also be necessary to mention fixation for certain types of work.

1005.1 Mr. WALLACE (United Kingdom) said that his Delegation's proposal was intended more as a suggestion for discussion than for a definitive text. The idea behind the first amendment was that no fixation requirement was necessary for choreographic works. In countries in which fixation was not a condition for protection and in which the Convention took effect without intermediate enacting legislation, choreographic works would be protected without fixation. He hoped that a large part of the Swedish case would be met in that way. At the same time the retention of the fixation requirement for entertainments in dumb show would allay fears that its abolition might result in protection for the performer rather than the author.

1005.2 The purpose of the second amendment was to cater to a situation already existing in many Union countries. Its wording was based on that of the corresponding Indian proposal (S/73).

1005.3 He wished to make it clear that there was no intention that the proposed amendments should affect Article 2, paragraph (2), of the Convention.

1006. Mr. STRASCHNOV (Monaco) agreed with the Chairman that the words "the acting form of which is fixed in writing or otherwise," which appeared in the existing text of the Convention, would become superfluous if the Main Committee accepted the second part of the United Kingdom amendment. He therefore suggested that the Main Committee should vote first of all on the second part of that amendment.

1007. The CHAIRMAN pointed out that the second part of the United Kingdom amendment would have the dual advantage of simplifying the situation, since it was known that a considerable number of countries made fixation a general condition for protecting works of any kind, and of making it easier for the United States to accede to the Berne Union.

1008.1 Mr. ROHMER (France) said he did not intend to give a further explanation of the French position on the question and he would merely make some comments on the United Kingdom proposal.

1008.2 If compelled to make a distinction between choreographic works and entertainments in dumb show, the Delegation of France would make the distinction in the opposite sense, because the performer in a dumb show entertainment was much more often the author of the work than in the case of choreographic works. Moreover, it was obvious that without the clear distinction provided by the phrase appearing in the present text of the Convention, there would no longer be any difference between the Berne Convention and the Rome Convention, so that there would be still further confusion between the performer and the author of a choreographic work, quite apart from the fact that the principle of giving protection to unfixed works was contrary to the Berne Convention. Unfixed images could not be remembered precisely enough, only existing as a style or a method, but it was difficult to see how methods or a style could enjoy protection under the terms of the Berne Convention.

1008.3 Finally, in the view of the Delegation of France, if legislations were given the option of insisting on a material support, that would have the effect of introducing a new régime of exceptions which would adversely affect the Berne Union. Hence the Delegation of France would oppose the United Kingdom proposal.

1009. Mr. GAE (India) said that he supported the amendment proposed in document S/191, because it was based on principles broadly similar to those underlying the amendment proposed by the Delegation of India in document S/73.

1010.1 Mr. STRNAD (Czechoslovakia) said he wondered what the consequences of the second part of the United Kingdom proposal would be. It should not be forgotten that, in some countries, works were protected from the moment at which they were given perceptible expression. Hence it was easy to see what complications would result for the Union if the United Kingdom proposal was accepted, because works of authors from countries of the Union and of an author who was a national of one of those countries would be accorded different treatment.

1010.2 There was also the case of countries in which, owing to the low level of education, the authors of choreographic works would be unable to fix their works in writing and would therefore lose the benefit of protection.

1011. Mr. STRÖMHOLM (Sweden), replying to the points made by the Delegation of France, explained that it was not the intention of the Swedish proposal to protect a method or system. In his view, the use of the word "work" made the matter crystal clear. Moreover, the Delegation of Sweden felt it would be an arbitrary decision to insist on fixation in the text of a Convention, when it was perfectly possible to determine without that whether there had really been a creative act and hence whether there was a work entitled to protection.

1012.1 Mr. LENNON (Ireland) said that his Delegation opposed the proposal to delete the fixation requirement in Article 2, paragraph (1), irrespective of whether choreographic works or entertainments in dumb show were concerned.

1012.2 His objection to the amendment proposed in document S/191 was that it might imply that in the future choreographic works would be protected even if unfixed, since the fixation requirement had been in the Convention for a very long time.

1012.3 His Delegation had no objection to the amendment proposed in document S/191.

1013. Mr. ELMAN (Israel) said he was uncertain whether the word "legislation" in the first amendment proposed by the Delegation of the United Kingdom meant statute law only or whether it included case law. In Israeli law fixation was required by case law, not statute. He suggested the difficulty might be overcome by referring to "national law" instead of "legislation."

1014. The CHAIRMAN asked the Delegate of the United Kingdom whether he was prepared to accept the amendment proposed by the Delegate of Israel and to withdraw the first part of his proposal if the Main Committee adopted the second part.

1015.1 Mr. WALLACE (United Kingdom) said that the second part of his Delegation's proposal was based on the conviction that since the situation for which it catered was already part of the national law of many Union countries, there was no reason to refrain from recognizing that fact in the Convention. If the Conference were to establish that the Berne Convention did not in effect permit fixation to be a condition for protection, the result might be to drive many countries out of the Convention.

1015.2 He said he had no strong feelings either way about the first part of his Delegation's proposal.

1016. The CHAIRMAN said that in his view "legislation in countries of the Union" should be taken to mean the law in general, including case law. He suggested that that explanation should be included in the Report of the Committee to meet the wishes of the Delegation of Israel, but without in any way modifying the text of the United Kingdom amendment.

1017. *It was so decided.*

1018. The CHAIRMAN put to the vote the second part of the United Kingdom proposal (S/191).

1019. *The second part of the United Kingdom proposal (S/191) was adopted by 18 votes to 9, with 9 abstentions.*

1020.1 The CHAIRMAN said that the decision which the Main Committee had just taken might make it easier for the United States to accede to the Berne Convention.

1020.2 In those circumstances, he wondered whether the Delegation of the United Kingdom wished to press the first part of its proposal.

1021. Mr. WALLACE (United Kingdom) withdrew the first part of his Delegation's proposal.

1022. The CHAIRMAN invited members of the Main Committee to vote on the proposal in the Program of the Conference (S/1) to delete the condition that choreographic works and entertainments in dumb show could be protected only if their acting form was fixed in writing or otherwise.

1023. *The proposal was adopted by 18 votes to 7, with 8 abstentions.*

ASSIMILATION OF TELEVISUAL WORKS TO CINEMATOGRAPHIC WORKS

1024.1 The CHAIRMAN drew the attention of the Committee to two new proposals concerning the assimilation of televisual works to cinematographic works (Article 2(1)), one submitted by the Delegation of Italy (S/161) and the other by the Working Group concerning the régime of cinematographic works (S/190), which was, in fact, merely a modification of the Italian proposal.

1024.2 It should be remembered that, when the text proposed in the Program was drawn up, there had been a feeling that it would be dangerous to make assimilation dependent upon the use of analogous processes, because cinematographic processes were primarily optical whereas those used in television were mainly magnetic. But the facts had proved those fears to be unjustified. Moreover, it was obvious that, if they were to be considered as cinematographic works, televisual works would have to use certain processes which were analogous to cinematography, such as montage and cutting.

1025. Mr. CURTIS (Australia) objected to the amendment proposed in document S/190 on the grounds that it focused attention on the process of reproduction and would inevitably entail a narrow approach to the question of assimilation, in that it was doubtful whether the words "expressed by a process analogous to cinematography" could be interpreted as covering video tape recordings. In the text proposed in document S/1, on the other hand, the words "visual effects" concentrated on the result rather than the method, and could be interpreted as covering any process capable of reproducing a work in visual form. The Delegation of Australia therefore preferred the wording of the Program proposal to that of document S/190.

1026. Mr. STRASCHNOV (Monaco), speaking as a member of the Working Group, assured the Delegate of Australia that the difference between the text proposed in the Program and the one submitted by the Working Group was not as fundamental as it might appear at first sight. A few years ago a case could have been made out for the wording proposed in the Program of the Conference, at a time when the techniques, processes and working methods of cinematography were completely different from those used by television, but that wording was out of date now that the interpenetration of the two methods of expression had become an established fact. Hence the Delegation of Monaco considered that it would be wiser to adopt the text proposed by the Working Group.

1027. Mr. STRNAD (Czechoslovakia) said it was difficult for the Main Committee to reach a decision on the principle of assimilation until it knew what was to be the legal status of cinematographic works.

1028. The CHAIRMAN suggested that the Main Committee should reserve its position until the final wording of Article 14 had been drawn up.

1029. *It was so decided.*

PROTECTION OF OFFICIAL TEXTS OF A LEGISLATIVE, ADMINISTRATIVE AND LEGAL NATURE AND OFFICIAL TRANSLATIONS THEREOF (ARTICLE 2(3)) (S/92 and S/161)

1030. The CHAIRMAN said that the Main Committee had before it two very similar proposals dealing with Article 2(3). One had been submitted by the Delegation of the Federal Republic of Germany (S/92) and the other by the Delegation of Italy (S/161).

1031. Mr. REIMER (Federal Republic of Germany) said that hitherto it had been the prerogative of the legislations in the countries of the Union to determine the protection to be granted to translations of official texts of a legislative, administrative and legal nature, but not the texts themselves. In view of the inclusion of the right of reproduction in the Convention, it now appeared essential to widen the scope of Article 2(3) (formerly Article 2(2)), but to limit the reservations to official translations. Such was the intention of the proposal of his Delegation, which considered that Article 9(2) was inadequate.

1032. Mr. GALTIERI (Italy) fully shared the point of view of the Delegation of the Federal Republic of Germany. The Delegation of Italy would therefore withdraw its proposal in favor of the one submitted by the Delegation of the Federal Republic of Germany.

1033.1 Mr. WALLACE (United Kingdom) said he understood that the aim of the amendment proposed by the Delegation of the Federal Republic of Germany was to allow countries latitude to deny protection to original texts as well as translations. Although he supported the amendment, he thought it would be dangerous if the word "administrative" was interpreted as allowing countries to deny copyright to Government publications such as expensive textbooks, which should always be entitled to protection. Freedom to deny protection was only justifiable in the case of material such as statutes and subordinate legislation. He suggested that the general report on the Conference should make it clear that the reference in the Convention to administrative texts did not give countries freedom to deny protection to all Government publications.

1033.2 His Delegation preferred the text proposed in document S/92, paragraph 2, to that contained in document S/161, because it was more narrowly worded.

1034. Mr. CURTIS (Australia) said he agreed with the views expressed by the Delegate of the United Kingdom.

1035. Mr. BERGSTRÖM (Sweden) said that the discussion had convinced him of the usefulness of the German proposal. His Delegation therefore supported it even though it differed from the text proposed in the Program.

1036. The CHAIRMAN invited the Main Committee to vote on the proposal of the Delegation of the Federal Republic of Germany (S/92), which had been supported by the Delegation of Italy.

1037. *The proposal of the Delegation of the Federal Republic of Germany (S/92) was adopted unanimously, with 4 abstentions.*

WORKS OF APPLIED ART (ARTICLE 2(6))

1038. The CHAIRMAN said that the Main Committee had before it three proposals on the question of works of applied art, one submitted by the Delegation of Italy (S/161), another by the Delegation of the Netherlands (S/140) and the third by the Delegation of Denmark (S/99).

1039.1 Mr. WEINCKE (Denmark) said that his Delegation had proposed the deletion of Article 2, paragraph (6), for a number of reasons. Firstly, it considered it unfair to discriminate against such a large category of works as those of applied art by relegating them to a special régime. They were expressly enumerated in Article 2, paragraph (1), and as such were amongst the creations it was the declared aim of the Berne Convention to protect.

1039.2 Secondly, the proper place for protecting industrial designs and models was in the international conventions on the protection of industrial property and not in a convention dealing with literary and artistic works.

1039.3 Thirdly, not only the principles involved in the retention of Article 2, paragraph (6), but also its practical consequences needed consideration. Since 1908, works of applied art had enjoyed full copyright protection in Denmark under the Copyright Act. For designs and models, that is productions which were not "works" in the sense of that Act, there was a shorter period of protection. Protection of an item as a design or model did not, however, preclude the author from simultaneously claiming full copyright protection for it. The system, which was not unique to Denmark, on the whole provided satisfactory protection for applied art. Experience in Denmark had shown that the courts were capable of making the necessary distinction between the two classes of production, but if the Program proposal was adopted there would inevitably be a period of some confusion. Furthermore, it was not generally contrary to the principles of the Berne Convention that Union countries should formulate different criteria as to what constituted applied art. Criteria for establishing the intellectual content of artistic character of a work likely to be entitled to copyright already differed from one country to another.

1039.4 The Delegation of Denmark was aware that the system it was recommending might seem novel to some countries, and it was therefore prepared to help in devising any reasonable solution if those countries decided that they could not assume the obligations which would stem from the acceptance of the Danish proposal. If a majority of the Union countries were in favor of deleting Article 2, paragraph (6), it should be possible to provide in the Convention for a reservation to be entered by those States which already had a system allowing them to protect works of applied art solely as designs and models.

1040. Mr. ADACHI (Japan) said that the Delegation of Japan disagreed with the proposed deletion. The studies undertaken by the Permanent Committee of the Berne Union should be continued in order to establish a more effective system for protecting works of applied art.

1041. Mr. CURTIS (Australia) agreed with the Delegate of Japan. The deletion of Article 2, paragraph (6), would not only make it difficult for many Union countries to accept the Stockholm text but would also fail to advance the interests of countries which operated the so-called dual system of copyright and separate protection for designs and models.

1042. Mr. WALLACE (United Kingdom) said that he sympathized with the Danish desire that works of applied art should be protected for the life of the author plus fifty years and that designs and models should enjoy a shorter period of protection. Personally, however, he found it very difficult to distinguish between these, and he very much doubted whether United Kingdom judges would agree to rule on the point if a distinction was enacted in his country's legislation. The adoption of a single world system, towards which the Danish proposal tended, was certainly desirable, but it would make it difficult for the United Kingdom to ratify the Stockholm text.

1043.1 The CHAIRMAN said that the problem was a very difficult one. Some countries, such as France, had a system of dual protection, covering both works of applied art and designs and models; others, such as the United Kingdom, only granted simple protection, while others again, like the Federal Republic of Germany for example, operated an intermediate system which introduced the concept of the artistic quality of a work. In those circumstances, it would be difficult to make any radical change to the existing text without adequate preparation.

1043.2 There was another factor which would have to be taken into account by the Main Committee, namely the term of protection. In order to give Delegations time to study that aspect of the question, he proposed that the Main Committee should reserve its position on that point until the time came to study the term of protection (Article 7(4)).

1044. *It was so decided.*

LIMITATIONS ON PROTECTION:
NEWS ITEMS (ARTICLE 2(7)) (S/171)

1045. The CHAIRMAN reminded the Committee that the Delegation of the United Kingdom had submitted a proposal concerning this paragraph (S/171).

1046. Mr. WALLACE (United Kingdom) said that his Delegation's proposal was based on the view that whereas facts were part of the public domain, the words used by journalists to convey them should be protected. The text proposed by his Delegation had the advantage of slightly extending the protection the Convention afforded to journalists.

1047. The CHAIRMAN said he had some doubt as to the advantages of the United Kingdom text over that of the Program of the Conference. He proposed, however, that the United Kingdom proposal should be referred to the Drafting Committee, as it was primarily a drafting question.

1048. Mr. WALLACE (United Kingdom) maintained that a question of substance was involved. He thought that before the matter was referred to the Drafting Committee, the Main Committee should decide whether in principle it was desirable to go slightly further than the existing text in protecting the journalist.

1049. Mr. ADACHI (Japan) agreed with the Chairman that the question should be referred to the Drafting Committee, but said that his Delegation preferred the existing text.

1050. Mr. STRASCHNOV (Monaco) also thought it would be wiser to retain the existing text. There could obviously be no question of protecting facts but, as the Delegate of the United Kingdom had pointed out, the question was to decide whether or not protection should be granted to the form in which a journalist clothed those facts. A case could be made out for protecting the form when the creative aspect of the journalist's work was involved, but certainly not when it was merely a question of a report containing miscellaneous facts. His Delegation therefore proposed that the Main Committee should retain the existing text without referring it to the Drafting Committee.

1051. Mr. STRNAD (Czechoslovakia) pointed out that it might in some cases be contrary to the public interest to grant protection to the form in which a journalist clothed his report of a fact. Such had been the conclusion of the Permanent Committee of the Berne Union at the close of the meeting which had been held at Geneva in 1958. For that reason his Delegation was in favor of retaining the existing text.

1052.1 Mr. KOUTIKOV (Bulgaria) thought that the United Kingdom proposal materially altered the substance of the text of the Convention. It was for the Main Committee, and not the Drafting Committee, to decide on that point.

1052.2 His Delegation was definitely in favor of retaining the text proposed in the Program of the Conference.

1053. Mr. ROHMER (France) said that the journalist's personality sometimes showed even in a report of events which were only of minor interest. That applied in the case of humorists, for instance, and Alphonse Allais had provided a striking example. The Delegation of France therefore supported the United Kingdom proposal.

1054. Mr. DE SAN (Belgium) said he did not agree with the Delegation of France. In his view, the present wording of Article 2(7) made it possible to protect a text to which a journalist had made his own contribution, whereas the United Kingdom proposal would have the effect of protecting any journalistic report. As a question of substance was involved, he proposed that the Main Committee should itself take a decision on the matter.

1055. Mr. GAE (India) said he was in favor of maintaining the existing text because the United Kingdom proposals were too narrowly drawn by comparison with the text of document S/1, which covered something more than mere news. If the Main Committee agreed that the existing text should stand, there was no need to refer the matter to the Drafting Committee.

1056. The CHAIRMAN said it would be difficult to improve the existing text without radically altering the sense. He therefore put to the vote the text of paragraph (7) as proposed in the Program of the Conference.

1057. *Article 2(7), as contained in the Program of the Conference, was adopted by 30 votes to 2, with 3 abstentions.*

The meeting rose at 10:50 a.m.

THIRTEENTH MEETING

Monday, June 26, 1967, at 9:40 a.m.

PROPOSAL OF THE WORKING GROUP
ON RIGHT OF REPRODUCTION
(ARTICLE 9(2)) (S/109)

1058.1 The CHAIRMAN informed the Main Committee that the Working Group had prepared a new draft of Article 9(2) dealing with the exceptions to the right of reproduction set out in the previous paragraph (S/109).

1058.2 In the absence of the Chairman of the Working Group, he pointed out that Main Committee I had decided in favor of a single general clause. The Working Group had therefore attempted to draw up a text authorizing exceptions, provided that such exceptions did not conflict with the normal exploitation of the work and did not prejudice the legitimate interests of the author. In other words, the reservation provided for in paragraph (2) could not be invoked to justify the reproduction of a number of copies of a work; on the other hand, it authorized the making of photocopies when these were solely for individual use or for scientific purposes. In the case of photocopies made by industrial firms, it could be assumed that there would be no "unreasonable" prejudice to the legitimate interests of the author if the national legislation stipulated that adequate remuneration should be paid.

1058.3 Since any exception to the right of reproduction must inevitably prejudice the author's interests, the Working Group had attempted to limit that prejudice by introducing the term "*inéquitable*" to translate the English term "unreasonable." The French word was not entirely satisfactory, however, and it might perhaps be advisable to find another term.

1059.1 Mr. DE SANCTIS (Italy), Chairman of the Working Group, thanked the Chairman for his very full explanation of the reasons which had led the Working Group to adopt unanimously the draft proposed in document S/109.

1059.2 The Working Group had been aware of the inadequacies of the text proposed in the Program of the Conference, and had attempted to find a general provision which would include all the specific cases mentioned in the first draft, namely personal use and use for judicial or administrative purposes.

1060.1 Mr. ROHMER (France) said that when the Working Group had adopted the proposed text, the Delegation of France had already formulated some reservations concerning the French adjectives which were proposed to qualify the word "*préjudice.*" In the view of the Delegation of France, the term "*injustifié*" was equally unsuitable and could be replaced by "*appréciable*" which conveyed the Working Group's intentions better.

1060.2 Moreover, the Delegation of France considered that a form of words should be found which would take account of certain marginal but important cases concerning works of art which had already been made public but had not yet been completely published.

1061. Mr. MASOUYÉ (BIRPI) wondered whether the term "*appréciable*" proposed by the Delegation of France was really an improvement on the Working Group's text; he agreed, however, that the word "*inéquitable*" was redundant when applied to the prejudice caused to an author's interests, and that another adjective should be found. He suggested that the term "*injustifié*" should be used.

1062. The CHAIRMAN informed the Delegation of France that the Working Group had had to admit that it was impossible to find a form of words which would cover all eventualities. To quote only one example, students would have to be allowed to reproduce, for their personal use, the text of the lectures which they attended.

1063.1 Mr. GAE (India) said that in the opinion of the Delegation of India Union countries should be entitled by the Convention to limit by legislation the author's exclusive right to authorize the reproduction of his work. Such a situation would be in the public interest. The author's right should give way to that interest and he should be content with reasonable remuneration. The Indian Government fully supported his right to that remuneration, but it did not think that the author should be allowed to withhold his work from the public. The Delegation of India regarded it as being in the wider interests of all Union countries, and of the developing countries in particular, that provision should be made for such arrangements. Union countries were entitled under Articles 11*bis*(2) and 13(1) of the Convention to institute compulsory licensing in respect of specific rights. There was no valid reason why those compulsory licensing provisions should not be generalized. Compulsory licensing was necessary in a multilingual country like India where there were no collecting societies.

1063.2 He drew the Main Committee's attention to an article by the Chairman on the Federal German Copyright Act in the review "Copyright" for December 1965. The Chairman had stressed in that article that the mere existence of a compulsory licensing system had proved useful in the Federal Republic of Germany by acting as a stimulus to the development of a beneficial pattern of contractual agreements; in other words, it had checked any unreasonable desire on the part of authors to withhold their work. Indian experience in the matter confirmed that conclusion.

1063.3 The Delegation of India found the wording proposed in document S/109 even narrower than that of Article 9(2)(c) in the Stockholm text. Both proposals fell short of the Indian Government's requirements. A further serious drawback to the text proposed in document S/109 was the lack of any reference to reproduction in translation. In a multilingual country like India, works would be useless if they could only be reproduced in the original. He thought that Article 9(2) should expressly specify translations and that the Convention should make it clear generally that all references to reproduction included translations.

1063.4 The Delegation of India therefore opposed the wording proposed in document S/109. Its own proposal for Article 9 (S/86) had been rejected. It seemed that the Main Committee could not accept the idea of limiting the author's exclusive right of authorizing reproduction and guaranteeing him equitable remuneration in return. His Delegation would therefore have to vote for the retention of the Brussels text, which had at least stood the test of time. The Indian Government was determined to end monopoly interests and to avoid unfair exploitation. He earnestly hoped the Main Committee would appreciate its point of view.

1064.1 The CHAIRMAN said that, as the principle of a compulsory general license, which had been proposed by the Delegation of India (S/86), had been rejected, the Main Committee could not reopen the discussion. The countries of the Union were, however, entitled to introduce a compulsory license in some cases, as was done by the German legislation which the Delegation of India had mentioned.

1064.2 It should not be forgotten that the question under consideration had nothing to do with the introduction of a compulsory license in the Protocol Regarding Developing Countries, which would be devoted entirely to protecting the interests of those countries.

1065.1 Mr. ELMAN (Israel) strongly supported the Indian suggestion that throughout the Convention the right of reproduction should automatically include the right of translation. Without the latter, the right of reproduction would obviously be useless to many countries.

1065.2 The words "in certain special cases" in document S/109 were indeed ambiguous, and might be taken to include circumstances in which import and currency restrictions prevented the normal import of a work and obliged a Government to avail itself of legislation to permit the reproduction of that work.

1065.3 That aspect deserved consideration not only in itself but also in connection with the formulation of the two provisos on the right of permission in cumulative rather than alternative terms, both in the Program text and in document S/109. It might for instance be argued that in the circumstances to which he had just referred it was not unreasonably prejudicial to the author's legitimate interests for the Government to permit the reproduction of his work, because the word "unreasonably" could be held to refer to the permitting country and not to the idea. The two provisos were also tautological. It might be better to dispense with the word "unreasonably" and to combine the two conditions by wording the provision to read: "... if the reproduction is not contrary to or in conflict with the normal exploitation of the work by the author." In either alternative the author's interests would be safeguarded.

1066.1 Mr. ASCENSÃO (Portugal) supported the proposal of the Working Group. Like the other delegations he believed that all the exceptions to the right of reproduction must be equally included as exceptions to the right of translation.

1066.2 The Delegation of Portugal considered that the proposal of the Delegate of France to substitute the word "*appréciable*" for "*équitable*" would introduce a quantitative concept which the Working Group had not

intended. Hence the Delegation of Portugal preferred the term "*injustifié*" which had been proposed by the Secretariat.

1066.3 Finally, as the object of Article 9(2) was to enable national legislations to grant a right of reproduction in certain cases, it might perhaps be preferable not to speak of reservations but to say that the reproduction was permitted in the cases mentioned.

1067. Mr. LAKHDAR (Tunisia) associated himself with the statement of the Delegate of India.

1068.1 Mr. KOUTIKOV (Bulgaria) said that, after listening to the statement of the Delegation of India he did not feel that the Main Committee could go back on its decision. It should restrict itself to studying the proposal put forward by the Working Group which it had itself instructed to seek a generally acceptable formula.

1068.2 When the time came to prepare the final French text, the Drafting Committee might perhaps consider the possibility of replacing the word "*inéquitable*" by the word "*sensible.*"

1069.1 Mr. DE SAN (Belgium) pointed out that the exclusive right of reproduction provided for in Article 9(1) was already subject to various exceptions under the terms of Articles 2*bis*, 10, 10*bis*, 11(3) and 13(2). Hence it might not be a waste of time to specify, either in a new paragraph or, more simply, in the Report of the Committee that these exceptions applied to the right of reproduction as well.

1069.2 As the majority of members of the Main Committee appeared to find the draft of Article 9(2) contained in the Conference Program too vague, there was some doubt as to whether the text prepared by the Working Group put sufficient limitations on the possibility of making a general reservation. Hence the Delegation of Belgium proposed that the end of the paragraph should be revised as follows: "... provided that such reproduction does not prejudice the interests of the author in any way which is not urgently justified by a higher interest."

1070.1 Mr. GERBRANDY (Netherlands) said he was not entirely happy about the text proposed by the Working Group. He wondered whether that text did not give too much freedom of action to national legislations at the expense of the Convention. It should not be forgotten that a provision of that nature would give no protection to nationals of other countries against acts which might be committed on Netherlands' territory, for example, as no judge would be willing to subordinate his own legislation to international custom.

1070.2 Moreover, it was somewhat astonishing that the Working Group, after declaring that it was a matter for legislation in the countries of the Union to permit reproduction, should apparently wish to restrict the power thus granted, but by imposing conditions on reproduction individually and not on national legislation. The same applied to the protection of the legitimate interests of authors, which was written into the reservation clause. But once a country was given authority to reserve the right of reproduction under a certain provision, the interests of authors ceased to be legitimate as soon as they ran counter to that provision.

1070.3 While not refusing to recognize the right of reproduction, the Delegation of the Netherlands was doubtful whether it should be compensated by such exceptions.

1071. Mr. STRASCHNOV (Monaco) asked that it should be made clear, in the actual text of the Convention or in the Report of the Committee, that the right of reproduction provided by Article 9 in no way affected the exceptions stipulated in other articles of the Convention.

1072.1 The CHAIRMAN pointed out to the Delegation of Israel that it would be extremely difficult to extend to translation the right of reproduction set out in Article 9. He suggested that the Main Committee should revert to that point when considering the provisions concerning the right of translation (Article 8).

1072.2 He invited the Main Committee to vote on the text proposed by the Working Group (S/109) on the understanding that the various questions of wording which had been raised during the discussion would be referred to the Drafting Committee. He suggested, however, that in the French version the Committee should replace the word "*inéquitable*" by the word "*injustifié*" which had the advantage of being closer to the English text than the other words which had been proposed.

1073. *The proposed amendment to the French text was adopted unanimously, with 11 abstentions.*

1074. *The proposal of the Working Group in regard to Article 9(2) (S/109), thus amended, was adopted by 21 votes to 4 with 8 abstentions.*

1075.1 The CHAIRMAN said that it might perhaps be more logical to reverse the order of the conditions restricting the right of reproduction granted to national legislations. The first essential was that the normal exploitation of the work should be safeguarded, and the question of prejudicing the legitimate interests of the author was only a secondary one.

1075.2 Moreover, the Committee had voted in favor of retaining the existing text of Article 9(2), but extending it to cover broadcasting. The Drafting Committee had considered that it would be better to say that it was a matter for national legislation to authorize the reproduction of newspaper articles, but that there should be no obligation on the countries of the Union to do so.

1075.3 He suggested that those two questions should be referred to the Drafting Committee.

1076. *It was so agreed.*

PROPOSAL OF THE WORKING GROUP ON EXCERPTS FROM PROTECTED WORKS (ARTICLE 10(2)) (S/185)

1077. The CHAIRMAN invited the Chairman of the Working Group to submit the Group's proposal concerning Article 10(2) (S/185).

1078.1 Mr. DE SANCTIS (Italy), Chairman of the Working Group, informed the Main Committee that the proposal concerning Article 10(2) had been unanimously adopted by the Working Group.

1078.2 The Working Group had been instructed to choose between retaining the Brussels text and drawing up a more restrictive text, and it had opted for the second solution. The text proposed by the Group no longer referred to borrowings, but spoke of the utilization of literary or artistic works "by way of illustration," which was to be understood in the sense of subsidiary reproduction. Furthermore, the Working Group had decided to delete the provision granting a special exception in the case of works having a scientific character and anthologies, in view of the expansion of the field of science and the number of exceptions to the right of reproduction which were already included in the Convention. In regard to utilization for teaching

purposes, some members of the Group would have liked the text to specify that the phrase referred to teaching in schools, but that proposal had finally been abandoned.

1078.3 The members of the Working Group had not, however, been able to reach agreement on the extension of the reservation to broadcasts or recordings—i.e., on the phrase placed in square brackets. Some delegations had considered that no mention should be made of broadcasting in Article 9, in view of the fact that Article 11*bis* already made it a matter for national legislation to authorize the broadcasting of a work on payment of equitable remuneration to the author. In the case of recordings, the opposition had been still stronger, as the majority of members of the Working Group had been opposed to the inclusion of that provision in Article 9(2).

1079. The CHAIRMAN suggested that the Main Committee should begin by studying the Working Group's proposal apart from the words in square brackets.

1080.1 Mr. WALLACE (United Kingdom) reminded the Main Committee that the working party which had revised the wording of the English version of the Berne Convention as prepared at Brussels had substituted the word "borrowings" for "excerpts" as a translation of the French "*emprunts*" on the ground that the intention behind the paragraph was to provide for the utilization not only of parts of works but also of whole works. If, as he thought, the Main Committee generally took the same view, the Program text of Article 10(2) became extremely ambiguous. It could be read as permitting the grant of compulsory licenses to publish for the purpose specified. He did not think it was intended to be interpreted in that way, however, and he therefore strongly supported the wording proposed in document S/185 because the two safeguards it contained removed the ambiguity and succeeded in making the paragraph reflect what he believed was the consensus.

1080.2 He suggested that the words "literary or artistic" in document S/185 should be altered to read "literary and artistic" to bring the wording into line with the definition given in Article 2(1).

1081.1 Mr. ROHMER (France) entirely approved the text proposed by the Working Group which had the advantage of not restricting the use of works to "borrowings."

1081.2 His Delegation wished to state, however, that if the words contained in square brackets in the Working Group's proposal were retained, as was to be hoped, it would be well to specify that the reference was solely to educational broadcasts carried out in teaching establishments or schools, in order to ensure that certain countries should not be able to broadcast entire works addressed to a considerable section of the population on the pretext that they were educational broadcasts.

1082. Mr. GODENHIELM (Finland) said he was worried about the implications of the proposed text if broadcasting and television were included. He therefore proposed that it should be made clear in the Report of the Conference that the phrase "by way of illustration" was to be interpreted in a restrictive sense.

1083. Mr. KOUTIKOV (Bulgaria) said that the Delegations of Bulgaria, Poland, Rumania, and Czechoslovakia, had submitted a joint proposal in regard to Article 10(2) (S/83). The Delegation of Bulgaria would, however, be ready to support the Working Group's proposal, including the words in square brackets of course, provided that the meaning of the word "teaching" was clearly defined in accordance with the proposal of the Delegation of France.

1084. Mr. REIMER (Federal Republic of Germany) said he approved the text proposed by the Working Group. In the view of his Delegation, it was not necessary to restrict the scope of the word "teaching" to school or university teaching. His Delegation wished to make it clear, however, that the phrase "to the extent justified by the purpose" in Article 10(1) must be interpreted in the sense of the objective of the quotation.

1085. The CHAIRMAN confirmed that the same object was in view in the case of quotations (paragraph 1) and of works used by way of illustration (paragraph 2).

1086.1 Mr. ZAKÁR (Hungary) said his Delegation could not accept the wording in document S/185. The Brussels text of Article 10(2) had been in the Convention for a long time and had proved its worth; the Delegation of Hungary favored its retention. His Delegation attached importance to the fact that countries were entitled to permit borrowings for scientific purposes; he disagreed that the possibility of making quotations under Article 10(1) would be adequate in that connection.

1086.2 His Delegation considered that the words "broadcasts or recording" should be added to the Brussels text of Article 10(2).

1087. Mr. ROJAS (Mexico) expressed approval of the text submitted by the Working Group. He only wished to point out that, if it was adopted, there would have to be a consequential alteration of paragraph (3) dealing with borrowings.

1088. The CHAIRMAN said that the question would be submitted to the Drafting Committee.

1089. Mr. STRASCHNOV (Monaco) said he would have preferred not to have the phrase in square brackets dissociated from the proposal of the Working Group as a whole, as the Main Committee had already accepted the principle of extending this right to broadcasting and television when it approved the proposal in document S/83. The Delegation of Monaco considered that it was no longer possible to refuse to grant the same right to teaching by radio and television as to teaching by the traditional methods.

1090. The CHAIRMAN said he still thought it would be preferable to vote first on the Working Group's proposal, disregarding the phrase in square brackets.

1091. *The proposal of the Working Group, apart from the phrase in square brackets, was adopted by 17 votes to 8, with 8 abstentions.*

1092.1 The CHAIRMAN suggested that the phrase in square brackets should be split up, and that the Main Committee should deal separately with the extension of the rights reserved to the legislation of the countries of the Union to broadcasting and to recordings respectively.

1092.2 In regard to broadcasting, the Main Committee might perhaps, as a compromise, adopt the formula suggested by the Delegation of France which was to extend the provisions of the clause to teaching by means of broadcasting, provided that such teaching was given in scholastic establishments.

1093. Mr. WALLACE (United Kingdom) agreed with the French suggestion that the wording in document S/185 should include a reference to educational institutions. If he had understood it correctly, the French suggestion was that broadcasts and recordings by broadcasting organizations for instructional purposes should only be permitted for teaching in schools and other educational establishments. The suggestion was a useful one and would no doubt attract support from a large number of delegations.

1094. Mr. KOUTIKOV (Bulgaria) asked whether the French proposal included university teaching.

1095. Mr. ROHMER (France) assured the Delegate of Bulgaria that it applied to teaching at all levels—i.e., teaching carried out in all scholastic institutions and universities.

1096. Mr. KOUTIKOV (Bulgaria) asked that that explanation should be mentioned in the Report.

1097. Mr. CIAMPI (Italy) wished to know whether scholastic education covered both public and private institutions.

1098.1 The CHAIRMAN thought it would be very difficult to make a distinction between public and private schools in the framework of the Article under consideration. He personally considered that the expression "in schools" covered both types of institution.

1098.2 After reminding the Main Committee that there were three possibilities to choose from: to extend the reservation to broadcasting without any restrictions, to extend it to broadcasting but solely for teaching in schools, to delete all reference to broadcasting; he invited the members of the Main Committee to vote on the first of those solutions.

1099. *The Main Committee decided by 19 votes to 8, with 6 abstentions, that the reservation should be extended to cover broadcasting without any restriction.*

1100. The CHAIRMAN proposed that a vote should be taken on the second part of the phrase in square brackets, namely the extension of the proposed right to teaching by means of recordings, it being understood that the Main Committee would again have to choose between the same three possibilities.

1101. Mr. STRASCHNOV (Monaco) pointed out that, according to the Rome Convention of 1961, the French term "phonogramme" applied solely to sound recordings, whereas the term "recordings" used in the English version covered both sound and video recordings.

1102. The CHAIRMAN considered that, in the text proposed by the Working Group, the term "*phonogramme*" applied solely to sound recordings. He therefore asked the members of the Main Committee to vote on the question of extending the reservation to teaching by means of phonograms, taking the latter term in its restricted sense.

1103. *The Main Committee decided by 22 votes to 6, with 6 abstentions, to extend the reservation to phonograms (sound recordings only) without any restriction.*

The meeting rose at noon

FOURTEENTH MEETING

Monday, June 26, 1967, at 2:30 p.m.

PROPOSALS OF THE WORKING GROUP ON CINEMATOGRAPHIC WORKS (S/130 and S/195)

1104.1 The CHAIRMAN traced the history of the question of the régime for cinematographic works and said that the text proposed in the Program introduced a system of presumption which the Working Group had taken over on a more modest scale. He emphasized that the object of the Convention was not to protect the interests of makers but to facilitate the circulation of cinematographic works in the countries of the Union while respecting the legitimate interests of authors, and to harmonize national legislation. He explained that the danger to the free circulation of cinematographic works arose from the varying concepts of authorship; whereas the authors of pre-existing works were regarded everywhere as authors, the same did not apply to directors, photographers, cameramen, and actors. The Program and a proposal by the Delegation of France had sought to extend the system of presumption to the authors of pre-existing works, but the Working Group had considered this unnecessary, since their status as authors was recognized everywhere, and it had only made a few minor drafting changes to the existing text of the Convention in this connection. National systems differed, however, in their treatment of copyright in a cinematographic work in the strict sense of the term; hence the Working Group proposed to introduce in paragraph (2) of the new Article 14*bis* a system of presumption which would be acceptable to the supporters of the copyright system and those of the system of legal assignment, because only the right of exploitation was assigned, and, for countries in which copyright belonged to the authors of literary and artistic contributions, it proposed a system of presumption of legitimation, which would not affect the contractual relationships between authors and makers, the latter being presumed to have been authorized to exploit the cinematographic work. All other questions would be a matter for national legislation.

1104.2 Turning to the question of the form of agreement between makers and authors, he reminded the Committee that in France all agreements had to be in writing, whereas the majority of other legislations recognized verbal contracts and, as the majority of members of the Main Committee felt that it was impossible to impose a uniform system on all countries, the text proposed by the Working Group for paragraph (2)(c) allowed full latitude to countries on that point. To solve the problem of harmonization, the Working Group had based itself on the rules of private international law and had decided that, just as the terms of a publisher's agreement varied according to the publisher's country, so the form of agreements concerning cinematographic works should depend on the country of the maker.

1104.3 Finally, he explained that the reason why paragraph (3) of the new Article 14*bis* stipulated that the provisions of paragraph (2)(b) should not apply to authors of scenarios, dialogues and musical works was that no one disputed their status as authors. It was to be understood, however, that national legislation could apply to such authors the system of presumption of assignment.

1105.1 Mr. BOUTET (France) said that his Delegation has examined with the greatest care the proposals of the Working Group concerning the régime of cinematographic works (S/195), proposals which sought to introduce new provisions into Article 14 and a new Article 14*bis* into the Convention.

1105.2 The Delegation of France wished to pay tribute to the efforts which the Group had made to reach a solution which would secure the unanimity of the countries represented at the Conference. The Delegation of France unreservedly accepted the text proposed for Article 14, together with paragraph (1) of Article 14*bis*. On the other hand, it felt bound to put before the Main Committee some observations on the other provisions of the proposed Article 14*bis*.

1105.3 The Main Committee was aware of the objections which the French Government had to the principle of introducing into the Convention of the Berne Union a system of presumption or an interpretative rule for agreements in the legal relationships between the authors

of a cinematographic work and its makers. The Main Committee was also aware that the French Government, being desirous of making a positive contribution to the studies which had been undertaken with a view to facilitating the circulation of films in the countries of the Union, had proposed, in its written reply to BIRPI, a wording for Article 14(4) which, in its view, would achieve the indispensable balance between the wishes of the makers and the interests of the authors.

1105.4 The Delegation of France had paid the greatest attention to the statements made by the various delegations on this question and to the main arguments which they had put forward.

1105.5 It had been pointed out initially that the variety of national régimes applied to cinematographic works could sometimes hamper the international exploitation of television films, and that the Berne Convention, in the common interest of authors and makers in an age of satellite relays, ought therefore to lift the existing legal barriers by adopting a system which would be both simple and uniform.

1105.6 In answer to that, it had been said that the suggested mechanism—the interpretative rule for agreements—presented a major drawback in that it introduced into the Convention, which had previously dealt only with copyright, mandatory provisions applying to agreements. The fear had been expressed that the system might conflict with the traditional principles of private international law and encroach on the liberty which national legislations had always enjoyed in that field. It had also been said that, in spite of the difficulties which had to be overcome, the maker of a film, like any businessman or foreman, was after all "able to look after himself." Finally, some delegations had expressed a fear that the interpretative clause, in particular, might adversely affect authors in developing countries, who were already in a weak position vis-à-vis the makers, who were generally nationals of developed countries.

1105.7 At the end of that discussion, the Delegation of France had been able to point out that the Main Committee was almost equally divided between the desire to adopt the new provisions and the desire to keep simply to the text of the existing Article 14 of the Convention.

1105.8 The Delegation of France was bound to state that Article 14*bis* as proposed by the Working Group did not meet the objections and the fundamental apprehensions expressed by the French Government. That view was based on grounds of principle and on the following legal and practical arguments:

1105.9 In the first place, the French Government considered that a Convention the object of which was "the protection of authors' copyright in their literary and artistic works" should not grant the users of those works mandatory rights which would weaken the contractual position of the creator, without at the same time giving him the means of safeguarding his moral and economic interests. Hence the French Government continued to regard it as essential that the adoption *jure conventionis* of the interpretative rule should be accompanied, also *jure conventionis*, by the requirement of a written agreement and an assurance that that agreement would be respected.

1105.10 Without that guarantee, the author of a cinematographic work, although he had the right to make a "contrary or special stipulation", would have great difficulty in producing proof to that effect.

1105.11 Moreover, although the draft Article 14*bis* rightly exempted authors of scenarios, dialogues and musical works from the compulsory system of presumption, it was difficult to understand why the director should not enjoy the same treatment.

1105.12 The director was the creator who breathed life into the collection of purely literary contributions which were entrusted to him.

1105.13 The Delegation of France therefore considered that the proposed solution was not in the spirit of the Berne Convention. It also considered that if the film maker sought legal safeguards for his exploitation, Article 14*bis* was not the appropriate means of achieving it.

1105.14 The Delegation of France considered that, because of the complexity of the problem, the Working Group had not been able—and this was no reflection on the Group—to solve the difficulties which had confronted various meetings of experts over a number of years. The Delegation of France appreciated the legitimate desire of certain States to retain on their territories a system of legal assignment or film copyright.

1105.15 The Working Group had taken that fact into account when it included in paragraph (2)(a) of the draft a provision to the effect that: "Ownership of copyright in a cinematographic work shall be a matter for legislation in the country where protection is claimed."

1105.16 That rule, which might well be satisfactory to the interested States, could not but create a widespread situation of legal insecurity in the countries of the Union. Hitherto, the maker had been legally safeguarded by negotiating with all the authors defined by the law of the country of origin of the cinematographic work. Henceforth, it was to be feared that a cinematographic work would have different authors in different countries, creators who would be as varied as the varied legal systems of the national legislations.

1105.17 Again, the history of the Berne Convention showed that many countries were still bound by different Acts. The application of those Acts, of which *ex hypothesis* only that of Stockholm would include the interpretative rule, would have the effect of seriously increasing the diversity of régimes applicable to cinematographic works. Great difficulties would therefore arise in the application of the proposed system, difficulties which were likely to lead to a host of legal actions—which was precisely what everyone wanted to avoid.

1105.18 Hence the Delegation of France considered that the régime proposed, far from contributing to the uniformity and simplicity which were desirable in any effective clause of a Convention, was too complicated and too diverse.

1105.19 The French Government was unable to find in the Working Group's suggestions any basis for a constructive solution which would enable the French Government to support an amendment of Article 14 of the Brussels text. For those reasons of law and of fact, in addition to those indicated at the outset of its statement, the Delegation of France would be compelled, to its great regret, to vote against the proposed Article 14*bis*.

1106. Mr. BERGSTRÖM (Sweden) said that the texts proposed by the Working Group for Articles 14 and 14*bis* (S/195) were much more modest than the text of Article 14 in document S/1. Nevertheless, his Delegation regarded them as a reasonable compromise between the very different views on the matter expressed during the discussions. The Delegation of Sweden had voted in favor of the proposals in the Working Group and would do likewise in the Main Committee.

1107.1 Mr. SPAIĆ (Yugoslavia) reminded the Main Committee that his Delegation had proposed the deletion of paragraphs (4) to (7) of Article 14 in the text proposed

in the Program because the rules of interpretation for agreements ran counter to the interests of authors and were out of place in the Berne Convention. In his view, the proposals put forward by the Working Group were equally unsatisfactory from the authors' point of view as the rules of interpretation reappeared in paragraph (2)(b) of the proposed Article 14*bis*.

1107.2 The director was not mentioned among the persons to whom the provisions were not applicable, in the absence of any contrary provision in national legislation. But as the director was one of the most important intellectual creators of the cinematographic work, to which he gave his imprint, and as he was regarded as the author by many legislations, the Delegation of Yugoslavia considered that he should be mentioned in paragraph (3) of the proposed Article 14*bis*.

1107.3 The ownership of copyright in a cinematographic work should be determined by the legislation of the country of origin of the work and not of the country in which protection was claimed, as the Working Group proposed in paragraph (2)(a) of Article 14*bis*. On the contrary, it was essential that recognition should be given to the rights of the authors of the cinematographic work, who might otherwise find themselves deprived of protection in a country operating the film copyright system, under which copyright was vested in the maker and not in the intellectual creator.

1107.4 It was essential that the form of the agreement should be governed by the legislation of the country of the author of the cinematographic work and not by that of the country in which the maker had his headquarters or habitual residence, as the Working Group proposed. That point was very important for those countries which laid it down in their legislation that a written document was an essential feature of an agreement. That was the case in Yugoslavia, where the agreement assigning copyright had no legal effect if it was not concluded in writing.

1107.5 He regretted that he could not support the proposals of the Working Group and he stated that, if the Main Committee adopted the proposed text, his Delegation would have no option but to vote against it in the plenary Assembly.

1108. Mr. REIMER (Federal Republic of Germany) expressed astonishment that a text on which almost all the members of the Working Group had reached agreement should give rise to such lively discussion, as the innovations which it proposed were very modest by comparison with the text contained in the Program. In his view, the objections raised by the Delegate of France were not justified, because presumption applied only to the works or contributions of "modern" authors. Moreover, what was involved was not a presumption of assignment but a presumption of legitimation, which would apply in regard to contributions made to a cinematographic work during shooting, and it seemed natural that those persons who had made contributions to it should not subsequently be able to object to the exploitation of the cinematographic work. In regard to the question of the form, i.e., the possibility of requiring a written agreement, it was impossible to impose on all countries the view held by one country. In his view, the formula adopted by the Working Group was satisfactory, because the place where the maker had his headquarters was the centre of the cinematographic production, and the maker could and should respect the provisions in force in the country in which his headquarters were situated. Moreover, that formula seemed calculated to facilitate the free circulation of films. Hence the Delegation of the Federal Republic of Germany supported the proposal of the Working Group and hoped that the efforts expended by the Group would not have been in vain.

1109. Mr. GODENHIELM (Finland) congratulated the Working Group on preparing a remarkably logical draft, which he fully supported. He hoped that those delegations which had expressed opposition to the draft would change their positions. In view of the fact that the work of the director was an inseparable part of any cinematographic work, he considered it quite normal that paragraph (3) of the proposed Article 14*bis* should not refer to him.

1110. Miss KLAVER (Netherlands) said she wished to make a statement on a matter of principle, as she assumed that the text proposed in document S/195 would subsequently be examined paragraph by paragraph. She paid tribute to the efforts of the Working Group to harmonize the various legal practices, but said she must reserve the final position of her Delegation in regard to the desirability of introducing the interpretative rule for agreements and assimilating televisual works to cinematographic works. Her Delegation proposed to take part in the general discussion on the draft prepared by the Working Group and it would make every effort to find a solution which was acceptable to all countries parties to the Berne Convention. The Delegation of the Netherlands considered that the criticisms levelled against the proposals in the Program, which did not produce the desired uniformity in legal treatment, applied equally to the draft submitted by the Working Group, which also allowed for different systems, and hence did not fully satisfy the Delegation of the Netherlands. It should be recognized, however, that some progress had been achieved towards the creation of a uniform system.

1111. Mr. ZAKÁR (Hungary) said that although the Working Group's proposals seemed more favorable to authors than those in the Program of the Conference, there was in fact no fundamental difference between the two texts. Even the Working Group had provided for rules of interpretation in favor of the maker which would operate against the author. His Delegation therefore maintained the proposal it had made at a previous meeting for the deletion of paragraphs (4) to (7) inclusive of the text of Article 14 in document S/1.

1112. Mr. ADACHI (Japan) said that his Delegation fully supported the proposals submitted by the Working Group.

1113. Mr. CURTIS (Australia) said that in Australia copyright was given to the author and not to the intellectual creators of a film, and his Government was not greatly concerned what was in the Convention provided it was not obliged to change its practice. Much of the contents of paragraph (2)(b) of the Working Group's text for the new Article 14*bis* was irrelevant to Australia's difficulties. It was regrettable, however, that paragraph (3) of that text was narrower than the corresponding provision in the Program of the Conference. Whereas the original proposal provided for a rule of interpretation under which an author who agreed to the incorporation of his work in a film was thereby assumed to have agreed to the public exhibition of that work, the new proposal provided for a rule in respect only of those who wrote works specially for films. Australia, which was a substantial importer of films and which was situated a considerable distance from most of the film-producing countries, agreed with the Working Group's text of paragraph (3) so far as it went, but regretted that it did not go further. Similarly, it would have welcomed retention of the distinction, made in the original proposal, between authors of musical works and authors of other works. Despite those criticisms, the Delegation of Australia would not stand in the way of acceptance of the Working Group's proposals.

1114. Mr. CIAMPI (Italy) said his Delegation had taken a sympathetic interest in the labors of the Working Group and found the Group's draft acceptable, subject to some amendments. His own country had a special system of protection and consequently it was not directly affected by Article 14*bis* and, as an exporter of cinematographic works, it had an interest in securing a free circulation of films. However, the Stockholm Conference was a conference on copyright, and it was important not to overlook the interests of the creators of literary and musical works and also the creators of cinematographic works. The cinematographic industry was in process of transformation throughout the whole world, and the distributors had acquired greater importance than the producers. He would draw the attention of the Main Committee to some questions connected with the legal aspects of the interpretative rule and of the concept of a compulsory written agreement which it was proposed to introduce into the Convention. In the first place, there was the phenomenon of co-production in Europe, under which authors' agreements affecting people of different countries created a variety of situations vis-à-vis national legislation; then there was the "author's film" which had come into existence alongside the maker's film, and in which the director's work was of greater importance than that of a writer or a musical composer. The Delegation of Italy agreed, in principle, that the text prepared by the Working Group should be taken as a basis for discussion, and, in order to secure unanimity, it proposed that the Main Committee should begin by considering the French proposal concerning the obligatory written agreement and by adding directors to authors in paragraph (3) of the proposed new Article 14*bis*. It was essential to find a solution because, since the Brussels Conference, the development of television had led to considerable changes in the field of cinematography and agreement must be reached on a text which would be valid for the future.

1115. Mr. WALLACE (United Kingdom) said that the Working Group's proposals were a useful compromise and had the support of the United Kingdom. It appeared that the Delegation of France disliked paragraph (2)(a) of those proposals. Unless, however, a provision on the lines of paragraph (2)(a) were included in the Convention, the Delegation of the United Kingdom would be forced to request that no change whatsoever was made in the Brussels text. If no change from the Brussels text were possible in relation to films, the Conference would, to some extent at least, have been a failure. It would be unrealistic to expect the many Member countries of the Berne Convention which gave copyright to the maker of a film to change their ways. The inclusion of any such obligation in the Convention would mean the breakup of the existing régime.

1116. Mr. CAVIN (Switzerland) stressed the modest scope of the Working Group's proposal, which applied to those persons who had made a contribution which was inseparable from the cinematographic work. He considered that the presumption in question was a perfectly natural one, because anyone who had contributed to the making of a cinematographic work could not object to the exploitation of the film. It was a presumption of legitimation which would operate in the case of an agreement with a third party. The result which had been achieved marked a small step forward in the direction of a solution of the difficult problems caused by the diversity of national legislations, and it would be most regrettable if the work of the Conference should end up in failure.

1117. Mr. LAKHDAR (Tunisia) said he fully supported the views of the Delegation of France.

1118. Mr. STRASCHNOV (Monaco) said that the text of paragraph (2) of the new Article 14*bis* was a natural result of "national treatment," and he reminded the Main Committee that under the terms of Article 4 of the Brussels text non-nationals could claim the same treatment as national authors in the country in which they claimed protection. It was therefore unthinkable that the ownership of copyright should always be as laid down by the law in the country of origin of the cinematographic work, because judges would be required to give their verdict on the basis of foreign laws. Monaco had proposed a more ambitious system in document S/115, but the Delegation of Monaco had realized that the more modest proposal submitted by the Working Group was the only one which had any chance of being accepted. Some people had objected that there was no precedent for an interpretative rule, but he would remind them of the treaty drawn up in 1958 by the Council of Europe, which had already been ratified by eleven countries; Article I of that European Agreement introduced the concept of a presumption of assignment, which went further than a presumption of legitimation. But that concept did not contain any obligation to conclude a written agreement also affecting directors. The Agreement dealt with the same problems which had confronted the Working Group. To those delegates who were in favor of expressly mentioning the director in paragraph (3), he would point out that the director was not entitled to the benefits of copyright in countries employing the film copyright system, and that if mention was made of the director in the paragraph under discussion, there would no longer be any uniformity. Finally, he wished to pay tribute to the Chairman who had made an invaluable contribution to the work of the Group and hence to that of the Conference.

1119. Mr. H'SSAINE (Morocco) expressed appreciation of the valuable efforts of the Working Group. He reminded the Main Committee that Morocco protected the rights of authors, whatever their nationality. His Delegation would vote against Article 14*bis*.

1120. The CHAIRMAN reminded the Main Committee that, whereas unanimity was required for any amendment to the Brussels text of the Berne Convention, votes in the Main Committee were taken by a simple majority. The purpose of the votes which were now to be taken was to ascertain the majority view in the Main Committee, and compromises would doubtless be arranged subsequently to achieve unanimity. He therefore invited delegates to vote on the substance, leaving drafting points to be settled later. If there were any proposed amendments, they would be put to the vote before the amended or unamended text. As the Delegation of France wished to press the amendment which it had proposed in document S/130, he would point out that that proposal went much further than the draft submitted by the Working Group, and that it was more rigid, since it made a written agreement obligatory. Finally, the question of the assimilation of televisual works to cinematographic works was still open. He invited the Main Committee to vote on the French amendment (S/130).

1121. *That amendment was rejected by 15 votes to 8 with 17 abstentions.*

1122. Miss KLAVER (Netherlands) reminded the Main Committee of her proposal, which had been supported by the Delegations of France and Italy, to the effect that the provisions of paragraph (2)(b) of the new Article 14*bis* should not apply to directors of cinematographic works.

1123. The CHAIRMAN pointed out that this amendment would not lead towards a harmonization of national legislation, because it failed to take account of the laws prevailing in the United Kingdom on the one hand and in Austria and Italy on the other. He invited the Main Committee to vote on the Netherlands amendment.

1124. *The Netherlands amendment was rejected by 15 votes to 7, with 17 abstentions.*

1125. Mr. DE SAN (Belgium) said that the reason why the Working Group's proposal had been approved by almost all the members of the Group was that some delegations had put aside their their own preferences in a spirit of compromise. He reminded the Main Committee that his Delegation had proposed that those countries of the Union whose national legislation made provision for a régime having effects analogous to those of Article 14(4) but specifically excluded dialogues and scenarios, could declare that they would not apply the provisions of the said paragraph in so far as they concerned such works.

1126. The CHAIRMAN said that the proposal of the Delegation of Belgium again did not fit into the logical pattern of the Working Group's proposal. He added that it was always essential to take account of comparative law and that if the proposal in question was adopted, it would be impossible to achieve a harmonization of legislations. He invited the Main Committee to vote on the Belgian proposal.

1127. *That proposal was rejected by 13 votes to 6, with 16 abstentions.*

1128. The CHAIRMAN referring to the position of the Delegation of France which had pressed for a written agreement to be made obligatory, said it was impossible to impose on all countries a system which was only accepted by one of them. He hoped that a compromise formula could be found later. He pointed out that paragraphs (2) and (3) of the new Article 14*bis* were complementary, and he invited the Main Committee to vote on the text proposed by the Working Group.

1129. *The text proposed by the Working Group was adopted by 28 votes to 8, with 4 abstentions.*

The meeting rose at 5 p.m.

FIFTEENTH MEETING

Tuesday, June 27, 1967, at 9:40 a.m.

RULES OF PROCEDURE

1130. The CHAIRMAN proposed that, as the Main Committee had only a limited time at its disposal, the time allowed to each speaker should be limited to five minutes in accordance with the provisions of Rule 26 of the Rules of Procedure.

1131. *It was so decided.*

PROPOSALS OF THE WORKING GROUP ON CINEMATOGRAPHIC WORKS (continued) (S/190)

1132.1 The CHAIRMAN drew the attention of the Committee to document S/190, containing the proposals of the Working Group concerning the régime of cinematographic works.

1132.2 On the question of the assimilation of televisual works to cinematographic works, the Working Group, adopting the suggestion of the Delegation of Italy, proposed to follow the Brussels text for Article 2, amending it to read as follows: "... cinematographic works to which are assimilated those expressed by a process analogous to cinematography." The expression "analogous process" would cover not only visual effects and fixation in material form but also the operations of cutting and montage. Hence it was for the Main Committee to vote either for this new draft of the Brussels text or for the text proposed in the Program of the Conference.

1133. Mr. WALLACE (United Kingdom) said that his Delegation would have preferred the text proposed in document S/1 but, in a spirit of compromise, was prepared to accept the Working Group's amendment in document S/190. He thought, however, that some further consideration should be given to the drafting of the provision the Main Committee had agreed the previous day regarding categories of works for the protection of which fixation would be required under the national legislation of certain countries.

1134.1 The CHAIRMAN said that was clearly a drafting point, because the Main Committee had already adopted, for all categories of works, the principle of a provision which would leave it to national legislations to decide whether the works must be fixed in order to be protected.

1134.2 He put to the vote the Working Group's proposal concerning Article 2, it being understood that, as in the Program, there would be no paragraph (2).

1135. *The proposal was adopted unanimously, with 2 abstentions.*

1136. Mr. CIAMPI (Italy) drew the attention of the Main Committee to the importance of not giving in the report any interpretation of the assimilation of televisual works to cinematographic works. The responsibility for such interpretations should be left to national legislations.

1137.1 The CHAIRMAN emphasized that it might be dangerous to leave the countries of the Union full latitude to interpret assimilation, and that this was not what the Main Committee had voted for, since it had been made clear that there would be assimilation when an analogous procedure was used.

1137.2 The same question arose in connection with photographic works, which were mentioned a little further on in the same paragraph, and he proposed that the Brussels text should be amended to read as follows: "... photographic works, to which are assimilated works expressed by an analogous process... "

1138. *The Chairman's proposal was adopted unanimously.*

1139. The CHAIRMAN said that the Working Group's two proposals concerning paragraph (4)(c)(i) of Article 4 and paragraph (2) of Article 6, respectively, were only drafting points; they were in conformity with the decision which the Main Committee had taken at its tenth meeting to mention only the headquarters or habitual residence of the maker and not to introduce the criterion of nationality.

1140. *The wording proposed by the Working Group for paragraph (4)(c)(i) of Article 4, and for paragraph (2) of Article 6, was adopted unanimously.*

1141. The CHAIRMAN recalled the suggestion of the Delegation of Italy that, in the absence of a definition of the maker, the Convention should state that there was a presumption that the maker of a cinematographic work was the person or corporate body whose name appeared in the credit titles of the work. The Group had taken up that idea and proposed the insertion, at a suitable place, of the sentence which was reproduced in the last paragraph of document S/190. That sentence might form paragraph (3) of Article 15.

1142. *The Main Committee decided unanimously to adopt the text suggested by the Working Group in the last paragraph of document S/190 and to insert it at the end of Article 15 of the Convention of which it would form paragraph (3).*

REPRODUCTION OF LECTURES, ADDRESSES, SERMONS AND SIMILAR WORKS (ARTICLE 2*bis*(2))

1143.1 The CHAIRMAN drew the attention of the Committee to the various proposals concerning paragraph (2) of Article 2*bis*. The Delegations of Bulgaria, Poland and Czechoslovakia (S/79) proposed the insertion of the words "or broadcast" after the words "reproduced by the press." The Delegation of the Federal Republic of Germany (S/92) proposed that the following words should be added to the original text: "and, when they refer to news, may be broadcast by radio or communicated by wire to the public." Finally, the Delegation of India proposed (S/73) that the words "reproduced by the press" should be replaced by the words "reproduced in original or in translation by the press or cinematography or broadcasting."

1143.2 The question of extending to broadcasting the exceptions which were made for the press was very similar to the question which had been discussed the day before concerning Article 10(2) and he thought it was desirable, if the provisions of Article 2*bis* were to be extended to broadcasting, that their scope should be limited. Amongst other things, there was the case of lectures, which might be more closely defined as lectures given during a public assembly, and the case of sermons, which was a very special one.

1144.1 Mr. STRASCHNOV (Monaco) said that the reproduction of a text in the press was a much more serious matter than its dissemination by broadcasting because the latter was by nature ephemeral, whereas the former might involve the printing of thousands or even millions of copies. Moreover, if the Main Committee were to adopt the proposal of the Delegation of the Federal Republic of Germany that, in the case of broadcasting, only news should be covered, it would be going back to Article 10*bis*. Finally, there was the point that it was difficult to equate news with certain categories of works, particularly sermons; yet the reproduction of sermons, although not of great interest to the press, was of considerable interest to broadcasting.

1144.2 For those reasons, he would like to see the exceptions which were provided for the press extended to broadcasting, but without the restrictions suggested by the Delegation of the Federal Republic of Germany.

1145. Mr. GAE (India) referring to the third amendment submitted by his Delegation (S/73) said that broadcasting filled an important role in mass communication and should be catered for in Article 2*bis*. The reference to reproduction in the "original or in translation" had been included in the amendment for the reasons he had given during the Main Committee's consideration the previous day of paragraph (2) of Article 9; presumably, that point would be taken up when Article 8 (right of translation) was discussed.

1146.1 The CHAIRMAN stressed the importance of restricting the scope of the existing text and he invited the Main Committee to give careful consideration to that point.

1146.2 Mr. Straschnov had rightly emphasized the importance of sermons for broadcasting organizations which put out a large number of religious broadcasts. Against this, it might be said, however, that those organizations were not likely to use sermons frequently without the approval of their authors.

1147.1 Mr. ROHMER (France) said that the question at issue was whether the concept of the press could be extended to include broadcasting. That was a point worthy of discussion, but all that was needed in order to make the text generally acceptable was to say that the works concerned could be reproduced "by the press or by broadcasting," without introducing the restriction proposed by the Delegation of the Federal Republic of Germany.

1147.2 The publication of sermons in the press involved a much greater infringement of copyright than broadcasting them, which left no trace.

1147.3 The Delegation of France considered that national legislation should be allowed complete latitude, subject to the general spirit of the Convention.

1148. Mr. GERBRANDY (Netherlands) agreed with the Delegate of Monaco concerning the importance of not giving rise to any confusion with Article 10*bis*, or with Article 10(2). It seemed to him that the soundest plan, therefore, would be simply to delete Article 2*bis*.

1149. Mr. WALLACE (United Kingdom) said he shared the view that the existing text of paragraph (2) of Article 2*bis* went much further than necessary. Indeed, as the Delegate of the Netherlands had said, it might be dispensed with altogether. A possible alternative would be to confine the provisions of the paragraph to public speeches. But he also agreed with the Delegate of France that, in principle, broadcasting should have the same rights as the press.

1150. Mr. KOUTIKOV (Bulgaria) said that the Delegations of Bulgaria, Poland and Czechoslovakia, in proposing that the exceptions provided for the press should be extended to broadcasting, had had in mind not the reproduction of a complete lecture, speech or sermon, but only the inclusion in a press report of extracts intended to inform the general public of the ideas put forward by the speakers. Hence they had not thought it advisable to introduce any limitation.

1151.1 Mr. CIAMPI (Italy) said that the various committees and study groups which had prepared the revision of the Convention had reached the conclusion, after studying the question very carefully, that it was impossible to extend the provisions in question to broadcasting. Hence the Delegation of Italy would prefer to keep to the Brussels text.

1151.2 If, however, the Main Committee should decide to adopt the amendment submitted by the Delegation of the Federal Republic of Germany, the Delegation of Italy would be glad to support it provided that the extension to broadcasting was authorized solely in the case of works dealing with current topics.

1152.1 The CHAIRMAN said he was afraid that some confusion had arisen during the debate. In particular, it seemed that speakers had confused Article 10*bis* and Article 9(2) with Article 2*bis*. What they were dealing with here was not articles on current topics (as in Article 9(2) of the Brussels text) or short extracts from literary and artistic works (as in Article 10*bis*), but lectures, speeches or sermons which could be reproduced *in extenso* in the press or by broadcasting. It would therefore be impossible to delete Article 2*bis* as the Delegation of the Netherlands had proposed, because there was the question of whether broadcasting organizations had the right to reproduce lectures, speeches or sermons without the consent of the speakers.

1152.2 He therefore suggested that a Working Group should be set up to give more careful consideration to this important question and to propose the most satisfactory wording possible for Article 2*bis*. That Working Group might be composed of the representatives of the following countries: Bulgaria, France, Federal Republic of Germany, Monaco, Sweden and Switzerland, under the Chairmanship of Switzerland.

1153. *It was so decided.*

ASSIMILATION OF DIFFUSION BY WIRE TO BROADCASTING

1154. Mr. ASCENSÃO (Portugal) drew the Main Committee's attention to the question of the extension to diffusion by wire of any relaxation which might be granted in the case of broadcasting. The Delegation of Portugal was of opinion that the Convention should enunciate the general principle of the assimilation of diffusion by wire to broadcasting, and it would like to know the Chairman's view on that subject.

1155. The CHAIRMAN said that this question would be studied and discussed under the heading of Article 11*bis*.

MORAL RIGHTS (ARTICLE 6*bis*)

1156. The CHAIRMAN reminded the Main Committee that the Program of the Conference proposed to extend the period of protection of moral rights to twenty years after the death of the author. On the other hand, the Delegation of Bulgaria (S/89 and S/197) proposed that that period should be extended indefinitely, and the Delegations of Greece and Portugal had submitted a joint proposal (S/151) for amendment which sought to achieve practically the same thing. In addition, the Delegation of Greece proposed (S/183) that a new paragraph should be added concerning works over which no economic rights existed.

1157.1 Mr. KOUTIKOV (Bulgaria) said that the improved wording of paragraph (1) of Article 6*bis* was acceptable to him. On the other hand, he doubted whether the suggested wording for paragraph (2) would give satisfactory protection to an author's moral rights. It was generally recognized that it was in the interest not only of the author and his heirs but also of world culture that there should be no infringement of the authorship of a work or of its integrity. It would be logical to recognize that such protection should not be limited in duration.

1157.2 There had been evidence of hesitations, concealment of facts and even of opposition at the Brussels Conference and within the 1965 Committee of Governmental Experts. The major argument put forward by the adversaries of an unlimited period of protection for moral rights was that moral rights, once they had fallen into the public domain, would become a legal instrument for safeguarding the interests of the community, and that they would cease to have any place in a Convention which dealt with the protection of moral rights solely insofar as they came within the field of private law. But that point was arguable. It could be pointed out that certain provisions of the Berne Convention, such as Article 6(2), which provided machinery for retaliation, went far beyond the field of private law. Moreover, the Convention need only assert the principle of unlimited protection for moral rights, leaving the signatory States full freedom to make the application of that principle subject to particular conditions. Finally, it seemed that only by adopting an unlimited term of protection for moral rights would the Main Committee be complying with the true intentions of the authors of the proposed text, which were clearly to avoid any infringement of the author's moral rights.

1157.3 It was on those grounds that the Delegation of Bulgaria proposed that in paragraph (2) of Article 6*bis* the words "at least until the expiry of the economic rights" should be deleted.

1158. Mr. AMRI (Tunisia) suggested that the discussion should be adjourned until the conclusions of the Working Group on works of folklore were known, as the two questions were closely linked.

1159.1 Mr. WALLACE (United Kingdom) said that the controversial nature of the question of the author's moral rights could not be denied. Owing to reported cases of abuse, that right was, justifiably or not, somewhat suspect in the United Kingdom and possibly even more so in the United States of America. It would be regrettable if the extension of the scope of the author's moral rights made it more difficult for the United States of America to accede to the Berne Convention.

1159.2 In the United Kingdom, the moral rights to claim authorship of a work were a matter for the copyright statute, but the other element of that right, namely the right to object to any distortion, mutilation or alteration that would be prejudicial to the author's honor or reputation was a matter for the common law and in particular for the law of defamation which did not allow an action to be brought after the death of the person defamed. For that reason, the Delegation of the United Kingdom would find great difficulty in accepting the proposed text.

1160.1 Mr. KAMINSTEIN (United States of America) said that his remarks should not be interpreted as reflecting any personal hostility to the principle of the author's moral rights—an indispensable part of the foundation on which the Berne Convention rested. Even those accustomed to the common law tradition, where copyright was regarded as a property rather than a natural right, found it difficult to argue moral rights on principle. Nor should anything he said be taken to mean that, unless the issue was resolved to the satisfaction of his Delegation, the United States of America could not consider adhering to the Berne Convention. He was present as an observer and, as such, considered that he did not have the right to influence the Main Committee's decision on that, or any other, point.

1160.2 He wished to recall, however, that when, some 30 years previously, the United States of America had seriously considered acceding to the Convention, one of the main obstacles had been the question of moral rights, as, he was convinced, it would be once again. In the United States of America, as in the United Kingdom—whose Delegation's position on the matter he fully supported—certain aspects of the author's moral rights were protected under laws that were not concerned with copyright. The issue, as it affected the United States of America, required time for solution, and he urged a cautious approach.

1161.1 Mr. IOANNOU (Greece), introducing document S/151, pointed out that it was wrong to say that the Berne Convention did not provide protection for monuments, since paragraph (2) of the existing text of Article 6*bis* provided that after the death of the author his moral rights could be exercised by institutions. It was clear that those institutions would tend to protect not only the historic personality of the author but also his work as a cultural monument.

1161.2 Hence the Delegations of Greece and Portugal had felt that it would be sufficient either to say: "After the death of the author, those rights shall be maintained by the persons or institutions authorized by the national legislation of the country in which the protection is claimed," or, if that form of words might cause difficulties for certain States, to retain paragraph (2) of document S/1 and add a paragraph (3) reproducing paragraph (2) of the Brussels text but omitting the words "at least until the expiry of the copyright." Paragraph (3) would then become paragraph (4).

1161.3 The Delegation of Greece had also considered that it would be an advantage to add a paragraph indicating that works over which economic rights did not exist should be protected against any use which might be prejudicial to the cultural heritage of mankind.

The full text of the proposal would be found in document S/183. If necessary, a reservation could be included for the benefit of those countries whose legislation did not allow such a provision to be applied.

1162. Mr. Kordač (Czechoslovakia) said that his Delegation was in full agreement with the position taken by the Delegation of Bulgaria and supported the amendments in document S/89.

1163.1 Mr. Weincke (Denmark) said he considered it unrealistic to discuss the inclusion in the Convention of a provision obliging countries to protect the author's moral rights in perpetuity. Moreover, once the copyright term had expired, the realm of public law was involved. For those reasons, his Delegation could not support the Bulgarian, Greek and Portuguese proposals. It did, however, agree that the protection of the author's moral rights should be compulsory for the full period of normal copyright protection. At a conference in Geneva in 1965, the Delegation of Denmark had proposed certain additional provisions in that connection for inclusion in the Stockholm program, in the hope that moral rights, no matter how controversial, would have a more prominent place in the Convention.

1163.2 An account of measures adopted in Denmark, where valuable experience had been gained in protecting moral rights after the author's death, was given in document S/13. Such measures, he was convinced, were of considerable importance both for the creative artist and for the community. In Denmark, it had been found that those who inherited author's rights tended not to invoke such rights solely for economic gain.

1163.3 Since several Union countries were strongly opposed to the extension of the provisions for moral rights—an extension which, it was felt in some quarters, might dissuade non-Union members from adhering to the Convention—his Delegation was prepared to cooperate with other interested delegations in finding an acceptable solution; he suggested that a working group might be set up for the purpose.

1164.1 Mr. Ciampi (Italy) drew the attention of the Delegates of the English-speaking countries, whose position he fully understood, to the proceedings of the Rome Conference which had introduced the moral rights in the text of the Convention; that Conference had already studied the problem very thoroughly—which it would be impossible to do at the present Conference.

1164.2 The Delegation of Italy would vote in favor of the text proposed in the Program, which it considered to be a slight improvement on the Brussels text.

1165. Mr. Rohmer (France) said he was in favor of the draft contained in document S/1. Whatever opposition might be aroused by the introduction of the principle of an unlimited term of protection for moral rights, he would like to remind the Main Committee that that principle had been adopted in French legislation and that any proposals to include it in the Convention would have every sympathy of the Delegation of France.

1166. Mr. Reimer (Federal Republic of Germany) said he was opposed to the recognition of perpetual moral rights. In his view, copyright was indivisible, and moral rights should expire with the economic rights. Moreover, to recognize perpetual moral rights might well prevent the free exploitation of a work which had fallen into the public domain: a popular adaptation of a work by Bach might be objectionable from the point of view of taste, but it was difficult to see by what right it could be banned.

1167. Mr. Lucas (Niger) reminded the Main Committee that the Delegate of Tunisia had proposed the adjournment of the debate until the findings of the Working Group on works of folklore were known. He suggested that the Tunisian proposal, which he considered very wise, be adopted.

1168. Mr. Lennon (Ireland) said that his Delegation was unable to support the amendment to Article 6*bis* in document S/1. Under the Irish legal system, the question of the author's moral rights was largely independent of copyright, being more akin to the law of defamation under which personal rights expired upon the death of the person concerned. It would be difficult to assimilate into that system any extension of the right to bring an action for defamation after death. While his country was prepared to cooperate with others in protecting copyright, Ireland would find difficulty in ratifying the Convention with the change proposed.

1169.1 Mr. Gae (India) said he assumed that the author's rights referred to in paragraph (1) of Article 6*bis* included the right to prevent, or claim damages in respect of, any distortion, mutilation or other alteration of the work, as well as the right to take any other steps in relation to acts which might be prejudicial to the author's honor and reputation. Under the Indian legal system, those rights were protected under the law of defamation. He considered that the Article should be examined in that light, with special reference to the period after the author's death.

1169.2 The Delegation of India considered that the rights conferred upon the author under the terms of paragraph (1) of Article 6*bis* should, after his death, be exercisable, in the first instance, by his legal heirs. Failing that, his rights should be exercisable by the persons or institutions authorized by the legislation of the country where protection was claimed. Since the text proposed for paragraph (2) in document S/1 catered only to the second eventuality, his Delegation had submitted a new text for the paragraph in which both possibilities were covered (S/73, paragraph (5)).

1170. Mr. Preda (Rumania) supported the proposal of the Delegation of Bulgaria.

1171.1 Mr. Ascensão (Portugal) said that his Delegation, when it had joined with the Delegation of Greece, to draft the two texts set out in document S/151, had been concerned that moral rights should not be relegated to a secondary position in a Convention on copyright.

1171.2 Some people were afraid that the principle of maintaining moral rights after the expiry of economic rights might be abused and applied in a manner which would be injurious either to the public interest or to a normal exploitation of the work. To avoid those consequences, it might be possible, for instance, to exclude pecuniary compensation. That would present no difficulty in the case of the proposed variant B (S/151) which stated that national legislations should have full freedom to establish the conditions under which those rights should be exercised. In the case of variant A, a similar provision might be added, either by leaving the Drafting Committee to find a suitable form of words or by adopting the last phrase of the existing paragraph (2).

1171.3 The Delegation of Portugal considered that it would be advisable to set up a Working Group to consider the various proposals, which might not prove to be incompatible.

1172. Mr. Dittrich (Austria) said that his Delegation supported the proposal in document S/1 and agreed with the remarks made by the Delegate of the Federal Republic of Germany regarding protection for moral rights.

1173. Mr. ADACHI (Japan) said his Delegation considered that the duration of protection for moral rights should not be based on that for economic rights. However, in view of the importance accorded to the matter in the proposals before the Conference, his Delegation was inclined to agree with the amendment in document S/1. It supported the Danish Delegate's suggestion to set up a Working Group.

1174.1 The CHAIRMAN reminded the Main Committee that the Delegate of Tunisia, supported by the Delegate of Niger, had proposed that the discussion should be adjourned until the findings of the Working Group on works of folklore were known. There could obviously be no question of the Main Committee voting forthwith, but the exchange of views which had taken place had been very useful; when the time came to vote on the general principle of moral rights it would not be necessary to resume the discussion.

1174.2 He stressed the importance of caution in this matter, in view of the differences which existed between national legislations. On the one hand, the Latin countries, together with some developing countries, provided unlimited protection. On the other hand, the Anglo-Saxon countries protected moral rights only during the life of the author. Finally, a third group, consisting of countries in continental Europe, proposed an intermediate solution, which would involve protecting moral rights only until the expiry of the economic rights, after which it would no longer be a question of protecting copyright but of protecting the work itself as a monument: the matter would then be outside the scope of the Convention. Those were the three possibilities on which the Main Committee would have to reach a decision of principle, after taking cognizance of the findings of the Working Group on works of folklore.

1174.3 He drew the attention of the Main Committee to document S/147, containing another proposal connected with Article 6*bis*, submitted by the Delegation of Austria.

1175.1 Mr. DITTRICH (Austria) said that, as a result of errors in reproduction, the scores of nearly all larger musical works differed in some way from the originally approved version. For instance, it had not been possible to establish which of two versions of a famous Verdi opera, used in Vienna and Milan respectively, was the most faithful reproduction of the original. The Austrian proposal in document S/147, which covered not only musical but also literary works, was designed to avoid such situations in future.

1175.2 What was involved was primarily a matter of principle, but the details of how that principle should be defined had not been fully considered before submitting the text at present before the Main Committee. In his view, the idea behind his Delegation's proposal was sound, but its scope was obviously too wide. For instance, it would be unrealistic to oblige the publisher of a scientific work (a legal textbook, for example) to deposit photocopies of the most authentic text of that work in the national library or archives of the country concerned. He suggested that, if the majority favored the proposal in principle, a Working Group could be set up to study it further.

1175.3 The International Federation of Musicians, in a booklet circulated to the Conference, had urged the adoption of a provision along the lines of the Austrian proposal and the Observer of that Organization might perhaps be invited to address the Main Committee at a suitable time.

1175.4 His Delegation was not suggesting that the deposit of a facsimile copy of a work should be a formality for the establishment of a copyright. It considered that Article 6*bis* was an appropriate place for the inclusion of the new provision, adoption of which would help the author to determine any contravention of his moral rights. There might be arguments in favor of including the proposed provision in the Convention as a new article but that was a point that could be examined by the Working Group.

1176.1 Mr. VAUGHAN (International Federation of Musicians) thanked the Delegation of Austria for the proposal in document S/147.

1176.2 Details of a musical score, particularly in the case of a masterpiece, were essential for its true interpretation. Only those ideas that had been filtered by the composer's own mind, and actually written by his hand, could be said to bear the mark of his personality.

1176.3 The Austrian proposal, if adopted, would provide a scientific basis on which to establish the fixation of the musical work under protection. The provision of original sources would make it possible to ascertain accurately how many changes had been made when application was made for protection of an arrangement of the work. Presentation of original sources would also provide the only true point of reference if any question of moral rights arose or if changes, damaging to the composer's honor and reputation, were made to the original text. He understood that some principle of identification was accepted in patent law. In the world of music, experience had shown that for many reasons—but primarily owing to the composer's own inefficiency or abuse by third parties—the "legal deposit" of a copy of the first edition of a work would often have failed to make known the composer's authentic text of that work.

1176.4 The matter was of concern not only for scholars and publishers, for whom a study of the composer's exact text at length was necessary, but also for the interpreter whose recording of a work would often be praised or condemned according to its faithfulness to the original. Modern recording techniques now revealed details of musical sound which, in the composer's lifetime, might have passed unnoticed—a cogent reason for enabling interpreters to buy their own copies of orchestral parts and scores. A conductor's interpretation was not only indicative of his own character; it also affected his livelihood in a highly competitive field.

1176.5 The words "in the form and version finished and approved by the author," in the Austrian proposal referred, for a musical work, to the original manuscript with any changes thereto made elsewhere by the composer in his own hand. If the composer wrote a second version, that too should be documented at the time of printing and publication. The cost for microfilming all such documents was small, amounting to less than one half per cent approximately of the cost of printing the work. The Albertina collection in Vienna, which housed photocopies of all Austrian music, was a fine example of the practical use of such a system. Without adequate provision, it would be impossible to replace texts that had been lost. There had, for instance, been no photocopy in Paris of the manuscript of Mozart's "Don Giovanni," lost for several months there in 1967, nor indeed of all the manuscripts lost in the Florence floods.

1176.6 Over and above his economic interests, a serious author's main concern—and indeed right—starts and probably ends with a desire that his works should be widely available and known in their most authentic form. The Austrian proposal would allow a country to mark its respect in real terms for its authors and composers.

1177.1 Mr. REIMER (Federal Republic of Germany) supported the proposal of the Delegation of Austria. The booklet prepared by the International Federation of Musicians, and the statement which had been made

by the observer for that organization showed that there were many regrettable abuses, both in the financial field and in regard to the protection of moral rights, particularly in the case of the hiring of scores.

1177.2 He hoped that a Working Group would consider the substance of the question and perhaps submit a more satisfactory wording for the proposed new paragraph.

1178.1 Mr. IOANNOU (Greece) supported the principle behind the Austrian proposal, but observed that the amendment only provided a rule for national public law.

1178.2 He shared the hope of the Delegate of the Federal Republic of Germany that a Working Group would be set up to prepare a more satisfactory draft.

1179.1 Mr. EMRINGER (Luxemburg) supported the proposal of the Delegation of Austria. He wondered, however, whether a provision of that nature should appear in an international convention, and he hoped that the various delegations would express their opinion on that point.

1179.2 He welcomed the idea of setting up a Working Group.

1180.1 Mr. ROHMER (France) said the French Government had every sympathy for the Austrian proposal. The question had been studied for many years by the International Federation of Musicians and had been brought up on various occasions at meetings of the Permanent Committee of the Berne Union in London, Madrid and New Delhi; a very full documentation had been put at the disposal of the participants on those occasions. There seemed no reason, therefore, why the addition of the proposed new paragraph should give rise to any opposition on the part of the delegations.

1180.2 For that reason, he thought it unnecessary to set up a Working Group. He proposed that the Main Committee should vote forthwith and leave the Drafting Committee to prepare a definitive text. He suggested that in the Austrian proposal the words "in the form and version finished and approved by the author" should be replaced by "in a definitive version approved by the author and intended to be authentic."

1181. Mr. KOUTIKOV (Bulgaria) thought that the Austrian proposal which had been supported by the Observer of the International Federation of Musicians, deserved careful attention by the Main Committee and that it should be thoroughly examined by a Working Group.

1182.1 Mr. STRASCHNOV (Monaco) supported the proposal of the Delegation of Austria but expressed the fear that the implementation of the proposal might give rise to legal difficulties.

1182.2 In the first place, it was not easy to see how such a provision could be applied to a publisher who published a score, the original of which had been published in another country. It would therefore have to be made clear that only the publisher who published a work for the first time should be required to deposit a facsimile of the original.

1182.3 Moreover, the country of first publication would very often be the country of origin of the work, to which the Convention did not apply. That constituted a major difficulty.

1182.4 Hence the Austrian proposal would require very careful study if it was to be incorporated in the general system of the Convention.

1183.1 Mr. ASCENSÃO (Portugal) thought it would be premature to adopt the Austrian proposal. It would have the effect of laying down an administrative rule, and there was no certainty as to what position national administrations would adopt on that point. It would be better to await the results of possible experience with domestic legislation before taking a decision with international implications.

1183.2 He was surprised at the suggestion that the question should be referred to a Working Group, as the Main Committee had not thought fit to set up a Working Group to study the whole problem of moral rights.

1184.1 Mr. CIAMPI (Italy) said that, while he thought the Austrian proposal deserved consideration, he was doubtful whether the Conference was competent to discuss it and include it in the Convention. The very delicate problem which it raised might well be alien to the objects and even the spirit of the Convention.

1184.2 There was a contradiction in the attitude of those delegations which had objected to the protection of moral rights after the death of the author but now supported the proposal to protect the work itself.

1184.3 Finally, there was the question of the administrative consequences of the proposed provision. In some countries, 20,000 or so works were published each year, and a very complex and expensive machinery would have to be set up.

1184.4 For those reasons the Delegation of Italy had hoped that, before referring the matter to a Working Group for study, the Main Committee would decide whether or not such a provision could validly be incorporated in the Convention and whether the Conference was competent to do so.

1185. Mr. CURTIS (Australia) said he appreciated the situation as described by the Delegation of Austria in its proposal but he considered that the implications went beyond copyright. Further study was needed before such a provision could be included in the Convention. He hoped that the proposal would not be put to the vote for his Delegation would have to abstain.

1186. The CHAIRMAN drew the attention of delegates to the fact that it was not enough to show "sympathy" for a concrete proposal. In this particular case, the question was whether or not it was possible to include in the Berne Convention a provision which did not refer to copyright *stricto sensu*. It would be unsatisfactory to refer the problem to a Working Group for study without having decided on the principle involved, particularly as time was running out. Besides, the question could not simply be referred to the Drafting Committee; an important question of substance was involved. He therefore suggested that the Main Committee should vote at the start of the afternoon meeting, for or against the principle of including in the Convention a provision on the lines of the one proposed by the Delegation of Austria.

The meeting rose at 12:20 p.m.

SIXTEENTH MEETING

Tuesday, June 27, 1967, at 2:35 p.m.

DEPOSIT OF LITERARY, MUSICAL OR DRAMATICO-MUSICAL WORKS: AUSTRIAN PROPOSAL (S/147)

1187. The CHAIRMAN invited the Secretary to make a statement, on behalf of BIRPI, on the subject of the Austrian proposal (S/147), which the Committee had examined at the previous meeting.

1188. Mr. MASOUYÉ (BIRPI) informed the Main Committee that, after taking into consideration the arguments put forward during the discussion, BIRPI considered that it would be premature to include in Article 6*bis* a new paragraph on the lines suggested by the Delegation of Austria. On the other hand, the Conference might perhaps make a recommendation concerning the need for a very thorough study of the problems arising in that field and for a survey to ascertain how they could be solved at the next Conference.

1189. The CHAIRMAN invited the Main Committee to endorse the BIRPI proposal, as he felt it was not feasible at present to require the deposit of all the literary, musical or dramatico-musical works published in the countries of the Union. He therefore asked the Delegation of Austria whether it would be prepared to withdraw its proposal so that the problem could be studied more thoroughly.

1190. Mr. DITTRICH (Austria) withdrew his Delegation's proposal on the understanding that the Conference would formulate a suggestion on the subject.

1191. The CHAIRMAN proposed that the Committee should make a recommendation on the lines of the Austrian proposal and leave the wording to the Drafting Committee.

1192. *That proposal was accepted unanimously.*

WORKS OF APPLIED ART (continued)
(S/99 and S/161)

1193.1 The CHAIRMAN suggested that, before embarking on a consideration of Article 7, concerning the term of protection, the Main Committee might settle some points which had been left in suspense during the consideration of Article 2(6), which also dealt with the term of protection in regard to works of applied art.

1193.2 The proposal which was furthest from the text of the Program of the Conference was the Danish proposal (S/99) to delete Article 2(6). It should be borne in mind that the methods used to protect works of applied art varied widely from one country to another and that the Brussels draft was the product of very lengthy discussion. Without careful preparation it would be impossible to upset the established system by adopting a provision which would be inoperative in a large number of countries.

1194. Mr. WEINCKE (Denmark) pointed out that so far the Main Committee had only debated the Danish proposal very briefly. He suggested that it should be discussed further before being put to the vote.

1195.1 Mr. LJUNGMAN (Sweden) said he fully supported the Danish proposal. The Main Committee had wisely abolished discrimination against choreographic works and should do the same with works of applied art. Judicial decisions might vary from one country to another as to what should be protected as applied art. In any case, a work with sufficient artistic qualities could easily be protected as an artistic work proper.

1195.2 He suggested that the objections of countries such as the United Kingdom might be met by providing in the Convention for the maintenance of their present systems. A suitable form of wording could be worked out by the Drafting Committee.

1196. Mr. WALLACE (United Kingdom) said he was grateful to the Delegate of Sweden for his suggestion. It was important to bear in mind the position not only of existing Union countries but also of future members of the Union.

1197. Mr. GODENHIELM (Finland) supported the Danish proposal.

1198. The CHAIRMAN put to the vote the Danish proposal concerning Article 2 (S/99).

1199. *The Danish proposal was rejected by 13 votes to 11 with 11 abstentions.*

1200. The CHAIRMAN pointed out that the Main Committee had before it two other proposals concerning a new paragraph (6) of Article 2, one of them submitted by the Delegation of the Netherlands (S/140) and the other by the Delegation of Italy (S/161). He invited the Delegation of the Netherlands to introduce its proposed amendment.

1201.1 Mr. GERBRANDY (Netherlands) said he thought there was no great difference of substance between the Italian proposal (S/161) and the Netherlands proposal (S/140); he would therefore be prepared to accept the Italian proposal.

1201.2 He wished to point out, however, that under existing conditions those designs and models which had no protection according to copyright in their countries of origin, as in the case of the United Kingdom, were thereby completely deprived of protection in the other countries, even when such works were normally regarded in those countries as works of art protected by copyright. The Netherlands proposal was intended to remedy that state of affairs.

1202.1 The CHAIRMAN considered, on the contrary, that there was a great difference between the two proposals under consideration. The Netherlands proposal sought to ensure copyright protection in the other countries even when protection in the country of origin applied only to designs and models. Under the Italian proposal, on the other hand, when works of applied art were protected solely as designs and models in their country of origin, they would have to enjoy the same protection in the other countries of the Union. Moreover, they would have to enjoy copyright protection in those countries of the Union which provided no special protection for designs and models.

1202.2 In that respect, the Italian proposal could be a valuable means of filling a gap in the Convention.

1203. Mr. CIAMPI (Italy) confirmed that the interpretation given by the Chairman reflected the intentions of the Italian proposal, which was somewhat different in substance from the Netherlands proposal.

1204. Mr. GERBRANDY (Netherlands) withdrew his proposal in favor of the Italian proposal.

1205. *The Italian proposal was adopted unanimously, with 11 abstentions.*

WORKS OF APPLIED ART:
TERM OF PROTECTION (ARTICLE 7(4))

1206. The CHAIRMAN said that the Main Committee had before it various proposals concerning the term of protection for works of applied art. The Program of the Conference proposed that the minimum term of protection should be fixed at 25 years from the making of the work, whereas various delegations had asked for terms of protection ranging from 10 to 50 years (S/56, S/99, S/152 and S/192).

1207. Mr. WALLACE (United Kingdom) said that the term of protection proposed in the amendment submitted by his Delegation (S/192) was in fact misconceived in view of the reference in the Program text of Article 7(4) to "works of applied art in so far as they are protected as artistic works." He withdrew that part of the proposal from the United Kingdom proposal.

1208.1 Mr. ASCENSÃO (Portugal) said that the proposal of the Delegation of Portugal on this question (S/152) was in line with the Greek proposal (S/56). The Delegation of Portugal considered that the term of protection laid down in paragraph (4) did not correspond to the situation prevailing in a number of countries and should be reduced to 10 years.

1208.2 It was true that the developing countries would have the benefit of an additional Protocol adapted to suit their special conditions, but it should not be forgotten that a number of countries were in an intermediate position. For the latter, it would be better to adopt the term laid down in the Universal Convention, which was 10 years, while leaving the industrialized countries free to grant such works a longer term of protection by means of special agreements.

1209. Mr. IOANNOU (Greece) explained that his Delegation's proposal to reduce the term of protection to 10 years applied to works of applied art but not to photographic works; Greece would be prepared to accept a term of protection of 50 years for the latter category of works.

1210.1 The CHAIRMAN said that he personally would be prepared to accept a term of protection of only 10 years for designs and models, but that such a period was very short when applied to copyright.

1210.2 He invited the Main Committee to vote first on the Danish proposal concerning Article 7(4) (S/99).

1211. *The Danish proposal was rejected by 17 votes to 9 with 6 abstentions.*

1212. The CHAIRMAN put to the vote the proposal contained in the Program of the Conference to extend the minimum period of protection to 25 years from the making of a work.

1213. *That proposal was adopted by 22 votes to 5 with 7 abstentions.*

1214. The CHAIRMAN said that that vote concluded the discussion of works of applied art.

TERM OF PROTECTION (ARTICLE 7(1)) (S/205)

1215.1 Mr. REIMER (Federal Republic of Germany) drew the attention of the Committee to the proposal of the Delegation of the Federal Republic of Germany (S/205). The Federal Republic of Germany had recently extended the term of protection from 50 to 70 years after the death of the author; that was a remarkable fact, bearing in mind that it was only in 1934 that the term had been extended from 30 to 50 years. It was to be hoped that the attitude of the German Government would encourage other countries to reconsider the question of a possible extension of the term of protection.

1215.2 In some countries, such as Austria, Belgium, France, Italy and Norway, the term of protection had been extended on account of the War, whereas in others, such as Portugal, protection in perpetuity had been reduced to a period of 50 years from the death of the author, and the socialist countries were proposing to abolish the term of protection entirely.

1215.3 The Delegation of the Federal Republic of Germany therefore, did not propose the amendment of Article 7(1), because there were some countries in which there was not even any question of the possibility of extending the term of protection; it proposed the continuation of the negotiations begun in 1959 between the interested countries with a view to the conclusion of a special agreement on the extension of the term of protection in those countries.

1216. Mr. WALLACE (United Kingdom) said it was very unlikely that his country would be persuaded to follow the example set by the Federal Republic of Germany in introducing a term of protection covering the life of the author plus 70 years, but his Delegation had no objection to the proposal to continue negotiations for a special agreement on the subject.

1217. Mr. CIAMPI (Italy) paid tribute to the Government of the Federal Republic of Germany, which had placed on the statute book a new provision extending the term of protection to 70 years after the author's death. In that connection, he would mention the initiative which Italy had taken in the Council of Europe with the object of instituting a uniform term of protection in all member countries of the European Economic Community. Moreover, it should not be forgotten that the works which were still used after the death of their author were relatively few in number and generally constituted the highest level of human thought; it was therefore appropriate to pay tribute to them by extending the term of protection.

1218. Mr. MASOUYÉ (BIRPI) said that if the Main Committee voted in favor of the proposal submitted by the Delegation of the Federal Republic of Germany, BIRPI would be ready to resume study of the question in order to facilitate the conclusion of a special agreement between the countries of the Union under the provisions of Article 20 of the Convention.

1219. The CHAIRMAN said that the Main Committee would have an opportunity later on to vote on the proposal of the Delegations of Poland and Bulgaria (S/50) to reduce the term of protection. If that proposal was adopted, it might perhaps be advisable for the Conference to mitigate the effects by expressing the hope that an extension could be negotiated by means of a special agreement between the interested countries, in accordance with the proposal of the Delegation of the Federal Republic of Germany.

1220. *The proposal of the Delegation of the Federal Republic of Germany was rejected by 7 votes to 5 with 23 abstentions.*

CINEMATOGRAPHIC WORKS: TERM OF PROTECTION (ARTICLE 7(2)) (S/152)

1221. The CHAIRMAN pointed out that, in regard to cinematographic works, the Main Committee had adopted the principle of a term of protection of 50 years from the first public showing. The Main Committee had before it a Portuguese proposal on that point (S/152).

1222.1 Mr. ASCENSÃO (Portugal) explained that the purpose of his Delegation's amendment was to protect the public interest by enabling the work to be made available to the public within the shortest possible period. Under the Portuguese proposal, the 50-year term of protection would begin from the time at which the work was made and not from the date when it was made accessible to the public; that meant that in such cases the work would become public property 50 years after making, even if it had been made public 20, 30, 40, or even 49, years after making.

1222.2 It might be objected that the proposal affected only a limited number of cases and it was therefore of no great importance. But the Delegation of Portugal considered that there was no justification for obliging countries whose legislation embodied that rule, such as Italy, to amend it to the detriment of the public interest, even if such provisions were seldom applied.

1223. *The Portuguese proposal was rejected by 19 votes to 3 with 8 abstentions.*

1224. Mr. ZAKÁR (Hungary) pointed out that his Delegation's proposal on the subject (S/91) had not been put to the vote. The Delegation of Hungary wished to maintain its proposal, which would have the effect of providing for cinematographic works a term of protection of 25 years from the time of their making.

ANONYMOUS AND PSEUDONYMOUS WORKS: TERM OF PROTECTION (ARTICLE 7(3))

1225. *The text of paragraph (3), as drafted in the Program of the Conference, was adopted unanimously.*

POSTHUMOUS WORKS: TERM OF PROTECTION (DELETION OF ARTICLE 7(5) OF BRUSSELS TEXT) (S/151)

1226. The CHAIRMAN drew the attention of the Main Committee to the joint proposal submitted by the Delegations of Greece and Portugal to retain that paragraph (S/151).

1227. Mr. ASCENSÃO (Portugal) pointed out that the Program of the Conference proposed the deletion of paragraph (5) of the Brussels text concerning the protection of posthumous works in view of the fact that posthumous works could be assimilated to any other literary or artistic works and hence were covered by the various provisions of Article 7. In the view of the Delegation of Portugal, however, it was unsatisfactory to treat posthumous works in that way. In addition, paragraph (5) of the Brussels text provided a very useful means of calculating the term of protection from the death of the author and not from the date on which the work was made available to the public. Hence the Delegation of Portugal hoped that that principle would be maintained in the Convention, as proposed jointly by his Delegation and that of Greece (S/151).

1228. The CHAIRMAN invited the representative of the Secretariat to explain the reasons which had led the Swedish Government and BIRPI to propose the deletion of the paragraph.

1229. Mr. MASOUYÉ (BIRPI) referred the Main Committee to the explanation given in document S/1. The Swedish Government and BIRPI had considered that the term of protection for posthumous works need not be expressly mentioned, as they could be assimilated to the general category of works protected by the Convention and hence came within the scope of the various provisions of Article 7.

1230. *The deletion of paragraph (5) of the existing text of Article 7 was approved by 25 votes to 2 with 5 abstentions.*

PHOTOGRAPHIC WORKS: TERM OF PROTECTION (ARTICLE 7(4)) (S/192)

1231. The CHAIRMAN pointed out that the Main Committee had to reach a decision on the term of protection for photographic works. The Program of the Conference proposed a term of 25 years from the making of the work, whereas the Delegation of the United Kingdom wished to see that period extended to 50 years (S/192).

1232. Mr. WALLACE (United Kingdom) said he had tabled the first part of the proposal contained in document S/192 primarily with the aim of ascertaining the view of the Main Committee with regard to the introduction of a term of protection of 50 years for photographs.

1233. Mr. LENNON (Ireland) said he supported the United Kingdom proposal.

1234. Mr. STRNAD (Czechoslovakia) explained that new legislation introduced in Czechoslovakia protected photographic works for a period of 10 years after the death of the author. Hence the Delegation of Czechoslovakia would abstain from voting on the United Kingdom proposal.

1235. Mr. REIMER (Federal Republic of Germany) opposed the United Kingdom proposal. German law provided for a term of protection of 25 years from the appearance of the work or from its manufacture if it had never been published. In the view of the Delegation of the Federal Republic of Germany, only minor fees were involved, and there was no justification for a term of protection of more than 25 years.

1236. Mr. IOANNOU (Greece) and Mr. ROJAS (Mexico) supported the United Kingdom proposal.

1237. Mr. WALLACE (United Kingdom) withdrew the remainder of the proposal contained in document S/192 in order to avoid creating difficulties for member countries of the Union.

1238. The CHAIRMAN put to the vote the draft of Article 7(4) contained in the Program of the Conference.

1239. *The text contained in the Program was adopted unanimously with one abstention.*

TERM OF PROTECTION: ADDITIONAL GRANT (ARTICLE 7(6))

1240. *The new paragraph (6) of Article 7 proposed in the Program of the Conference was adopted unanimously.*

TERM OF PROTECTION: COMPARISON OF TERMS (ARTICLE 7(7)) (S/69)

1241. The CHAIRMAN pointed out that the Committee had before it a Swiss proposal on this subject (S/69), which differed from the proposal in the Program of the Conference only in the fact that the countries of the Union would be able to include in their legislation a special provision concerning the term of protection.

1242.1 Mr. CAVIN (Switzerland) said that the rule set out in Article 7(7) ran counter to the principle of assimilation contained in Article 4(1) under which authors who were nationals of any of the countries of the Union enjoyed in the other countries of the Union the rights which their respective laws granted to national authors.

1242.2 In the view of his Delegation, it would be more in keeping with the general system of the Convention to restrict the application of that exception to cases in which it was required by the legislation of the country in which protection was claimed; that would merely involve transposing the order of application of the principle of "comparison of terms." Under the Swiss proposal, the term of protection would be subjected to the general rule of Article 4(1), i.e., to the legislation of the country in which protection was claimed, but countries of the Union

would be entitled to depart from the rule contained in the Convention and declare that the law of the country of origin was applicable.

1242.3 The Swiss proposal, while not having a wide application in practice, would make it possible to avoid any departure from the principle of assimilation, which was a fundamental rule of the Convention.

1243. Mr. STRNAD (Czechoslovakia) argued that if this proposal was adopted, those countries whose legislation contained no provision concerning the term of protection granted to foreign works would be forced to change their national legislation. Hence the Delegation of Czechoslovakia would prefer the Main Committee to keep to the text proposed in the Program of the Conference.

1244. *The Swiss proposal was rejected by 21 votes to 8 with 6 abstentions.*

1245. *The text of Article 7(7) proposed in the Program was adopted unanimously.*

TERM OF PROTECTION: LIMITATION (S/50)

1246. The CHAIRMAN drew attention to the joint proposal by the Delegations of Bulgaria and Poland (S/50) which sought to introduce into Article 7 a provision allowing countries still bound by the Rome Act to grant a term of protection shorter than those proposed.

1247.1 Mr. DRABIENKO (Poland) said that Poland was not in a position to extend its term of protection in the near future, although it was not opposed to the principle of extension.

1247.2 The draft submitted jointly by Bulgaria and Poland was a transitional measure, as it limited the restriction to those countries which would still be bound by the Rome Act at the time of ratification of the Stockholm Act. In the interest of the Convention itself, it might be better to enable all countries to accede to the Stockholm Act, even at the price of some variations in the term of protection, rather than to exclude them automatically by laying down the principle of a longer term of protection than they were in a position to grant.

1248. Mr. PREDA (Rumania) supported the proposal of the Delegations of Bulgaria and Poland. In his view, if certain countries were obliged to grant a 50-year term of protection, they would be unable to sign the Stockholm Act unless they were allowed to make provision in their own legislation for shorter terms in the case of certain categories of work.

1249. Mr. STRNAD (Czechoslovakia) said, for the benefit of those who might question the wisdom of allowing an exception in favor of a limited number of members of the Union, that a similar supplementary provision had been adopted at the Rome Conference of 1961 in regard to neighboring rights, in order to enable Sweden to accede to the Convention. If the conciliatory spirit shown at Rome was applied in the present case, it would be possible to ensure that this clause was not the sole obstacle to the accession of certain countries of the Union.

1250. The CHAIRMAN asked the sponsors of the proposal to state what sort of term would be granted to countries of the Union who were bound by the Rome Act and whether the suggested exception applied solely to the normal term of protection, which had been fixed at 50 years, or also to the special terms adopted for certain works, such as the term of 25 years applied to works of applied art.

1251. Mr. KOUTIKOV (Bulgaria) explained that national legislations always laid down reasonable terms of protection, and it was those terms which would be taken into consideration. Moreover, it was possible that the special terms applying to certain works would also be affected by national legislations. In any case, it was essential that, as a transitional measure, the countries in question should be able to retain shorter terms of protection than those provided by the Convention.

1252.1 Mr. STRASCHNOV (Monaco) quoted the precedent created by the Universal Convention, in which, in order to deal with situations existing in certain countries such as the United States of America, the drafters had included a special provision enabling those States to retain a 25-year term of protection from the date of first publication of the work.

1252.2 Moreover, it should be borne in mind that, of the 58 members of the Berne Union, some 15 were still bound by the Rome Act and had not yet ratified the Brussels Act, although some of them granted the term stipulated in the latter Act. In his view, very few of those 15 countries would be likely to make use of the suggested option. The Delegation of Monaco therefore considered that it would be to the interest of the Union to recognize that *de facto* situation rather than to exclude a number of countries from the Stockholm Act for a considerable time.

1253. Mr. REIMER (Federal Republic of Germany) opposed the proposal of the Delegations of Bulgaria and Poland. It would be undesirable to allow countries of the Union to accede to the Stockholm Act while at the same time making a reservation concerning the term of protection. That would create the paradoxical situation that countries which had not acceded to the Brussels Act would be rewarded by being given the opportunity of acceding directly to the Stockholm Act.

1254.1 Mr. ROHMER (France) reminded the Main Committee that the question of reservations was to have been settled at the Rome Conference. Certain reservations, which went back to the Berlin, or even the Paris Conference had been retained, however, to take account of certain national interests.

1254.2 Nevertheless, one of the results of the Brussels Conference had been to achieve general acceptance of the principle of a term of protection of 50 years after the death of the author, and it was absolutely essential that the Stockholm Conference should not go back on that decision.

1254.3 Finally, there was nothing in the draft submitted by the Delegations of Bulgaria and Poland to show that this exception would only be of a transitional nature. In those circumstances, it was not easy to see how the Conference could allow an encroachment on the Brussels Act for the benefit of the Rome Act.

1255. The CHAIRMAN said he fully understood the reason for the proposal put forward by the Delegations of Bulgaria and Poland. Nevertheless, it would be difficult to go back on the decisions of the Brussels Conference, particularly as the Main Committee had already rejected a draft resolution of the Federal Republic of Germany urging the opposite course of extending the term of protection.

1256. Mr. KOUTIKOV (Bulgaria) emphasized that the exception envisaged in the proposal submitted by the Delegations of Bulgaria and Poland would only affect a small number of countries, as the Delegate of Monaco had pointed out. Members of the Main Committee should ask themselves whether it was a good thing that the obstacle of the term of protection should be allowed to prevent certain countries from acceding to the Stockholm text.

1257.1 Mr. STRNAD (Czechoslovakia) pointed out that the term of protection was not the only point of difference between the Rome, Brussels and Stockholm Acts, and that certain countries, including Czechoslovakia, which had acceded to the Rome Act, nevertheless granted a 50-year term of protection in their national legislation.

1257.2 He would point out to the Delegation of the Federal Republic of Germany that, if the proposal of the Delegations of Bulgaria and Poland was accepted, that would create a "systematic irregularity," whereas its rejection would create serious divergences throughout the whole Convention, owing to the fact that those countries would be bound by the Rome Act only.

1258.1 Mr. CIAMPI (Italy) drew the attention of the Main Committee to a question of principle, which was that the Stockholm revision should not be allowed to reverse decisions taken at the Brussels Conference, even if some confusion resulted from the adoption of the additional Protocol and of an increasing number of reservations.

1258.2 Finally, it should not be forgotten that the uniformity of protection enunciated in the Preamble to the Brussels Act was really the fundamental element of the Convention.

1259. The CHAIRMAN suggested that the Main Committee should postpone a vote on this question until the following meeting.

1260. *It was so decided.*

The meeting rose at 4:55 p.m.

SEVENTEENTH MEETING

Wednesday, June 28, 1967, at 9:30 a.m.

TERM OF PROTECTION: LIMITATION (continued) (S/225)

1261. The CHAIRMAN read out a draft of Article 7(6) prepared by Mr. Masouyé, the Secretary (S/225). To meet the wishes of the Delegation of France which was anxious to be able to study the compromise draft, he suggested that the text should be distributed and discussion deferred until the following day.

1262. Mr. CIAMPI (Italy) approved that suggestion but drew the attention of the Main Committee to the fact that the question concerned fell within the terms of reference of Main Committee IV as well as of Main Committee I, and suggested that the two Main Committees might hold a joint meeting to consider it.

1263. The CHAIRMAN said that if the provisions in question were to be included in Article 7, Main Committee I was competent to examine them, but that if they were to be included in the final clauses (provisions dealing with reservations) the matter would fall within the terms of reference of Main Committee IV; but the members of the latter Committee were diplomats who would not wish to take any decision on questions of substance and would ask the opinion of Main Committee I, which would be a complicated way of doing things. Hence he would prefer to see the provisions in question included in Article 7.

1264. Mr. KOUTIKOV (Bulgaria) thought that the draft submitted by Mr. Masouyé should logically be placed in Article 7 and that Main Committee I was competent to consider it. As a large number of delegations seemed to feel that a written text would help them to reach a decision, he supported the Chairman's suggestion.

1265. The CHAIRMAN invited the Main Committee to vote on whether or not any provisions which might be adopted should be inserted in Article 7.

1266. *The Main Committee decided by 22 votes to 2 with 10 abstentions that the proposed draft, if adopted, should be included in Article 7.*

1267. Mr. MASOUYÉ (BIRPI) pointed out that, if the draft text was approved, the countries which would be affected at the time of signature of the Stockholm Act would be Bulgaria, Poland, Rumania, and Thailand; the last-named country, however, would probably regard itself as a developing country which would enjoy the benefits of the special Protocol on that subject. There would therefore be three countries for which a special provision might be adopted as a transitional, if not a temporary measure.

1268. The CHAIRMAN drew the attention of the Main Committee to the draft for a new Article 7(3A) proposed by the Delegation of the United Kingdom (S/42). He himself was afraid that the expression "collective works" might give rise to some difficulties, as it was interpreted differently in different legislations.

1269. Mr. WALLACE (United Kingdom) said that no question of principle was involved in his Delegation's proposal for the addition of a new paragraph (3A) to Article 7 (S/42). If the proposal caused any difficulty, it would be withdrawn.

1270. Mr. ROHMER (France) said that under French law a collective work constituted a separate entity; it was not a group of fragments but a single whole. If, therefore, the United Kingdom proposal was to be understood in that sense, it introduced a new factor, and the Delegation of France would support it, as it supplemented Article 7*bis*.

1271. The CHAIRMAN drew attention to the varying interpretations of the expression "collective works" and asked the Delegate of the United Kingdom whether he could withdraw his proposal.

1272. Mr. WALLACE (United Kingdom) withdrew his Delegation's proposal.

TERM OF PROTECTION: WORKS OF JOINT AUTHORSHIP (ARTICLE 7*bis*)

1273. The CHAIRMAN said that the alterations to Article 7*bis* were merely drafting changes and he invited the Committee to approve the proposed text.

1274. *The proposed text was approved unanimously.*

RIGHT OF TRANSLATION (ARTICLE 8)

1275. The CHAIRMAN said that the question had often been raised as to whether the exceptions which were permissible in regard to the right of reproduction applied when the work reproduced was not the original but a translation. It had been suggested that the words "in original and in translation" should be inserted in Article 10 and Article 2*bis*, but, in his view, it would be dangerous to introduce that idea *expressis verbis*. Moreover, no clarification on that point had been included in Article 9(2), which had been accepted. The right of translation in question concerned the exploitation of the work in a translated version, and it was therefore logical that any exception to the right of reproduction should apply to the original and the translation. In his view, it would be preferable to express the idea in general terms in the Main Committee's report rather than to insert the phrase "in original or in translation" in certain provisions only.

1276. Mr. STRNAD (Czechoslovakia) thought it would not be enough to mention the matter in the Main Committee's report, because the report was an aid to interpretation and did not form a part of the text of the Convention. The question had given rise to much ambiguity and uncertainty; it had led some countries to enter reservations when acceding to the Convention, and he considered that those uncertainties could be eliminated if the necessary clarification was made in Article 8.

1277. The CHAIRMAN thought it would be equally possible to introduce into Article 8 a suitable provision, which it would be the difficult task of the Drafting Committee to prepare. The Main Committee could, perhaps, vote on that text later on.

1278. Mr. WALLACE (United Kingdom) observed that amendment of Article 8 along the lines suggested by the Delegate of Czechoslovakia might affect the work of Main Committee II, where the question of translation was being discussed as a separate matter. He agreed with the Chairman, therefore, that the matter should be dealt with in the Main Committee's report rather than in Article 8 itself.

1279. Mr. BERGSTRÖM (Sweden) said that the Chairman's ideas coincided with those which had motivated the Delegation of Sweden in its preparation of document S/1. It seemed self-evident that exceptions relating to the right of reproduction would also relate to the right of translation. His Delegation would vote in favor of the Chairman's proposal.

1280. Mr. GAE (India) said he considered that a specific provision should be included in the Convention, but that it should be left to the Drafting Committee to decide whether it was to be inserted in Article 8 or in another Article of the Convention.

1281. Mr. ELMAN (Israel) said that his Delegation would prefer the inclusion of a specific provision in the Convention. In view of the fact, however, that such a procedure might give rise to drafting complications, and in view of past practice in the matter, his Delegation would be satisfied if a clear reference to the right of translation was made in the report.

1282. Mr. CIAMPI (Italy) thought that the Main Committee was not in a position to study the question of recasting Article 8 and he therefore approved the Chairman's proposal to mention the matter in the Main Committee's report.

1283. Mr. KOUTIKOV (Bulgaria) said he greatly appreciated the Chairman's suggestions as to the possibility of including the necessary explanations in the Main Committee's report, but that he was anxious to see the clarity of the text improved and he therefore hoped that the Drafting Committee would make a further effort so that some clarification on the question of translation could be inserted in Article 8. He shared the views of the Delegate of Czechoslovakia on that subject.

1284. Mr. MIHINDOU (Gabon) agreed with the Delegate of Czechoslovakia and asked that clarification concerning translation should be included in the body of the Convention.

1285. Mr. STRASCHNOV (Monaco) warned the Main Committee of the danger of expressing an important idea in the report, where it was liable to be lost sight of. In support of that statement, he quoted the precedent of the report of the Rome Conference of 1928.

1286. Mr. FERSI (Tunisia) said he welcomed any proposals which would clarify the Convention, and he therefore would be in favor of including any text on the subject in Article 8.

1287. Mr. CIAMPI (Italy) suggested that a small working group should be set up to consider the question, as it was not purely a drafting matter.

1288. The CHAIRMAN said that the Main Committee was largely in agreement on the substance of the problem, and that the differences of opinion arose over the question of whether any text which might be adopted should be included in the Main Committee's report or in the Convention. He suggested that the Drafting Committee should be instructed to try to find a suitable wording, within the framework of Article 8, which the Main Committee could consider subsequently.

1289. *That suggestion was approved by 32 votes to 3 with 2 abstentions.*

EXCERPTS FROM PROTECTED WORKS (ARTICLE 10(2)) (continued) (S/185 and S/216)

1290. The CHAIRMAN drew attention to a proposal by the Working Group (S/185) to amend Article 10(2) and to a sub-amendment to the French version of that proposal submitted by the Delegations of Brazil, Mexico, and Portugal (S/216).

1291. Mr. STRASCHNOV (Monaco) drew the attention of the Main Committee to the anomaly which arose as a result of the decision taken during the discussion of Article 10(2), by which the application of the provisions was extended to cover both broadcasting and television for scholastic purposes, whereas it was restricted to sound recordings only. The anomaly was all the more regrettable because educational television was forging ahead of educational broadcasting in many developing countries and many developed countries. He was in favor of the proposal submitted by the Delegations of Brazil, Mexico, and Portugal.

1292. Mr. WALLACE (United Kingdom) observed that it seemed illogical to distinguish between sound and vision; his Delegation would vote in favor of the proposal.

1293. The CHAIRMAN invited the Committee to vote on the proposal submitted by the Delegations of Brazil, Mexico, and Portugal (S/216).

1294. *That proposal was adopted by 37 votes to 2 with 3 abstentions.*

PERFORMING RIGHTS (ARTICLE 11)

1295. The CHAIRMAN said that approval of the second sentence of paragraph (1) was subject to approval of Article 13 as proposed in the Program. He also suggested the deletion of Article 11(3).

1296. *It was so decided.*

1297. Mr. STRNAD (Czechoslovakia) drew the attention of the Main Committee to the text of Article 11(2) which contained a provision dealing with translation. On grounds of uniformity, that provision should be deleted.

BROADCASTING RIGHTS (ARTICLE 11*bis*)

1298. The CHAIRMAN pointed out that the Swedish/BIRPI Study Group had prudently refrained from proposing any amendment to the compromise wording adopted in Brussels. The Delegation of Brazil, however, had submitted a proposal (S/217) concerning paragraph (1), but he himself wondered whether it was really necessary to add these explanations to the text.

1299. Mr. CAMARGO (Brazil) withdrew his Delegation's proposal.

1300. The CHAIRMAN pointed out that proposals in regard to Article 11*bis*(3) had been submitted by the Delegations of Monaco (S/77), Japan (S/112), and the United Kingdom (S/171).

1301. Mr. STRASCHNOV (Monaco) emphasized the changes which had occurred in the field of recording since the concept of ephemeral recordings had been introduced into the Berne Convention in 1948. Whereas at that time the problem had been mainly one of sound recordings made by broadcasting authorities themselves to assist in improving the quality of broadcasts and to enable authors to secure copyright fees by the rebroadcasts thereby facilitated, the majority of recordings today were television films made to order by third parties who were often film makers. Their purpose was the same as that of the recordings made previously by broadcasting authorities, but it was clear that when they were utilized in a different way they lost their character of ephemeral recordings. The text of the Convention should therefore be adapted to take account of the actual situation and enable ephemeral recordings to be made by third parties at the request of broadcasting authorities. Another new factor was the multiplicity of broadcasting authorities in the same country and he wondered whether it might not be possible to agree that a recording made by one could be used by the others, without thereby affecting the interests of authors, since there would be no change in the national legislations which restricted the permitted number of broadcasts to between two and four.

1302. Mr. WALLACE (United Kingdom) said that the Delegation of the United Kingdom would be unable to vote in favor of the proposal submitted by the Delegation of Monaco because it might upset the delicate balance achieved at Brussels. The intention of his Delegation's amendment to Article 11*bis* (S/171) was to preserve that balance while at the same time helping broadcasting interests and authors. The inclusion of the words "at the request of" in the amendment submitted would help broadcasting organizations, while the words "when, for technical or other reasons, the broadcast cannot be made at the time of the performance of the work" gave a better idea than did the original text of what an ephemeral recording was about and they would appeal to authors. It should be clearly understood that his Delegation was proposing a package deal; it would not accept either amendment alone. It should also be understood that it was not his Delegation's intention that broadcasting organizations should use ephemeral recordings once only. In the second sentence of Article 11*bis*(2) the word "broadcast" should therefore be replaced by the word "broadcasts."

1303. Mr. ADACHI (Japan) said that there were more than 40 broadcasting organizations in Japan. A situation might arise in which certain recordings, although made by or at the request of a broadcasting organization as mere technical means exclusively for the use of the broadcast, would not be regarded as ephemeral recordings because the term "by means of its own facilities and used for its own emissions" used in the Brussels text had not been complied with. In order to obviate that possibility, the Delegation of Japan was proposing that in paragraph (3) of Article 11*bis*, the words to which he had referred be replaced by the words "as a mere technical means for the use of the broadcasts made with permission" (S/112). That proposal was substantially the same as the one submitted by the Delegation of Monaco (S/77). Consequently, if the latter were supported by the majority of the Main Committee, the Delegation of Japan would withdraw its own proposal. If the Main Committee did not support the proposal submitted by the Delegation of Monaco, his Delegation considered that paragraph (3) should be amended along the lines suggested by the Delegation of the United Kingdom.

1304. Mr. ROHMER (France) said that Article 11*bis* had given rise to numerous objections, and he summarized the pros and cons of the argument. He was in favor of retaining the existing text, which, reflected a balance achieved with considerable difficulty. The system of ephemeral recordings had been interpreted very loosely, as several weeks or even several months were allowed to elapse between the recording and the broadcast. Finally, it should be noted that the existing text could not be altered without endangering certain benefits which had been secured for authors.

1305. Mr. CIAMPI (Italy) took up the arguments adduced by the Delegate of Monaco but reached different conclusions. The exploitation of intellectual works with which they were dealing was a financial exploitation and, whereas it had been possible to make concessions in the case of education and the public interest, the problem was quite different in the case of ephemeral recordings made by broadcasting organizations. The technical change which had occurred in connection with such recordings was in fact a further reason for giving better protection to the interests of authors. He must warn the Main Committee against the consequences of making changes in the Brussels text, which had been an acceptable compromise between the opposing interests. Hence, although he had every sympathy for the United Kingdom proposal, he was in favor of maintaining the Brussels text in order to avoid further conflict.

1306. Mr. BERGSTRÖM (Sweden), speaking on behalf of all Nordic Delegations represented on the Main Committee, recommended that the text of Article 11*bis* be left as it stood. At a previous meeting, the Main Committee had voted in favor of the Working Group's proposal that a new paragraph (4) be added to the Article 11*bis* (S/195). That paragraph was, however, ambiguous and might upset the existing balance. The Nordic Delegations recommended that the decision taken regarding new paragraph (4) be reversed.

1307. The CHAIRMAN agreed that it would be wise not to make any changes to the text of Article 11*bis*(3) and he asked the Delegations of Monaco, the United Kingdom, and Japan, whether they would be prepared to withdraw their proposals.

1308. Mr. STRASCHNOV (Monaco) said he would be prepared to withdraw his Delegation's proposal if the text of Article 11*bis* in the Brussels version was left unchanged, i.e., if the new paragraph (4) proposed by the Working Group (S/195) was reconsidered and deleted.

1309. Mr. WALLACE (United Kingdom) said that on the assumption that the Brussels text of Article 11*bis*, paragraph (2), would remain unaltered, his Delegation was prepared to withdraw its amendment.

1310. Mr. ADACHI (Japan) said that in the opinion of his Delegation broadcasting organizations should be allowed to entrust the making of ephemeral recordings to another broadcasting organization only and that the latter should also be entitled to broadcast the work. Provided it was clearly stated in the report that such an opinion was not contrary to the provisions of paragraph (3) in the Brussels text, his Delegation would withdraw its amendment (S/112).

1311. The CHAIRMAN said that the new paragraph (4) of Article 11*bis* could be reconsidered if a qualified majority expressed itself in favor of a further vote, and he invited the Main Committee to decide on whether a new vote should be taken on paragraph (4).

1312. *The Main Committee decided, by 25 votes to 7 with 3 abstentions, to proceed to a new vote on paragraph (4) of Article 11*bis.

1313. Mr. FERSI (Tunisia) considered it inadvisable to retain the new paragraph (4) of Article 11*bis* in view of the need to work out a fair compromise when there was such a clash of interests.

1314.1 Mr. STRASCHNOV (Monaco) explained the consequences of retaining the new paragraph (4) of Article 11*bis*. The first consequence of the new paragraph would be that the same broadcast would be subject to different treatment depending on whether it was broadcast live (in which case the national legislation could apply the system of compulsory license) or recorded for broadcasting subsequently (in which case the system of licenses would not apply). Secondly, at a time when television programs were transmitted by satellite from one continent to another, the differences in local times generally made it necessary to record a broadcast which was to be transmitted from America to Europe, for instance, as a live broadcast would come through at an inconvenient time; as such recordings constituted television films, which were treated as cinematographic works, the restriction on the compulsory license system would make their broadcast much more difficult if paragraph (4) was adopted, which would create a considerable obstacle yielding no profit to the authors. Moreover, if the new paragraph (4) was retained, many national legislations would have to be changed, because, in countries where the system of compulsory licenses obtained, no distinction was generally made between a cinematographic work and a work broadcast live.

1314.2 In the new paragraph (4), reference was made to "works adapted or reproduced in the cinematographic work itself," and he wondered whether the system of compulsory licenses would be ruled out in regard to pre-existing works. The text was ambiguous and needed clarification. It had been suggested that the object was to protect the makers of cinematographic works, against television, but such protection was unnecessary, because television organizations could not freely obtain the works which they used; they had to have an agreement with the maker and distributor setting out the exact conditions for the exploitation of the work.

1314.3 When the Main Committee came to study the proposed text for Article 13, dealing with the recording of musical works, a request would probably be made for an extension of the system of licenses, the need for which was recognized and he wondered whether it was logical to allow it in the case of private gramophone recording companies and refuse it for public broadcasting organizations. Finally, he would warn the Main Committee against the new paragraph (4) which could hamper the future use of satellites. If the text was adapted, a unanimous decision would be required to delete it subsequently from the text of the Convention.

1315. Mr. WALLACE (United Kingdom) said that his Delegation had made no proposals for changes in Article 11*bis*(1) and (2). When, however, the Delegation of the Federal Republic of Germany had proposed that the provisions of paragraph (2) should not apply in the case of Article 14, the Delegation of the United Kingdom had said that they must apply at least so far as secondary uses were concerned. That situation had resulted in the proposal (S/195) for the addition of a new paragraph (4). Admittedly, the paragraph, which raised some very complicated issues, should have been drafted more tightly. No system of compulsory licensing for the broadcasting of films existed in the United Kingdom, and the introduction of such a system was not favored. He was not impressed with the examples given by the Delegate of Monaco of the need for such licenses, nor was he impressed by the comparison with Article 13. On the other hand, it was quite apparent that many delegations felt strongly on the matter. In principle he was in favor of the Convention leaving a reasonable latitude to Governments. He did not think it wise, moreover, to press a minority so far that it could not accept a text on a matter which was not of capital importance. Considering the situation, the Delegation of the United Kingdom could abstain when the vote was taken.

1316. Mr. STRNAD (Czechoslovakia) began by pointing out that the wording of new paragraph (4) of Article 11*bis* made it difficult to understand, and went on to indicate the difficulties which would result from its adoption when works were being exploited in exchange television programs, owing to the fact that some countries recognized the system of compulsory licenses, while others did not. It was desirable that the exchange of television programs should be further developed, and he was therefore opposed to any proposal which would put obstacles in their way. Hence he would vote against the retention of the new paragraph (4) of Article 11*bis*.

1317. The CHAIRMAN said he thought that the new paragraph (4) of Article 11*bis*, which had been drafted on the basis of a proposal by the Delegation of the Federal Republic of Germany, was a sound one. It could, however, be deleted provided that paragraph (3) was not amended.

1318. Mr. CURTIS (Australia) said that his Government regarded it as a matter of some importance that the flexibility of paragraph (2) of Article 11*bis* should be preserved. There were five reasons for that: firstly, the considerable changes that were about to be made in broadcasting practices necessitated a conservative approach to the provisions of the Convention relating to broadcasting; secondly, flexibility in broadcasting rights was essential if the many variations in broadcasting practice found in member countries of the Union were to be accommodated in the Convention; thirdly, in so far as compulsory licenses were concerned, there were practical considerations which distinguished broadcasts from reproduction for publication; fourthly, there was no reason why films should be treated differently from other literary and artistic works; and, fifthly, in Australia, restrictive practices in television had necessitated legislation requiring that material be made available for broadcasting. The restrictive practices in question had nothing to do with copyright but it had been necessary to rely on the provisions of Article 11*bis*(2) in order to ensure that the legislation did not conflict with the Convention.

1319. Mr. CIAMPI (Italy) said he was ready to accept the compromise solution of retaining the Brussels text and abandoning the new paragraph (4), but he would draw the attention of the Main Committee to the question of the assimilation of televisual works to cinematographic works. In his view, that question was not resolved by the new formula of Article 2 and should be settled by national laws and by the courts.

1320. The CHAIRMAN invited the Main Committee to vote on the proposal to retain the Brussels text of Article 11*bis* unchanged.

1321. *That proposal was adopted unanimously with 5 abstentions.*

The meeting rose at 12:05 p.m.

EIGHTEENTH MEETING

Wednesday, June 28, 1967, at 2:35 p.m.

RIGHT OF PUBLIC RECITATION (ARTICLE 11*ter*) (S/92)

1322. The CHAIRMAN said that the Delegation of the Federal Republic of Germany had submitted some amendments to Article 11*ter* (S/92).

1323.1 Mr. REIMER (Federal Republic of Germany) said that two amendments were involved, one a drafting amendment and the other an amendment of substance.

1323.2 The first consisted of adding to the existing text the words "including the public recitation of these works by means of instruments capable of reproducing them mechanically." It might be of advantage to insert that provision, leaving the Drafting Committee to improve the wording.

1323.3 The second amendment involved the inclusion of the idea of "communication to the public" which appeared in paragraph (1) of Article 11, and of starting Article 11*ter* with the following phrase: "Subject to the provisions of Article 11*bis*."

1324. Mr. BERGSTRÖM (Sweden) said that his Delegation was fully in agreement with the proposal of the Delegation of the Federal Republic of Germany. The same amendments would in fact have been submitted in document S/1 but for his Government's wish not to suggest too many changes to the Convention.

1325. Mr. DITTRICH (Austria) said that his Delegation supported the proposal of the Delegation of the Federal Republic of Germany wholeheartedly.

1326. Mr. CAVIN (Switzerland) supported the proposal of the Delegation of the Federal Republic of Germany, which was very similar to the observations put forward by the Delegation of Switzerland during the preparatory work.

1327. Mr. CAMARGO (Brazil) said his Delegation was also in favor of the proposal.

1328. Mr. IOANNOU (Greece) supported the proposal of the Delegation of the Federal Republic of Germany.

1329. Mr. KORDAČ (Czechoslovakia) said that his Delegation also supported the proposal of the Delegation of the Federal Republic of Germany.

1330. The CHAIRMAN put to the vote the second part of the proposal of the Federal Republic of Germany, which was to add the following words to Article 11*ter*: "(ii) any communication to the public of the recitation of their works," and to start the Article with the following phrase: "Subject to the provisions of Article 11*bis*."

1331. *The proposal was adopted unanimously with one abstention.*

1332. The CHAIRMAN said that if the first part of the proposal of the Delegation of the Federal Republic of Germany was adopted, and the words "including the public recitation of these works by means of instruments capable of reproducing them mechanically" were introduced in an item (i)—words which would no longer appear in Article 13—it would be logical to include them in Article 11 as well.

1333. Mr. BERGSTRÖM (Sweden) supported the proposal of the Delegation of the Federal Republic of Germany.

1334. Mr. CIAMPI (Italy) also supported the proposal.

1335. Mr. WALLACE (United Kingdom) said that he agreed with the Chairman that the reference to public recitation of works "by means of instruments capable of reproducing them mechanically" should also be included in Article 11.

1336. The CHAIRMAN put to the vote the first part of the proposal of the Delegation of the Federal Republic of Germany, it being understood that the same words "including the public recitation of these works by means of instruments capable of reproducing them mechanically" should be included in the text of Article 11 by the Drafting Committee.

1337. *That proposal was adopted unanimously with 3 abstentions.*

1338. Mr. KOUTIKOV (Bulgaria) said he had abstained because the proposal of the Delegation of the Federal Republic of Germany was incompatible with the legislation in force in his country.

RIGHT OF AUTHORIZING ADAPTATIONS (ARTICLE 12)

1339. The CHAIRMAN said that the Program of the Conference did not suggest any amendment to the existing text.

1340. *The Main Committee decided unanimously to retain the Brussels text.*

MECHANICAL REPRODUCTION RIGHTS (ARTICLE 13)

1341.1 The CHAIRMAN pointed out that Article 9 now included a reference to mechanical reproduction rights, so that there appeared to be no need to refer to it again in Article 13. It was for that reason that the Program of the Conference proposed the deletion of paragraph (1) of the Brussels text.

1341.2 The Delegation of Greece (S/56) considered that the paragraph should be retained, with the addition, after the words "Authors of musical works shall have" of the words "independently of the exclusive right referred to in Article 9, paragraph (2)." The Delegation of the United Kingdom also favored the retention of the Brussels text.

1341.3 Gramophone record manufacturers were afraid that they might be liable to double payment of fees, if mechanical reproduction rights were mentioned twice in the Convention.

1342.1 Mr. WECHGELAER (Netherlands) put forward several arguments in favor of retaining the Brussels text.

1342.2 It was at the meeting of the Committee of Experts in 1965 that a delegation had first expressed the opinion that the inclusion of a general right of reproduction in Article 9 would make Article 13(1) superfluous. The Committee of Experts had not adopted that view.

1342.3 Moreover, Article 13(1) spoke of "recording," while Article 9 spoke of "reproduction." But Article 3 of the Rome Convention of 1961 and the text of the European Agreement Concerning Program Exchanges of Television Films drew a very clear distinction between "reproduction" and "fixation."

1342.4 Again, the arrangement of the Convention required that the rights attaching to the various categories of work should be dealt with consecutively. It was therefore only logical to mention recording in Article 13, which dealt with composers' rights.

1342.5 It was difficult to see why the paragraph in question should be deleted, while other provisions dealing with recording were retained in the Convention.

1342.6 Finally, with the deletion of Article 13(1), the exceptions laid down in Article 9 would become applicable to recordings, and there was no longer any clear link between the exceptions mentioned in Article 9 and those mentioned in Article 13.

1342.7 For all those reasons, the Delegation of the Netherlands considered that Article 13(1) should be retained.

1343. The CHAIRMAN pointed out that the Rome Convention dealt with quite a different subject, as it granted performers the right to authorize the first fixation and, in some cases, the right to authorize copies. Besides, the Rome Convention could in no circumstances be quoted as a sort of model for the Berne Convention: that would be a reversal of their roles.

1344.1 Mr. STRASCHNOV (Monaco) urged that it should be made clear once and for all—possibly in the report of the Committee—that, according to the terminology used in the Berne Convention, reproduction and recording were not separate concepts, as the first embraced the second.

1344.2 If that was not the case, authors other than composers would be at a disadvantage by comparison with composers, because, under the terms of Article 9, they would only have the right of authorizing reproduction, whereas composers would be able to authorize the first fixation and the further making of copies.

1344.3 The Main Committee had just decided to introduce into Article 11(1) the concept of public performance by all means or methods which was sufficient to make item (ii) of Article 13(1) superfluous. Similarly, the new text of Article 9 eliminated the need to maintain item (i) of Article 13(1).

1344.4 His Delegation therefore considered that this paragraph should be deleted in the interest of authors, because the compulsory license can not apply to the public performance by instruments of mechanical reproduction.

1345. Mr. WALLACE (United Kingdom) said that he agreed entirely with the remarks made by the Delegate of Monaco.

1346. The CHAIRMAN put to the vote the proposal contained in the Program of the Conference that Article 13(1) of the Brussels text should be deleted.

1347. *The proposal was adopted by 25 votes to 5 with 5 abstentions.*

1348. The CHAIRMAN put to the vote the proposal in the Program of the Conference that the new paragraph (1) should not cover the public performance of recorded works.

1349. *The proposal was adopted unanimously with one abstention.*

1350. The CHAIRMAN pointed out that in the new paragraph (1) proposed in the Program of the Conference, no change was made to the provisions of the Brussels text concerning compulsory licenses. But the Delegations of the Federal Republic of Germany (S/92), the United Kingdom (S/171), and Brazil (S/217), had submitted draft amendments, all of which sought to include mention of the words which provided a basis for a musical work or which necessarily accompanied its performance.

1351.1 Mr. BOUTET (France) reminded the Main Committee that the question had been discussed at length at the Brussels Conference and the proposal had finally been rejected.

1351.2 It was quite clear that the provisions which were now proposed would be tantamount to an extension of the compulsory license, which was something the Delegation of France could not support.

1352. Mr. WALLACE (United Kingdom) said that his Delegation's amendment to paragraph (1) of Article 13 (S/171) was not intended to introduce a compulsory license for the recording of literary works; but it was only reasonable that the provisions of that Article should apply both to the music and to the words of a song if they were meant to be performed together. The only part of the amendment that was not purely a matter of drafting was the phrase "including any words intended by their author to be performed with them." The words "by their author" referred to the author of the words but that point could perhaps be dealt with by the Drafting Committee. He commended the amendment to the Main Committee as a matter of common sense.

1353. Mr. BERGSTRÖM (Sweden) said that his Delegation was somewhat hesitant about the inclusion of the words proposed by the Delegation of the United Kingdom in Article 13 but appreciated the practical need for such a provision. Possibly, a more appropriate place for its inclusion in the Convention would be under paragraph (2) of Article 9.

1354. Mr. CURTIS (Australia) said in support of the United Kingdom's amendment that the compulsory recording right would be of little practical use if the manufacturer could not include the words of the song on his record.

1355.1 Mr. CIAMPI (Italy) said that the United Kingdom proposal had only a limited scope and dealt largely with a question of interpretation, which could be left to the discretion of the courts.

1355.2 The principle of the right of reproduction had now been introduced into the Convention and it would be a very serious matter to include exceptions and exemptions for compulsory licensing which would involve the destruction of that principle. His Delegation was therefore in favor of the wording proposed in the Program.

1356. Mr. REIMER (Federal Republic of Germany) agreed with the Delegation of the United Kingdom. It seemed logical that the provisions concerning compulsory licenses should also apply to the words accompanying the music.

1357. Mr. WECHGELAER (Netherlands) approved the principle underlying the two proposals but preferred the wording proposed by the Delegation of the Federal Republic of Germany, which was shorter and would doubtless be more easily interpreted by continental jurists.

1358. Mr. DITTRICH (Austria) said that his Delegation supported the proposal of the Delegation of the Federal Republic of Germany in document S/92 which was in accord with the Austrian observations in document S/13.

1359. The CHAIRMAN put the United Kingdom proposal to the vote and suggested that the Drafting Committee should be asked to find a shorter wording.

1360. *The proposal was adopted, subject to drafting changes, by 13 votes to 5 with 20 abstentions.*

1361. The CHAIRMAN pointed out that another draft amendment had been submitted, by the Delegation of Brazil, in document S/217. He suggested, however, that it might not be essential to add the sentence, "the provisions of Article 9(2) shall apply to musical works," and he wondered whether the Delegation of Brazil would be prepared to withdraw its proposal.

1362. Mr. CAMARGO (Brazil) said his Delegation would withdraw its proposal.

1363. The CHAIRMAN put to the vote the text of paragraph (1) appearing in the Program of the Conference, as amended by the United Kingdom proposal.

1364. *The text proposed in document S/1, as amended by the United Kingdom proposal, was adopted, with 2 abstentions.*

1365.1 The CHAIRMAN pointed out that the Drafting Committee would have to bring the text of paragraph (2) into line with the wording which had just been adopted for paragraph (1).

1365.2 In addition, as the text proposed in the Program of the Conference did not indicate until what date the recordings in question could be reproduced, the Main Committee would have to take a decision on that point.

1366. Mr. MASOUYÉ (BIRPI) said that BIRPI thought it would be appropriate to make the date the 31st day of December of the year in which the Stockholm Act came into force.

1367. Mr. WALLACE (United Kingdom) proposed 1970 as the date limit.

1368. Mr. CURTIS (Australia) said he considered it unrealistic to specify an exact date in the Convention since a country that had not acceded to, or ratified, the Stockholm Act by that date could be required to provide in its legislation measures having retroactive effect in cases of infringement of copyright and might, moreover, be placed in the position of being unable to give adequate notice to manufacturers regarding their right to make recordings. A possible solution would be to provide that the date limit for countries acceding to, or ratifying, the Stockholm Act after the agreed date would be the date of their accession. As he did not wish to delay the Main Committee's proceedings, he could perhaps revert to the matter after its examination by the Drafting Committee.

1369. Mr. BERGSTRÖM (Sweden) said that his Delegation had no objection to the United Kingdom proposal, which in fact appeared to be in line with the recommendation contained in the notes, in document S/1, on the preparatory work in respect of paragraph (2) of Article 13.

1370. Mr. BOUTET (France) said it was possible that only a few countries would have ratified the Stockholm Act by December 31, 1970, or by any other date which the Main Committee might select. It might therefore be better to wait until the Stockholm Act had come into force before fixing a date.

1371. Mr. WALLACE (United Kingdom) said that he thought most delegations would like to end the exception in favor of the record industry at an early date. He therefore suggested, in order to meet the point raised by the Delegate of Australia, that the following words should be added at the end of paragraph (2): "... or, in respect of any country ratifying at a later date, the date of such ratification."

1372. Mr. CIAMPI (Italy) thought the question could not be settled in isolation from the other questions concerning the coming into force of the Stockholm Act. He therefore suggested that contact should be made with Main Committee IV.

1373. The CHAIRMAN agreed that it would be better to hold over the question until the decisions of Main Committee IV were known.

1374. *It was so decided.*

1375. The CHAIRMAN said he would still like the Main Committee to vote immediately on the United Kingdom proposal to add at the end of paragraph (2) the words: "... or, in respect of any country ratifying at a later date, the date of such ratification."

1376. *That proposal was adopted unanimously, apart from one dissenting vote and one abstention.*

1377. The CHAIRMAN suggested that the proposed amendments to Article 13(3) should not be discussed until Article 16 had been considered.

1378. *It was so decided.*

SEIZURE OF INFRINGING COPIES (ARTICLE 16) (S/211)

1379. The CHAIRMAN said that the United Kingdom (S/211) had proposed that in paragraph (1) the words "may be seized" should be replaced by the words "shall be seized" and that in paragraph (2) the words "may also apply" should be replaced by the words "shall also apply."

1380. Mr. IOANNOU (Greece) said that the existing text should be interpreted as placing an obligation on States to seize an infringing work when so requested. The proposed amendment appeared to impose that obligation even when seizure was not requested.

1381. Mr. STRNAD (Czechoslovakia) said that the existing text could also be interpreted as allowing countries of the Union to make legislative provisions concerning the seizure of infringing works. In order to avoid any ambiguity, it would perhaps be well to redraft the provision.

1382. Mr. WALLACE (United Kingdom) said that, provided the sense of the Article, as explained by the Delegate of Greece, was made clear in the report and that the English version was brought into line with the French, he was prepared to accept the existing text.

1383. The CHAIRMAN said there was unanimous agreement on the principle that a State should not take the initiative in affecting a seizure, but that it was required to seize an infringing work when so requested, and he proposed that the Drafting Committee should be asked to find a more satisfactory wording for Article 16.

1384. *It was so decided.*

LIMITATION ON EXHIBITION OF WORKS (ARTICLE 17) (S/171 and S/215)

1385.1 The CHAIRMAN drew the Main Committee's attention to the United Kingdom proposal (S/171) to delete the words "to permit" from the existing text and to add a new paragraph. The Delegation of Australia also proposed the addition of a new paragraph (S/215).

1385.2 The Chairman invited the Main Committee to examine the first part of the United Kingdom proposal.

1386. Mr. WALLACE (United Kingdom) said that Article 17 had doubtless been originally drafted with the questions of censorship and the control of obscenity in mind; but the words "to permit" did suggest that States had an inherent power to override the author's rights, despite the provision for such rights under certain articles of the Convention. Therefore, as proposed in document S/171, his Delegation considered that those words should be deleted; he believed that would be in line with the Main Committee's general feeling.

1387. Mr. CURTIS (Australia) said the Main Committee's decision on the United Kingdom's proposal in document S/171 for a new paragraph under Article 17—which had still to be discussed—would influence his Delegation's vote on the proposal to delete the words "to permit." For the time being, he would oppose the deletion of the words "to permit," considering that there were instances when the Government should retain the right to take action against the consent of the copyright owner.

1388.1 The CHAIRMAN thought it would be wiser to take a vote on the first part of the United Kingdom proposal after the Main Committee had discussed the drafts for new paragraphs submitted by the Delegations of the United Kingdom and Australia respectively.

1388.2 He informed the Main Committee that the observer for the International Confederation of Societies of Authors and Composers (CISAC) had expressed a wish to speak on the two texts.

ABUSE OF MONOPOLY POSITION
(S/171 and S/215)

1389.1 Mr. WALLACE (United Kingdom) said he believed most countries sought to control monopoly collecting societies. He was not attacking those societies, which he considered to be necessary for the author's well-being, but in a monopoly situation—the performance of music was a good example—there was usually some form of control over the tariffs applied. In the United Kingdom, for example, a tribunal dealt with such matters. The object of his Delegation's proposal for a new paragraph under Article 17 was to make it clear that the United Kingdom was entitled to maintain that tribunal—a fact which, although already implicit in the Convention, it was desirable to state explicitly.

1389.2 The United Kingdom proposal, unlike the Australian proposal in document S/215, did not refer specifically to the question of moral rights and just remuneration. Nevertheless, the intention was that remuneration should be paid in as many cases as possible.

1390. Mr. CURTIS (Australia) said that his Delegation's proposal (S/215), like that of the United Kingdom, had its origin in the measures being introduced nationally to regulate the relationship between collecting societies and copyright owners. There were, however, some significant differences in his Delegation's position. In Australia, the arbitration system proposed would not be restricted to copyright works controlled by collecting societies since those societies did not affect such a wide range of works as in some other countries. The copyright owner would have initial access to compulsory arbitration and would enjoy the same freedom as the user of the work to approach the arbitration tribunal. His Delegation was also anxious to prevent any conflict between the Berne Convention and domestic legislation on restrictive practices, although in most countries a degree of exemption was granted for intellectual property rights. It considered it essential, moreover, to state explicitly the provisions for the preservation of the author's moral rights and the right to adequate remuneration. For those reasons, his Delegation's amendment had been framed in somewhat wider terms than that of the Delegation of the United Kingdom.

1391. The CHAIRMAN invited the Observer of CISAC to take the floor.

1392.1 Mr. MALAPLATE (International Confederation of Societies of Authors and Composers (CISAC)) said he regretted that circumstances compelled him to intervene in the discussion.

1392.2 The authors who were represented by CISAC felt that it was the function of the Berne Convention to put foreign authors on the same footing as national authors in regard to their rights and to ensure a minimum protection in countries of the Union other than the country of origin. They did not consider that it was the task of the Convention to deal with the exercise of copyright, unless the circulation, performance or showing of a literary or artistic work was likely to imperil public order or public decency: that was the essential object of Article 17 of the Convention.

1392.3 But the new paragraph which it was now proposed to add to Article 17 dealt with the normal exercise of copyright, and authors considered that if States thought fit to intervene in that field, they should do so under their national legislation and that they did not require the blessing—*a priori* or *a posteriori*—of a clause in the Convention.

1392.4 Any unbiased observer would admit that authors often had to band together in national associations in order to exercise their rights, and that such associations were no less essential for the users of literary and artistic works than for the authors themselves.

1392.5 Authors had noted that the Australian proposal might lead to the institution of a generalized legal license, and they took the liberty of hoping that the new text of a Convention which had been created to give them protection would not subject them to gratuitous and unjustifiable censure in regard to the exercise of their rights. The Convention would fulfil its functions better if, instead of casting unwarranted suspicion on authors and their associations, it helped them to accomplish their task, which was often an arduous and delicate one.

1392.6 But authors did not ask for that. All they wanted was to be subject to their national laws and to the interpretation of those laws by the courts, like other citizens, without having the Berne Convention interfere in any way in a field which, in their view, did not concern it.

1393. Mr. ROJAS (Mexico) said he considered that the protection of the author's rights should be accompanied by a parallel provision in the Convention to prevent the abuse of such rights. Many countries had had experience of the monopoly positions referred to by the United Kingdom. For that reason, he heartily supported both proposals and, in fact, would find it difficult to choose between the two. Possibly, the best solution would be to combine them, if the two Delegations agreed.

1394. Mr. CAMARGO (Brazil) said his Delegation entirely shared the views of the representative of CISAC. Under Brazilian law authors had the sole right of laying down the fees for the exploitation of their works, and that was confirmed by the courts.

1395. The CHAIRMAN suggested that further discussion should be deferred until the following day.

The meeting rose at 4:45 p.m.

NINETEENTH MEETING

Thursday, June 29, 1967, at 9:40 a.m.

TERM OF PROTECTION:
LIMITATION (continued) (S/50 and S/225)

1396. The CHAIRMAN invited the Main Committee to resume consideration of the proposal submitted by the Delegations of Bulgaria and Poland (S/50) in conjunction with a new proposal by the Secretariat (S/225).

1397. Mr. STRASCHNOV (Monaco) asked whether the principle of comparison of terms of protection set out in Article 7(7) should also apply in this case.

1398. The CHAIRMAN confirmed that the principle of comparison of terms would continue to apply.

1399.1 Mr. ROHMER (France) reaffirmed the view of his Delegation that the proposal by the Delegations of Bulgaria and Poland raised some very delicate questions of principle, as an increase in the number of exceptions could have the effect of distorting the pattern of the Convention.

1399.2 The compromise solution suggested by the Secretariat only affected a small number of States, and the Delegation of France would have been able to support it if it had laid down a date by which those countries would have to adopt the term of protection enshrined in the Brussels Act—50 years—and a minimum figure for the term of protection applied in those countries, such as 30 years for instance. But from what he had been told by one of the countries concerned, that country was not in a position to accept those conditions. In those circumstances, the Delegation of France could not support the compromise solution put forward by the Secretariat.

1400. Mr. IOANNOU (Greece) associated himself with the statement made by the Delegation of France.

1401. The CHAIRMAN suggested that the Main Committee should decide to insert in the Secretariat draft a stipulation to the effect that the minimum term of protection would be 30 years in the case of Article 7(1), the special case of photographic works and works of applied art being reserved, of course.

1402.1 Mr. KOUTIKOV (Bulgaria) said it was his understanding that the Delegation of France had not put forward any formal proposal but had merely explained why it would be unable to vote for the Secretariat proposal. If that was not the case, the Delegation of Bulgaria would be forced to ask for time to consider the matter.

1402.2 Replying to the comment of the Delegate of France, he wished to point out that, while the Bulgarian Government was not at present in a position to enter into any engagement regarding a minimum term of protection, it was contemplating a reform of the copyright law, which might even take place before Bulgaria acceded to a new revision of the Berne Convention.

1403. Mr. ROHMER (France) said he would be prepared to draft a formal proposal laying down a minimum term of protection of 30 years which would operate during a transition period of 30 years.

1404. Mr. KOUTIKOV (Bulgaria) said that the statement made by the Delegation of France which appeared to lay down special conditions for Bulgaria, made it necessary for him to consult his Government. He therefore proposed that the vote should be postponed.

1405. The CHAIRMAN suggested that consideration of the question should be deferred to the following week.

1406. *That proposal was adopted unanimously with 5 abstentions.*

ABUSE OF MONOPOLY POSITION (continued)

1407. The CHAIRMAN reminded the Main Committee that it had been decided to consider Article 17(2) before the preceding paragraph. He invited discussion on the two draft amendments submitted by the Delegations of Australia (S/215) and the United Kingdom (S/171).

1408.1 Mr. CIAMPI (Italy) said his Delegation would prefer not to embark at present on the substantive question raised by the Australian and United Kingdom proposals. It considered that this question, which had already been raised in similar terms at the Brussels Conference, lay outside the competence of the Berne Union, and that it was for States to take appropriate measures "to prevent or deal with any abuse by persons or organizations exercising one or more of the rights in a substantial number of different copyright works, of the monopoly position they enjoy" (S/171).

1408.2 Hence the Delegation of Italy would suggest that the discussion should be restricted to the question of whether the proposed provisions were compatible with the object of the Convention which, it should be made clear, was not an international agreement on the régime for the utilization of literary and artistic property, but an agreement which sought to provide more effective protection for literary and artistic works.

1409.1 Mr. EMRINGER (Luxembourg) said he did not dispute the validity of the arguments adduced by the Delegation of Italy. The question of copyright was quite separate from that of restrictive commercial practices, which could be regarded as being outside the scope of the Convention.

1409.2 Nevertheless, the proposals which had been submitted had the advantage of establishing a useful link between national legislation and the Convention for those legislators who, at the national level, were required to take measures against restrictive trade practices. He himself preferred the wording proposed by the Delegation of Australia (S/215).

1410. Mr. LASSEN (Norway) agreed that the Australian and United Kingdom proposals were interesting and that it was necessary to control abuses. He pointed out, however, that domestic monopoly legislations, had proved adequate for the purpose and were not regarded as conflicting with the Berne Convention. If that was the position, there was no reason to alter the Convention in that respect, provided the general report on the Conference made it clear that such legislation was not in fact contrary to the Convention.

1411.1 Mr. ROHMER (France) said that Article 17 in the Brussels text had the clearly defined purpose of giving the State the right to protect certain aspects of the life of the community, such as public morality, but without weakening copyright protection. It had enabled certain works to be forbidden because they had been judged to be immoral.

1411.2 But the proposals submitted by Australia and the United Kingdom went much further and directly affected the actual basis of copyright. The first impression which they produced was one of surprise, because the right of every State to intervene in the affairs of authors' associations had never been disputed. The question then arose, however, as to whether those proposals might not lead to the institution of a legal license if some Governments should decide to limit themselves to the idea of "just remuneration," in the words of the Australian proposal.

1411.3 Finally, it was an undoubted fact that any State was fully entitled to break up a monopoly which was giving rise to abuses. Hence there was no need to include in the Convention provisions which some authors might regard as being directed against them, particularly when it was borne in mind that the Stockholm Conference had already made a step backwards, by comparison with the Brussels Conference, in the protection given to authors.

1412. Mr. GAE (India) said that Governments should be entitled to control abuses of Convention rights by means of domestic legislation. His Delegation preferred the Australian proposal to that of the United Kingdom, but thought that a combination of the two proposals might provide the best solution.

1413.1 Mr. GERBRANDY (Netherlands) wondered whether it might not be dangerous to introduce into the Convention a special provision authorizing States to take measures against certain authors or against organizations set up to defend their interests. Moreover, anti-cartel legislation came within the field of civil law and of the economic law of States, neither of which should be invoked in the Convention.

1413.2 Nevertheless, it would be dangerous to reject the United Kingdom proposal after hearing the Delegation of the United Kingdom state openly that its intention was to sound opinion to ascertain whether the Performing Rights Tribunal, which had operated in the United Kingdom for some ten years, was a body which enjoyed general recognition—all the more so as no case with international aspects had been submitted since the Tribunal had started functioning.

1413.3 On the other hand, the Delegation of the Netherlands was opposed to the Australian proposal, which it considered to be too vague and liable to detract from the rights granted to authors in the preceding articles of the Convention.

1413.4 Hence the Delegation of the Netherlands supported the Norwegian proposal to mention in the Conference report that bodies such as the Performing Rights Tribunal were authorized bodies.

1414.1 Mr. STRASCHNOV (Monaco) pointed out that whenever steps had been taken to eradicate the abuses arising from the monopoly positions of authors' associations, whether in the Netherlands, Canada, or Switzerland, the question had been raised as to whether such measures were compatible with the Berne Convention. Consequently, at the Brussels Conference, twelve countries had expressly reserved the right to take measures of that kind, but that had not prevented legal actions being brought to challenge the legality of the bodies such as those set up in the United Kingdom and the Federal Republic of Germany. While it was clear that those bodies were compatible with the Berne Convention in regard to broadcasting, by reason of paragraph (2) of Article 11*bis*, it did not necessarily follow that the same was true regarding public performance.

1414.2 Hence the Delegation of Monaco thought it might be an advantage to give formal recognition to the right of States to prevent abuses in that field. There was no question of giving States the power to issue a compulsory license, but only of enabling them to take measures against the improper practices of cartels. In addition, the inclusion of a provision of this kind in the Convention would have the advantage of making it clear that Articles 85 *et seq.* of the Treaty of Rome which gave that right to the member States of the European Economic Community, did not run counter to the Berne Convention.

1414.3 The Delegation of Monaco preferred the Australian proposal, which expressly reserved the moral rights of authors and hence seemed calculated to give better protection to their rights.

1415. Mr. BENÁRD (Hungary) said that in the opinion of his Delegation the Berne Convention, in its existing form, did not affect domestic legislation against the abuse of rights, particularly anti-trust laws. Consequently, there was no need to alter the Convention in that respect.

1416. Mr. SPAIĆ (Yugoslavia) favored the retention of the existing text of Article 17 of the Convention. In his view, it was undesirable to establish a fixed framework for measures which might be taken to check the improper practices of monopolies, practices which varied from country to country according to the prevailing social conditions, particularly as States were already entirely free to intervene in case of abuse.

1417.1 Mr. WALLACE (United Kingdom) emphasized that the proposal contained in document S/171 was in no way an attack on collecting societies, which were both useful and necessary. His Delegation's move in introducing the proposal derived from the proceedings at Brussels, where the United Kingdom and other countries had entered a reservation on the right in question. Under the Stockholm text, however, it was proposed that no more reservations should be allowed, so it was essential for the United Kingdom to ascertain by the present method whether its Performing Rights Tribunal was permitted by the Convention. It seemed generally agreed that such was the case; if so, it was illogical not to make that clear in the text of the Convention itself.

1417.2 The exact scope and wording of the proposed change was a delicate matter, however, and his Delegation was therefore prepared to withdraw its proposal provided that the general report made it abundantly clear that all Union countries had the freedom to legislate in the way that the United Kingdom sought in its proposal; that such legislation was not contrary to the Convention; and that the Conference was unanimous on those two points.

1418. Mr. KOUTIKOV (Bulgaria) thought that Article 17, in its present form, was based on a rule which had become traditional in international affairs. The two proposals which were now before the Main Committee would have the effect of completely changing the overall pattern of Article 17. His Delegation would therefore prefer to retain the existing wording.

1419.1 Mr. IOANNOU (Greece) entirely agreed with the Delegations of France and Italy, since the provisions in question would be out of place in the Convention. Should the Main Committee decide otherwise, the Delegation of Greece would prefer the United Kingdom proposal.

1419.2 The best solution would perhaps be to follow up the last suggestion made by the Delegation of the United Kingdom and to state expressly in the Conference report that States were entitled to take the measures in question.

1420. Mr. DITTRICH (Austria) said that the Austrian Government had never regarded laws on restrictive business practices or on collecting societies as contrary to the Convention. The amendments proposed by the Delegation of the United Kingdom and the Delegation of Australia were therefore superfluous. The Delegation of Austria supported the suggestion that the question should be dealt with in the general report.

1421.1 The CHAIRMAN said that as long ago as the 1920s the International Bureau had considered the problem and had decided that it was a question of public order, a field in which States were entirely free to take such measures as they deemed necessary to check improper practices. It seemed to him that the two proposals which had been submitted to the Main Committee went too far, particularly that of Australia, which spoke of "preventing abuses," and it might well be that some legislations, considering that authors' royalties were excessive, might regard them as abuses and might ultimately introduce compulsory licenses.

1421.2 Hence the last suggestion of the Delegation of the United Kingdom seemed to him to offer the wisest solution. The Main Committee could decide not to include a special provision in the Convention but to state very clearly in the Conference report—and not merely in the minutes, as had been done at Brussels—that those taking part in the Conference had unanimously agreed that questions of public order were reserved to national legislations and that countries of the Union were entitled to take measures to check the improper practices of monopolies. In those circumstances, would the Delegations of the United Kingdom and Australia be prepared to withdraw their proposals?

1422.1 Mr. KING (Australia) said that the Delegation of Australia was prepared to withdraw its proposal on the same conditions as those stipulated by the Delegation of the United Kingdom, namely on the understanding that the freedom to legislate which the Australian Government would wish to see recognized in the general report extended to the freedom to legislate which it was seeking with its own proposal.

1422.2 His Delegation's proposal aimed at dealing with the peculiarly Australian situation of individuals and corporations possessing monopoly rights over a substantial part of the field represented by a particular class of work. In many other countries those rights would be exercised by collecting societies. Although Australia's concern was with monopolies, the idea of a monopoly should not be too narrowly construed. The terms of the United Kingdom proposal were not broad enough to cover the legislation which the Australian Government intended to introduce. He asked for his explanation of the Australian point of view to be borne in mind if his Delegation's proposal was withdrawn and the matter was dealt with in the general report.

1423. The CHAIRMAN said that there was no question of reproducing the text of the United Kingdom proposal verbatim in the report, but only of adding a sentence specifying that questions of public order were reserved to national legislations and that countries were therefore entitled to take steps to check the abuses of monopolies. The final drafting of that sentence would, of course, be entrusted to the Drafting Committee. He therefore invited the Delegations of the United Kingdom and Australia to withdraw their proposals.

1424. Mr. WALLACE (United Kingdom) said that the Chairman's formula was acceptable. Accordingly, he withdrew his Delegation's proposal.

1425. Mr. KING (Australia) said that he too accepted the Chairman's formula and withdrew his Delegation's proposal.

1426. *There being no opposition, the Chairman's proposal was accepted.*

1427. Mr. CIAMPI (Italy) said his Delegation had preferred to abstain on this proposal.

LIMITATION ON EXHIBITION OF WORKS (continued)

1428.1 The CHAIRMAN said that the Main Committee had before it two proposals for Article 17, one from the United Kingdom (S/171), seeking to delete the words "to permit," and the other from Italy (S/226), seeking to delete the words "or regulation."

1428.2 The purpose of the United Kingdom proposal was clearly not to restrict the rights of authors but to eliminate the last vestiges of censorship.

1429. *The United Kingdom proposal (S/171) was adopted unanimously, apart from one abstention.*

1430. The CHAIRMAN invited the Delegation of Italy to introduce its draft amendment.

1431.1 Mr. CIAMPI (Italy) said that the Italian proposal followed logically from the United Kingdom amendment which had just been accepted. Its purpose was to ensure that no obstacles should be placed in the way of the free circulation of artistic and literary works by administrative or police action. It was true that Article 17 mentioned "legislation" alongside "regulation," but there could be no doubt that laws voted by a Parliament provided much greater safeguards than regulations which could be adopted by administrative bodies.

1431.2 In addition, the Delegation of Italy considered that it would be advisable to ask the Drafting Committee to replace the phrase "Government of each country of the Union" by the word "country" or "State," because it was not in fact the Government—the Executive—which could take legislative measures.

1432. Mr. KOUTIKOV (Bulgaria) said that Article 17 as it appeared in the Program of the Conference recognized the realities of the legal situation in all countries by authorizing the countries of the Union to adopt both legislative and administrative measures. Hence the Delegation of Bulgaria was in favor of retaining the text as it was drafted in the Program, but asking the Drafting Committee to replace the phrase "Government of each country" by the word "country," in accordance with the suggestion of the Delegation of Italy.

1433. Mr. GAE (India) said his Delegation drew a distinction between legislation enacted by a country's legislature and regulations issued by its executive authorities, to which the Delegate of Bulgaria had drawn attention. Since it was necessary to provide for both types of instrument, not only should the proposed deletion not be made but the opening words of the Article should be altered to read: "The provisions of the Convention cannot prejudice the rights of each country of the Union..."

1434. Mr. H'SSAINE (Morocco) said he was in favor of keeping the existing text of Article 17, which was in line with Moroccan legislation in this field.

1435. Mr. BENÁRD (Hungary) said his Delegation considered that the terms "legislation" and "regulation," as used in Article 17, were both based on what was known as a country's legislation. He therefore suggested altering the words "by legislation or regulation" to read "in accordance with its legislation."

1436. Mr. LUCAS (Niger) supported the Hungarian proposal.

1437. Mr. LAKHDAR (Tunisia) thought that the present text of Article 17 could be retained, subject to adoption of the second suggestion put forward by the Delegation of Italy.

1438. The CHAIRMAN said the important thing was that any administrative measures or regulations should be based on national legislation. If there was agreement on that point, the question could be referred to the Drafting Committee.

1439. *It was so decided.*

AVAILABILITY OF AUTHENTIC GRAPHIC COPIES OF LITERARY, MUSICAL OR DRAMATICO-MUSICAL WORKS (S/223)

1440. The CHAIRMAN invited the Delegate of Israel to introduce his proposal (S/223).

1441.1 Mr. ELMAN (Israel) said that the proposal contained in document S/223 was modest in scope and was merely intended to give effect to copyright in its fullest sense. The special circumstances which had led his Delegation to submit its proposal were that publishers of musical compositions frequently refused to sell outright the orchestral and other scores of orchestral works which conductors and musicians needed for performances, and instead insisted on hiring them out, often at a high fee. That happened with works both under and out of copyright. He quoted two specific examples of the practice to which he was referring, one concerning a distinguished living composer and the other a famous nineteenth-century composer. In addition to the high fees, hiring contracts often stipulated restrictive conditions such as prohibitions on the copying, reproduction or lending of the hired score; furthermore, in cases where the work was to be performed on more than one occasion at short intervals, they frequently imposed the obligation to return the score during the intervening periods. Hiring fees were sometimes successfully demanded for a recording of a work in a country other than that in which the publisher possessed the right to copy the work, despite the fact that the recording in question was made from a different copy of the work.

1441.2 The undesirable effects of such restrictive practices were numerous. Firstly, there was a *de facto* extension of copyright terms of protection; the right of reproduction was subject to contract and no longer to copyright. Secondly, the composer was often excluded from sharing in the hiring fees and only received his proportion of the performance fee. Thirdly, the excessive hiring fees discouraged the performance of many works because orchestras could not afford to play them. Fourthly, conductors were hampered by having to hire unannotated scores and then annotate them instead of being able to use their own annotated scores.

1441.3 Behind the aim of protecting the author should lie that of protecting the public, which should have easy access to musical works. The proposal in document S/223 was a modest step in that direction, and merely aimed at allowing countries to legislate so as to compel music publishers to publish freely. He realized that it might be necessary for his Delegation to withdraw its proposal and be content with a reference to the matter in the general report.

1442. The CHAIRMAN pointed out that the proposal of the Delegation of Israel was similar to an Austrian proposal (S/147) discussion of which had been deferred so that the question could be studied more thoroughly. The Main Committee might decide that the Israeli proposal should form the basis for discussion on that question, as it had the advantage, by comparison with the Austrian proposal, of dealing only with musical and dramatico-musical works.

1443. Mr. ELMAN (Israel) agreed to the Chairman's suggestion and withdrew his Delegation's proposal.

1444. *The Chairman's proposal was adopted.*

ARTICLES 18 TO 20

1445. *Articles 18 to 20 were adopted unchanged.*

PREAMBLE TO THE CONVENTION (S/210)

1446. The CHAIRMAN drew attention to a Brazilian proposal (S/210) to amend the Preamble to the Convention.

1447.1 Mr. CAMARGO (Brazil) said that there were three basic reasons for accepting the principle of legal protection of intellectual property: the mind had no frontiers, intellectual creation was not directed towards reward, and it was the fruit of individual effort.

1447.2 The draft submitted by the Delegation of Brazil had the advantage of avoiding long enumerations, including future forms of intellectual creation, of concentrating in one place provisions which had previously been scattered through the Convention, and of making the "production of the mind"—the intellectual production, including the process of creation—the object of protection instead of the completed work.

1448. Mr. STRASCHNOV (Monaco) said he could not accept the Brazilian proposal which, in his view, was too vague and did not precisely reflect the purpose and nature of the Convention. The Delegation of Monaco would prefer to keep to the existing text.

1449. *The Brazilian proposal was rejected with one dissenting vote and 16 abstentions.*

WORKS FOR HIRE (S/196)

1450. The CHAIRMAN drew attention to a Hungarian proposal (S/196) to include in the Convention a new clause, the position of which still had to be determined.

1451. Mr. KOUTIKOV (Bulgaria) emphasized the great importance of the problem raised by the Hungarian proposal. As there was not sufficient time to study the question in depth, he suggested that the Main Committee should revert to it at a later meeting.

1452. Mr. TIMÁR (Hungary) said that copyright problems connected with works of the kind referred to in document S/196 had increased in importance in recent years. Many Union countries had already protected authors in that respect and it was time for the Convention to do likewise. The Hungarian proposal represented a moderate step which would make a real contribution to the protection of authors.

1453.1 Mr. STRASCHNOV (Monaco) said he fully appreciated the importance of the question raised in the Hungarian proposal. But the proposal was based on a *petitio principii*, namely the assumption that a work created by an author on commission belonged to the employer or the person commissioning the work and could be exploited by him. That was a conclusion drawn from a principle which did not appear in the Convention. Hence the Delegation of Monaco could not support the Hungarian proposal.

1453.2 In regard to the question of whether the right of exploitation could belong to the employer, the question had been studied by the Committee of Governmental Experts in 1965, and that Committee had decided that such a concept did not run counter to the Convention and that the State was therefore entitled to grant the employer the right to exploit the work. The Main Committee could perhaps recall that decision in its report.

1454. The CHAIRMAN said that, although the idea behind the Hungarian proposal was excellent, a provision of that nature could not easily be introduced into the Convention. Under Anglo-Saxon law the copyright holder was the employer in the case of a work created by an employee, whereas under German law the assignment of copyright was always restricted by the purpose of the contract drawn up between employee and employer. Finally, the mention of a "written stipulation" was liable to cause problems for those countries which recognized the validity of verbal contracts.

1455. Mr. CIAMPI (Italy) said that the idea behind the Hungarian proposal was an admirable one, which was at the present time being carefully studied in Italy. It was, however, a general problem which lay outside the field of copyright. Hence the Delegation of Italy considered that the idea should be mentioned in the report of the Committee but that for the moment no new provisions should be included in the Convention.

1456. The CHAIRMAN asked the Delegation of Hungary whether it would agree that the Committee should merely mention the idea in the report.

1457. Mr. TIMÁR (Hungary) said that, on that understanding, he withdrew his Delegation's proposal.

1458. *It was decided that the Main Committee should mention the Hungarian proposal in its report.*

The meeting rose at 12:15 p.m.

TWENTIETH MEETING

Thursday, June 29, 1967, at 2:30 p.m.

WORKS OF FOLKLORE (continued) (S/212)

1459. The CHAIRMAN invited Mr. Strnad to introduce the Czechoslovak proposal concerning works of folklore (S/212).

1460.1 Mr. STRNAD (Czechoslovakia) began by pointing out that the Working Group on folklore was to meet after the meeting of the Main Committee, and that a definitive report on the question could not be submitted until after that meeting. The draft prepared by the Delegation of Czechoslovakia could be added as paragraph (4) of Article 15 of the Berne Convention.

1460.2 Many people felt it desirable to protect folklore, which was a cultural heritage of a large number of developing countries. But any provisions which might be adopted on that subject must be in harmony with the Berne Convention. This involved finding out what features were common to works of folklore and to artistic works protected by the Convention. Works of folklore did not form a separate category of artistic creation which was not covered by the Convention, but they had one characteristic feature; they were anonymous works with no publisher who could represent the author, so that the provisions of Article 15(2) could not apply to them. Hence some institution, corporate body or individual would have to be designated to protect the rights of the authors of such works.

1460.3 As in the case of anonymous and pseudonymous works, the difficulty was to decide who was the author, and this had to be a matter of presumption, as the Delegation of the United Kingdom had pointed out during the examination of Article 7(4) of the Convention.

1460.4 If the provisions to cover folklore were to be on the same lines as those contained in the national legislations of developed countries in regard to the protection of the rights of persons who were unable to look after their interests, the Delegation of Czechoslovakia could be accused of trying to make the Convention fulfil a function which belonged to national legislations; but it should be noted that works of folklore were not generally published in their country of origin; hence the Czechoslovak draft suggested that it should be a matter for national legislation in the country of origin to designate the authority to protect the author's rights. In his opinion, that was the most which could be done to protect folklore within the framework of the Berne Convention.

1461. Mr. STRASCHNOV (Monaco) said that, after listening to the statement of the Delegate of Czechoslovakia, he feared that the proposed system would encourage the growth of a crop of national authorities which would collect royalties but would have no idea what to do with them.

1462. The CHAIRMAN said it would be the task of the appointed authorities to protect the interests of the authors of works of folklore in all the countries of the Union, so that the system would not produce a crop of national authorities.

1463. Mr. STRNAD (Czechoslovakia) said the Chairman's interpretation was quite correct.

1464. Mr. H'SSAINE (Morocco) welcomed the Czechoslovak proposal, as works of folklore were not protected in his country. The Moroccan copyright office, which had been set up in 1965, would be able to collect the royalties on works of folklore and there would be no difficulty in distributing them, in view of the existing agreements between copyright societies.

1465. Mr. ROHMER (France) felt it was essential to begin by settling the question of definition. Folklore was a common fund of age-old anonymous works, and if it was exploited by particular authors he could see no reason why they should be described as the authors of works of folklore; it appeared from the draft text that they were contemporary authors, and hence stood on the same footing as other authors. As he understood the position, certain communities wished to lay claim to rights in their national folklore, and any author making use of this anonymous common fund would have to share his royalties with the authority acting as folklore trustees. He also wondered whether the Czechoslovak draft sought to protect folklore against authors who used it. He hoped that the Chairman of the Working Group would make his intentions clear.

1466. Mr. STRNAD (Czechoslovakia) said there was no reason to apply different rules to works of folklore and to works protected by the Berne Convention. A work which had fallen into the public domain, whether folklore or not, could be used by anyone, but a recent work by an unknown author had to be protected; any adaptation or arrangement of such a work required the approval of the author, and as the author was unknown, the work would have to be protected by an organization appointed at national level but vested with authority at the international level.

1467. Mr. BENÁRD (Hungary) said that his Delegation considered that the proposal submitted by the Delegation of Czechoslovakia (S/212) for the protection of the authors of folklore works was fundamentally sound and would support it.

1468. Mr. SPAIĆ (Yugoslavia) thought the Czechoslovak proposal would provide a good basis for studying the protection of works of folklore. As it was created by the people, and not by particular authors, folklore required a special régime, but in that case it should be borne in mind that the protection should apply to the exploitation of the works rather than to the works themselves. It might perhaps be advisable to introduce a special article into the Berne Convention.

1469. Mr. IOANNOU (Greece) said that in the field under consideration a distinction could be made between works derived directly from tradition and works based on folklore. In regard to the first category, the difficulty arose from the provisions of Article 7(3) according to which countries were not required to protect anonymous or pseudonymous works when it was reasonable to presume that their author had been dead for fifty years. It might perhaps be possible to mention works of folklore in Article 2 and insert in Article 15 a clause

on the lines of the Czechoslovak draft. Finally, he would emphasize that protection should be based on the integrity of the work and on the date of its publication.

1470. Mr. BOUKOULOU (Congo (Brazzaville)) disagreed with the view of the Delegate of Czechoslovakia that the term "folklore" applied only to anonymous works. Folklore could be the product of a tribe, a family or even of a particular person in that family; the definition of the term varied from country to country. Folklore could also be regarded as including a work which had been forgotten but which might have been the exclusive property of a family or a group.

1471. Mr. ROHMER (France) said that one also found the works of contemporary authors in folklore, and he wondered why they should be so described merely because they were anonymous, when there were anonymous authors of works outside the field of folklore to whom the provisions of the Convention applied. He had been under the impression that the object in view was to prevent the improper exploitation of a country's heritage, which he regarded as justifiable. Finally, he wondered whether the authors of works of folklore who were not anonymous would be subjected to the common regulations.

1472. Mr. WALLACE (United Kingdom) said that the United Kingdom had been successfully invaded a number of times and had also received settlers from all over the world. Its culture was based on what had been brought to it by those invaders and settlers. It could not, therefore, consider the question to whom, or to which country, folklore belonged. For that reason, and for the reasons given by the Delegate of France, it would be impossible to insert in United Kingdom law any provisions relating to folklore. The Delegation of the United Kingdom would not, however, object to any country, which thought it could identify its own folklore, charging for the exploitation of that folklore on its own territory. His Delegation was not in favor of Czechoslovakia's proposal which, as drafted, was not clear. It would, however, be prepared to consider a text which left the protection of folklore optional in so far as member countries were concerned and related only to its exploitation in the country of origin of the folklore itself.

1473. Mr. MULENDA (Congo (Kinshasa)) said he agreed with the distinction which had been made by some delegations between works based on folklore which had fallen into the public domain and folklore creations in the proper sense of the term. He regretted that African countries had been pillaged, that their art treasures had been removed to foreign museums, and that people came to those countries to make recordings for which they subsequently reserved the exclusive rights of exploitation. His Delegation hoped that the difficulties of the developing countries would be recognized and that it would be possible to find a solution acceptable to all.

1474. Mr. LUCAS (Niger) asked to what periods the term "folklore" was intended to apply. If, as some speakers had suggested, it was to be applied to works of great antiquity, no problem arose. But in Africa folklore was equally a contemporary phenomenon, involving the creation of new works which could not easily be fixed in material form. The only conceivable form of fixation was that of recordings, which were often made by foreigners, and it was therefore understandable that the young countries were anxious to prevent an exploitation of their works of folklore which was carried out at their expense.

1475. Mr. CIAMPI (Italy) said he had no objection in principle to a study of the question of folklore, but he wished to know whether the documents submitted by the Delegation of Czechoslovakia also sought to protect the author's right, granted by Article 6*bis*, to claim the authorship of a work. If that was the case, would the competent authority be the same as the one for which provision was made in Article 6*bis*(2)?

1476. Mr. GAE (India) said that folklore works resulted from the creative efforts of a number of unidentified authors indigenous in a certain area. In most cases they were unpublished. According to paragraph (2) of Article 15, the publisher whose name appeared on an anonymous work would be regarded, in the absence of proof to the contrary, as representing the author of that work. His Delegation considered, therefore, that in the case of folklore, where there was no publisher, countries should be authorized to enact legislation placing folklore works under the responsibility of the State. A new paragraph drafted as suggested by the Delegation of Czechoslovakia should be added to Article 15 and the term of protection should be 50 years from the date of publication of the work.

1477. Mr. KING (Australia) said that some of the previous speakers seemed to believe that works incorporating the pattern of a particular cultural group belonged to that group in the sense that only members of that group were entitled to profit from their reproduction. The Delegate of the United Kingdom had pointed out the great difficulty of defining a cultural pattern and had said that his Delegation would not object to countries protecting what they regarded as their unique folklore. It was possible, however, that what one country regarded as a work of folklore would not be so regarded by another country. It would seem necessary, therefore, to apply the rule that a work of folklore must be identifiable by a reasonable person as being the work of a particular cultural group. The question was so complicated that he doubted whether the Working Group on folklore would be able, during the current session, to produce a text acceptable to all countries represented at the Conference.

1478.1 The CHAIRMAN pointed out that the first problem which arose was that of finding an international definition of folklore, and the second arose from the fact that under the Berne system, protection could only be given to works which had not yet fallen into the public domain. To overcome those difficulties he had drafted two proposals for the Main Committee.

1478.2 The first proposal which was based on the document S/212 submitted by the Delegation of Czechoslovakia sought to avoid the use of the term "folklore." It assumed that two conditions were fulfilled: firstly, that the unpublished work had an unknown author and, secondly, that it could reasonably be presumed that the author was or had been a national of a particular country of the Union. In the case of a work of folklore it would be for the legislation of that country to designate the competent authority to protect the rights of the author of the work of folklore in all the countries of the Union. That first proposal, in which the term "folklore" was not mentioned, but which would apply to the majority of works of folklore, would make it possible to protect the rights of authors in the countries of the Union.

1478.3 In regard to the question of whether a work did or did not belong to the public domain, it should be remembered that in principle the onus of proving that a work was still protected lay with the person taking legal action; but in the case of works of folklore it might be possible to put the onus of proof the other way around, i.e., assume that a work had not fallen into the public domain unless the contrary could be proved; that solution might meet the wishes of the developing countries.

1478.4 His second proposal took account of the views expressed by the Delegate of the United Kingdom. It was to introduce a rule which would protect folklore on a country's national territory by stipulating, for instance, that national legislations could contain whatever provisions were required to give such protection. He thought that the two proposals might serve as a basis for discussion in the Working Group on folklore.

1479. Mr. BERGSTRÖM (Sweden) asked whether the Chairman, in his reference to unpublished works, was using the word "published" in the sense of paragraph (5) of Article 4, or paragraph (3) of Article 7.

1480. The CHAIRMAN explained that he had used the phrase "unpublished works" in order that the designated authority should be presumed to have the power to protect the works in question because, where published works were concerned, it was the publisher who would be regarded as representing the author, in accordance with the provisions of Article 15(2).

1481. Mr. STRNAD (Czechoslovakia) agreed that the proposals put forward by the Chairman took account of the criticisms levelled against the Czechoslovak draft (S/212). He considered them fully acceptable and he would submit them to the Working Group on folklore.

1482. Mr. WALLACE (United Kingdom) said that he hoped that it would be possible, before the Working Group met, to have the texts of the Chairman's proposals in writing. So far as he had understood the proposals, it did not seem that his Delegation would be able to accept the first proposal. One difficulty was that although there would be many works which were in fact in the public domain it would be impossible to show that they were. So far as he could judge without a written text, the formulation of the second proposal would be acceptable to the Delegation of the United Kingdom.

1483. Mr. STRNAD (Czechoslovakia) pointed out that the Working Group on folklore was due to meet in about twenty minutes' time. It would therefore be impossible to reproduce and distribute the Chairman's proposals before the meeting.

1484. The CHAIRMAN pointed out to Mr. Wallace that the reversal of the onus of proof, to which the Delegation of the United Kingdom objected, was only one aspect of his proposal.

The meeting rose at 4:40 p.m.

TWENTY-FIRST MEETING

Monday, July 3, 1967, at 11 a.m

ADDITIONAL PROTOCOL CONCERNING THE PROTECTION OF THE WORKS OF STATELESS PERSONS AND REFUGEES (S/1, ANNEX III)

1485.1 The CHAIRMAN invited the Main Committee to vote on the draft of the additional Protocol concerning the protection of the works of stateless persons and refugees contained in the Program of the Conference (S/1, Annex III).

1485.2 He pointed out that the Conference had accepted the principle that any person habitually resident in one of the countries of the Union should be treated as a national of that country. Hence the draft additional Protocol now served no purpose. He therefore suggested that the Main Committee should take no action in regard to the draft additional Protocol.

1486. *The Main Committee decided unanimously to take no action in regard to the draft additional Protocol concerning the protection of the works of stateless persons and refugees.*

ADDITIONAL PROTOCOL TO THE BERNE CONVENTION CONCERNING THE APPLICATION OF THE CONVENTION TO THE WORKS OF CERTAIN INTERNATIONAL ORGANIZATIONS (S/1, ANNEX IV) (S/237)

1487.1 The CHAIRMAN said that in the light of conversations which he had had with the observers of some international organizations, it seemed to him that the draft additional Protocol to the Berne Convention concerning the application of the Convention to the works of certain international organizations (S/1, Annex IV) was liable to be misconstrued. Some observers of international organizations were under the impression that, under the terms of the additional Protocol, those organizations would become the owners of the copyright. That was not the case. The only point at issue was whether works emanating from international organizations could be protected under the Convention. Such works were naturally protected when first published in a country of the Union, or when their author was a national of a country of the Union, but it still had to be decided whether the benefit of protection could be extended to the works of international organizations, published as such.

1487.2 The question raised several legal difficulties. In particular, there was the question of what was meant by "country of origin" when the work concerned was published by the United Nations, in the United States, for instance.

1487.3 The CHAIRMAN invited the members of the Main Committee to comment on the substance of the problem.

1488. Mr. WALLACE (United Kingdom) said he considered the additional Protocol to be unnecessary since, apart from a few exceptions, works of international organizations would already be protected by virtue of the author's nationality or of the place of publication. He also agreed with the Chairman that the Protocol might give rise to misunderstandings: it was not intended to grant copyright to international organizations but merely to cover certain cases, which in his view would be relatively minor, which would otherwise be unprotected. Most important of all, however, was the danger that international organizations might come to regard being listed in the Protocol as a matter of prestige, which was something to be avoided in connection with the Convention. If the Protocol was adopted as drafted, there would undoubtedly be claims for addition to any list that might be established, and Governments would be faced with the bleak prospect of issuing orders to protect the publications of international organizations for no useful purpose, which would be a waste of time for all concerned. For those reasons, he was opposed in principle to the additional Protocol.

1489.1 Mr. ROHMER (France) said that his Delegation would certainly not have taken the initiative in submitting the draft additional Protocol, because the question was not an urgent one. If, however, the Conference considered that an additional Protocol of this nature would serve a useful purpose, the Delegation of France would accept it.

1489.2 As the CHAIRMAN had pointed out, the question at issue was not whether the benefit of copyright could be extended to international organizations but whether protection should be given to certain works emanating from those organizations. If the text proposed in the Program of the Conference was to be adopted, it

would have to be made more explicit, in order to avoid misunderstandings, and the beneficiary organizations would have to be listed. Hence the following words would have to be added at the end of the draft: "... and by the International Court of Justice, by the IAEA and by those international intergovernmental organizations which have their headquarters in a country of the Union or in which a majority of members are countries of the Union."

1490. Mr. MASOUYÉ (BIRPI) expressed regret that the Delegation of France had not submitted its proposal in writing, in conformity with the Rules of Procedure.

1491. Mr. VAN ISACKER (Belgium) said that the draft additional Protocol, as it stood, was restrictive, because no mention was made of the publications of the European Communities, for example. It was of prime importance to the European Communities that they should benefit by any protection which might be granted to the organizations of the United Nations system; it was for that reason that the Delegations of Luxembourg, the Netherlands and Belgium had submitted an amendment which would extend the scope of the Protocol (S/237). If, however, the Conference should decide not to adopt the additional Protocol, the authors of the amendment would not press their proposal.

1492. The CHAIRMAN said that the Main Committee had before it a United Kingdom proposal to take no action in regard to the additional Protocol on the grounds that the works of the international organizations already enjoyed the protection provided under the Universal Convention.

1493. Mr. WALLACE (United Kingdom) said that since the Main Committee was to vote on the issue, he considered it desirable to make two further observations. First, he failed to understand why international organizations should need to protect works for which, to the best of his knowledge, they sought the widest possible publicity. Second, it had already been agreed that the protection granted to official texts of an administrative or legal nature should be determined by each Union country under its national legislation; it was therefore likely that in any event the works in question would not be protected.

1494.1 The CHAIRMAN pointed out that the works to which the draft additional Protocol applied were not the official publications of the international organizations, for which no question of protection arose, but other works such as scientific reports, for instance.

1494.2 He invited the Main Committee to vote on the United Kingdom proposal to take no action in regard to the draft additional Protocol concerning the application of the Convention to the works of international organizations.

1495. *The United Kingdom proposal was adopted by 14 votes to 7 with 13 abstentions.*

PROPOSAL OF THE WORKING GROUP ON REPRODUCTION OF LECTURES, ADDRESSES AND SIMILAR WORKS (S/239)

1496.1 Mr. MASOUYÉ (BIRPI) submitted the recommendations of the Working Group on Article 2*bis*(2) (S/239), as Mr. Cavin, of the Delegation of Switzerland the Chairman of the Group, had had to leave Stockholm.

1496.2 The Working Group had had before it a proposal by the Delegations of Bulgaria, Poland and Czechoslovakia (S/79) to extend to radio broadcasting the right of reproduction which was restricted to the press under the terms of the Brussels text at present in force. The Working Group had also had before it a proposal by the Delegation of the Federal Republic of Germany (S/92) which sought to restrict to current affairs the right of reproduction granted to broadcasting and distribution by wire.

1496.3 The Working Group had decided that the press and broadcasting should be placed on the same footing in Article 2*bis*(2). It had also considered that the scope of the provision should be restricted by deleting "sermons" in that context. Following the same line of thought, the Working Group had thought it desirable to stipulate that the "lectures, addresses and other works of the same nature" must have been given in public if they were to benefit by that provision.

1496.4 In regard to the reference to news, which several members of the Working Group, taking their cue from the proposal of the Federal Republic of Germany, had considered indispensable, the Group had decided that it was not always the purpose of the lecture or address which would justify its classification as news, but merely the fact that it was publicized by the press or broadcasting. A broadcast lecture on Molière could be described as news even though the subject could not strictly be so described. Hence the Working Group had thought it better not to speak of news but to refer to the "informatory purpose."

1497.1 The CHAIRMAN said he regarded the Working Group's proposal as reasonable, seeing that the powers reserved to the countries of the Union to legislate in regard to the right of reproduction by the press of lectures, addresses, etc., were being extended to broadcasting.

1497.2 He wondered whether it might not be advisable to extend those powers which, under the Working Group's proposals, were limited to lectures, etc., given in public, to works of the same nature given in private.

1498.1 Mr. CIAMPI (Italy) said his Delegation was in a position to support the Working Group's proposal (S/239) as "sermons" were to be excluded from the scope of the clause.

1498.2 But the Working Group's draft referred only to paragraph (1) of Article 11*bis* of the Convention, and the Delegation of Italy wondered whether an express reference might not also be made in the same clause to paragraph (2) of Article 11*bis*.

1499.1 Mr. STRASCHNOV (Monaco) explained the lines along which the Working Group, of which he had been a member, had worked in drafting its proposals.

1499.2 The Group's basic aim had been to put the press and broadcasting on a footing of equality, as the members of the Main Committee had apparently wished, in view of the fact that radio news services were now at least as important as the press.

1499.3 It had also been necessary to determine the régime to be applied to the utilization of the particular works covered by this clause, not only in regard to the most important media, but also in regard to their secondary use (communication in cafés, by loudspeaker, etc.). Article 11*bis*(1) defined "communication to the public." It seemed desirable to bring within the scope of the new arrangement the various possible uses such as were envisaged in item (iii) of Article 11*bis*(1).

1499.4 But Article 11*bis*(2) was based on a different principle, namely that of equitable remuneration. Hence, if reference was also to be made to Article 11*bis*(2), as the Delegation of Italy proposed, the balance between press and broadcasting in Article 2*bis*(2) would again be upset. If national legislation was to authorize the

press to reproduce the works referred to in Article 2*bis* without payment, broadcasting might not enjoy the same privilege. Hence he thought it undesirable to adopt the Italian proposal.

1500. The CHAIRMAN said that he himself thought it might even be undesirable to mention Article 11*bis*(1) in Article 2*bis*(2). As all the members of the Main Committee seemed to be in agreement on the substance of the proposal, the best plan would perhaps be to refer the text to the Drafting Committee for final drafting. The Drafting Committee would decide whether or not Article 11*bis* should be mentioned.

1501.1 Mr. CIAMPI (Italy) said he accepted the Chairman's suggestion.

1501.2 He wished to make it clear, however, that the Delegation of Italy wished to see Article 11*bis*(1) mentioned in Article 2*bis*(2) in order to ensure that the authors of the works referred to in Article 2*bis* would receive an equitable remuneration.

1502. The CHAIRMAN pointed out that that was a different question from the one which was dealt with in the Working Group's proposal, and that it might involve changes to the substance of the Convention. The Delegate of Italy could ask the Main Committee to take a decision on that substantive question.

1503. Mr. CIAMPI (Italy) withdrew his proposal and said he would be satisfied if the minutes of the meeting mentioned the debate on the question.

1504. *The proposal of the Working Group on Article 2*bis*(2) (S/239) was adopted unanimously.*

PROPOSAL OF THE WORKING GROUP ON FOLKLORE (S/240)

1505.1 Mr. STRNAD (Czechoslovakia), speaking as Chairman of the Working Group on folklore, reminded the Main Committee that a first proposal submitted by the Delegation of Czechoslovakia (S/212) had given rise to some objections in that Committee. He had drawn the attention of the Working Group to those objections, and the Group had duly taken account of them in the proposal which it now submitted to the Main Committee (S/240).

1505.2 The Working Group had adopted the principle that a work of folklore was, by definition, the work of an unknown author. Hence the Working Group's proposal did not mention "works of folklore" but works "for which the identity of the author is unknown."

1505.3 The criticism had also been levelled against the Czechoslovak proposal that the definition of the work which was to be protected ought not to be capable of application to already published works, which came within the scope of the provisions of Article 15(2). Hence the provisions of the new Article 15(3) proposed by the Working Group (S/240) referred only to "unpublished" works.

1505.4 The members of the Working Group had also thought it wise to state that full information concerning the national authority designated in each country of the Union to protect the authors of works of folklore should be communicated to all the other countries of the Union. In that way, everyone would know to whom they should apply to seek authority to publish or otherwise use a work of folklore. That was the reason for subparagraph (b) of the draft Article 15(3) (S/240).

1505.5 There had been some differences of opinion in the Working Group on the question of whether an author whose identity was unknown should be given protection at the international level or merely within his own country. The majority of members of the Working Group had favored protection at the international level, but two delegations had reserved the right to put forward their arguments against such protection in a plenary meeting if necessary.

1505.6 In regard to the question as to whether the provisions suggested by the Working Group should continue to apply if the identity of the author was subsequently disclosed, the members of the Working Group had decided that in that case the author should be regarded according to the normal practice of the Berne Convention and the provisions of Article 15(2) should then be applied.

1505.7 The Working Group had also had before it a proposal by the Chairman of the Main Committee on the advisability of requiring proof that the work could or could not be regarded as having fallen into the public domain. After a long exchange of views, the Chairman had withdrawn his proposal, the majority of members of the Working Group having spoken against it.

1506.1 The CHAIRMAN said that a general question arose in that connection, owing to the fact that a work which had fallen into the public domain was no longer protected. In many cases, it was extremely difficult to know whether a work of folklore was still entitled to protection or whether it had already fallen into the public domain. For that reason, he had proposed that a presumption of protection should be mentioned in the new draft provisions. He had withdrawn that proposal, however, because it would have been extremely difficult to insert the appropriate clause into the Convention.

1506.2 The basic point at issue was not whether a work of folklore could enjoy protection in all the countries of the Union, but whether the competent authority designated for that purpose in the country of origin, a developing country for instance, could be authorized to obtain protection for a work of folklore not only in the country of origin but also in all the other countries of the Union.

1506.3 On the whole, he considered that the Working Group's proposal offered advantages not only for the various countries of origin—and particularly for the developing countries, to whom the protection of works of folklore was of particular interest—but also for the users of such works in other countries. As a result of the designation of competent national authorities, the user would know to whom he should apply if he wished to have the existing rights assigned to him.

1507.1 Mr. CURTIS (Australia) said that, despite the apparently procedural character of paragraph (3)(a) as proposed by the Working Group, it seemed to him that the phrase "for which there is every ground to presume that that author is a national of a country of the Union" involved a point of substance, since it could have the effect of conferring certain rights not provided for elsewhere in the Convention. He asked what the intention behind that paragraph was.

1507.2 Further, in the same paragraph, he suggested that the phrase "where the identity of the author cannot be ascertained" be substituted for "for which the identity of the author is unknown" to distinguish the works in question from ordinary anonymous works for the protection of which provision was made elsewhere in the Convention.

1508. The CHAIRMAN pointed out to the Delegate of Australia that the question was purely one of procedure and did not involve any real presumption of nationality. Nor was there any question of requiring complete certainty on that point. A very high degree of probability would suffice. That was why the Working Group proposed to use the phrase: "... for which there is every ground to presume that..." On the basis of that strong presumption it could be taken as proved that "that author is a national of a country of the Union", etc.

1509.1 Mr. ROHMER (France) said that his Delegation, which had taken part in the deliberations of the Working Group, had been broadly in favor of the proposed draft (S/240).

1509.2 The text was clear enough, except on the precise point which had been raised by the Delegate of Australia of the distinction which was to be drawn between an "anonymous" work and a work of which the author was "unknown." The French courts would find it difficult to draw a distinction between a work the author of which was "unknown" and an "anonymous" work. The distinction in French law was essentially a verbal one, and hence it might perhaps be advisable to state in the Main Committee's report that the word "unknown" had been chosen to meet certain precise requirements, and that it referred specifically to the protection of works of folklore, because the word "unknown," according to the proposals of the Working Group, was the only criterion which distinguished works of folklore from other works.

1510. The CHAIRMAN said it had been the feeling of the Working Group that an "anonymous" work was a published work, whereas the work of an "unknown" author was an unpublished one.

1511. Mr. ROHMER (France) said that he had drawn attention to the difficulties of interpretation which the proposed text would undoubtedly create in France for the very reason that, under French law, an "anonymous" work was not necessarily a "published" work.

1512. The CHAIRMAN suggested that, in the circumstances, it would be advisable to include the desired explanations in the Main Committee's report. He suggested that the Delegate of France should get in touch with the Rapporteur for that purpose.

1513. Mr. WALLACE (United Kingdom) said that his Delegation had been among those in the Working Group which had favored the replacement of the words "in countries of the Union" at the end of paragraph (3)(a), by "in the country concerned." Although in no way opposed to the principle of the suggestion before the Main Committee, he was concerned that the matter would inevitably lead to some discussion in his country's Parliament and might create difficulties for his Government in ratifying the Stockholm Act. Since most delegations were prepared to accept the text proposed, he would not insist upon a vote on the issue but would, however, abstain from the vote on paragraph (3) as a whole.

1514. The CHAIRMAN invited the Main Committee to vote on the proposal of the Working Group on folklore (S/240).

1515. *The proposal of the Working Group (S/240) was adopted unanimously, with 6 abstentions.*

The meeting rose at 12:10 p.m.

TWENTY-SECOND MEETING

Monday, July 3, 1967, at 2:35 p.m.

MORAL RIGHTS (continued) (S/232 and S/247)

1516.1 The CHAIRMAN said that there were three possible ways in which the Main Committee could deal with the protection of moral rights: it could retain the existing text, which imposed no obligation on the countries of the Union to extend that protection beyond the death of the author; or it could adopt the new text proposed in the Program of the Conference, which would make it obligatory for the countries of the Union to extend the protection of moral rights until the expiry of the economic rights; finally, it could adopt the idea of an unlimited term of protection, as proposed by the Delegations of Bulgaria (S/89) and Greece (S/183). In addition, as some countries, particularly those employing Anglo-Saxon law, were unable to accept the principle of an unlimited term of protection, several delegations had drafted a compromise proposal (S/232).

1516.2 The question of protecting works after the death of their author had already been discussed at length, and it should be possible for the Main Committee merely to vote for one or other of those principles. If the proposal contained in the Program of the Conference was accepted, the Main Committee might then examine the escape clause set out in document S/232.

1517. Mr. IOANNOU (Greece) considered that the amendment which had been put forward by a group of delegations (S/232) put the question in a new light. In those circumstances, it would be difficult to dissociate the reservations from the question of principle. The Main Committee might therefore wish to agree first of all on the escape clause, so as to make it easier to reach agreement subsequently on the principle of extending the moral rights of authors.

1518.1 The CHAIRMAN disagreed, saying that it would be difficult to study the escape clause without knowing the Main Committee's decision on the subject of the duration of moral rights. The protection of moral rights in perpetuity was undoubtedly a noble idea which was fairly widely accepted in countries with a Latin culture, but it should be borne in mind that a considerable number of countries of the Union, in addition to Australia, Ireland, and the United Kingdom, would be unable to accept it. In the Federal Republic of Germany, for instance, it was considered that, once the economic rights had expired, the protection of moral rights ceased to be a question of private law and came within the scope of public law, because it was a matter which affected the protection of the nation's cultural heritage in the interests of the community as a whole.

1518.2 The Main Committee had to vote, however, on the proposals which were before it. He therefore invited members to vote first of all on the principle of granting moral rights in perpetuity (S/89 and S/183).

1519. *The principle of granting moral rights in perpetuity was rejected by 14 votes to 11 with 5 abstentions.*

1520. Mr. LAKHDAR (Tunisia) said that Tunisian law had decided in favor of protecting moral rights in perpetuity, and his Delegation had therefore supported the Bulgarian proposal (S/89).

1521. The CHAIRMAN wondered whether the Main Committee might not adopt an escape clause worded in more cautious terms than document S/232, since the majority of delegations appeared to be in favor of maintaining the moral rights of the author at least until the expiry of his economic rights. It might, for instance, be stated that the reservation could be invoked solely by those countries in which the legislation in force at the time of ratification or accession did not provide protection for moral rights after the death of the author. That would ensure that countries in which protection was granted for 50 years after the death of the author did not invoke the escape clause to abolish the protection of moral rights.

1522. Mr. GAE (India) drew attention to the amendment to Article 6*bis* proposed by his Delegation in document S/73, and pointed out that it was designed to protect the right of successors in title to exercise authors' moral rights and only to allow organizations to exercise such rights in cases where there were no successors in title.

1523.1 Mr. WALLACE (United Kingdom) said the problem was a difficult one for the Delegation of the United Kingdom as he had pointed out on a previous occasion. He thought the most the United Kingdom Government could do would be to extend the right to claim authorship for a period of 50 years *post mortem auctoris.*

1523.2 The proposal in document S/232 had the advantage of expressing some idea of latitude. The Chairman had made an interesting suggestion as to how the proposal could be amended. The Delegation of the United Kingdom was prepared to accept that suggestion in a spirit of compromise.

1524. Mr. WEINCKE (Denmark) said the Nordic Delegations thought substantial progress would have been achieved had a general agreement been reached as suggested in the Program proposal, but in view of the obstacles to agreement and the need for caution to which the Chairman had referred, they had decided to join with the Delegations of Australia, Ireland and the United Kingdom in sponsoring the proposal in document S/232. They considered, however, that the wording of the proposed text might be improved by the Drafting Committee. Though modest, the proposal represented real progress in that its acceptance would oblige Union countries to provide at least some protection for an author's moral rights after his death. He was glad that the idea that those rights should continue after death seemed to have won recognition.

1525. Mr. CIAMPI (Italy) said he regretted that the Main Committee was unable to adopt the text proposed in the Program of the Conference, which was very modest by comparison with the Brussels text. But in order to avoid unnecessary complications over the escape clause, the Delegation of Italy would be prepared to accept the compromise suggested by the Chairman.

1526.1 Mr. ROHMER (France) stressed the basic difference between the two concepts of moral rights: in certain Nordic countries moral rights could not be dissociated from the person of the author, whereas in countries such as France they were linked to the "social impact" of the work and hence they were entitled to protection even when the economic rights had expired.

1526.2 The proposal put forward in the Program of the Conference was already a compromise between these two apparently irreconcilable points of view. But some delegations now seemed to want to tip the balance still further in favor of their national legislation (S/232). According to the concepts of Anglo-Saxon law, there were obviously grounds for considering that it was difficult to divine the intentions of the authors; but the moral rights accorded to the author did seem to include the right of objecting to any distortion or mutilation of the work which could be easily determined in practice. That was a right which was itself linked to the economic rights. It appeared that agreement could be reached on that point, on the understanding that no reference should be made to moral rights in the most fundamental and broadest sense of the term, namely respect for the author's intentions.

1527.1 Miss KLAVER (Netherlands) said the proposal contained in the Program of the Conference was calculated to lead to an extension of treaty law and her Delegation was therefore prepared to accept it.

1527.2 Her Delegation was aware, however, of the abuses which might result from the application of ill-defined moral rights and of the further obstacles which would be put in the way of the accession of the United States by the adoption of this principle; it would therefore be prepared to support the proposal contained in document S/232, if the text contained in the Program of the Conference was not accepted.

1528. Mr. QUINN (Ireland) said that the question was a difficult one for his Delegation, which did not wish to extend the notion of moral rights in the manner signified by the Program proposal. Although the Delegation of Ireland had agreed to associate itself with the proposal presented in document S/232, it had done so reluctantly. Its preference would be for the retention of the Brussels text.

1529.1 Mr. STRÖMHOLM (Sweden) said he had no intention of joining in the doctrinal dispute which would inevitably result if any attempt was made to define moral rights. But he wished to point out that the question did not arise in the Scandinavian countries, in which moral rights in the strict sense of the term were initially protected until the expiry of the term of protection for economic rights, after which protection was granted in public law to the objectively assessed qualities of the work. The Scandinavian countries had therefore associated themselves with the sponsors of the proposal (S/232) not in order to avoid the complications which might result from a reshaping of the Berne Convention, but in the hope of finding a solution which would be acceptable to those countries in which an extension of protection from moral rights would give rise to almost insurmountable difficulties.

1529.2 The Delegations of the Scandinavian countries would, however, be prepared to accept the formula suggested by the Chairman, which had the advantage of being closer to the text contained in the Program of the Conference.

1530. Mr. BENÁRD (Hungary) said that his country was in favor of the principle of protecting moral rights to the fullest extent possible, but in view of the difficulties facing certain countries the Delegation of Hungary would, in a spirit of compromise, abstain if a vote was taken on the proposal submitted in document S/232, as amended in accordance with the Chairman's suggestion.

1531. Mr. AMARAL (Brazil) said that his Delegation supported the Program proposal.

1532. The CHAIRMAN pointed out that the question was one of vital importance for the future of the Berne Convention. He therefore suggested that the meeting should be suspended so that delegations could consult with each other with a view to preparing a new compromise text.

1533. *It was so decided.*

The meeting was suspended at 3:15 p.m. and resumed at 4:20 p.m.

1534. The CHAIRMAN informed the Committee that some delegations had drafted a new proposal (S/247), with the sole object of facilitating the ratification or accession of

those countries in which the moral rights of authors were not granted complete protection, but without authorizing the other countries to reduce the level of protection prevailing prior to the Stockholm Act.

1535. Mr. DRABIENKO (Poland) suggested that the vote should be deferred to a later meeting so as to enable delegations to give detailed consideration to the new proposal which had been put before them (S/247).

1536. Mr. IOANNOU (Greece) inquired as to the meaning of the words "some of these rights" in the new joint draft (S/247).

1537.1 The CHAIRMAN said he thought that the sponsors of the proposal wanted to give the countries of the Union the right to choose which rights they wished to revoke after the death of the author; that would meet the wishes of the Anglo-Saxon countries and of India.

1537.2 He invited the Main Committee to vote first of all on the Polish proposal to postpone the vote, then on the joint proposal (S/247) and finally on the text contained in the Program of the Conference.

1538. *The proposal to adjourn the vote was rejected by 15 votes to 10 with 5 abstentions.*

1539. *The joint proposal (S/247) was adopted by 22 votes to 3 with 7 abstentions.*

1540. *The text of Article 6*bis*(2), thus amended, was adopted unanimously with 2 abstentions.*

RESERVATIONS (ARTICLE 25*ter*)

1541.1 Mr. DE SANCTIS (Italy), speaking in his capacity as Rapporteur of Main Committee IV, drew attention to the views which Main Committee I had expressed on the subject of the reservations in regard to the right of translation which were provided in Article 25(3). The Main Committee's decision was somewhat ambiguous in view of the fact that the Conference had in fact to choose between three possibilities: to maintain the reservations for those countries which already availed themselves of them; to extend the right of reservation to countries which might accede to the Convention for the first time after the Stockholm Revision Conference; or finally to abolish the right of reservation for all countries of the Union, it being understood that the question of reservations for the developing countries was an entirely separate one.

1541.2 Main Committee I had voted, by an overwhelming majority, for the maintenance of the reservation in regard to translations, but there was some doubt as to whether that decision meant that the right of reservation was maintained solely for those countries which already enjoyed it or whether, on the contrary, it was to be extended to countries acceding to the Convention for the first time. Before Main Committee IV embarked on a consideration of Article 25*ter* of the Convention, it would be advisable to clarify the position of Main Committee I particularly in regard to paragraph (2)(a) of the Article 25*ter* and the meaning which was to be given to words "Any country of the Union...may retain the benefit of the reservation it has previously formulated..."

1542. Mr. MASOUYÉ (BIRPI) pointed out that Main Committee I had been invited to vote on the retention or abolition of the reservation in regard to translations, taking into account the special clauses contained in the Protocol. It would appear that the Main Committee had voted in favor of retaining the reservation not only for those countries which already exercised it, but also for the future in general.

1543.1 Mr. STRASCHNOV (Monaco) said he had pointed out during the discussion on this point that the Brussels text contained two quite distinct provisions in regard to the reservations concerning translations, one applying to countries outside the Union (Article 25) and the other applying to countries which were already members of the Union (Article 27(2)).

1543.2 His Delegation had been under the impression that the discussion in Main Committee I had been concerned with both cases. If that was correct, the decision taken by the Main Committee should be interpreted as meaning that the right of reservation was to be maintained both for member countries of the Union and for non-member countries of the Union which might subsequently accede to the Union.

1544. Mr. DE SANCTIS (Italy) said he reserved the right to revert to the point if the decision of Main Committee I was in fact to be interpreted in the way which had just been suggested.

1545. Mr. WALLACE (United Kingdom) said that he had understood that the decision reached by the Main Committee allowed existing Union countries to retain the benefit of earlier reservations. He had not understood that the Main Committee had in effect approved the idea that new members of the Union—leaving on one side, of course, the developing countries—should be free to make translations after ten years. The Delegation of the United Kingdom was opposed to that idea.

1546. The CHAIRMAN said he thought the Main Committee had in fact voted in favor of granting new members of the Union the right to exercise the reservation in regard to translations. However, in order to avoid any ambiguity, it would be necessary to study the minutes of the meeting more carefully. He therefore suggested that the Main Committee should postpone consideration of the question to a later meeting.

1547. Mr. DE SANCTIS (Italy), said that if Main Committee I had in fact voted for the amendment of Article 25*ter* as it appeared in the Program of the Conference, a just solution might be to allow those countries of the Union which did not benefit by such reservations to apply the principle of reciprocity of protection to works originating in countries which did make use of the reservations.

1548. The CHAIRMAN invited the Delegate of Italy to submit a written proposal on the subject.

The meeting rose at 5 p.m.

TWENTY-THIRD MEETING

Tuesday, July 4, 1967, at 9:30 a.m.

TERM OF PROTECTION: LIMITATIONS (PROPOSAL OF THE SECRETARIAT (S/225))

1549. The CHAIRMAN drew the attention of the Committee to the Secretariat proposal (S/225) which was based on the joint proposal (S/50), and which would have the effect of adding a second sentence to paragraph (6) allowing those countries of the Union which were bound by the Rome Act and which had in their national legislation in force at the time of signature of the Stockholm Act provisions granting a lesser term of protection than those provided for in the preceding paragraphs of Article 7, to maintain those provisions when acceding to or ratifying the Stockholm Act. That was a useful provision because it should enable three countries to ratify the Stockholm Act.

1550. Mr. ROHMER (France) recalled the reasons which had led France to oppose such a provision. Nevertheless, the Delegation of France understood the reasons which prevented some countries from accepting the system of protection for 50 years *post mortem* and it would be satisfied provided that the following phrase could be added to the text: "until the next revision conference which will reconsider the matter."

1551. The CHAIRMAN noted that no delegation supported the French proposal and he invited the Main Committee to vote on the Secretariat suggestion (S/225).

1552. *The Secretariat proposal was adopted unanimously with 11 abstentions.*

TERM OF PROTECTION: EXTENSION (S/205)

1553. The CHAIRMAN said several delegations had requested that the Main Committee should reconsider the proposal of the Delegation of the Federal Republic of Germany (S/205) that the Stockholm Conference should put forward a recommendation. Such a step would be of value, as was shown by the experience of the Federal Republic of Germany. It should be noted that a recommendation of that nature would impose no obligation on any State, and that it would be a good thing to show authors that the trend of the Conference was not entirely towards a reduction in the term of protection.

1554. Mr. DITTRICH (Austria) said that for reasons resulting from World War II, Austria provided in its copyright law for an extension of the term of protection. The Delegation of Austria therefore supported the German proposal (S/205), for which it had voted when the question had first been discussed. The Delegation of Austria suggested that the discussion on the German proposal should be reopened for the reasons given by the Chairman.

1555. Mr. CIAMPI (Italy) fully supported the suggestion that the Main Committee should reconsider the proposal of the Delegation of the Federal Republic of Germany which he entirely supported.

1556. Mr. WALLACE (United Kingdom) said that the proposal concerned a matter upon which it was for the countries concerned to take a decision. His Delegation had abstained in the first vote on it, and would do so again. That abstention should not, however, be interpreted as meaning that the Delegation of the United Kingdom agreed that a considerable amount of BIRPI's time and money should be spent on implementing the proposal.

1557. The CHAIRMAN invited the Main Committee to vote on whether the proposal of the Delegation of the Federal Republic of Germany (S/205) should be reconsidered, as suggested by the Delegation of Austria.

1558. *The required majority of two-thirds having been attained, it was so decided.*

1559. The CHAIRMAN invited further discussion of the proposal contained in document S/205.

1560. Mr. STANESCU (Rumania) said his Delegation had voted against the proposal in the first vote, but would abstain in the second vote, because the point at issue was that of a special arrangement between the countries concerned.

1561. The CHAIRMAN invited the Main Committee to vote on the proposal of the Delegation of the Federal Republic of Germany (S/205).

1562. *The proposal was adopted by 9 votes to 2 with 21 abstentions.*

1563. Mr. MASOUYÉ (BIRPI), replying to the Delegate of the United Kingdom, pointed out that the appropriations for which provision was made in the budget were submitted to the competent authorities before they took effect, and thus member States could express their views.

EXCEPTIONS TO TRANSLATION RIGHTS: REPORT OF DRAFTING COMMITTEE (S/248)

1564. The CHAIRMAN invited discussion on the report of the Drafting Committee concerning the right of translation (S/248), which dealt with exceptions to the right of translation.

1565.1 Mr. WALLACE (United Kingdom), speaking as Chairman of the Drafting Committee which had prepared the report regarding the right of translation (S/248), said that the Drafting Committee had decided that there could be little doubt that the exceptions introduced in Articles 2*bis*, 9(3), 10(1) and 10(2) for the right of reproduction should also apply to the right of translation.

1565.2 When considering the text proposed for Article 9(2) in the Program of the Conference, the Drafting Committee had discussed the question whether, if photocopies of a work were made and issued, it would be right that photocopies of a translation of that work should also be made and issued without contact with the author of the original. For instance if an article were to appear in a newspaper and he himself were to write a translation for his personal use, then there would probably be no objection; but if a large organization, possibly a business firm, were to make a translation of an article without contacting its author and issue photocopies of that translation on a fairly large scale, then the situation might be different. The opinion of the Drafting Committee was, therefore, that the exception introduced under Article 9(2) involved a matter of principle which ought to be discussed by the Main Committee in plenary.

1565.3 In the case of Articles 10*bis*, 11*bis* and 13, which referred to the right of broadcasting as well as to the right of reproduction, the Drafting Committee had considered itself unable to prepare adequate provisions in the absence of a decision by the Main Committee I and had consequently referred the matter to the Main Committee.

1566. The CHAIRMAN said that the simplest solution would have been to state in the report that the translation of a work was assimilated to the original work, but, as the phrase "in the original or in translation" already appeared in the text of some articles, it would be necessary to examine all those articles to decide which required a decision. After indicating how the Drafting Committee had grouped the various articles under consideration in the three paragraphs of its report, he invited discussion of paragraph 1 (S/248).

1567.1 Mr. BERGSTRÖM (Sweden), speaking on behalf of all the Nordic countries represented on the Main Committee, said he wished to make a general statement on the question of translation.

1567.2 The Nordic countries had always interpreted the provisions of the Berne Convention as meaning that any exceptions made, at the international level, to authors' reproduction, broadcasting or performance rights applied also to the right of translation. Unless that interpretation was correct, exceptions would be of little practical value to a country whose language was not widely known. Similarly, if translations could not be made without the prior consent of the author of the original work, certain

populations might be deprived, for reasons of convenience rather than of economy, of the cultural achievements of countries whose languages they did not know. In Sweden, for instance, where English was fairly widely known, the culture of English-speaking countries would prevail over French, German, Italian or Spanish culture. There seemed little sense in introducing an exception which some countries would be unable to apply.

1567.3 Although the Swedish Government had hoped that the matter would be dealt with in the general report, it was prepared to comply with the wish, expressed by several delegations, that specific reference to it be made in Article 8. That reference should, however, cover the provisions of all the articles mentioned in the Drafting Committee's report (S/248). There should also be a statement in the general report to the effect that the provision added to Article 8 was based on the principle that an exception to an author's right to reproduction, broadcasting or performance included, on the same conditions, an exception to that author's exclusive right to translation.

1568. The CHAIRMAN invited the Main Committee to vote on the opinion expressed by the Drafting Committee in paragraph (1) of its report.

1569. *Paragraph (1) was approved unanimously.*

1570. The CHAIRMAN opened the discussion on paragraph 2 of the Drafting Committee's report, dealing with Article 9(2), by pointing out that the exception which it provided was a new one, and he ran through the various practical situations in which the exceptions might be extended to the translated version of the work. In the case of photocopies of a work, the situation was somewhat complicated; the Federal Republic of Germany had adopted some very precise provisions in that respect, which were intended to ensure that authors would receive an equitable remuneration now that the use of photocopies had become a normal practice in big firms. It was only normal to extend the exception to an article translated with the author's consent, when the article had been published in a German review—in that case, the article would be subjected to the same régime as the other articles in the review—but it was not permissible in the case of photocopies of translations of articles taken from foreign reviews, because the practical reason which justified the extension in the first case did not exist in the second case. It would be very difficult to introduce that idea into the text of the Convention, and he would suggest the use of a form of words such as "extension to the translated version of the work only if the conditions provided in paragraph (2) are also fulfilled for that translated version."

1571. Mr. BERGSTRÖM (Sweden) said that exceptions to the right of reproduction should apply, on the same conditions, to the right of translation. Under Article 9(2), therefore, translations should be permitted if they did not conflict with a normal exploitation of the work and if they were not unreasonably prejudicial to the legitimate interests of the author of the original work. It might be dangerous to mention in the report the examples given by the Chairman.

1572. Mr. GAE (India) said that exceptions to the right of reproduction without exceptions to the right of translation would be of little benefit to India where few foreign languages were known. It had been said that difficulties might arise in the case of photocopies of translations made on a fairly large scale. In the opinion of his Delegation, a country which made a photocopy of an article should be allowed to issue photocopies of the translation of that article without consulting the author in the matter. The Delegation of India supported the view expressed by the Delegation of Sweden.

1573. Mr. ELMAN (Israel) said that his Delegation fully supported the formula suggested by the Delegation of Sweden. That formula would cover all cases, including those mentioned by the Chairman and the Delegate of the United Kingdom.

1574. The CHAIRMAN invited the Main Committee to vote on the principle of extending to the translated version the exception provided in Article 9(2) if the conditions provided in paragraph (2) were fulfilled for that translated version.

1575. Mr. WALLACE (United Kingdom) said he agreed with the Chairman's analysis of the question and, generally, with his conclusions. He was not so happy, however, with the formula the Chairman had suggested for the addition to Article 9(2). There was some danger that if that formula were inserted in that Article, which was intended to have some restrictive meaning, it would also have to be inserted in other articles. He would be inclined, for the time being, to leave Article 9(2) as it stood on the basis that its provisions applied to the translations as well as to the originals.

1576. The CHAIRMAN stressed the limited scope of the proposed extension and suggested that the Main Committee should accept the principle, leaving the Drafting Committee to work out a satisfactory text.

1577. Mr. CURTIS (Australia) pointed out that two independent rights were involved. First, the Convention gave the author a right of translation, and second, it gave him, according to the decision taken by the Main Committee at the current session, a right of reproduction. So far, the Main Committee had considered the question only from the point of view of exceptions to the right of reproduction; it might be advisable, however, to consider it also from the point of view of exceptions to the right of translation. In the examples mentioned during the meeting, exceptions should be made not only to the right of reproduction but also to the right of translation. Consideration should be given to the possibility of stating, in one or several places in the Convention, that there was also an exception to the right of translation to the extent necessary to permit reproduction in the translated version. No new principle was involved, but the report on reproduction in translation might be clearer if it was recognized that exceptions to two rights, not merely one, were involved.

1578. The CHAIRMAN pointed out that authors had a right of translation and that the exceptions which it was proposed to make to that right were of minor importance.

1579. Mr. CIAMPI (Italy) said that if the Drafting Committee was to be asked to find a solution to the problem, it was essential that the problem should have been clearly stated by the Main Committee. Whereas the solution might be simple in the case of the Federal Republic of Germany, it was liable to involve legislative changes in other countries. Hence he thought it better to leave things unchanged and to mention the matter solely in the report of the Main Committee.

1580. The CHAIRMAN said that the expression "in the original and in translation" already appeared in other articles and if it did not appear in Article 9(2), that might be used as the basis for an argument *a contrario*. There was not enough time to set up a Working Group, but on this one point the Drafting Committee might play the part of a Working Group and the Delegate of Italy might be invited to take part in its deliberations. He invited the Committee to vote on that proposal.

1581. *The Chairman's suggestion was adopted unanimously, with 3 abstentions.*

1582. The CHAIRMAN opened the discussion on Article 10*bis* dealing with small portions of protected works which were incorporated in a broadcast or cinematographic work and which were seen or heard in the course of an event. He himself felt that there was no need to extend the exception to the translated version in this case.

1583. Mr. BERGSTRÖM (Sweden) observed that the question was not very important. As however, there might be occasions on which the right could be of value, the Delegation of Sweden saw no reason why the provisions of Article 10*bis* should not be included in the new provision to be added to Article 8.

1584. Mr. STRASCHNOV (Monaco) agreed that the problem was of minor importance, but pointed out that a translation was sometimes necessary in radio news broadcasts; he thought that the exception might be extended to translations without doing any harm to authors.

1585. Mr. GAE (India) said that the Delegation of India considered that Articles 10*bis*, 11*bis*, and 13, should all be referred to under Article 8. The system under consideration should be made applicable to all exceptions made to the right of reproduction and the right of broadcasting.

1586. The CHAIRMAN invited the Main Committee to vote on the proposal submitted by the Delegation of Monaco, amongst others, which sought to extend the exception to the translated version.

1587. *The proposal was adopted unanimously with 3 abstentions.*

1588. The CHAIRMAN said the same problem arose in the case of compulsory licenses where radio broadcasts were concerned.

1589. Mr. BERGSTRÖM (Sweden) proposed that Article 11*bis* be included in the list of articles to which reference would be made under Article 8.

1590. Mr. ROHMER (France) said it was essential to distinguish the right of performance from the right of translation and to safeguard the moral rights of the author in regard to translation. He was therefore opposed to the assimilation of Article 11*bis* to the other articles listed in paragraph 3 of document S/248.

1591. Mr. BERGSTRÖM (Sweden) said that in all cases the moral rights of the author would have to be strictly observed. In so far as Article 11*bis* was concerned, application of the principle under discussion would be very restricted.

1592. Mr. CIAMPI (Italy) agreed that it was too late to raise new questions of substance, and he directed the attention of the Main Committee to the comments submitted by the Delegate of France, with which the Delegation of Italy was in full agreement.

1593. The CHAIRMAN invited the Main Committee to vote on the proposal to make provision in Article 11*bis* for the extension of the exception to the translated version of the work.

1594. *That proposal was adopted by 20 votes to 7 with 7 abstentions.*

1595. The CHAIRMAN said that the same problem arose in the case of texts accompanying musical works.

1596. Mr. WALLACE (United Kingdom) said that the question was simply whether the Main Committee should agree that record manufacturers making records under compulsory license should be allowed not only to reproduce the original words but also to translate them. The Delegation of the United Kingdom had voted against the extension of the exception in Article 11*bis* and would also vote against the extension of the exception in Article 13.

1597. Mr. ROHMER (France) said his Delegation was definitely opposed to any extension of the exception in the case of Article 13. It was true that there were many cases in which the words accompanying a piece of music were of minor importance, but there were some cases in which the words were of literary value and the approval of the author should therefore be required. Whatever the circumstances, such an extension would ignore the author's right to ensure a correct translation of his text.

1598. The CHAIRMAN invited the Main Committee to vote on the extension of the exception to the translated version in the provisions of Article 13.

1599. *The extension was approved by 12 votes to 11 with 13 abstentions.*

1600. Mr. WALLACE (United Kingdom) said that as Chairman of the Drafting Committee he would like to be sure that that Committee had latitude, following the discussion in the Main Committee, to examine a general formula rather than the possibility of an insertion in each article.

1601.1 The CHAIRMAN pointed out that decisions which the Main Committee had taken during the present meeting applied only to the questions of substance. In accordance with those decisions, the extension had been approved in all cases apart from Article 9(2) which was to be examined by the Drafting Committee. The question which still had to be solved was whether the idea should be expressed in each relevant article or whether it should form the subject of a general provision.

TRANSLATIONS: PRINCIPLE OF EQUIVALENT PROTECTION (S/245)

1601.2 The CHAIRMAN opened the discussion on the proposal submitted by the Delegation of Italy (S/245), dealing with the question of whether countries should be allowed to apply the principle of equivalent protection in regard to the right of translation. He pointed out that the Committee had decided on the previous day to retain the existing text of the Convention, under which countries already members of the Union or countries acceding to the Berne Convention could maintain the reservation provided for in Article 25 or take advantage of it. The question at issue was whether those States which acceded to the Convention after the Stockholm Conference would also be entitled to avail themselves of the reservation. The question would be of importance if a big country should accede to the Convention because, if that country should make use of the reservation and grant a period of protection of ten years, it would be only fair to apply the principle of material reciprocity. In his view, the Italian proposal had considerable merits.

1602. Mr. KOUTIKOV (Bulgaria) said he was afraid that a provision of that kind might be somewhat of a deterrent to countries wishing to accede to the Berne Convention, as they might regard it as a condition for accession. For that reason the Delegation of Bulgaria would abstain when the proposal was put to the vote.

1603. Mr. DE SANCTIS (Italy) said he thought that the changes which the Main Committee had made to the text reproduced in the Program did not constitute improvements. Their object had been to enable new countries to make use of reservations which were not envisaged in the Program. In his view, if it was desired to amend the text suggested in the Program, the only solution

would be to adopt the principle of material reciprocity. It should also be noted that in the other Main Committees there was a trend towards the application of the principle of material reciprocity in regard to other questions.

1604. Mr. STRASCHNOV (Monaco) said it was to the interest of the Berne Union to encourage the accession of new countries, but it was essential to work out a system which would discourage recourse to reservations and, in that connection, the Italian proposal seemed to him to be a valuable one. He would therefore vote in favor of that proposal.

1605. The CHAIRMAN invited the Main Committee to vote on the proposal submitted by the Delegation of Italy (S/245).

1606. *The proposal was adopted unanimously with 15 abstentions.*

1607. Mr. BERGSTRÖM (Sweden), speaking on behalf of all the Nordic Delegations represented on the Main Committee, proposed that the Rapporteur of the Main Committee be allowed to insert in the general report a sentence to the effect that the possibility given in the general report of the Brussels Conference to make minor reservations to the exclusive rights provided for in Articles 11 and 11*ter* was still valid.

1608. The CHAIRMAN said he thought that the point could be mentioned in the report. He added that the Convention made no exception for performances, public recitations, etc., but it was stated in the Brussels report that countries were entitled to maintain certain minor exceptions when these were based on the traditions of the country.

The meeting rose at 11:45 a.m.

TWENTY-FOURTH MEETING

Saturday, July 8, 1967, at 9:30 a.m.

TEXTS PROPOSED BY THE DRAFTING COMMITTEE (S/269)

1609. Mr. MASOUYÉ (BIRPI) asked the Main Committee to excuse the Secretariat, which was not in a position to distribute Mr. Bergström's report that morning, as had been hoped. For reasons beyond its control, the Secretariat would not be in a position to distribute the report in the two working languages until Monday morning.

1610.1 The CHAIRMAN after thanking the Rapporteur and the Secretariat for their devoted work, proposed that the Main Committee should limit itself for the time being to an examination of the texts proposed by the Drafting Committee in document S/269. He pointed out that delegates who would have liked to study the report in advance could obtain any necessary verbal explanations from Mr. Bergström in the course of the discussions.

1610.2 He indicated that the observer for the United States of America had expressed a wish to make some observations, and he invited him to take the floor.

1611.1 Mr. KAMINSTEIN (United States of America) thanked the Chairman for allowing him the opportunity to address the Main Committee once again as the Conference drew near its close and expressed his Delegation's appreciation to the Secretariat and to the host Government.

1611.2 His Government, although unfortunately still not a member of the Berne Union, was greatly interested in the decisions taken at the Conference on the future of international copyright law, and had long been engaged in the revision of its own 1909 law—a program initiated by his predecessor as U.S. Register of Copyrights, Arthur Fisher. The new law would probably be enacted by the end of 1968, when the United States would be able to consider adhering to the Berne Union. Some serious difficulties remained but, judging by the spirit of cooperation that had marked the Stockholm Conference, there was every reason to believe that, when the time came, both sides would make the necessary adjustments.

1611.3 The United States, itself once a developing country, had experienced many of the special needs brought out during the Conference. During the nineteenth century, when the accent had been on agriculture, industry, increased literacy, and free public education, individual authors had received little encouragment. The works of foreign authors had not been protected until 1891 and, even then, rigid manufacturing requirements had been applied to force the publication of American editions. During that formative period of their history, Americans had read English books, and American authors had been unable to make a living by writing. There were obviously certain advantages to be gained, particularly in respect of education, by denying protection to foreign works so that they could be made freely available but, as the United States had found, the cost was long-term cultural dependency and an irretrievable loss of national authorship that might not be apparent for a century or more. Because at a certain stage of development a country's immediate needs had to take priority, it was often difficult for it to realize that, in the long run, literature and art were the most valuable national resources. Those who might interpret his remarks in the light of his country's evident commercial interest in the Stockholm Conference were not to be blamed but should remember that the United States, which had passed through the same phase as the developing countries, was still paying a high price for its mistakes.

1611.4 The developing countries now had to decide whether to join in a Union with other countries or to go it alone. The United States, faced with the same choice some decades previously, had chosen the latter course, with the result that was only to be predicted: its law and practice had hardened without regard to the law and practice in other countries or to international copyright law, and as it assumed the role of an exporter rather than an importer of materials under copyright protection, its system had been found to be basically inconsistent with the system in use throughout the rest of the world. It was essential in the United States' own interests to bridge that gap, but the task was not easy and much remained to be done.

1611.5 In the light of those facts, he regarded the work accomplished during the Conference as fundamentally sound. The developed countries had accommodated the needs of the developing countries, while preserving the dynamic character of the Berne Convention. As active partners in international copyright law, the developing countries—which, it was gratifying to note, were not repeating the United States' mistakes—would be able to participate directly in the evolution of that law, to encourage and protect their own authors more effectively than had been possible in the United States and to be more flexible in adjusting their laws to changing national conditions.

1611.6 While he considered the general trend of the discussions to be constructive, the question of compulsory licenses caused him some concern. Such licenses bore a resemblance to the United States manufacturing clause, albeit in a less objectionable form, which it had still not been possible to excise completely from the law. Ad-

mittedly, in certain instances, compulsory licenses might be useful but, ultimately, they implied some form of central collecting agency where the author would have to apply for remuneration. As the system grew in size and power, the author would probably suffer a loss of independence and artistic integrity, which had forbidding implications.

1611.7 The last two years had seen the advent of the computer age, which would place enormous demands upon copyright works. Far-fetched as it might sound, he believed that the new age heralded the most radical changes in individual authorship and independent expression since the Renaissance.

1611.8 Copyright in its existing form had two elements: control and remuneration. Without the first of those elements, there would be no copyright but only patronage. In coming generations, there would undoubtedly be strenuous efforts in all countries to remove the author's control over his work, or to restrict it considerably, leaving him only with limited rights of remuneration—a challenge to meet which the International Copyright Union and the Universal Copyright Convention would do well to prepare. If the public were to benefit, copyright should encourage authors to create works independently of any control other than that imposed by their own artistic conscience. The Stockholm Conference was a turning point in world copyright law and it was his hope that the Berne Convention, while catering for the conditions prevailing in different member countries, would continue to preserve the true purpose of that law.

1612.1 The CHAIRMAN emphasized the interest which all the countries of the Berne Union took in the revision of the national legislation of the United States and expressed the pleasure which they felt that that revision was based on the principles of the Berne Convention as far as the term of protection was concerned. They were most anxious to see the United States—and the Soviet Union too—accede to the Convention in the near future, and there could be no greater success for the Stockholm Conference than to help to hasten the accession of those two great countries.

1612.2 He invited Mr. Wallace, Chairman of the Drafting Committee, to introduce document S/269.

1613. Mr. WALLACE (United Kingdom) said that the Drafting Committee's debates had been very interesting and, although it had not reached complete agreement on every point, never acrimonious. He thanked all those who had helped in preparing the draft, which he hoped would be approved by the Committee.

1614. The CHAIRMAN invited the Main Committee to examine the Drafting Committee's text article by article.

1615. Mr. KEREVER (France) wondered whether it would not be advisable, before embarking on a detailed study of the document, to settle the question of whether the exceptions provided for in certain articles were applicable to the right of translation.

1616. The CHAIRMAN suggested that this important matter should not be settled forthwith, but should be dealt with after a break in the meeting, which might take place between 10.30 and 11 a.m.

1617. *It was so decided.*

1618. The CHAIRMAN invited the Main Committee to consider the text of the Preamble, which remained unchanged.

1619. *The text of the Preamble was approved unanimously.*

1620. The CHAIRMAN invited the Main Committee to examine the text of Article 1, which was also unchanged.

1621. *The text of Article 1 was approved unanimously.*

1622. The CHAIRMAN pointed out that the text proposed for Article 2 had undergone some amendment. In paragraph (1), it was stated that works expressed by analogous processes were assimilated to cinematographic and photographic works. A new paragraph (2) had been added which incorporated a proposal of the Delegation of Italy and stated that it was a matter for legislation in the countries of the Union to prescribe that literary and artistic works or any specified categories of works should not be protected unless they had been fixed in some material form.

1623. Mr. CIAMPI (Italy) reminded the Main Committee that his Delegation had insisted on the importance of not giving any interpretation in the report of the assimilation to cinematographic works of works expressed by a process analogous to cinematography.

1624. *The text of Article 2 was approved unanimously.*

1625. The CHAIRMAN drew the attention of the Main Committee to Article 2*bis*. He pointed out that the reservation provided in paragraph (2) for reproduction by the press of lectures, addresses and works of the same nature had been extended to broadcasting, and that the prerogative which was thus granted to national legislations had been limited to cases in which the use of the works in question was justified by the informatory purpose.

1626. Mr. WEINCKE (Denmark), referring to the English text of paragraph (1) of Article 2*bis*, asked why the Drafting Committee had reverted to the Brussels text, using the word "speeches" in preference to "discourses" as proposed in document S/1.

1627. Mr. WALLACE (United Kingdom), replied that the Drafting Committee had decided to revert to the Brussels text purely for reasons of style.

1628. *The text of Article* 2bis *was approved unanimously.*

1629. The CHAIRMAN invited the Main Committee to vote on the text of Article 3, which laid down the scope of protection and defined the concept of publication.

1630. *The text of Article 3 was approved unanimously.*

1631. The CHAIRMAN pointed out that the new Article 4 introduced into the Convention a further criterion of eligibility for cinematographic works and for works of architecture or graphic and three-dimensional works affixed to land or to a building.

1632. Mr. WALLACE (United Kingdom) said that his Delegation's acceptance of subparagraph (a) of Article 4 would depend upon the adoption of paragraph (2)(a) of Article 14*bis*, as proposed by the Drafting Committee, which stipulated that the ownership of film copyright should be a matter for the legislation in the country where protection was claimed.

1633. *The text of Article 4 was approved unanimously.*

1634. The CHAIRMAN invited the Main Committee to examine the text of Article 5, which laid down the principle of protection and defined the country of origin.

1635. *The text of Article 5 was approved unanimously.*

1636. The CHAIRMAN invited the Main Committee to examine the text of Article 6, which reproduced, without amendment, the earlier clause dealing with measures of retaliation.

1637. *The text of Article 6 was approved unanimously.*

1638. The CHAIRMAN pointed out that Article 6*bis* dealt with the protection to be granted to the moral rights of the author. The first sentence of paragraph (2) gave those countries which wished to protect that right in perpetuity freedom to do so. On the other hand, the second sentence of the paragraph made it clear that those countries whose legislation, at the moment of ratification or adhesion, did not contain provisions for the protection after the death of the author of all the rights set out in paragraph (1), were entitled to provide that some of those rights should not be maintained after the death of the author.

1639. Mr. KEREVER (France) pointed out that the Delegation of France had raised some objections to the draft amendment which had been incorporated in the second sentence of paragraph (2). It had suggested what it considered to be a wiser formula concerning those rights which would not be maintained after the death of the author. Hence, while bowing before the will of the majority, it would vote against the text proposed by the Drafting Committee.

1640. Mr. CIAMPI (Italy) said that his Delegation was unable to vote in favor of a text which ran counter to the principles of Italian legislation and it would therefore abstain from voting.

1641. The CHAIRMAN stressed the fact that it was important to leave the door of the Berne Convention open to the United States, and he urged the Main Committee not to amend the second sentence of paragraph (2).

1642. *The text of Article 6*bis *was approved with one dissentient vote and 4 abstentions.*

1643. The CHAIRMAN invited the Committee to vote on the text of Article 7, dealing with the term of protection.

1644. *The text of Article 7 was approved unanimously.*

1645. The CHAIRMAN pointed out that Article 7*bis* was concerned with the term of protection for the copyright of a work of joint authorship.

1646. Mr. ROHMER (France) said it would be more correct to say in French "sous réserve que les délais consécutifs à la mort de l'auteur soient calculés *à partir* de la mort du dernier survivant des collaborateurs."

1647. *The text of Article 7*bis, *with the amendment to the French version suggested by the Delegate of France, was adopted unanimously.*

1648. The CHAIRMAN invited the Main Committee to examine the text of Article 8. He explained that after the vote, he proposed to revert to the question which the Delegate of France had raised at the beginning of the meeting.

1649. *The text of Article 8 was approved unanimously.*

1650. The CHAIRMAN drew the attention of the Main Committee to the addendum to document S/260 containing a section of the report dealing with exceptions to the exclusive right of translation.

1651. Mr. CIAMPI (Italy) said it should be pointed out that the interpretation given in the report did not reflect the unanimous opinion of the Main Committee but only that of a small majority.

1652.1 Mr. KEREVER (France) said his Delegation was opposed to the insertion of the text in its present wording. The Delegation of France considered it dangerous to include an interpretation of Articles 11*bis* and 13, the consequences of which might well run counter to the actual provisions of the Convention.

1652.2 He proposed that the Main Committee should merely state in the report the opinions which had been expressed by the various delegations. The following text might be included in the report: "There was lively discussion in the Main Committee on what was to happen to the right of translation in cases where a work could be lawfully used without the authorization of the author, under the provisions of the Convention. Those discussions gave rise to various statements on the general principles of interpretation. It was admitted that Articles 2*bis*(2), 9(2), 10(2), and 10*bis*, effectively made it possible to use a work not only in the original but also in translation, provided that the conditions set out in those Articles were fulfilled, including the condition concerning conformity with fair practice, and that the rights granted to the author under Article 6*bis* (moral rights) should be reserved here as in the case of all utilization of a work; nevertheless, varying opinions were expressed in regard to the lawful uses for which provision is made in Article 11*bis* and 13. Some delegations considered that those Articles applied equally to a work in translation, provided that the conditions mentioned above were fulfilled. Other delegations, including those of Belgium, France and Italy held that those Articles were so drafted in the Stockholm text that they could not be interpreted as meaning that the right to use a work without the consent of the author in such cases also gave the right to translate it. In that connection, those delegations stressed the general principle that a commentary on the discussions could not have the effect of modifying or extending the provisions of the articles of the Convention."

1653.1 Mr. STRASCHNOV (Monaco) pointed out that in some countries, including France, an international convention which had been ratified by Parliament and published in the Official Journal, became an integral part of domestic law, and that obviously could not be the case with an extract from the report of one of the committees which had participated in the drafting of such a convention. All delegations were agreed that the provisions of Articles 2*bis*(2), 9(2), 9(3), 10(1), 10(2), and 10*bis*, applied not only to the original work but also to the translated work, and it would therefore be desirable to state this clearly in a new paragraph of Article 8. That provision could be extremely useful in the countries concerned, particularly for their courts.

1653.2 In regard to the scope of Articles 11*bis* and 13, he considered that the solution advocated by the Delegate of France would be the best one.

1654. Mr. DRABIENKO (Poland) supported the suggestion of the Delegate of Monaco.

1655. Mr. GAE (India) said that since the right to reproduce a work would only be truly effective if it included the right of translation, he considered that Article 8 should provide that a work could be used both in the original and in translation, if the Convention allowed the use of that work without the author's permission. He agreed that it would serve no useful purpose to refer to the matter in the report and supported the amendment proposed by the Delegate of Monaco.

1656. Mr. SCHURMANS (Belgium) fully endorsed the statements of the Delegates of France and Monaco. He felt that the text of the Convention ought to be sufficiently clear to eliminate the need for any interpretative addendum, of which little account would doubtless be taken once the Convention had been ratified.

1657. The CHAIRMAN proposed a suspension of the meeting.

The meeting was suspended at 10.35 a.m. and resumed at 11 a.m

1658.1 The CHAIRMAN reminded the Main Committee that the original intention had been to make no mention in the actual text of the Convention of extending to translated works the facilities granted for using original works, but to mention the matter cautiously in the report. Unfortunately, as the phrase "in the original or in translation" had been introduced into some articles, as a result of various proposals, it had proved necessary to study all the articles which could be affected, particularly Articles 11*bis* and 13, which were variously interpreted by different national legislations.

1658.2 As a compromise, he proposed that the first sentence of the addendum (S/269) should mention only Articles 2*bis*(2), 9(2), 9(3), 10(1), 10(2), and 10*bis*. A third sentence would state that delegations had differing opinions in regard to Articles 11*bis* and 13, some of them considering it quite normal that the compulsory license should be extended to translated works, while others considered it inadvisable.

1659. Mr. CIAMPI (Italy) approved the Chairman's proposal, subject to final drafting.

1660. Mr. KEREVER (France) also approved the Chairman's proposal, which met the wishes of the Delegation of France. In order to avoid any danger of misinterpretation, however, the Delegation of France wished it to be pointed out that a commentary on the discussions could not have the same effect as a provision of the Convention.

1661. The CHAIRMAN invited the Main Committee to vote on his proposal, it being understood that the final draft would be submitted to the Main Committee on the following Monday and that account would be taken of the last remark made by the Delegate of France.

1662. *The Chairman's proposal was adopted unanimously with 2 abstentions.*

1663. The CHAIRMAN drew the attention of the Main Committee to the text of Article 9, and in particular to the words "including sound or visual recordings," which the Drafting Committee had felt it necessary to add in square brackets at the end of paragraph (1) in order to avoid any misunderstanding as a result of the deletion of the former Article 13(1).

1664. Mr. WALLACE (United Kingdom) said that the Drafting Committee had discussed the advisability of including some words in Article 9 to show that the right to make records was in fact covered by the right of reproduction. One argument against that idea had been that such words would probably have to be included elsewhere in the Convention. Since the Drafting Committee's meeting, another suggestion had been mentioned to him, namely that the words in square brackets in paragraph (1) of Article 9 should be omitted, and that the first part of paragraph (1) of Article 13 should be amended to read: "Each country of the Union may impose for itself reservations and conditions on the exclusive right granted *by Article 9* to the author..." That proposal, if adopted, would create a link between Articles 9 and 13 and seemed to him to offer an appropriate solution to the problem.

1665.1 The CHAIRMAN said that the problem would still not be solved if they adopted the new proposal of the Chairman of the Drafting Committee and merely referred in Article 13 to the "exclusive right granted by Article 9." Some legal authorities made a distinction between reproduction and recording, and contended that only the reproduction of a recording constituted a "reproduction."

1665.2 He therefore considered that it would be more satisfactory to add to Article 9 the phrase suggested by the Drafting Committee.

1666.1 Mr. STRASCHNOV (Monaco) pointed out that the word "recording" was also used in Article 10, and that the same concept was in Articles 10*bis*, 11, and 11*bis*. Hence, if Article 9 made a distinction between reproduction and recording, the interpretation of those other articles would become very difficult.

1666.2 To avoid those difficulties, he proposed that the words "including sound or visual recordings" should not be added to Article 9 and that the Main Committee should merely state in its report that the concept of reproduction covered both recordings and copies of recordings.

1667. The CHAIRMAN thought it would be safer to state in the actual text of Article 9—perhaps in a new paragraph—that in the context of the Convention a sound or visual recording should be regarded as a reproduction.

1668. Mr. KEREVER (France) said his Delegation had always contended that a recording was a reproduction. Nevertheless, in order to avoid the risk of an argument *a contrario*, it would be willing to see that statement deleted from the report.

1669. The CHAIRMAN suggested that a new paragraph should be inserted in Article 9, reading as follows (subject to drafting changes): "(4) For the purposes of this Convention, any sound or visual recording shall be considered as a reproduction."

1670. *The amendment proposed by the Chairman was adopted unanimously with one abstention.*

1671. Mr. HESSER (Sweden) pointed out that paragraph (3) of Article 9, unlike the first two paragraphs, did not deal only with the right of reproduction but also with broadcasting. He suggested therefore that it should form a separate article, possibly Article 9*bis*, to make it quite clear that two different notions were involved.

1672. The CHAIRMAN said he thought the comment of the Delegate of Sweden was a very sound one. He suggested that it should be left to the Drafting Committee to decide in which article of the Convention that paragraph should be incorporated.

1673. *It was so decided.*

1674. The CHAIRMAN drew the attention of the Main Committee to the words "and on broadcast programs of the same character" which the Drafting Committee proposed to insert in the same paragraph (3). He suggested that it would be logical to allow the same option in the case of radio broadcasts as in the case of news articles.

1675. Mr. STRASCHNOV (Monaco) said he would prefer the use of the phrase "broadcast works of the same character," as the term "program" was somewhat vague.

1676. Mr. NAMUROIS (Belgium) said that if the words "published in newspapers or periodicals" were omitted, the interpolation proposed by the Drafting Committee would become unnecessary: the clause would then be self-explanatory.

1677. Mr. GAE (India) said that for the reasons he had already explained, his Delegation would vote against paragraph (2) of Article 9, as proposed in document S/269.

1678. Mr. ADACHI (Japan) said his Delegation was somewhat hesitant about including in paragraph (3) the words in square brackets—"and of broadcast programs of the same character"—since it considered that they might prejudice the author's rights.

1679. Mr. CIAMPI (Italy) suggested that the vote on Article 9 should be taken paragraph by paragraph.

1680. *It was so decided.*

1681. The CHAIRMAN invited the Main Committee to vote on the text of paragraph (1) of Article 9.

1682. *The text of paragraph (1) of Article 9 was approved unanimously.*

1683. The CHAIRMAN invited the Main Committee to vote on the text of paragraph (2).

1684. *The text of paragraph (2) of Article 9 was approved with one dissenting vote.*

1685. The CHAIRMAN invited the Main Committee to vote on the text of paragraph (3), on the understanding that that paragraph would be transferred to another article, to be decided by the Drafting Committee. In accordance with the suggestion made by the Delegate of Monaco, the phrase "broadcast programs of the same character" would be replaced by the words "broadcast works of the same character."

1686. *The text of paragraph (3) of Article 9, thus amended, was approved with 6 dissenting votes.*

1687. The CHAIRMAN invited the Main Committee to vote on the text of Article 10, dealing with "lawful borrowings."

1688. *The text of Article 10 was approved unanimously with one abstention.*

1689. The CHAIRMAN drew the attention of the Main Committee to the text to Article 10*bis* and pointed out that in the French text the words "ces œuvres" should be replaced by "les œuvres."

1690. *The text of Article 10*bis *was approved unanimously.*

1691. The CHAIRMAN invited the Main Committee to examine the text of Article 11, to which the following words had been added "including such public performance by any means or process." That clarification had become necessary as a result of the deletion of Article 13(1) of the Brussels text.

1692. Mr. STRASCHNOV (Monaco) said he was afraid that to delete from Article 11 the reservation which it had previously contained while still speaking of "public performance by any means" might lead to some overlapping, apparent if not real, between the two Articles 11 and 11*bis*. It might perhaps be better to restore the explicit reservation of the Brussels text.

1693. The CHAIRMAN said that the report would mention, with any explanations which might be necessary, the principle of *lex specialis derogat legi generali*. Otherwise, all the possible exceptions would have to be mentioned in the Convention.

1694. *The text of Article 11 was approved unanimously.*

1695. The CHAIRMAN invited the Main Committee to vote on the text of Article 11*bis* which reproduced the Brussels text unaltered.

1696. Mr. CIAMPI (Italy) wondered whether it might not be more satisfactory, in paragraph (2), to speak of "the rights granted to the author by Article 6*bis*" rather than "the moral rights of the author."

1697. The CHAIRMAN suggested that the Drafting Committee should examine that suggestion.

1698. *The text of Article 11*bis *was approved unanimously subject to revision by the Drafting Committee.*

1699. The CHAIRMAN invited the Main Committee to examine the text of Article 11*ter*. He pointed out that the Drafting Committee had added the words "including such public recitation by any means or process" in paragraph (1), and a new paragraph (2) concerning translation rights.

1700. *The text of Article 11*ter *was approved unanimously.*

1701. The CHAIRMAN invited the Main Committee to examine the text of Article 12.

1702. *The text of Article 12 was approved unanimously.*

1703. The CHAIRMAN drew the attention of the Main Committee to the text of Article 13, dealing with compulsory licenses for sound recording. He pointed out that the situation was particularly delicate because, once the general principle of the right of reproduction was accepted, they were confronted with the question of the words linked to a musical work. The Main Committee might wish to examine and discuss the wording suggested by the Drafting Committee.

1704. Mr. DITTRICH (Austria) asked what meaning the Drafting Committee gave to the words "normally performed."

1705. Mr. WALLACE (United Kingdom) replied that the Drafting Committee, which had discussed the whole question at some length, had had in mind countries with compulsory licensing systems where, if the authors of the music and of the words agreed to a first recording, other manufacturers could make subsequent recordings of both the music and the words. The Drafting Committee had sought to provide that no compulsory license should be issued to put words to music and to make a record without the consent of the author of those words, for which reason the phrase "with the consent of the author of those words" had been used. If the author of the words had agreed that they should be added to a musical work and recorded, then those were the words which were "normally performed with that work" within the meaning of the draft.

1706.1 The CHAIRMAN shared the view of Mr. Wallace: if an author allowed a producer of phonograms to make a recording of his work, that authorization should be equally valid for other producers.

1706.2 He thought, however, that the word "normally" was not a very happy choice, because it frequently happened that a musical work containing words was recorded without the specific consent of the author of the words.

1706.3 He therefore proposed the following text: "1. Each country of the Union may impose for itself reservations and conditions on the exclusive right granted to the author of a musical work and to the author of words, the author of which has already authorized another producer to record them with the musical work, to authorize the sound recording of that musical work."

1706.4 He informed the Main Committee that the Observer for the International Federation of the Phonographic Industry had asked to speak, and he asked him to take the floor.

1707.1 Mr. STERLING (International Federation of the Phonographic Industry) said he shared the views expressed by the Chairman and the Delegate of the United Kingdom and agreed that, in making recordings, the prior consent of the author of the words and of the composer of the music with which those words would be performed should be obtained. Since, however, the expression "normally performed" might not cover all eventualities, he suggested the use of the word "asso-

ciated" instead, which would bring the text more into line with existing legislation and safeguard the rights of the author of the words.

1707.2 Since the Main Committee had already agreed, in connection with paragraph (1) of Article 9, on the desirability of indicating that recording was a form of reproduction, he suggested that the words "reproduction by" should be added before the words "sound recording" in paragraph (1) of Article 13.

1708. Mr. CIAMPI (Italy) said it was not "words" but "texts" which were protected, and that it would therefore be better to speak of "the author of the literary text which is ... normally performed with that work."

1709. The CHAIRMAN suggested that his own proposal might be referred to the Drafting Committee, which would no doubt also take account of the comment of the Delegate of Italy.

1710. *It was so decided.*

1711. The CHAIRMAN invited the Main Committee to vote on the text of Article 13, subject to any drafting changes to be made by the Drafting Committee.

1712. *The text of Article 13 was approved unanimously subject to revision by the Drafting Committee.*

1713.1 The CHAIRMAN pointed out that Articles 14 and 14*bis*, which dealt with cinematographic rights, raised some complex questions. The Drafting Committee had been very anxious to suggest a form of words which would be acceptable not merely to the majority of countries but to all the countries of the Union, but he was afraid that it had not yet found the ideal solution.

1713.2 He therefore suggested that the Main Committee should defer consideration of those two Articles until the following Monday. He understood that Mr. Hesser, the First Vice-President of the Conference, intended to suggest the setting up of a Working Group which would try to find a solution in the intervening period.

1714. Mr. HESSER (Sweden) proposed that a small Working Group be set up, under the chairmanship of Mr. Ulmer, composed of the Delegates of the Federal Republic of Germany, France, Sweden, the United Kingdom, and Yugoslavia.

1715. *It was so decided.*

1716. The CHAIRMAN invited the Main Committee to examine the text of Article 14*ter*, which had not been changed.

1717. *The text of Article 14*ter *was approved unanimously.*

1718. The CHAIRMAN drew the attention of the Main Committee to the text of Article 15. He pointed out that in the French text of paragraph (1), the phrase "jusqu'à preuve du contraire" had been replaced by the words "sauf preuve du contraire." In addition, in paragraph (3), the words "in the preceding paragraph" should be replaced by the words "in paragraph (1)." Finally, in paragraph (4(a)), the words "or has his habitual residence in such country" should be deleted, because Article 3(2) made it clear that authors having their habitual residence in one of the countries of the Union were assimilated to nationals of that country.

1719. *The text of Article 15 was approved unanimously with one abstention.*

1720. The CHAIRMAN invited the Main Committee to vote on the text of Article 16, dealing with the seizure of infringing works.

1721. *The text of Article 16 was approved unanimously.*

1722. The CHAIRMAN invited the Main Committee to examine the text of Article 17.

1723.1 Mr. KRUGER (Republic of South Africa) said his Government was not prepared to accept any change in the substance of Article 17 as contained in the Brussels text. He accordingly gave notice, reluctantly, that he might have to vote against the text proposed in document S/269 at the plenary meeting. He regretted that, owing to a misunderstanding, the Delegation of South Africa had not made its position clear in that connection at the meeting on June 29, 1967.

1723.2 His Government's attitude was based on its understanding of the contract embodied in the Berne Convention—a classical example of the *stipulari alteri* contract of Roman law—for the benefit of third parties. Legislation enacted by States to grant certain benefits to authors was aimed at protecting the works of all authors in Convention countries with a view to promoting world culture. In accepting those benefits, the authors did so in the knowledge of the reservation set forth in Article 17 of the Brussels text. Since no author or State had ever questioned the words "to permit" and new circumstances had not arisen to warrant a change, his country was concerned that nothing should be omitted from a text that had stood for 81 years.

1723.3 There was no ulterior motive behind his Delegation's stand, and he was fully prepared to discuss the matter in a Working Group. An examination of the South African Copyright Act, which he was ready to show to any delegate, would reveal that it contained nothing contrary to either the letter or the spirit of the Convention.

1723.4 His Government, which had always observed the spirit of the Berne Convention, would press for the retention of Article 17 in its entirety.

1724.1 The CHAIRMAN pointed out that the Main Committee had already decided by a very large majority, on the proposal of the Delegation of the United Kingdom, to delete the words "to permit," which had been liable to be interpreted as meaning that a State had the right to permit the distribution, performance or exhibition of the work without the consent of the author. There could therefore be no question of going back on that decision.

1724.2 He would, however, draw the attention of the Delegate of South Africa to the fact that he was at liberty to repeat the views of his Government in plenary session, when the revised text of the Convention was being finally adopted.

1725. Mr. SCHURMANS (Belgium) said that in some exceptional cases the legislature might empower the executive to take certain measures on its behalf. The Delegation of Belgium would like to know whether such cases would be covered by the provisions of Article 17.

1726. The CHAIRMAN said that the Drafting Committee had considered that problem, and had reached the conclusion that such cases would be covered, provided, of course, that the measures taken were based on legislation.

1727. *The text of Article 17 was adopted with one dissenting vote and one abstention.*

1728. The CHAIRMAN invited the Main Committee to examine the text of Article 18.

1729. *The text of Article 18 was approved unanimously.*

1730. The CHAIRMAN invited the Main Committee to examine the text of Article 19.

1731. *The text of Article 19 was approved unanimously.*

1732. The CHAIRMAN invited the Main Committee to examine the text of Article 20.

1733. *The text of Article 20 was approved unanimously.*

1734. The CHAIRMAN invited the Main Committee to approve the Draft Resolution I which appeared in document S/269.

1735. *The Draft Resolution I was approved unanimously with 15 abstentions.*

1736. The CHAIRMAN invited the Main Committee to approve the Draft Resolution II which expressed the wish that the questions raised by the proposals of the Delegations of Austria and Israel should be studied in preparation for the Vienna Conference, subject always to the protection of the rights of authors.

1737. Mr. DITTRICH (Austria) asked that items (i) and (ii) be put to the vote separately.

1738. Mr. ELMAN (Israel) said that the end of the last sentence of the resolution did not appear to reflect the sense of the meeting as he understood it. He suggested that it be reworded as follows: "... in order to consider the inclusion of provisions relating to them in a future revision of the Convention."

1739. The CHAIRMAN suggested that the proposal of the Delegation of Israel should be referred to the Drafting Committee.

1740. *It was so decided.*

The meeting rose at 12:30 p.m.

TWENTY-FIFTH MEETING

Monday, July 10, 1967, at 11:35 a.m.

REPORT OF THE MAIN COMMITTEE (S/271)

1741. The CHAIRMAN invited Mr. Bergström to introduce the report of Main Committee I.

1742.1 The RAPPORTEUR, introducing document S/271, apologized for the fact that the Main Committee had been presented with such a long document to digest in so short a time. He had considered that the most satisfactory method of reporting on the Main Committee's work was to deal separately with each group of Berne Convention topics, starting with a review of the relevant provisions of the Brussels text and then going on to relate them, via the Program proposals and delegations' amendments on those topics, to the provisions which the Main Committee had approved for adoption as the Stockholm text.

1742.2 The aim had been to mention in the report all the amendments submitted by delegations. He hoped they would draw his attention to any amendments to which he had omitted to refer and also to any cases where he had misinterpreted the significance of an amendment.

1742.3 It had been necessary to draft the report in stages from the beginning of the Main Committee's meetings onwards. Certain of its contents would therefore need correction to allow for supervening decisions.

1743. The CHAIRMAN suggested that the Main Committee should examine the report paragraph by paragraph.

1744. *It was so decided.*

Paragraphs 1 to 3

1745. *Paragraphs 1 to 3 were adopted.*

Paragraph 4

1746. Mr. HESSER (Sweden) said that his name should be replaced by that of Mr. Stig Strömholm since he himself had only been able to serve on the Drafting Committee for a short time.

1747. *Paragraph 4, thus amended, was adopted.*

Paragraphs 5 to 12

1748. *Paragraphs 5 to 12 were adopted.*

Paragraph 13

1749. Mr. MASOUYÉ (BIRPI) suggested, on the proposal of the Delegate of Monaco, that the fourth sentence of paragraph 13 should be amended to read as follows: "Similarly, Articles 11, 11*ter*, 14 and 14*bis* do not refer to Article 11*bis*," as Article 11, which was quoted in the report, was only one example among many.

1750. The RAPPORTEUR suggested that the words "for example" be deleted from the last sentence.

1751. *Paragraph 13, thus amended, was adopted.*

Paragraphs 14 to 82

1752. *Paragraphs 14 to 82 were adopted.*

Paragraph 83

1753. Mr. GERBRANDY (Netherlands) asked that delegations should be allowed to submit certain comments to the Rapporteur subsequently. The Delegation of the Netherlands reserved the right to propose a new draft for paragraph 83.

1754. *It was agreed to reserve the decision on the wording of paragraph 83.*

Paragraphs 84 and 85

1755. *Paragraphs 84 and 85 were adopted.*

Paragraph 86

1756. Mr. WALLACE (United Kingdom) referring to the wording of the sixth sentence, said that when Article 9, paragraph (2), and the amendment to that paragraph proposed by the Delegation of the United Kingdom had been discussed, his Delegation had suggested that although compulsory licensing could not be permitted for the publication of books, it might be desirable for photocopying, which, if on a large scale, should be the object of remuneration for the author. The word "never" gave the wrong emphasis.

1757. The RAPPORTEUR accordingly suggested that the words "it should never" be replaced by the words "it may not."

1758. *It was agreed to reserve a decision on the wording of paragraph 86.*

Paragraph 87

1759. *Paragraph 87 was adopted.*

Paragraphs 88 to 93

1760.1 Mr. STRASCHNOV (Monaco) pointed out that the heading to paragraphs 88 to 93 should be amended, as Article 9(3) had become Article 10*bis*.

1760.2 In addition, the final version of the report should state that by virtue of the new Article 9(3), any recording, whether sound or visual, was regarded as a reproduction within the meaning of the Convention.

1761. *It was agreed to reserve a decision on the wording of paragraphs 88 to 93.*

Paragraphs 94 to 101

1762. *Paragraphs 94 to 101 were adopted.*

Paragraph 102

1763. Mr. ASCENSÃO (Portugal) said he hoped that the joint proposal of the Delegations of Brazil, Mexico and Portugal (S/216) to replace the word "phonogrammes" in the French text by the word "enregistrements" would be mentioned in paragraph 102 of the report.

1764. Mr. MASOUYÉ (BIRPI) explained that that document was not mentioned in the report because the point which it raised was purely a matter of drafting, and it had been referred to the Drafting Committee. A reference to the joint proposal could, however, easily be inserted in paragraph 102.

1765. *It was agreed to reserve a decision on the wording of paragraph 102.*

Paragraph 103

1766. The RAPPORTEUR suggested that the wording "in places open to the public" be replaced by wording along the lines of "general education available to the public."

1767. Mr. MULENDA (Congo (Kinshasa)) said that the last sentence of paragraph 103 gave too restrictive an interpretation of the institutions which could provide the education referred to in Article 10.

1768. *It was agreed to reserve a decision on the wording of paragraph 103.*

Paragraphs 104 to 107

1769. *Paragraphs 104 to 107 were adopted.*

PROPOSALS OF THE DRAFTING COMMITTEE (ARTICLES 9, 10*bis*, 13, AND 14*bis* (S/290))

1770. The CHAIRMAN invited the Main Committee to turn to document S/290, containing the proposals of the Drafting Committee on Articles 9, 10*bis*, 13 and 14*bis*.

1771. Mr. GERBRANDY (Netherlands) raised a point of order on behalf of the Delegations of Belgium, Luxemburg, and the Netherlands. He said that, in the opinion of those Delegations, the question of cinematographic works could not be reopened unless a motion to that effect was carried by the requisite qualified majority, now that the proposals of the Working Group on the régime of cinematographic works (S/195) had been adopted by the Main Committee.

1772. The CHAIRMAN said he was aware that a decision to reopen the question of cinematographic works would have to be approved by a two-thirds majority. He therefore proposed that the Main Committee should begin by studying the proposals of the Drafting Committee concerning Articles 9, 10*bis* and 13.

1773. The CHAIRMAN pointed out that the principle stated in Article 9(3) had already been unanimously adopted by the Main Committee, so that the Main Committee now had to deal solely with the revised wording submitted by the Drafting Committee.

1774. *The new wording of Article 9(3) proposed by the Drafting Committee (S/290) was adopted unanimously.*

1775. The CHAIRMAN said that the Drafting Committee, which had been instructed to find a more suitable position for paragraph (3) of Article 9, proposed that it should appear as paragraph (1) of Article 10*bis*, the former paragraph (1) of that Article becoming paragraph (2).

1776. *The new paragraph (1) of Article 10*bis *proposed by the Drafting Committee (S/290) was adopted.*

1777. Mr. STRASCHNOV (Monaco) asked whether it would not be more in conformity with the spirit of the Berne Convention to require the consent of both the author of the music and the author of the words, as cases might arise in which the author of the musical work refused to have his music recorded with the words.

1778. Mr. WALLACE (United Kingdom) said that the point raised by the Delegate of Monaco had been discussed by the Drafting Committee, which had decided to leave the wording as it appeared in document S/290 because the point could only be met by making substantive alterations to the text of the Convention with regard to musical works.

1779. The CHAIRMAN said it was clear that the consent of both authors was required for the first recording, and that it was unnecessary to say so specifically in the Convention. He therefore invited the Delegate of Monaco to withdraw his proposal.

1780. Mr. STRASCHNOV (Monaco) withdrew his proposal.

1781. *Article 13, as redrafted (S/290), was adopted.*

1782.1 The CHAIRMAN said that before taking a vote on the question of reopening the discussion on cinematographic works, he would like to mention a few of the reasons which lay behind the compromise proposal now before the Main Committee (S/290). A Working Group consisting of France, Yugoslavia, Sweden, the United Kingdom, and the Federal Republic of Germany, with Monaco and Switzerland assisting as observers, had been instructed by the Main Committee to find a solution to two particularly knotty problems: the form of the agreement which was to constitute the basis of certain presumptions of assignment and the possibility of excluding the principal director of a cinematographic work from the benefits of presumption, while taking into account the situation in those countries of the Union whose legislation made no provision for presumption in favor of the principal director.

1782.2 From the purely legal point of view, the form of the agreement was a matter of private international law and it would be impossible to impose a system applied by one group of countries upon countries which followed a different system. Hence the Working Group

on the régime of cinematographic works had originally proposed (S/195) that the form of the undertaking should be governed by the legislation of the country in which the maker of the cinematographic work had his headquarters or his habitual residence. That proposal had been adopted by Main Committee I, but with considerable opposition, and it had therefore seemed necessary to work out a compromise to ensure that the Conference did not reach a deadlock over such an essential item in its Program. Hence the latter part of Article 14*bis*(2)(c) had been further amended in order to satisfy those countries such as France, which did not accept the validity of a verbal contract in connection with the system of presumption of assignment. That was a substantial concession on the part of those countries of the Union which accepted the validity of verbal contracts.

1782.3 The second amendment made by the Working Group, on the proposal of Yugoslavia, supported by France, had been to put the principal director of the work on the same footing as the authors of scenarios, dialogues and musical works, in paragraph (3). In view of the fact that there was now a presumption in favor of the principal director of a cinematographic work in the majority of countries of the Union, the Working Group had decided to accept that proposal, in the hope that this compromise would achieve unanimous support; the Working Group had, however, added a clause for the benefit of those few countries which did not apply the system of presumption in favor of the director. That was the object of the last sentence of paragraph (3).

1782.4 Those countries which applied the film copyright system would be entirely free to retain that system.

1783. Mr. MASOUYÉ (BIRPI) said that the last sentence of the English text of Article 14*bis*(3) as given in document S/290 contained a typing error. The correct wording was: "However, those countries of the Union whose legislation does not contain rules providing for the application of the said paragraph (2)(b) to such director shall notify the director by means of a written declaration which will be immediately communicated by him to all the countries of the Union."

1784. Mr. WALLACE (United Kingdom) said that it was of considerable importance to the United Kingdom that a contract made in London by a United Kingdom film maker with those contributing to the making of the film which expressly provided that it would be governed by United Kingdom law should be interpreted in accordance with that law by the courts of other countries. The Delegation of the United Kingdom was opposed to the proposed wording because of the doubts it cast on the validity of that view.

1785.1 The CHAIRMAN pointed out that it was a long-standing tradition of the Berne Convention that the question of presumption was to be governed by the legislation of the country in which protection was claimed.

1785.2 There would be no presumption of assignment, unless national legislation made express provision for it, in the case of persons, other than those mentioned in paragraph (3), who contributed to the making of a cinematographic work, i.e., the photographers and, where applicable, the actors. Moreover, it was doubtful whether such persons could claim authorship of a work. Nevertheless, countries of the Union had the possibility of ensuring that they obtained an equitable remuneration, by giving them the benefit of a presumption of legitimation.

1785.3 Summing up, he said that the compromise submitted by the Drafting Committee had the advantage of facilitating the circulation of films in the countries of the Union but without adversely affecting the legitimate interests of authors.

1786. Mr. JELIĆ (Yugoslavia), referring to the procedural point raised by the Delegation of the Netherlands, said that the Main Committee had decided unanimously at its last meeting to set up a Working Group to seek a new compromise in regard to Article 14*bis*, and that appeared to imply that discussion of the question would be reopened.

1787. The CHAIRMAN invited the Main Committee to vote on the reopening of discussion on paragraph (2)(c) and (3) of Article 14*bis*.

1788. *The Main Committee decided, by 20 votes to 8, with 9 abstentions, to reopen the discussion.*

The meeting rose at 1 p.m.

TWENTY-SIXTH MEETING

Monday, July 10, 1967, at 3 p.m.

CINEMATOGRAPHIC WORKS (ARTICLE 14*bis*) (continued) (S/290)

1789.1 The CHAIRMAN opening the discussion on the text of Article 14*bis* proposed in document S/290, said he would prefer the Main Committee to begin by considering paragraph (3) of that Article, as it appeared that the problems which it raised could be solved more easily than those arising in connection with the form of undertaking referred to in paragraph (2).

1789.2 In the new text of paragraph (3), the principal director had been added to the list of authors to whom the presumption of assignment could not be applied.

1790. Mr. DE SANCTIS (Italy) said he accepted paragraph (3) as it appeared in the compromise draft.

1791.1 Mr. NAMUROIS (Belgium) said the problem was a complicated one. Some delegations were anxious that the director should be mentioned in this Article on the same footing as the authors of scenarios, dialogues and musical works. But was there any point in that? The economic and social situation of the directors to whom that Article applied was such that they could negotiate with the maker and object to the presumption of assignment.

1791.2 The adjective "principal," which was applied to the director, was so vague that it was liable to raise serious difficulties of application for a whole range of other productions assimilated to cinematographic works. A simpler solution would be to say that presumption applied to directors unless the national legislation decided otherwise. Then there would no longer be any need to qualify the word "director" and there would be no danger of any clash with existing national legislations.

1792.1 Mr. KEREVER (France) said that although paragraph (3) of Article 14*bis* was easier to discuss on the technical plane, it was quite as important in its substance as paragraph (2).

1792.2 There was no serious reason why the director should not be put on the same footing as the authors of scenarios, dialogues and musical works. The Delegate of Belgium had spoken of the economic position of the principal director, but a Belgian writer like Simenon was surely in an even stronger position and yet he was exempted from the presumption of assignment as an author of pre-existing works.

1792.3 The difficulty of applying the epithet "principal" to a director would hardly apply in the case of Bergman's films for instance. The remaining difficulties seemed to have been exaggerated.

1792.4 The epithet "principal" had been applied to the director in order to assimilate him to authors of scenarios, etc., thus making it possible to apply the presumption to assistant directors and persons who did not rank as intellectual creators of the work.

1792.5 Admittedly, there was still a difficulty in deciding who was entitled to be regarded as an author in the case of cinematographic works, but it was always possible to have recourse to national legislation.

1792.6 The Delegation of France supported the compromise draft, but it could not agree that the director should be treated differently from the three other categories of authors.

1793.1 The CHAIRMAN, replying to the Delegate of Belgium, said that reversing the formula would produce the same result in practice.

1793.2 The point at issue was whether the Main Committee wished that the provisions of paragraph (2)(b) should be applied to the principal director as well as to the authors of the scenarios, etc., unless the national legislation decided otherwise, or whether the Main Committee wished to make a distinction between the former and the latter.

1794. Mr. NAMUROIS (Belgium) said his intention in seeking to reverse the formula in reference to the director only had been to take account of the view which had been expressed previously by the majority of delegates. If his proposal was not supported, he was prepared to withdraw it.

1795. The CHAIRMAN, noting that the proposal of the Delegate of Belgium was not supported, said he would regard it as having been withdrawn.

1796. Mr. JELIĆ (Yugoslavia) said that Yugoslavia, like France, could not accept a solution which ran counter to its domestic legislation. The compromise draft would enable his country to accede to the Stockholm Act without amending its legislation, as the director was presumed not to have assigned his rights.

1797. Mr. GERBRANDY (Netherlands) said he had no objection to the director being mentioned along with the authors of scenarios, etc.

1798. The CHAIRMAN put to the vote paragraph (3) of Article 14*bis* as it appeared in document S/290.

1799. *The text was approved by 18 votes to 3 with 14 abstentions.*

CINEMATOGRAPHIC WORKS: FORM OF UNDERTAKING (ARTICLE 14*bis*(2)) (S/290)

1800. The CHAIRMAN invited discussion of paragraph (2)(c) of Article 14*bis*, according to which the undertaking would take the form of a written agreement or something having the same force. It would be a question of a simple written statement and not of a deed authenticated by a solicitor or signed in the presence of witnesses.

1801. Mr. CURTIS (Australia) thought paragraph (2)(c) of Article 14*bis* ambiguous. If it meant that a country where protection was claimed might require an undertaking in writing, his Delegation could agree to it, but if it meant that such a country might require more than a written agreement, then as representatives of a film copyright country his Delegation had serious objections. As, however, the Secretary had stated that the former was the correct interpretation, the wording should be improved.

1802. Mr. WALLACE (United Kingdom) said he shared the preoccupation of the Delegate of Australia. The meaning would, he thought, be made clearer if Article 14*bis*, paragraph (2)(c), read as follows: "The question whether the form of the undertaking referred to above should be in a written agreement or something having the same force shall be a matter for the legislation of the country where protection is claimed."

1803. Mr. MASOUYÉ (BIRPI) read out the corresponding French text of paragraph (2), thus amended. That was the text which would be taken as the basis for discussion.

1804. Mr. DE SANCTIS (Italy) said he was satisfied with the new wording, which was an improvement on the previous version. His Delegation had accepted the Working Group's first draft, because the simplest way of facilitating the international circulation of films would be to say that the form of undertaking would be governed by the legislation of the country in which the maker had his headquarters or his habitual residence. The change which had been made subsequently did not facilitate the circulation of films; it did exactly the opposite. In those circumstances, he reserved his country's position in regard to the vote on that point and to ratification of the Stockholm Act. The system of "legal assignment" which operated in Italy would cease to have any practical value elsewhere. If the rule of *locus regit actum* had been adopted, it would have been in conformity with Italian legislation.

1805. The CHAIRMAN pointed out that they were dealing with a compromise solution and that, when the vote had been taken in the Working Group, the Delegate of Italy, after supporting the French proposal to require a written contract, had nevertheless voted against the Working Group's proposal as a whole.

1806.1 Mr. GERBRANDY (Netherlands) said he wished to ask several questions. Would the provisions of Article 14*bis*(2)(a) apply to the "film copyright" countries? It appeared to him that they would not.

1806.2 The paragraph would undoubtedly apply to those countries of the Union which granted copyright to persons contributing to the making of the work.

1806.3 But did paragraph (2)(a) apply to countries such as Italy, where authors assigned their economic rights to the maker?

1807.1 The CHAIRMAN explained that paragraph (1) of Article 14*bis* applied to all countries. Paragraph (2)(a) also applied to all countries: it was a matter for legislation in the country where protection was claimed to decide who owned the copyright. Hence the United Kingdom and the other "film copyright" countries would be able to retain their present system, and the same would apply in the case of Austria and Italy, which applied the system of *cessio legis*.

1807.2 In those countries where legislation granted copyright to persons contributing to the work, the economic rights being handed over to the maker and only the moral rights being left to those persons, the owners of these partial rights over the cinematographic work would also be determined by the legislation of the country in which protection was claimed. All that was set out clearly in paragraph 318(iii) of the report (S/271). Paragraph (2)(b) applied only to the third category of countries, those whose legislation regarded

the authors of contributions to the making of the cinematographic work as owners of copyright. Hence it could be considered that there were three systems. Paragraphs (1) and (2)(a) of Article 14*bis* applied to the first two systems, those of film copyright and of *cessio legis*. The third system was covered by paragraph (2)(b), but paragraphs (1) and (2)(a) naturally applied to it as well.

1808. Mr. GERBRANDY (Netherlands) said he was still in some doubt in spite of the explanation given in paragraph 318(iii) of the report, which he read out to the Main Committee. He wondered whether, in the example which was quoted the question was not always one for either French law or United Kingdom law, whatever system was applied. Paragraph (2)(c) applied to "film copyright" countries too.

1809. The CHAIRMAN replied that the "film copyright" countries were in fact covered by paragraph (2)(c), but indirectly: in the case of an English film distributed in France or in Germany, the system of presumption would be applied. The undertaking would result from an oral agreement in all those countries where that type of agreement was sufficient, but in France a written document would be necessary.

1810. Mr. GERBRANDY (Netherlands) said it was for that reason that his Delegation was opposed to paragraph (2), which would obstruct the free circulation of films.

1811. The CHAIRMAN reiterated that the Main Committee was dealing with a compromise solution. He, too would have preferred another system. It was in a spirit of international conciliation that the Drafting Committee had agreed on this text.

1812. Mr. GERBRANDY (Netherlands) said it was in the same spirit of conciliation that he had voted for the text proposed by the Working Group in document S/195, a text which most certainly did not meet the wishes of the Delegation of the Netherlands. The Chairman had said on that occasion that it would be the last compromise which delegates would be asked to accept, yet they were now being invited to accept another. The wording suggested by Mr. Wallace was more satisfactory than that put forward by the Drafting Committee, but there were limits to the spirit of conciliation, and an obstacle of this kind to the free circulation of films was not acceptable.

1813. Mr. STRASCHNOV (Monaco) asked the Chairman for an explanation concerning the relations between the "film copyright" countries and the continental countries. In the case of an English film distributed in France, a written document would be necessary if the presumption was to apply to the owner of the copyright, as France was the country in which protection was claimed. Paragraph (2)(b) spoke only of those countries of the Union in which legislation included the authors of contributions among the copyright owners, and paragraph (2)(c) mentioned the undertaking set out in paragraph (2)(b). It was surely possible to conclude from this that the undertaking concerned only those countries which recognized the authors of contributions as authors, and in that case the French judge could not require, for a film originating in the United Kingdom, the written form prescribed by paragraph (2)(c).

1814. The CHAIRMAN said he thought that Mr. Straschnov had interpreted the text incorrectly. Paragraph (2)(b) of Article 14*bis*, under the terms of which the authors of contributions were the owners of the copyright, applied in France, Germany, Austria and, generally speaking, in the countries of continental Europe, if the English film was exported to those countries. The legislation of the countries in which protection was claimed would be applicable. Conversely, if a French or German film was distributed in the United Kingdom, the system of film copyright would apply.

1815.1 Mr. FERSI (Tunisia) pointed out that in his country copyright in a cinematographic or televised work belonged to the maker, who was also responsible for distribution and hence carried considerable financial responsibility. Tunisian law established the presumption that the agreement linking the maker with all those persons whose works were used in making the film included an assignment to the maker of the exclusive right of exploitation, unless there was a stipulation to the contrary. Hence Tunisia was included among the "film copyright" countries. The proposed text of paragraph (2)(c) of Article 14*bis* would be liable to have the effect of turning against the copyright owner the presumption of assignment provided by legislation.

1815.2 The Main Committee had adopted an article assimilating televisual works to cinematographic works. Television and broadcasting were of great cultural importance in his country, and any restriction on the possibilities of exploiting these information media would be intolerable. The barriers to free circulation, which were being gradually removed by means of conventions, must not be set up again under another form.

1815.3 He would have preferred to see the Main Committee adopt the rule that the form of the undertaking should be governed by the legislation of the country in which the maker had his headquarters or his habitual residence. As that was not possible, he would prefer to retain the Brussels text.

1815.4 In regard to the form of undertaking, he wondered whether a written agreement was to be understood as a simple signed agreement, a document drawn up on stamped paper or a document authenticated by a solicitor. Was a maker to be required to take account of all national legislations? And in that case, would it not be advisable to standardize those legislations? It would be better to keep to the Brussels text, which had proved its worth.

1816.1 The CHAIRMAN said that German law and Scandinavian legislation were based on the same principle.

1816.2 The question at issue in paragraph (2) of Article 14*bis* was that of the circulation of cinematographic works—their export to other countries of the Union. In all countries where the oral agreement prevailed, a work could circulate freely. It was in countries like France, which required a written agreement or an equivalent act, that difficulties might arise.

1817.1 Mr. NAMUROIS (Belgium) said that the compromise suggested by the Drafting Committee would produce a state of complete insecurity. Instead of facilitating the circulation of works, it would make it more difficult. Hence he would adopt the same position as the Delegate of the Netherlands.

1817.2 To take a concrete case affecting the form of undertaking: supposing that a television film of the Belgian television organization was produced by a number of collaborators, whose relations with that organization were governed by a collective agreement. That film was imported into France, where a written agreement was required. Would the collective agreement be regarded as adequate for the application of presumption?

1818. The CHAIRMAN explained to the Delegate of Belgium that if the televised film was assimilated to a cinematographic work, the presumption would operate on the basis of a written contract, and he asked the Delegate of France to explain what was meant by "something having the same force."

1819. Mr. GODENHIELM (Finland) said he would support the text proposed by the Drafting Committee in document S/290, but he would have liked to know the views of the representative of the international cinema organization on this delicate point.

1820.1 Mr. KEREVER (France) said he approved the amendment which Mr. Wallace had proposed to the text of paragraph (2)(c) of Article 14*bis*.

1820.2 He pointed out that the Delegation of France had finally accepted the existing text of Article 14*bis* in a spirit of international cooperation.

1820.3 The main difficulties, apart from some doubts as to the need to introduce an international system of presumption, had been caused by the desire to define the circumstances in which presumption could operate and hence to decide who were the owners of copyright in a cinematographic work, together with a desire to secure recognition for the place of the director among the joint authors.

1820.4 But the Delegate of Tunisia seemed to have slightly exaggerated the drawbacks of the compromise formula. Who would suffer if the country in which the agreement was signed was replaced by the country in which protection was claimed? Tunisian authors? The texts which had been introduced into the Convention were designed to give security to authors as well as security of circulation for films, and they would not suffer from the new text of Article 14*bis*. There was no contradiction between Tunisian legislation and the text of the Convention, because the latter did not affect relations between Tunisian authors and makers.

1820.5 In what way would the new provisions hamper the circulation of films? Presumption of assignment would be applied to a Tunisian cinematographic work exported to France, if a written contract existed, but there would be no obstacle other than a simple formality. A German film would be able to circulate in the Nordic countries and the presumption of assignment would be fully operative. But if the idea of a hindrance to circulation was related to the fact that there would be no uniform system applying to the cinematographic work, then the Delegation of France would agree with the comments made by the Delegate of Tunisia. There ought to be uniformity in the operation of the presumption of assignment in all countries. France had accepted paragraph (2)(a) in a spirit of compromise. Its effect would be that France would be unable to invoke the Convention in Italy or in Great Britain to protect its rights in regard to a cinematographic work.

1820.6 The words "written agreement or something having the same force" could be taken to apply to the written documents governing the relations between a broadcasting organization and its employees, for instance; that was the case with a collective agreement. Although the Delegation of France preferred the idea of a written agreement, it was prepared to accept a wider concept.

1821. Mr. BELINFANTE (Netherlands) thought that *locus regit actum* was the safest rule. If a verbal contract was valid in the Netherlands under Netherlands law, why should French law require a written contract and regard the verbal contract as null and void? It would be much more reasonable to apply the rule of *locus regit actum*. The Delegation of the Netherlands considered that the legal problem raised by this article had not been settled satisfactorily from the practical or the theoretical point of view.

1822.1 The CHAIRMAN recognized the importance of the principle invoked by the Delegate of the Netherlands, but added that there were others which were no less important and that several solutions were possible. In this particular case, the rule *locus regit actum* would be more dangerous than the rule proposed by the Drafting Committee in document S/290. The first solution worked out by the Working Group was a good one, but not all delegations had been able to accept it, and the Drafting Committee had proposed the present text in a spirit of conciliation.

1822.2 In regard to moral rights, he would propose that they should be limited to fifty years *post mortem auctoris* in order to satisfy the United Kingdom and to leave the door open to the United States of America. He would have preferred another solution, but in order to make it easier for France to accept Article 14*bis* he would appeal once again to the spirit of conciliation of all delegates and ask them to accept this solution.

1823.1 Mr. KEREVER (France), replying to the Delegate of the Netherlands who had invoked the rule *locus regit actum*, said that in the present instance they were dealing not merely with the interpretation of a contract but with the rights of the author and maker respectively. There was nothing illogical about leaving the matter to the legislation of the country in which protection was claimed, because that principle had already been laid down in various articles of the Convention.

1823.2 The Delegate of the Netherlands had, as it were, levelled an accusation of imperialism against all those countries which recognized the validity of a written contract but not of a verbal contract. But the question was not one of validity but of interpretation. A French judge would not declare a verbal contract null and void, but he would interpret it on the basis of whether or not written documents existed. If there were no written documents, presumption would not operate, but there were other factors which would guide the judge in his summing up.

1824. The CHAIRMAN put to the vote the text of paragraph (2)(c) in the revised version which had been read out at the beginning of the meeting.

1825. *That text was approved by 21 votes to 5 with 13 abstentions.*

1826. The CHAIRMAN put to the vote Article 14 and Article 14*bis*, as a whole as amended.

1827. *Those Articles were approved by 25 votes to 4 with 5 abstentions.*

TEXTS PROPOSED BY THE DRAFTING COMMITTEE (continued) (S/269)

1828. The CHAIRMAN said that the Delegate of Israel had proposed that at the end of the Draft Resolution II (S/269) the words "the possibility of including" should be replaced by "the inclusion of."

1829. Mr. MASOUYÉ (BIRPI) read out the paragraph with that amendment in French and in English.

1830. The CHAIRMAN pointed out that the question dealt with in the draft resolution had been studied by the Drafting Committee. In his view it would be wiser not to amend the existing text of the Convention but to study the matter further to ascertain whether those provisions could be introduced into the Convention. He asked the Delegate of Israel whether he would be prepared to withdraw his proposal so that the text would be left unchanged.

1831. Mr. ELMAN (Israel) said the purpose of his amendment had been to show more succinctly the action taken by the Conference. As it was merely a matter of drafting, he would withdraw the amendment.

1832. The CHAIRMAN proposed that the Main Committee should vote first on item (i) of the Preamble of the Draft Resolution, which corresponded to an Austrian proposal.

1833. *The text was approved unanimously with 5 abstentions.*

1834. The CHAIRMAN put to the vote item (ii) of the Preamble of the draft resolution, which corresponded to a proposal by the Delegation of Israel.

1835. *That text was approved unanimously with 6 abstentions.*

1836. The CHAIRMAN put to the vote Draft Resolution II as a whole.

1837. *The Draft Resolution as a whole was approved unanimously with one abstention.*

CINEMATOGRAPHIC WORKS (continued)

1838. Mr. WALLACE (United Kingdom) apologized for reverting to Article 14*bis* but thought that since the French version of paragraph (2)(c) of Article 14*bis* (S/290) referred to "un acte écrit équivalent," the words "or a written Act having the same effect" would correspond more closely to it than the proposed wording of the English version.

The meeting rose at 5 p.m.

TWENTY-SEVENTH MEETING

Tuesday, July 11, 1967, at 10:30 a.m.

REPORT OF THE MAIN COMMITTEE (continued) (S/271)

1839. The CHAIRMAN invited the Main Committee to continue the examination of its report (S/271).

1840. Mr. MASOUYÉ (BIRPI) pointed out for the benefit of English-speaking delegates that the English text of paragraph 206, which did not appear in document S/271, was contained in document S/271/Corr.1.

Paragraphs 108 to 113

1841. *Paragraphs 108 to 113 were adopted.*

Paragraphs 114 to 118

1842.1 The RAPPORTEUR, referring to paragraph 114, suggested that the word "new" before the word "provision" be deleted.

1842.2 Referring then to paragraph 116, he suggested that the word "photographic" be substituted for "cinematographic" in the second sentence.

1842.3 Finally he suggested that the last sentence of paragraph 118 should be amended to read: "Choreographic works and entertainment in dumb show are the only works included in the Convention for which a condition of this kind is laid down."

1843. *Paragraphs 114 to 118, thus amended, were adopted.*

Paragraphs 119 to 126

1844. *Paragraphs 119 to 126 were adopted.*

Paragraphs 127 to 133

1845. *Paragraphs 127 to 133 were adopted.*

Paragraphs 134 to 141

1846. The RAPPORTEUR suggested the addition, at the end of paragraph 136, of the words "for instance, textbooks."

1847. *Paragraphs 134 to 141, thus amended, were adopted.*

Paragraphs 142 to 147

1848. *Paragraphs 142 to 147 were adopted.*

Paragraphs 148 to 156

1849. *Paragraphs 148 to 156 were adopted.*

Paragraphs 157 to 163

1850. *Paragraphs 157 to 163 were adopted.*

Paragraphs 164 to 168

1851. *Paragraphs 164 to 168 were adopted.*

Paragraphs 169 to 173

1852. The RAPPORTEUR suggested the following rewording for the last part of the second sentence of paragraph 169: "...which did not protect all moral rights of the author after his death."

1853. *Paragraphs 169 to 173, thus amended, were adopted.*

Paragraphs 174 to 179

1854. *Paragraphs 174 to 179 were adopted.*

Paragraphs 180 to 183

1855. *Paragraphs 180 to 183 were adopted.*

Paragraphs 184 to 189

1856. *Paragraphs 184 to 189 were adopted.*

Paragraphs 190 to 195

1857. *Paragraphs 190 to 195 were adopted.*

Paragraphs 196 to 201

1858. *Paragraphs 196 to 201 were adopted.*

Paragraphs 202 to 205

1859. The RAPPORTEUR suggested that paragraph 205 should be deleted and replaced by the text proposed for paragraph 206 (for English text of paragraph 206 of S/271/Corr.1).

1860.1 Mr. ASCENSÃO (Portugal) considered that the text proposed for paragraph 206 did not exactly reflect the discussions which had taken place on the question of whether the lawful uses for which provision was made in Articles 11*bis* and 13 should also cover translated works. The paragraph said that "some delegations" considered this to be a justifiable interpretation, whereas in fact it had been the opinion of the majority. Moreover, the report seemed to give more weight to the argument of the minority.

1860.2 Hence the Delegation of Portugal proposed that the words "Some Delegations considered..." should be replaced by "The majority of Delegations considered..."

1861. The CHAIRMAN said that he himself had proposed that the word "majority" should not appear in the report, in view of the fact that it had really only been a very small majority (13 votes to 12 with a large number of abstentions). Besides, the Main Committee had so decided.

1862. Mr. ASCENSÃO (Portugal) said that the decision had been taken on a verbal proposal by the Chairman, and that only now, in the context of the new paragraph, was it evident that the omission of the word "majority" made a very considerable alteration to the presentation of the facts.

1863. Mr. WALLACE (United Kingdom) suggested that, to meet the point of the Delegate of Portugal, "many delegations" could be used in place of "some delegations."

1864. The CHAIRMAN said that the suggestions made by the Delegates of both Portugal and the United Kingdom would involve reopening a discussion which had already been closed by a decision, and he therefore proposed that the Main Committee should reverse its decision. He pointed out that a two-thirds majority was required.

1865. *The Chairman's proposal was rejected by 10 votes to 7, with 15 abstentions, and the Main Committee did not reopen the discussion.*

1866. *Paragraphs 202 to 205 were adopted, the text of paragraph 206 replacing the two sentences in quotation marks in paragraph 205.*

Paragraphs 207 to 209

1867. *Paragraphs 207 to 209 were adopted.*

Paragraphs 210 to 215

1868. *Paragraphs 210 to 215 were adopted.*

Paragraphs 216 to 222

1869. The RAPPORTEUR said the Delegation of Japan had asked for a reference to be inserted in the report concerning the interpretation of paragraph (3) of Article 11*bis*. He suggested that such reference should be made in a new paragraph.

1870. *Paragraphs 216 to 222, thus amended, were adopted.*

Paragraphs 223 to 227

1871. *Paragraphs 223 to 227 were adopted.*

Paragraphs 228 to 233

1872. *Paragraphs 228 to 233 were adopted.*

Paragraphs 234 to 239

1873. The RAPPORTEUR said the last part of paragraph 234 should be amended to read: "...should *not* be applicable to musical works."

1874. *Paragraphs 234 to 239, thus amended, were adopted.*

Paragraphs 240 to 246

1875. *Paragraphs 240 to 246 were adopted.*

Paragraphs 247 to 251

1876. *Paragraphs 247 to 251 were adopted.*

Paragraphs 252 to 255

1877. *Paragraphs 252 to 255 were adopted.*

Paragraphs 256 to 261

1878. *Paragraphs 256 to 261 were adopted.*

Paragraphs 262 to 266

1879. The RAPPORTEUR, referring to paragraph 263, said the Delegation of the United Kingdom had proposed that the words "law and order" should be substituted by "public order" and the word "misuses" by "abuses."

1880. Mr. WALLACE (United Kingdom) said his Delegation would also like to suggest the addition of the following sentence at the end of that paragraph: "On this, the United Kingdom and Australian proposals were withdrawn."

1881. Mr. KRUGER (South Africa) said that, for the reasons he had stated at the meeting on July 8, 1967, his Delegation could not accept the interpretation given in paragraph 263 which appeared to be based on the proposal, referred to in paragraph 262, to delete the words "to permit" from Article 17. He suggested, therefore, that the words "public order" should be replaced by "public policy" or, alternatively, that the phrase "with regard to the deletion of the words 'to permit'" should be added after the words "without opposition." If neither suggestion was acceptable, then he would like it to be recorded in the report that his Delegation did not agree with the interpretation given.

1882. The CHAIRMAN pointed out that the question which arose in connection with paragraph 263 was whether the English words "public policy" had the same meaning as the French expression "*ordre public.*"

1883. Mr. WALLACE (United Kingdom) said it had always been difficult to translate the French term "ordre public" into English, since the conception in the United Kingdom was not quite so exact as on the Continent, but United Kingdom experts in foreign law generally preferred the translation "public order."

1884. The CHAIRMAN wondered whether the expression "public policy" could not be used, followed, in brackets, by the French expression "*ordre public.*" Then the intention would be perfectly clear.

1885. Mr. LENNON (Ireland) agreed with the Delegate of the United Kingdom that "public order" was an acceptable translation of "ordre public" and it was, in fact, the term used in Irish law. He did not think "public policy" would be satisfactory, however, and suggested that "ordre public" could be used, between quotation marks, without giving any translation.

1886. Mr. WALLACE (United Kingdom) supported that suggestion.

1887. Mr. KRUGER (South Africa) said if "ordre public" was meant to apply only in times of stress when order had to be restored, he could not accept the expression; if it referred to a State's public policy, however, he would, of course, support it.

1888.1 The CHAIRMAN said it was difficult to define the meaning of the term "ordre public" in a few words. It was, however, widely used in private international law and could not give rise to any misunderstanding.

1888.2 He invited the Main Committee to adopt the proposal of the Delegate of Ireland to replace the words "questions of law and order" in the English text of paragraph 263 by the words "questions of 'ordre public'."

1889. *The proposal was adopted with one dissenting vote and 2 abstentions.*

1890. Mr. CURTIS (Australia) said he considered that instead of the word "monopolies" (at the end of paragraph 263), the singular, "monopoly," would be better.

1891. Mr. LENNON (Ireland) said the sentence that the Delegation of the United Kingdom had proposed should be added at the end of paragraph 263 might introduce some ambiguity into that section of the report. Presumably, it was intended to apply only to the Australian proposal, mentioned in paragraph 260, and to the second part of the United Kingdom proposal, referred to in paragraph 259.

1892. Mr. WALLACE (United Kingdom) agreed with the Delegate of Ireland and suggested the following wording instead: "On this, the United Kingdom and Australian proposals relating to abuse of monopoly were withdrawn."

1893. Mr. KRUGER (South Africa) pointed out that he had made a second proposal regarding the deletion of the words "to permit." If neither of his proposals was acceptable to the Main Committee, he would then reiterate his request that it be recorded at the foot of paragraph 263 that his Delegation did not agree with the interpretation given therein.

1894.1 The CHAIRMAN pointed out that the words "to permit" had been deleted from Article 17 in order to ensure that the Article could not be interpreted as meaning that a country could authorize, without the consent of the author, the distribution, performance or exhibition of a literary or artistic work in cases where the Berne Convention provided that the consent of the author was necessary.

1894.2 To meet the wish expressed by the Delegate of South Africa, the Chairman proposed that the explanation should be given in paragraph 262.

1895. *The Chairman's proposal was adopted by 21 votes to 1 with 9 abstentions.*

1896. *Paragraphs 262 to 266, thus amended, were adopted.*

Paragraphs 267 to 269

1897. *Paragraphs 267 to 269 were adopted.*

Paragraphs 270 to 276

1898. *Paragraphs 270 to 276 were adopted.*

Paragraphs 277 to 281

1899. *Paragraphs 277 to 281 were adopted.*

Paragraphs 282 to 288

1900. *Paragraphs 282 to 288 were adopted.*

Paragraphs 289 to 294

1901. *Paragraphs 289 to 294 were adopted.*

Paragraphs 295 to 299

1902.1 The CHAIRMAN noted with satisfaction that the terminology which he himself had advocated had been adopted in paragraphs 296 to 298, which spoke of "classical authors" in the case of pre-existing works and "modern authors" in the case of artistic or literary contributions to the making of the cinematographic work *stricto sensu.*

1902.2 He wondered, however, whether it might not be wiser, in view of the existing differences between the various national legislations, merely to speak of "authors of pre-existing works" and "authors of contributions," adding an explanation in brackets, the first time that the latter expression was used, to indicate what contributions were referred to.

1903. The RAPPORTEUR said the Chairman's new proposal was acceptable to him. He pointed out that in the English text the heading "Article 14 (Articles 14 and 14*bis*)" should be inserted between paragraphs 295 and 296.

1904. Mr. CURTIS (Australia) said that, if the term "modern authors"—in the sense used, for example, in paragraph 304—was replaced by "authors of contributions" or a similar expression, the position of film copyright countries would not be fully covered. A slightly wider expression would be better, and perhaps the Rapporteur would bear that in mind when redrafting the text.

1905. The CHAIRMAN said he was anxious to ensure that there should be no misunderstanding. The term "classical" was applied in the report to the authors of pre-existing works, within the meaning of Article 14, and the term "modern" to the authors of the cinematographic work in the strict sense of the term, within the meaning of Article 14*bis.* Hence it seemed that this could not give rise to any difficulties in the countries where the film copyright system was in force.

1906. The RAPPORTEUR observed that the second sentence of paragraph 288 and the first sentence of paragraph 289, as approved by the Main Committee, might possibly cover the point of the Delegate of Australia.

1907. Mr. CURTIS (Australia) said he was thinking of subsequent paragraphs which, if redrafted as envisaged, would not seem to take account of the fact that in film copyright, the maker was given certain rights which were covered under the continental system by the term "modern authors."

1908. The CHAIRMAN said he thought that those questions had been cleared up in the new draft of Article 14*bis*, which stated that national legislations could grant to the authors of contributions the same rights which were granted to the authors of the cinematographic work, but not those which were granted to the authors of the pre-existing work by Article 14. It was, of course, understood that in those countries where the film copyright system operated, those rights were reserved to the maker. Hence there should be no misunderstanding.

1909. Mr. KEREVER (France) said that if, as he was given to understand, the film copyright system not only gave the maker the rights of the authors of contributions but also granted them the status of authors, the proposed text should not give rise to any difficulty in the countries in which that system was in force.

1910.1 The CHAIRMAN pointed out that, as was stated in paragraph 289 of the report, the Delegation of the United Kingdom had agreed to withdraw a proposal to include in Article 6(2) an explanation that the countries of the Union were entitled to regard the maker of a cinematographic work as the author of that work, in view of the fact that the new Article 14*bis* laid it down that it was a matter for legislation in the country in which protection was claimed to determine the ownership of copyright in a cinematographic work.

1910.2 In order to avoid any misunderstanding, it might nevertheless be advisable to add to the report a few words along those lines.

1911. Mr. WALLACE (United Kingdom) said he would like the text of paragraph 289 to stand, but suggested that the words "and it was proposed to make this clear in the proposed new Article 14*bis*" be added at the end.

1912. *Paragraphs 295 to 299, thus amended, were adopted.*

Paragraphs 300 to 305

1913. The RAPPORTEUR suggested the insertion, in paragraph 303 of the word "finally" between "and" and "decided" since there had been two votes on paragraph 4 of Article 11*bis*.

1914. *Paragraphs 300 to 305, thus amended, were adopted.*

Paragraphs 306 and 307

1915. *Paragraphs 306 and 307 were adopted.*

Paragraphs 308 to 311

1916. The RAPPORTEUR said that, in paragraph 310, he had misunderstood the meaning of the Japanese proposal. The first sentence should therefore be amended to read: "Japan proposed to mention only authors of pre-existing works in paragraph (4) and to delete paragraph (7)."

1917. *Paragraphs 308 to 311, thus amended, were adopted.*

Paragraphs 312 to 317

1918. *Paragraphs 312 to 317 were adopted.*

Paragraph 318

1919. *Paragraph 318 was adopted.*

Paragraphs 319 to 321

1920. The RAPPORTEUR suggested that, after paragraph 321, some explanation should be given regarding the term "written agreement or a written act of the same effect."

1921. *Paragraphs 319 to 321, thus amended, were adopted.*

Paragraphs 322 to 325

1922.1 Mr. STRASCHNOV (Monaco) reminded the Main Committee that, in the course of the previous day's discussions, some delegations, including his own, had expressed doubts concerning the interpretation of Article 14*bis*(2)(b) and (c), pointing out that it might conceivably be thought that the system of presumption of legitimation could only be applied between countries which had adopted the continental system. The Chairman had explained that this was not the case, and that the suggested compromise would enable cinematographic works to circulate freely between those countries and those in which the film copyright system was in force.

1922.2 He wondered whether it might not be advisable to mention that explanation in the report.

1923.1 The CHAIRMAN said he thought the suggestion of the Delegate of Monaco was a wise one. He mentioned the difficulties which could hamper the circulation of films between the two groups of countries: if a German or French maker exported a film to the United Kingdom, the system of film copyright would be applied to it, but if a British maker exported a film to the Federal Republic of Germany or to France, the system applied to it would involve some measure of presumption, either on the basis of a written contract in the case of France, or of a verbal contract in the case of the Federal Republic of Germany. Hence it was essential that makers should keep abreast of the legislation in force in the various countries.

1923.2 He suggested that an explanation of that point should be included in the text of the report.

1924. *Paragraphs 322 to 325, thus amended, were adopted.*

Paragraphs 326 to 328

1925. The RAPPORTEUR said that the Delegation of Japan had asked that the following sentence be added after the second sentence in paragraph 327: "A proposal was made by Japan to the effect that the reservation be maintained (document S/98)." In the third sentence, the words "in conformity with the Japanese proposal" should therefore be inserted after the word "maintain."

1926. *Paragraphs 326 to 328, thus amended, were adopted.*

Paragraphs 329 to 333

1927. *Paragraphs 329 to 333 were adopted.*

Paragraphs 334 to 339

1928. *Paragraphs 334 to 339 were adopted.*

Paragraphs 340 and 341

1929. *Paragraphs 340 and 341 were adopted.*

1930. The CHAIRMAN pointed out that some paragraphs had been adopted subject to final drafting. He invited Mr. Masouyé to put forward a proposal on that point.

1931. Mr. MASOUYÉ (BIRPI) suggested that the final drafting of those paragraphs should be left to the Chairman and the Rapporteur, who could, of course, always count on the help of the Secretariat.

1932. *It was so decided.*

CLOSING REMARKS

1933. The CHAIRMAN thanked all delegations for the spirit of international cooperation which had made them willing and able to take part in the revision of the Berne Convention. They could congratulate themselves on having satisfactorily solved all the questions to which it was possible to find a solution at the present stage. He emphasized that that result could never have been achieved without the preparatory work of the Swedish/BIRPI Study Group, and he expressed his warmest thanks to the Chairmen of the various Working Groups, to the Chairman of the Drafting Committee who had had a particularly difficult task, to the Rapporteur, whose nocturnal labors had resulted in the production of a highly technical work in which he would retain moral rights in perpetuity, and to the Secretary, who had displayed unflagging devotion.

1934. Mr. GRANT (United Kingdom) said the Chairman had paid many well deserved tributes but was himself the most deserving of all. He had devoted himself to the Main Committee—which, without his help could not have achieved half as much as it had—and given freely of his great knowledge. All members of the Main Committee would wish to thank him.

1935. Mr. HESSER (Sweden) associated himself with the previous speaker's remarks and extended to the Chairman the thanks of his Delegation, which represented the host Government. The Chairman's vast knowledge of both national and international law had enabled him to suggest compromise solutions on many occasions and he was to be admired for the wonderful job he had done and for the masterly way in which he had conducted the Main Committee's business.

1936. Mr. KEREVER (France) associated his Delegation with the congratulations which the Delegates of the United Kingdom and Sweden had addressed to the Chairman. The Delegation of France had appreciated not only his competence, which was universally recognized, but also the skill with which he had always been able to pick out the real problems, thus ensuring that the discussions kept to the point and were not unnecessarily prolonged.

1937. Mr. CIPPICO (Italy) fully endorsed the tribute paid to the Chairman.

1938. Mr. MAGNIN (Deputy Director, BIRPI) speaking on behalf of Mr. Bodenhausen, Director of BIRPI, expressed his admiration for the new demonstration of mastery which the Chairman had given in guiding the Main Committee's discussions with such authority and such attention to detail. He also congratulated the Rapporteur, whose work would henceforward be indispensable for anyone who wished to study the results of the Stockholm Conference. Finally, he wished to express warm thanks to all delegations, each of which had played its part in the execution of a work which was all the more satisfying because of the magnitude of the difficulties involved.

The meeting rose at 12:05 p.m.

TWENTY-EIGHTH MEETING

Tuesday, July 11, 1967, at 3:45 p.m.

CINEMATOGRAPHIC WORKS (ARTICLES 14 AND 14*bis*) (continued) (S/299)

1939.1 The CHAIRMAN reminded the Main Committee that groups of eminent legal specialists had been studying the questions concerning the régime of cinematographic works over a long period of time. The clear and logical legal wording which had emerged as a result of their efforts, in the form of Articles 14 and 14*bis* of the Berne Convention, should satisfy the supporters of all the systems operated in the various countries of the Union. The only provision which still gave rise to objections among those proposed for Articles 14 and 14*bis* in document S/278 was paragraph (2)(c) of Article 14*bis* dealing with the form of the cinematographic agreement. He therefore proposed a compromise wording for paragraph (2)(c) of Article 14*bis*, to read as follows: "The question as to whether the form of the undertaking referred to above should be a written agreement or something having the same force shall be governed by the legislation of the country of the Union in which the maker of the cinematographic work has his headquarters or his habitual residence. It shall, however, be a matter for legislation in the country of the Union in which protection is claimed to provide that the undertaking shall be a written agreement or something having the same force. Countries exercising that right shall notify the Director General by means of a written declaration which will be immediately communicated by him to all the countries of the Union."

1939.2 The first sentence of the new draft, laying down the principle that the legislation of the country of the maker determines the form of the undertaking to be entered into, should meet the wishes of the Delegation of the Netherlands which had stated that its objections were based solely on legal consideration and not on any political considerations or on a wish to defend particular interests.

1939.3 The practical objections which had been raised by the Delegation of France should be eliminated by the subsequent phrases which covered all the objections concerned. If a cinematographic work was the product of a French maker, a written contract would be required as the basis for presumption not only in France, but in all the countries of the Union. Moreover, when protection was claimed, a written agreement would have to exist even in the case of an Italian, English or other film.

1939.4 He suggested that the meeting should be suspended in order to enable the various delegations concerned to study the new text and carry out informal discussions.

1940. *It was so decided.*

The meeting was suspended at 4 p.m. and resumed at 5 p.m.

1941. The CHAIRMAN said that the definitive text of his proposal for the rewording of Article 14*bis*(2)(c) had just been circulated under reference S/299, having been slightly redrafted during the suspension of the meeting.

1942. Mr. GERBRANDY (Netherlands) said he was in a position to accept the new text (S/299). His Delegation's last misgivings had been removed by the changes which had been made to the first sentence: "The question whether or not the form of the undertaking referred to above should for the application of the preceding subparagraph (b) be in a written agreement..." He wished to thank the Secretary warmly for having drawn up the compromise draft which made it possible to achieve unanimity. He also thanked the Delegation of France and all those who had taken an active part in the preparation of this felicitous draft.

1943.1 Mr. KEREVER (France) said that the French version of the second sentence of the new text (S/299) should open thus: "Est toutefois réservée à la législation du pays..."

1943.2 The Delegation of France was happy to give proof of its spirit of conciliation by making some sacrifices of principle and accepting the compromise draft which had already secured the approval of the Delegation of the Netherlands. The new paragraph (2)(c) of Article 14*bis* opened with a general provision which was followed by the required exceptions. Hence the clause as a whole was satisfactory.

1944. *The new text of Article 14*bis*(2)(c) was approved unanimously.*

REPORT OF THE MAIN COMMITTEE (continued)

1945. Mr. DITTRICH (Austria) pointed out that the Committee would have to amend the report which it had adopted at the previous meeting, to bring it into line with the decision which had just been taken.

1946. *It was so decided.*

The meeting rose at 5:15 p.m.

MAIN COMMITTEES I AND II

Chairman: Mr. Eugen ULMER (Federal Republic of Germany)
Secretary: Mr. Claude MASOUYÉ (BIRPI)

JOINT MEETING

Wednesday, July 5, 1967, at 2:35 p.m.

ELECTION OF THE CHAIRMAN

1947. Mr. BODENHAUSEN (Director of BIRPI) invited members to elect a Chairman for the joint meeting of Main Committees I and II.

1948. *On the proposal of Mr. Singh (India), Mr. Ulmer (Federal Republic of Germany) was unanimously elected Chairman.*

HARMONIZATION OF DRAFTS OF MAIN COMMITTEES I AND II (S/249)

1949. The CHAIRMAN, after expressing his thanks to the head of the Delegation of India and to all the delegates, pointed out that it was the task of the joint Main Committees to harmonize the drafts approved by Main Committees I and II. In the Protocol Regarding Developing Countries (S/249 and S/249 Add.), which Main Committee II had approved subject to final drafting, some amendments would no doubt have to be made at two points—in paragraph (a)(i) and in paragraph (c) of Article 1.

1950. Mr. STRASCHNOV (Monaco) inquired why the phrase "lawful representatives" was used in paragraph (a)(i) of Article 1, whereas in Article 2(4) of the Berne Convention (which had now become paragraph (5) (S/1)) it had already been specified that the protection accorded to authors included their successors in title.

1951. Mr. MASOUYÉ (BIRPI) explained that the term "lawful representatives" used in the text of the Protocol had been taken from the Paris Act of 1886, which had been subsequently amended. It would be for the Drafting Committee to make the necessary corrections.

1952. The CHAIRMAN thought that the words "in the other countries of the Union" in paragraph (a)(i) of Article 1 should be replaced by the words "in countries other than the country of origin"; that expression, which had been used in Article 4(1) (S/1), was more appropriate because it was possible that the authors of certain works might not be nationals of a country of the Union.

1953. *It was so decided unanimously.*

PROTOCOL REGARDING DEVELOPING COUNTRIES: LIMITATION ON RIGHT OF BROADCASTING AND COMMUNICATION TO THE PUBLIC (ARTICLE 1(c))

1954.1 The CHAIRMAN pointed out that the text of paragraph (c)(i) of Article 1 in document S/249 had been taken from the Rome Act. But there had been a change of terminology since that Act had been drawn up, and a clear distinction was now made between broadcasting and the public communication of the broadcast work. In order to avoid confusion, it would be better to replace the proposed draft by a different wording which might be on the following lines: Retain paragraph (1) of Article 11*bis* for the developing countries and replace paragraph (2) by the following: "The legislations of the countries of the Union may restrict the protection granted by paragraph (1) above but the effect of those conditions will be limited to the countries which have put them in force. Such conditions shall not in any case prejudice the moral rights of the author nor the right which belongs to the author to obtain an equitable remuneration: (a) for the broadcast itself; (b) for the communication to the public of the broadcast work, in the case of a broadcast for profit-making purposes."

1954.2 He stressed that that wording would be in harmony with the Brussels and Stockholm Acts.

1955. Mr. WALLACE (United Kingdom) said that so far as he could judge without a written text, the Chairman's proposal did not seem to alter the sense of the Article and would probably be satisfactory to his Delegation.

1956. Mr. STRNAD (Czechoslovakia) agreed with the Delegation of the United Kingdom.

1957. Mr. GOUNDIAM (Senegal) asked how the rights of authors could be restricted if their moral rights and economic rights were respected, and he asked that the expression "for profit-making purposes" should be replaced by the more precise term "commercial."

1958. The CHAIRMAN said it would be difficult to alter the expression "for profit-making purposes" as it had been the basis of the compromise which had been achieved. In regard to the question raised by the Delegate of Senegal, there could be no question of prejudicing the author's moral rights, but his economic rights could be subject to restrictions in favor of the developing countries, provided that an equitable remuneration was paid to the author for the broadcast itself or for the communication to the public of the broadcast work in the case of a broadcast for profit-making purposes.

1959. Mr. MULENDA (Congo (Kinshasa)) said that, while he did not wish to challenge the principle of fixing an equitable remuneration, he would like to know whether it was understood that such remuneration could be fixed, in the absence of agreement, by a competent authority.

1960. The CHAIRMAN replied that the purpose of the proposed text was not to change the existing situation but to remove any ambiguity in regard to the broadcast itself, and the communication to the public of the broadcast work, for profit-making purposes.

1961. Mr. FERSI (Tunisia) found the proposed text acceptable both in substance and form.

1962. Mr. CIAMPI (Italy) approved the substance of the proposed text, subject to one clarification. He thought it would be better not to mention the moral rights of the

author and to make reference to Article 6*bis* of the Convention.

1963. Mr. WALLACE (United Kingdom) said that there would always be, in accordance with Article 11*bis*, a compulsory license to broadcast and a compulsory license for the secondary use of broadcasting. With regard to broadcasting itself, there would always be payment; with regard to the secondary uses, however, there would be payment only if the performances were for profit-making purposes.

1964. Mr. H'SSAINE (Morocco) said he was in favor of the text proposed by the Chairman and added that in his country there were legal provisions governing the collection of copyright fees.

1965. The CHAIRMAN invited the members of the joint meeting to vote on the proposal.

1966. *The wording proposed by the Chairman was approved unanimously.*

1967. Mr. GERBRANDY (Netherlands) said that Article 3 of the Protocol provided that a country could maintain one or more reservations until it acceded to the Act adopted by the next revision conference of the present Convention. He pointed out that a distinction was generally made between accession to an Act, on the one hand, and signature and ratification on the other.

The meeting rose at 3 p.m.

MAIN COMMITTEES I AND IV

Chairman: Mr. Eugen ULMER (Federal Republic of Germany)
Secretary: Mr. Claude MASOUYÉ (BIRPI)

JOINT MEETING

Thursday, July 6, 1967, at 2:40 p.m.

ELECTION OF THE CHAIRMAN

1968. Mr. BODENHAUSEN (Director of BIRPI) announced that the Delegation of France had nominated Mr. Ulmer, of the Federal Republic of Germany, as Chairman of the joint meeting of Main Committee I and Main Committee IV, as Mr. Ulmer was Chairman of Main Committee I and the matters to be discussed in the joint meeting were of more direct concern to Main Committee I than Main Committee IV.

1969. *Mr. Ulmer (Federal Republic of Germany) was elected Chairman of the joint meeting of Main Committees I and IV by acclamation.*

RESERVATIONS (ARTICLE 25*ter* OF THE BERNE CONVENTION): PROPOSAL BY THE DELEGATION OF ITALY (S/259)

1970.1 The CHAIRMAN traced the history of the question of the reservations in regard to the right of translation, mentioned in Article 25*ter* of the Berne Convention in the Program of the Conference (S/9) and in the proposal by the Delegation of Italy (S/259), and he explained the purpose of the latter proposal.

1970.2 Reservations in regard to the right of translation were of very long standing. In principle, since the Berlin revision (1908), the right of translation had been protected by Article 8 of the Berne Convention throughout the whole term of protection—that is, during the life of the author and for 50 years after his death. But since the Paris revision (1896) a country of the Union had been allowed to make a reservation, by virtue of Article 5, authorizing translations into the national language or languages of that country before the expiration of the term of protection, if the work concerned had not been translated into such language or languagues after a period of ten years.

1970.3 In the Brussels Act (1948), there were two provisions laying down the conditions under which countries could avail themselves of that reservation: Article 27(2) and the last sentence of Article 25(3), the second of which referred more particularly to countries which acceded subsequently to the Berne Convention and which, for the sake of simplicity, might be called "new" countries; under the terms of those two provisions, the Brussels Act granted the benefit of that reservation not only to countries which had already acceded to the Convention, but also to these "new" countries.

1970.4 But the Brussels Act made no provisions for effective reciprocity for those countries which took advantage of the said reservation. Thus, Japan, for example could take advantage of the reservation regarding the right of translation from the start. The result was that works originally written in French. English, etc., were only protected from translation in Japan for a period of ten years if no translation had been published during that period, whereas works originally written in Japanese were protected in France, the United Kingdom, etc., during the whole life of the author and for 50 years after his death.

1970.5 An attempt had therefore been made to restore the balance in the Stockholm Act; that was the purpose of the suggested provisions for Article 25*ter* (S/9). Under those provisions, any country of the Union acceding to the Stockholm Act would retain the benefit of the reservations it had previously formulated, which meant that for the so-called "old" countries the situation would remain unchanged. But the "new" countries ratifying the Stockholm Act would no longer have the option of formulating the reservation in question.

1970.6 That proposal had aroused some opposition, and Main Committee IV had asked Main Committee I to give its opinion on the question. After discussing the matter, Main Committee I had decided, by a large majority, that it would be better to give the "new" countries acceding to the Stockholm Act the same possibility of formulating those reservations as the "old" countries; that was only an expression of opinion, however, because Main Committee IV was the only body which could take a valid decision on that point.

1970.7 The Delegation of Italy noting that the majority of members of Main Committee I were in favor of retaining for the "new" countries the benefit of the reservations previously granted to the "old" countries, had thought it desirable to introduce into the Convention a system of effective reciprocity by which, in countries acceding to the Stockholm Act and availing themselves of the reservation which they would be entitled to formulate, works originally written in French, English, etc., would only be protected from translation for a term of ten years, but by the same token works originating in the said countries would only be protected for a similar term of ten years in France, the United Kingdom, etc. Thus the Italian proposal (S/259) sought to maintain the *status quo* for the "old" countries which had already formulated reservations in regard to the right of translation and for which the Stockholm Conference would still provide no effective reciprocity, but would introduce that reciprocity for the "new" countries acceding to the Stockholm Act; there was no desire to deprive those countries of the benefit of the reservation granted to the "old" countries, but there was also no desire to encourage the "new" countries to take undue advantage of that privilege.

1970.8. Main Committee I had found the Italian compromise proposal (S/259) satisfactory and had voted by a large majority to adopt it. But that again was only an opinion, strictly speaking, as it was really the responsibility of the joint Main Committees I and IV to take a decision on the question.

1970.9 He suggested that the meeting should begin by the case of the "old" countries such as Japan, and he called for a vote on paragraph 2(a) of Article 25*ter* of the Program of the Conference (S/9) in the following modified form: "(2)(a) Any country of the Union acceding to the Stockholm Act or ratifying it may retain the benefit of the reservation..."

1971. Mr. DE SANCTIS (Italy) accepted the amendment suggested by the Chairman.

1972. *Paragraph (2)(a) of Article* 25ter *of the Program of the Conference (S/9) as amended, was adopted unanimously.*

1973. The CHAIRMAN invited the members of the meeting to vote on the provisions concerning the "new" countries—that is, on the Italian proposal (S/259) dealing with paragraph (2)(b) of Article 25*ter.*

1974.1 Mr. WALLACE (United Kingdom) said that he was in favor of the version of the Article contained in the Program, which would modify the Brussels Act by allowing countries that accepted the Stockholm Act to make reservations under the Protocol only.

1974.2 During the debate in Main Committee I, the majority opinion had been in favor of allowing as much latitude as possible in the question of translations. He had not at the time realized that the discussion was intended to cover countries hitherto not members of the Union acceding to the Act as well as existing members. He was raising the point in the joint meeting in the hope that it was not too late to reopen the discussion.

1974.3 In his opinion, it was not just that new countries should be allowed to make reservations under conditions that were not allowed to existing members. He proposed therefore that the first sentence in subparagraph (2)(b) of the Italian amendment be deleted.

1975. Mr. ROHMER (France) said that he, like the Delegate of the United Kingdom, had been under a misapprehension when the vote had been taken in Main Committee I. He had understood that the vote applied both to the reservations benefiting the old countries, which it was in fact desirable to retain, and any reservations which the "new" countries might be allowed to formulate and for which, in the view of the Delegation of France, as of the Delegation of the United Kingdom, there appeared to be no justification. Hence the Delegation of France could not accept the first sentence of paragraph (2)(b) in the Italian proposal (S/259).

1976. The CHAIRMAN pointed out that when the matter had been put to the vote, Main Committee I had not in fact taken any decision but had merely expressed an opinion for the benefit of Main Committee IV. The debate, therefore, was not closed.

1977.1 Mr. IOANNOU (Greece) said he had been under the same misapprehension when the vote had been taken in Main Committee I.

1977.2 It was quite reasonable that countries of the Union should retain the benefit of the reservations which they had previously formulated but that benefit ought not to be extended to "new" countries.

1977.3 Moreover, if the benefit of previously formulated reservations was retained, under the terms of paragraph (2)(a) of Article 25*ter*, it should be coupled with an obligation to grant effective reciprocity, even in the case of those "old" countries which had from the very beginning availed themselves of the reservation in regard to the right of translation.

1978.1 Mr. BODENHAUSEN (Director of BIRPI) said that if the Conference adopted the additional Protocol Regarding Developing Countries, the right of reservation granted to "new" countries would lose much of its importance. The extension of that right to the translation of works, might then be of interest only to those "new" countries which were not developing countries.

1978.2 Supposing that the Soviet Union, for instance, subsequently wished to accede to the Berne Convention, the freedom to formulate reservations would certainly facilitate that accession. If that freedom was withdrawn, there would be a danger of closing a door which it would be advantageous to keep open.

1979. The CHAIRMAN agreed that the compromise proposal put forward by the Delegation of Italy (S/259) was reasonable in the sense that, while it gave the "new" countries the benefit of a privilege of which the "old" countries already availed themselves, it effectively limited that privilege by introducing the requirement of effective reciprocity.

1980. Mr. FERSI (Tunisia) said it was unnecessary for him to say what the position of his Government would be since, as the Director of BIRPI had pointed out, it would be entitled to formulate reservations under the terms of the additional Protocol Regarding Developing Countries. He wished, however, to support the general principle of enabling the maximum number of countries to accede to the Stockholm Act. Hence it was essential to leave certain doors open and accept the compromise solution suggested by the Delegation of Italy. The Delegation of Tunisia, like the Chairman, was in favor of the Italian proposal.

1981. The CHAIRMAN put to the vote paragraph (2)(b) of Article 25*ter* of the Berne Convention, as set out in the Italian proposal.

1982. *Paragraph (2)(b) of Article* 25ter, *in the form proposed by the Italian Delegation (S/259), was adopted by 21 votes to 4, with 10 abstentions.*

1983. Mr. ROHMER (France) speaking on a point of order, said that the meeting ought to have voted first on the United Kingdom proposal, which had been supported by the Delegation of France and which had priority over the Italian proposal as it had been submitted earlier.

1984. Mr. BODENHAUSEN (Director of BIRPI) said that the vote had been taken in accordance with the rules. The Delegation of the United Kingdom had proposed the adoption of the wording from the Program of the Conference (S/9). The Delegation of Italy had proposed an amendment to that Program (S/259). Hence the Italian amendment had to be put to the vote first. As it had been adopted, there was no longer any need to vote on the text of the Program of the Conference.

1985. The CHAIRMAN said that if the Delegation of France had been under any misapprehension, the result of the vote could be adjusted appropriately.

1986. Mr. ROHMER (France) said that his Delegation had intended to support the United Kingdom proposal and vote for the text of Article 25*ter* of the Program of the Conference (S/9). But unless it had been possible to delete the right of reservation for "new" countries, the Delegation of France would have voted for the compromise draft of the Delegation of Italy (S/259), because it introduced the system of effective reciprocity. In those circumstances, he would not press for an amendment to the results of the vote.

1987. The CHAIRMAN put to the vote paragraph (2)(c) of Article 25*ter*, as set out in the Italian proposal, which

was identical with paragraph (2)(b) of the same Article in the Program of the Conference (S/9).

1988. *Paragraph (2)(c) of the Italian proposal (S/259) was adopted unanimously.*

MAINTAINING THE RESERVATION CLAUSE IN ARTICLE 7: BULGARIAN AND POLISH PROPOSAL (S/225)

1989.1 The CHAIRMAN recalled that Main Committee I had had before it a proposal submitted by the Delegations of Bulgaria and Poland (S/50) to the effect that the countries of the Union bound by the Rome Act should be entitled, at the time of accession to the Stockholm Act, to grant a term of protection of less than fifty years from the death of the author, which was the term provided in the Convention. That proposal sought to make ratification of the Stockholm Act easier for three countries whose national legislations provided terms of protection of slightly less than fifty years. By a very large majority, Main Committee I had adopted the proposal of Bulgaria and Poland (S/50), amended in accordance with the suggestion of the Secretariat (S/225), and Article 7(6) of the Berne Convention had been modified accordingly.

1989.2 That clause was, however, a reservation, and it could therefore be included in the final clauses of the Convention instead of in Article 7. He inquired whether the joint Main Committees I and IV would prefer to keep that reservation in Article 7 or include it among the final clauses.

1990. *Joint Main Committees I and IV decided to keep the reservation clause in Article 7.*

The meeting rose at 5:30 p.m

MAIN COMMITTEE II

Chairman: Mr. Sher SINGH (India)
Secretary: Mr. Charles-L. MAGNIN (Deputy Director, BIRPI)
Rapporteur : Mr. Vojtěch STRNAD (Czechoslovakia)

FIRST MEETING

Wednesday, June 21, 1967, at 9:35 a.m.

OPENING OF THE MEETING

1991.1 The CHAIRMAN said that one of the most important tasks of the Conference was to establish rules for the benefit of developing countries. In 1964, the Swedish/BIRPI Study Group had proposed provisions, to be included in a new Article 25*bis*, which would give those countries the right to make reservations with respect to the provisions of the Convention on certain points. The 1965 Committee of Governmental Experts had approved the substance of those provisions. It had been suggested, however, within the Committee, that the provisions should not be inserted in the Convention itself but should be the subject of a Protocol annexed to it. The texts proposed for the benefit of developing countries had therefore been included in the Draft Protocol. Reference would be made in the final clauses of the Convention to the fact that the Protocol formed an integral part of the Convention. There was no great objection to the incorporation of rules of exception in the system of protection under the Convention but there was controversy on the manner in which those rules would be drafted. The task should not, however, be difficult. All countries represented at the Conference were engaged in the common task of protecting authors' rights and of ensuring that the peoples of the world as a whole became connoisseurs of artistic works. Prosperity, like peace, was indivisible and it was no longer permissible that the world should be divided into rich and poor.

1991.2 He invited members to make general statements on the subject and called on the Delegation of Sweden, which had prepared the provisions set out in the Draft Protocol, to make an introductory statement.

GENERAL DISCUSSION

1992.1 Mr. HESSER (Sweden) said that in recent years a growing body of opinion within the Berne Union had favored the idea that the Berne system should be altered so as to cater adequately to the economic, social and cultural needs of the developing countries. Provisions to that end had been suggested by the Swedish/BIRPI Study Group in 1964. In 1965, the Committee of Governmental Experts had approved those provisions in principle but had modified them and proposed that they be included in a separate Protocol. In conformity with its policy to support cultural and social advance in developing countries, the Swedish Government had sponsored the Experts' recommendations and now presented them, with minor amendments, as official proposals to the Conference.

1992.2 The Protocol would make it possible for developing countries to join, or maintain membership in, the Berne Union on conditions more liberal than those laid down in the Convention itself. The reservations proposed would, however, be valid for a limited period only. It was hoped that, by giving the developing countries access to the fruits of science, literature and art on conditions compatible with their economic situation, the system would promote the use of literary and artistic products which were so vital to the cultural and social advance of those countries.

1992.3 The Protocol would afford authors better protection than that offered by other international systems. Another of its advantages would be that protection in developing countries would, from the outset, be organized on the pattern of the Berne Convention.

1992.4 The Study Group had recommended that with respect to translation the ten-year clause of Article 5 of the Paris Additional Act of the Berne Convention should be included among the special provisions of the Protocol. The 1965 Expert Committee had suggested, however, that protection in that respect should not be inferior to that offered by the Universal Copyright Convention. Accordingly, the Paris clause had been replaced by provisions corresponding to the translation clause of the Universal Copyright Convention. That meant that although there would always be remuneration for translations, a period of only seven years need elapse before translations could be made.

1993.1 Mr. KRISHNAMURTI (India) said that in December 1963, when the Permanent Committee of the Berne Union had met in India, the then Indian Minister of Education had emphasized the need for special provisions to ensure that copyright conventions did not impede the free flow of information and education. The representatives of the Swedish Government and of BIRPI had acted on that suggestion with great rapidity and by 1965 a text of special provisions had been prepared. His Government wished to place on record its appreciation of the prompt and sympathetic consideration given to the matter by the Swedish Government and BIRPI. It also wished to thank the Governmental Experts who had displayed great understanding in their discussions on the draft provisions.

1993.2 There was no need to stress the importance to developing countries of the special provisions contained in the Protocol. It was unfortunate that in a country like India, which had always revered knowledge, the population had, for the past few centuries, been starved of knowledge and the literacy rate allowed to fall to its current low level. Since independence the Indians had, understandably, been clamoring for more and better facilities for education. Even if education brought no benefits, the government of a country inspired by democratic ideals could not ignore popular demand. Recent studies had shown, however, that education played a far greater role than had been imagined previously in improving living conditions and fostering understanding

between peoples. Indeed, researches carried out by UNESCO showed that although 60 per cent of improvements in living conditions in the world could be attributed to capital outlay the remaining 40 per cent could be attributed to education. It was no wonder, therefore, that India was anxious that the Berne Convention should place no obstacle in the way of the gigantic tasks facing its Government in bringing education to the masses.

1993.3 Mr. Adiseshiah, of UNESCO, had drawn attention to the fact that, whereas in some countries of Europe and North America the book supply amounted to approximately 2,000 pages per person a year, in India the average was 32 pages per person a year. He had also said that India as a nation ran the risk of dying intellectually and spiritually if the prevailing book famine was not checked. While India was second to none in upholding the rights of creators of intellectual works, it could not ignore the needs of its nationals. If it failed in that primary task, it would have been untrue not only to itself and its people but also to the world community at large.

1993.4 It had been suggested that countries which found the level of protection in the Berne Union too high could leave the Union and join the Universal Copyright Convention. That meant, presumably, that membership of the Berne Union would be limited to developed States. If that was the wish of the majority of members, they should say so unequivocally. Some 50 per cent of the world's surface was occupied by developing countries, whose populations accounted for approximately 60 per cent of the world population. About one in seven persons was an Indian. If developed States, most of which were bastions of democracy, thought that a union with a restricted membership would provide a democratic answer to the difficulty, the developing countries would have nothing to say. Was it more important to have a high level of protection in a restrictive union than a perhaps lower level of protection in a world union? It seemed to him that it was restricted and esoteric societies and communities which had faded into oblivion.

1993.5 No one would deny that an author had a right to benefit from his intellectual works but it was another matter to claim that he should have the exclusive right to control the use of his works, irrespective of the rights of users. An author, however gifted, stood on the shoulders of those who had preceded him and he, in his turn, had an obligation to posterity. India, therefore, conceded to the author no more than the right to equitable remuneration. In the interests of justice it would admit that, in special cases, compulsory licenses should be issued only after the author had been approached and it had proved impossible to conclude a free contract. India believed that an author should be free to decide when, if ever, he would make his work available to the public. Once the work had been made available to the public it should be available to other users on reasonable terms. If it were not so available, member States should be able to issue licenses on payment of equitable compensation. The Delegation of India failed to understand the reasons for the opposition to compulsory licenses with respect to books. Governments commonly armed themselves with powers to prevent their citizens from forming monopolies or committing arbitrary actions. Why should they not have powers to protect education and culture? As UNESCO had repeatedly said, it was only in the hearts of men that firm foundations of peace could be laid. In a shrinking world, it was no longer possible for some peoples to remain rich and others poor. Writing on the new German law, Professor Ulmer had said that, in cases where the rights were not controlled by a collecting society, the mere existence of a compulsory license had proved useful. Reference to it had paved the way to contractual agreements. The Delegation of India shared those opinions.

1993.6 The Delegation of India hoped that the Governments represented at the Conference would bear in mind the provisions of the UNESCO Declaration of the Principles of International Cultural Cooperation, particularly those which stated: that the wide diffusion of culture and the education of humanity for justice and liberty and peace were indispensable to the dignity of man and constituted a sacred duty which all nations must fulfil in a spirit of mutual assistance and concern; that member States, believing in the pursuit of truth and the free exchange of ideas and knowledge, had agreed and determined to develop and increase the means of communication between their peoples; and that international cultural cooperation was to cover all aspects of intellectual and creative activities relating to education, science and culture.

1993.7 Some of the developed countries spent considerable sums of money on the development of their book exports. If only a portion of that money were placed in a fund, it would more than meet any losses authors might suffer when their books were used in developing countries.

1993.8 At the BIRPI East Asian Seminar on Copyright, held in India in January 1967, the observer for the International Federation of Musicians (FIM) had referred to an arrangement whereby in a country adhering to the Neighboring Rights Convention the fees collected on performances of imported commercial records would be used within the country itself. That arrangement could be appropriately applied to other fields.

1993.9 Countries which endorsed the United Nations declaration of an all-out war on illiteracy, poverty and disease could do no better than make intellectual books available, for the next generation or two, to developing countries without demanding remittances of foreign exchange but by themselves meeting the costs involved.

1993.10 The extent of the developing countries' desire for access to intellectual works could be gauged by the concern they had expressed when the question of the protection of folklore works had been discussed. It would be recalled that, even before the principle of protection was agreed upon, many developed countries had suggested safeguards against the inaccessibility of folklore works. Perhaps the developed countries would now appreciate the anxieties of the developing countries with respect to more essential kinds of works.

1993.11 The Delegation of India hoped that the Committee would examine the Protocol, a revised text of which was being submitted by a number of African and Asian countries (S/160), with a view to enlarging rather than curtailing the special provisions. In 1965, the Committee of Governmental Experts had decided that the Protocol for Developing Countries would be an integral part of the Convention and that, as soon as the Stockholm Conference was over, developing countries could apply the special provisions, even before the Stockholm Act came into force, against all countries. His Delegation hoped that those assurances still held good.

1993.12 It should not be assumed that if the Union were made restrictive, with no option for the developing countries but to drop out, all developing countries would necessarily remain members of, or adhere to the Universal Copyright Convention. The Governments of those countries could not remain oblivious to the needs of their peoples. The developed countries also had a responsibility to meet the demand for educational and scientific literature in the developing world. The world was shrinking so that it was no longer possible to have cases of prosperity in a desert of poverty, islands of knowledge in an ocean of ignorance.

1993.13 Fears had been expressed that the introduction of special provisions might weaken the system. It had also been urged that the relaxations should not be lower than those contained in the Universal Copyright Convention. A person making a long jump took steps backwards in order to enable him to make a greater leap forward. Similarly, any temporary lowering of the standards of the Convention would eventually be more than compensated for.

1993.14 In conclusion, he submitted to the Committee for favorable consideration the revised text of the Protocol (S/160), which had been unanimously approved by all the African and Asian countries attending the Conference.

1994.1 Mr. DE MENTHON (France) said that France was deeply aware of the problems confronting the developing countries, among which it had many friends, and that it understood and sympathized with a proposal that was designed to facilitate the efforts of those countries to have access as rapidly as possible to other cultural sources. As presently organized, the protection of literary and artistic property was on two levels, the lower of which was that of the Universal Copyright Convention and the other that of the Berne Convention. An easy solution, which his Delegation did not however for the moment consider the best, would be to permit States finding it difficult to accept the high level of protection provided for in the Berne Convention to accede to the Universal Copyright Convention; but France was deeply attached to the Berne Union, whose vitality had been demonstrated by the recent adherence of three new members (Argentina, Mexico and Uruguay), and it felt that solutions acceptable to all should first and foremost be sought within the framework of the Berne Union, for the benefit of the developing countries which were neutral and for those wishing to become members. In the view of the Delegation of France, there was room, between the system of the Universal Copyright Convention and that of the Berne Union Convention, for a transitional intermediary system preparatory to accepting the Berne Union system, which was desirable for all States, not only because it offered better protection for intellectual works but also because its adoption by developing States would be proof of their success in surmounting their initial difficulties. It was in the sense of arriving at this intermediary level of protection that the study of the Draft Protocol should be approached.

1994.2 The Delegate of France emphasized the importance of showing clearly the exceptional character of the reservations permitted under the Protocol and avoiding the risk that they might compromise a structure which it had taken 80 years to build. He considered therefore that it was essential to determine clearly in the light of precise criteria the States that would benefit from such exceptional provisions.

1994.3 Lastly, and in the same spirit as its earlier remarks, the Delegation of France—speaking quite openly and frankly—said that it could not accept excessive reservations that would be likely, as in the case of the proposed Article 1(e) of the Draft Protocol, to distort the spirit and undermine the foundations of the Berne Union. It considered that the system of protection already established by the Union, which ought to be further improved to keep in line with the technical advance reflected in the mass communication media, should be safeguarded at all costs, as it was indispensable for the development of culture in all countries and consequently for the enrichment of the cultural heritage common to all mankind.

1994.4 In concluding, the Delegate of France expressed the hope that it would be possible to arrive at reasonable solutions which would provide developing countries with the facilities they needed without compromising the future of the protection of intellectual property throughout the world.

1995.1 Mr. ROJAS (Mexico) spoke on behalf of his own Delegation and the Delegations of Argentina and Uruguay. Those countries were among those described as "developing"; being aware of their problems, difficulties and needs, they appreciated and supported the efforts made in all fields by the international community to contribute towards their development. The Delegate of Mexico cordially thanked the Swedish Government and BIRPI for the efforts and goodwill they had demonstrated in preparing the Draft Additional Protocol to the Berne Convention, but he regretted that he could not approve of the result, since the three countries on whose behalf he was speaking considered that the Protocol was not only useless and ineffective but even highly dangerous and entirely contrary to the legitimate interests of authors and of culture in general.

1995.2 In the first place, he wished to point out that the present text of the Berne Convention afforded all countries a vast range of provisions applicable to special situations. Secondly, in the other Main Committees of the Conference, and particularly in Main Committee I, the maintenance of some of those provisions had already been approved in principle, and it was certain that the rest would also be included and perhaps amplified in the Stockholm text. The Protocol was ineffective, for while it was indisputable that some steps had to be taken with a view to cultural, social and educational expansion in the developing countries, there was no need to introduce those provisions in an Additional Protocol to the Berne Convention, the fundamental purpose of which was the protection of intellectual works, in order to contribute towards the enrichment of the universal cultural heritage.

1995.3 The Delegate of Mexico also pointed out that the content of the Protocol was not consistent with the aim in view. No intellectual or artistic progress was possible without authors, and there would be no authors unless they were assured of ample protection. It had been established that in the absence of appropriate legal and practical protection, an author's output diminished or even ceased altogether.

1995.4 The Berne Convention in its present form and in the form which it would have after the Stockholm Conference afforded the international community an example of the progressive extension of the protection of human rights, which it might be hoped to obtain by sincere cooperation between the States. The Delegate of Mexico drew attention to the preamble to a resolution adopted at the close of the legal seminar organized by BIRPI in 1966 in Madrid in conjunction with the Institute of Hispanic Culture and which read as follows: "The session . . . considering that reforms designed to facilitate the exercise of authors' rights, considered as being natural and human rights, can have a decisive influence on the future development of copyright throughout the world..." The text clearly indicated that the development of copyright would certainly be facilitated by reforms tending to make it easier to exercise authors' rights, but there was and could be no reference to reforms intended to restrict or to prevent the exercise of such rights on any pretext and, at the worst, to endanger their very existence. The Delegate of Mexico considered that the existence of copyright would indeed be endangered if the Protocol were adopted. Taking as an example paragraph (e) of Article 1, he wondered who would judge whether or not there were valid reasons for restricting the protection due to a work and, especially, what measures would be likely to guarantee the author at least a minimum of protection. How would it be possible to prevent a State from invoking the Protocol and deciding to reduce the protection of authors' rights by 100% or, in other words, abolishing it altogether? Noting that they were now contemplating the possibility of a series of reservations, designed to reduce the protection of authors, Mr. Rojas wondered whether, after the Stockholm Conference had reopened the door which had been closed by previous

Conferences, each subsequent Conference might not admit a larger number of possible reservations, thereby gradually reducing the Berne Convention to nothing more than a purely formal instrument devoid of all substance.

1995.5 The Delegate of Mexico felt that the proposed Protocol was primarily intended to extend the geographical area of application of the Berne Convention without taking account of its spirit. A pure and simple increase in the number of countries party to the Berne Convention was no justification for its deterioration. It was necessary to preserve the integrity of a text which, by its existence and content, had greatly contributed to the progress and enrichment of the cultural heritage of mankind. The Stockholm Conference must not compromise the future of that heritage for reasons of convenience dictated by circumstances. The provisions contained in the Protocol would reduce protection to a level similar to that afforded by the Universal Copyright Convention. If, however, a country was not in a position to organize as effective a protection as that which countries acceding to the Berne Convention were obliged to provide, it could simply become party to the Universal Convention, which had always been said to impose minimum requirements.

1995.6 In conclusion, the Delegate of Mexico said that his Delegation could, in principle, approve the Protocol only if all the other delegations present accepted it without hesitation.

1996.1 Mr. WALLACE (United Kingdom) said that the purpose of the Protocol was to provide developing countries with the possibility of making certain reservations over the rights of authors. The specific intention was to ease the burden on those developing countries which were already members and to remove obstacles to membership of the Convention of other developing countries.

1996.2 The Government of the United Kingdom was aware of the special difficulties facing the developing countries and was happy to play its full part in helping them to attain more advanced levels. For that purpose it participated fully in international activities directed to overseas development and also carried out its own program of aid. Over the years, the United Kingdom had expended millions of pounds in economic aid; more than £250 million had been spent in that way in 1966. In the special area of copyright, the United Kingdom had also been far from inactive. Its publishers, with Government assistance, had for some time operated a scheme under which low-priced textbooks containing up-to-date knowledge in a plentiful variety of subjects were made available to many developing countries of Africa and Asia. In general, the United Kingdom believed in helping developing countries in ways likely to prove of the greatest benefit to them but without specifically affecting particular interests. It was not convinced, however, that any useful purpose would be served by watering down the Berne Convention in the way proposed. On the contrary, such a revision might do a great deal of harm, not only to authors from advanced countries but also to those countries which were now striving to get the Protocol adopted; it might eventually weaken the very foundations of the Convention itself.

1996.3 Two broad classes of developing countries were concerned about the possibility of revision. Firstly, there were some existing member countries which considered that the standards laid down were more suited to the more advanced countries. It was perhaps true that the Convention was designed primarily to meet the needs of countries having reached a certain level of development. The Convention itself, however, allowed the possibility of imposing certain restrictions upon authors' rights and it could, in most cases, fairly be said that the existing members had made a positive decision to join knowing the Convention's obligations. That was, for instance, the case of India which, after independence, had been able to take stock of the situation before joining the Union. Clearly, if the possibility of further restrictions were given and those member countries took advantage of them they would run the risk of losing the confidence of publishing and other interests in developed countries. That could result in the loss of up-to-date educational books which all developing countries clearly needed if they were to advance to any degree.

1996.4 Secondly, there were many developing countries which did not belong to the Convention. It was said that it would ultimately be of value to authors if those countries were brought within the fold because it would be better if the protection granted by them were organized, from the start, on the pattern of the Berne Convention. That, however, was rather speculative and could not be regarded as a persuasive argument in favor of allowing a lowering of standards. Those countries would, of course, benefit by entering into relation with other copyright countries, but they could achieve that benefit with less rigid obligations by acceding to the Universal Copyright Convention which extended to some 55 countries, including most of the big countries.

1996.5 Authors in the United Kingdom were as willing as any others to help the developing countries, but they did not understand why that assistance should be entirely at their expense. That was not a case of aid in the normal sense but one of agreeing to the giving away of the property of a part only of the community, namely, the authors.

1996.6 As could be seen from its published observations (S/13), however, if it was the wish of the great majority of the member countries to provide for the possibility of membership of the Berne Union by developing countries on less onerous terms than those accepted by existing members, the Delegation of the United Kingdom would be prepared to assist in discussing a Protocol which would make that possible. It believed, however, that the terms of the Protocol now proposed went too far.

1997.1 Mr. CIPPICO (Italy) said that the question should be viewed against the background of the difficulties facing the developing world. Italy was well aware of those difficulties and, from its own experience with the Board for the Promotion of the Development of Southern Italy, realized the extent of the efforts which had to be made in order to make even slow progress in the right direction. The gap between the "haves" and the "have-nots" had not been reduced. Italy had, therefore, taken a keen interest in the proposal that a Protocol to the Berne Convention should be prepared for the benefit of the developing countries. The Delegation of Italy believed, however, that it would be very easy to weaken, or even wreck, the Berne Convention which was one of the most completely perfect instruments in private international law. A Protocol would lower the standards of the Convention and might set a precedent. Nonetheless, if the majority of member countries agreed on a reasonable Protocol, Italy would certainly accept this.

1997.2 To what extent were the provisions of the Protocol all-embracing? Most books in the world were already public property and 99 out of 100 of the books in existence could be translated or reprinted by the developing countries. Modern books would be affected if the Protocol were adopted and authors would certainly suffer. Had a breakdown been made of the monetary implications for those countries and persons who would be donors under the Protocol?

1997.3 Italy would view the Protocol, if it were adopted, as an intermediate step between the Berne Convention, which should be preserved, and the Universal Copyright Convention. Those developing countries that considered themselves unable to accept the high standards of the

Berne Convention and therefore desired to join the UCC should be allowed to do so. Italy hoped, however, that many developing countries would be attracted to the Berne Convention because its system was better organized, more elaborate and more comprehensive than that of the Universal Copyright Convention.

1998. Mr. GOUNDIAM (Senegal), after stating that his country was anxious to safeguard the Berne Convention, pointed out that cultural borrowings were characteristic of all cultures. Senegal did not wish merely to borrow, but also to give to others. The developing countries respected human rights and particularly the right of ownership but nowhere was the absolute character of the latter acknowledged. The Delegate of Senegal briefly recalled the characteristics of the developing countries: population explosion, paucity of financial resources, low school attendance rate—40% in Senegal and yet one of the highest in Africa and which would probably not reach 100% before 1980—and, lastly, the lack of executives. In order to remedy those deficiencies, the international organizations and the developed countries had granted aid, but such aid must obviously be supplemented by the efforts of the developing countries themselves. Unlike some members of the Main Committee, the Delegate of Senegal did not consider that the adoption of the Protocol would result in a lowering of the level of protection guaranteed by the Berne Convention. Some of the arguments adduced in this respect could not be retained in view of the extent of the obstacles to be surmounted and, in any case, the proposed restrictions could not discourage authors aware of the need for evolution in the developing countries. The Delegate of Senegal, recalling that the European countries had accepted the principle of exceptions within the framework of the European Convention on Human Rights, asked that a similar procedure be applied in the case of developing countries. He concluded by expressing the hope that the debate would lead to positive results.

1999. Mr. FERSI (Tunisia) emphasized that, in the period between the Berne Convention of 1886 and the Brussels Convention of 1948, the protection of authors' rights had been gradually strengthened. While in 1948 the concept of developing countries was unknown, for the very good reason that such countries did not then exist, that concept was now attracting the fullest attention. The minimum protection requirements were too onerous for the developing countries which, being almost exclusively importers, needed special treatment. There was nothing extraordinary in the establishment of such special treatment, which was one of the aims of the Stockholm Conference, since Article 24 of the Berne Convention, for example, provided for revisions. As the participants in the Conference were diplomats, they should apply flexible standards in examining the proposals submitted to them. The purpose of the Convention was to establish a Union and not a kind of club consisting of States apparently in agreement but in fact opposed to each other because of divergent interests. The Delegate of Tunisia emphasized that the Conference should endeavor to establish a balance and move towards universality. The developing countries wished to have rapid access to sources of culture, to contribute towards the improvement of the human condition and to help the Convention to overcome its narrowness and its regionalism so as to meet the needs of all its members. Some speakers had stated that the developing countries were undermining the very foundations of the Convention, but the Delegate of Tunisia wondered whether the authors' real enemies in an age where new media abounded were not the users of audio-visual media or pirate stations rather than the countries which demanded sacrifices from authors with a view to promoting culture. He concluded by appealing to the wisdom, the moderation, the spirit of conciliation and the solidarity of participants to ensure the success of the Conference which was cultural and non-commercial in character.

2000.1 Mr. CURTIS (Australia) said it was in the interests of all that there should be the widest participation in an international system of copyright protection. The Delegation of Australia did not believe that the Berne Union should be a closed shop. It thought, however, that those who had drafted the Protocol had mistaken their starting point. In framing a copyright convention the Committee was not framing a program of assistance to developing countries. The Committee was concerned with drawing up proper rules for the protection of literary and artistic works. If there were principles which ought to apply to the framing of those rules, then they ought to apply in all countries of the Union. In drafting the Protocol consideration should have been given to the question whether, as a matter of principle, the rules of copyright relating to educational and scientific books should be the same as those relating to works of art. The Delegation of Australia recognized the possibility that there should be, as a matter of principle, special rules relating to special kinds of works or works used for certain purposes. If such a principle existed at all, then it existed for all countries. Similarly, any principle that literary, educational and scientific works which enjoyed the benefits of copyright protection in a country ought to be available in the language of that country was not restricted to countries of a certain economic standard; it applied equally to all member countries of the Union.

2000.2 It was unfortunate, therefore, that the Protocol had been presented. The Delegation of Australia was aware of the difficulties with which certain countries were faced, but considered that the question should have been dealt with in a copyright convention as a matter of copyright principle applicable to all countries. If that had been done, it might have been possible to produce a convention that duly laid down common principles of copyright, principles which could be applied by different countries according to their different needs.

2000.3 If, however, the great majority of member countries was prepared to accept the solution proposed in the Protocol, the Delegation of Australia would be prepared to cooperate in framing a solution that would adequately meet the educational and social requirements of certain member countries of the Convention while at the same time meeting the legitimate economic interests of authors of certain classes of work.

2001. Mr. ELMAN (Israel) said that his Government was in favor of the ideas embodied in the Protocol. The fears expressed by previous speakers that the principles of the Protocol conflicted with those of the Berne Convention were unfounded. Israel considered, however, that the Protocol could be substantially improved and, in document S/40, had submitted suggestions to that effect. He drew attention in particular to the suggestion concerning prevention of the possible abuse of certain provisions of the Protocol and to the suggestion that in developed countries the cost of the undertaking be spread among the population as a whole and not confined to a small group of authors.

2002. Mr. STRNAD (Czechoslovakia) stated that the developing countries desired to participate in cultural exchanges but that economic and legal obstacles prevented them from having access, as they would wish, to the cultural heritage of the world. The Delegation of Czechoslovakia considered that the provisions relating to the protection of authors' rights should appear in the Convention and be binding on every State acceding to any part of the Stockholm Act. No decision had yet been taken as regards the question of whether the Protocol could be binding on countries which did not ratify any part of the Stockholm Act; it was necessary to find some means of enabling those countries to accede to the provisions in favor of the developing countries. The Delegate of Czechoslovakia did not consider that the

possibilities afforded to the developing countries would be likely to undermine the Berne Convention. The reservation that was proposed, for example, regarding rights of translation had existed in the Berne Convention for eighty years. The reservation concerning Article 9(2) of the Convention had also been in existence for several decades. The reservation concerning Article 11*bis* corresponded to the provisions of the Rome revision which were binding on many countries where the economic and social level was very high, and the application of the Berne Convention had not been adversely affected thereby. The reservation prescribed in Article 1(e) of the Protocol, which referred to education, was certainly a novelty, but it was necessary to take into account the needs of the developing countries and the Delegation of Czechoslovakia would support all measures designed to aid those countries. The question whether the adoption of an Additional Protocol was necessary or not was a purely formal one since, if the Protocol were rejected, it would be necessary to incorporate its provisions in the Convention.

2003. Mr. RATOVONDRIAKA (Madagascar) considered that a special statute for the developing countries was essential and he was happy to note that provision had been made for this in the Program, but he expressed some concern at the fact that it was not incorporated in the Convention. He emphasized that the Additional Protocol was not the only text containing temporary provisions: they were also to be found in Article 14(7) (S/1) and in Article V of the Universal Copyright Convention. He also noted that the reservations prescribed as regards terms of protection did not go as far as Article 7 of the Rome Act which did not establish any minimum term. Lastly, he was in favor of a perhaps diminished but definite protection, like that prescribed in the Protocol, and he warned the Committee against the consequences of rejection, the effect of which would be to remove protection altogether or make it uncertain.

2004. Mr. AMON D'ABY (Ivory Coast) began by summing up the different views which had emerged from the preceding interventions. He recalled that, after achieving independence, few of the African developing countries had ratified the Berne Convention, since for most of them ratification was not a matter of prime urgency. The few developing countries that had acceded to the Convention knowing that this act would have more disadvantages for them than advantages had thus demonstrated their confidence in the understanding and sympathy of States which had been members for a long time; but at Brazzaville in 1963 many African countries had felt that the members of the Berne Union constituted a club of more fortunate countries in which they had no place. He now noted that the majority of the interventions had shown evidence of systematic opposition to the Additional Protocol, on the grounds that the accession of the developing countries might be a disruptive element if it involved special clauses. Nevertheless, some countries had shown understanding for the problems of the developing countries. In the hope that others would follow their example, the Delegate of the Ivory Coast made an appeal to all delegations, since many of them had declared themselves ready to endorse the Additional Protocol if it were accepted by the majority.

2005. Mr. LENNON (Ireland) said that his Delegation had no objection to the proposed Protocol. It considered, however, that the countries which would be in a position to take advantage of the Protocol should be very carefully defined. The Delegation of Ireland agreed that the first sentence of Article 1 should be amended as proposed by the Delegation of the United Kingdom (S/13).

2006. Mr. ABI-SAD (Brazil) stated that, in principle, he was in favor of the adoption of the Additional Protocol.

2007. Mr. TIMÁR (Hungary) said that the Government of the People's Republic of Hungary would like to see the greatest possible number of countries accede to the Berne Union. He would, therefore, support any proposal designed to facilitate the accession of the developing countries. His Government approved the proposal to incorporate in the Convention a Protocol which took account of the interests of the developing countries in the field of international copyright protection, but such a Protocol should be strictly reserved to those countries; it would be appropriate, therefore, to specify precisely which countries would be permitted to avail themselves of the advantages thus afforded.

2008. Mr. BELINFANTE (Netherlands) said that, while the Netherlands was favorable to the Protocol in principle, it would not approve just any Protocol. The position adopted by the Delegation of the Netherlands would depend therefore on the terms of the Protocol.

2009. Mr. DRABIENKO (Poland) cordially approved of the idea on which the Draft Protocol was based and would indicate his country's attitude with regard to possible solutions in due course during the debate. He drew the attention of the Main Committee to the need to bear in mind, when making its choice, that the purpose of the provisions of the Protocol should be to make it easier for the developing countries to accede to the Berne Convention.

2010. Mr. CIPPICO (Italy) said, with reference to the statement made by the Delegate of the Ivory Coast, that his remark that he would be happy to see the ranks of the Berne Union increased should be taken in conjunction with his previous remark, that those developing countries which, because they felt unable to accept the high standards of the Berne Convention, wanted to join the Universal Copyright Convention should be allowed to do so. His Delegation believed, however, that the Berne Convention should be in a position to attract countries which felt they could accept either the existing provisions of that Convention or the facilities offered by a Protocol, if such an instrument were adopted.

2011. The CHAIRMAN said that most delegations seemed ready to adopt a Protocol. The contents of such a Protocol would, however, be a subject for discussion. He invited the observer delegations to make general statements.

2012.1 Mr. SABA (UNESCO) said that the UNESCO Secretariat had followed closely the preparatory work on the revision of the Berne Convention. Its objectives impelled UNESCO to consider the proposed revision submitted to the Intellectual Property Conference of Stockholm not only from a purely legal angle but also in relation to the practical consequences which the adoption of these proposals might have for the furtherance of education, science and culture.

2012.2 These preliminary considerations explained the particular interest which UNESCO had in the Protocol Regarding Developing Countries, for whom the utilization of literary and artistic works—and this term of course includes textbooks and educational and scientific works—represented a vital need in order to raise their status and to enable them to participate effectively in establishing mutual understanding among the nations.

2012.3 Considerations of the same kind as those which underlay the Draft Protocol submitted to the Stockholm Conference prompted the discussions of the fourteenth session of the UNESCO General Conference in Paris in October-November 1966 and led to the unanimous adoption of resolution 5.122, which invited the Director-General to call upon the competent bodies as soon as possible to examine the possibility of revising the Universal Copyright Convention with a view to facilitating the adherence of developing countries to this instrument.

2012.4 In these circumstances, the Permanent Committee of the Berne Union was convened in an extraordinary session by the Director of the United International Bureaux for the Protection of Intellectual Property from 14 to 16 March, 1967, to examine the effect on the development and general operation of the Berne Union of resolution 5.122 adopted by the UNESCO General Conference. Feeling no doubt that, as several Delegations including that of the Federal Republic of Germany had affirmed, the proposals submitted to the Stockholm Conference, on the one hand, and a possible revision of the Universal Convention along the lines indicated by the above-mentioned resolution, on the other, represented two possibilities of satisfying the needs of developing countries, the Permanent Committee expressed the view that it would be premature to reach a decision before the meeting of the Stockholm Conference on the advisability of revising the Universal Convention. Accordingly, the Director-General of UNESCO thought it necessary, now that the Stockholm Conference was in session, to give the Main Committee all relevant information on the reasons, the aim and the extent of the proposed revision.

2012.5 In view of economic, social and cultural conditions in the various parts of the world, the Universal Convention established minimum norms of protection calculated to guarantee general respect for copyright and to receive the consent of all countries. The aim of those States which prepared and adopted this instrument was to conclude an international agreement designed to associate within a general system of protection such countries as were unable to assume all the obligations imposed by the other conventional systems, mainly by the Berne Convention, and thereby to bring about universality in this field, more especially by gathering together, in terms used by the Head of the Delegation of Spain which reflect the spirit of the declarations made by almost all delegations to the Intergovernmental Copyright Conference, not only the Spanish-American countries but also the Arab countries, the countries of Africa and those of Asia. In these circumstances, the question arose of determining whether, in order to enable the developing countries to benefit from less burdensome conditions than those accepted by the present members of the Berne Union, it was necessary to conclude, and invite the States to ratify, a special Protocol which in substance embodied the minimum norms of the Universal Convention. The developing States, until such time as they were in a position to meet the obligations stipulated in the Berne Convention, had the option of adhering to the Universal Convention.

2012.6 It might be objected: (i) that several newly independent States were bound by the Berne Convention—the application of which had been extended to their territory by the powers which handled their foreign relations—and could not meet the demands currently imposed by this text; (ii) that the same States were in no position to withdraw from the Berne Convention and adhere to the Universal Convention because of the penalties stipulated under (a) of the Appendix Declaration relating to Article XVII of this Convention in the event of a State's withdrawing from the Berne Union and adhering to the Universal Convention. Resolution 5.122, which the UNESCO General Conference adopted at its fourteenth session, was specifically designed to remedy a situation prejudicial to the interest of developing States.

2012.7 Two of its recitals specified the reasons which impelled the General Conference to adopt resolution 5.122. The General Conference considered on the one hand that UNESCO, in order to continue to assist African Member States in matters of copyright, should facilitate the accession of those States to the Universal Convention and, on the other hand, expressed the view that "Article XVII of the Universal Convention and the Appendix Declaration relating thereto have consequences that are prejudicial to the interests of the States acceding to that Convention, since it is stipulated therein that works which, according to the Berne Convention, had as their country of origin a country which had withdrawn, after January 1, 1951, from the International Union created by the said Convention, shall not be protected by the Universal Copyright Convention in the countries of the Berne Union."

2012.8 It was further specified that the General Conference approved the resolution in question after noting the proposals concerning the application of the Appendix Declaration relating to Article XVII of the Universal Convention to works originating in a developing country. The proposals referred to, which were submitted to the General Conference, specified the scope of the suggested revision. They suggested that the following paragraph should be added to the present text of the Appendix Declaration relating to Article XVII: "However, application of this provision shall be suspended with regard to works originating in a developing country, as defined by the Economic and Social Council (resolution 2029 (XX) of the United Nations General Assembly)."

2012.9 Thus, the changes in the Universal Convention contemplated by the General Conference aim at a temporary suspension of the application of Article XVII in favor of developing States only, such States, moreover, being defined on the basis of a precise criterion.

2012.10 The above data made it possible to define the limited scope of the proposed revision in terms both of space and of time. Limitation in space: only developing States as listed by the Economic and Social Council were to benefit. Limitation in time: what was involved was a temporary suspension, the application of which would be limited to the duration of underdevelopment.

2012.11 In application of resolution 5.122, the Director-General of UNESCO in his circular letter dated December 30, 1966, consulted States parties to the Universal Copyright Convention on the advisability of revising the Appendix Declaration relating to Article XVII of this Convention along the lines indicated above. This consultation was interrupted de facto following on the resolution adopted by the Permanent Committee of the Berne Union at its Extraordinary Session held in Geneva from March 14 to 16, 1967, which suggested that governments of member States of the Berne Union should not put forward their views on the question of revising the Universal Convention until after the Stockholm Conference. By June 15, 1967, five States parties to the Universal Convention, one of which was also a member of the Berne Union, had none the less put forward their observations on this matter and called for the convening of a revision conference. States which have not yet communicated their comments to the Director-General of UNESCO may do so up to March 1, 1968. The Intergovernmental Copyright Committee, which was the competent body for the preparation and convening of conferences aimed at revising the Convention, would then be in a position to examine the advisability of revising this instrument.

2012.12 Independently of the revision of the treaty texts on behalf of developing countries, UNESCO was seeking ways of ensuring a balance between the safeguarding of the fundamental principles of copyright in the producer nations and the necessity of disseminating works in the importing States. Given the limited resources of the developing countries, UNESCO had begun by granting them direct assistance to enable them to meet the heavy expense and the exchange difficulties involved in the acquisition of copyrights. On various occasions, the Organization had itself paid the fees in

connection with school textbooks translated and published under its auspices in various countries benefiting from its aid.

2012.13 Additionally, UNESCO had instituted an international system of book coupons which constitute a form of international currency and enable exchange difficulties to be eliminated. The allocation of coupons, hitherto intended to finance the purchase of books and other publications, had been extended by the General Conference to the payment of copyrights. So far, it is true, this was an experiment on a small scale but it was already intended to continue and expand it. Complementary action might be taken by the producing States providing funds within the framework of cooperation and bilateral assistance programs to facilitate the settlement of copyright fees due to those of their nationals whose works were used in developing countries. This would make it possible to furnish developing countries with the assistance they need in order to encourage their cultural expansion while observing the principles and rules of existing agreements.

2012.14 In following the work of the Main Committee, the UNESCO observers will have in mind the various ways in which works might be disseminated without infringing the rights of their authors and would like to extend their warm good wishes for the success of the discussions.

2013.1 Mr. MALAPLATE (International Confederation of Societies of Authors and Composers (CISAC)) stated that the Protocol Regarding Developing Countries was certainly the most delicate of the questions contained in the Program of the present Diplomatic Conference, particularly since any comments that might be made on the subject might well be misinterpreted.

2013.2 He emphasized that, in such circumstances, the authors belonging to CISAC, which was an international organization constituting a veritable world congress of authors, with its 80 groups belonging to 40 countries, wished primarily to state most emphatically that they were by no means unmindful of the need to facilitate cultural, social and educational expansion in the developing countries, but, on the other hand, they could not agree with the system proposed by the Program of the Conference for achieving that aim.

2013.3 The reasons for that attitude were the following: primarily, the text of the Convention was much more flexible than some persons appeared to think: the numerous and substantial restrictions permitted therein, even in the Stockholm version, afforded the developing countries the most varied possibilities of restricting copyright in almost all fields: translation, performance, presentation, recitation, broadcasting, mechanical reproduction, etc.

2013.4 If, despite these various possibilities, certain additional provisions had to be adopted with a view to cultural, social and educational expansion in the developing countries, the authors considered: (1) that such provisions were out of place in a Protocol forming an Appendix to the Berne Convention, the fundamental purpose of which had always been and still remained the protection of intellectual works; (2) that the system provided in the Protocol was not likely to achieve the object sought, as experience showed that the cultural development of a country was closely bound up with the effective protection of authors; (3) that such a system was inequitable, as the principal result of its application would be to make the burden of the problematic aid afforded to developing countries devolve on the authors alone, while only real beneficiaries would, in the long run, be certain users of intellectual works, to the detriment of the national and foreign creators of such works.

2013.5 While acknowledging that very substantial aid should be given in that field to the developing countries, the authors considered that such aid could certainly be afforded in other ways and by other means, in particular, by economic assistance on the part of States producing and exporting intellectual works.

2013.6 Such a solution would make it possible to maintain the level of protection of the Convention without constituting an excessive burden on developing countries which were party to the Berne Union or which intended to become party to it and would contribute towards effectively ensuring a genuine promotion of national culture in those countries.

2013.7 For many years, the societies of authors belonging to CISAC had assumed responsibility for representing and ensuring the protection of moral and material interests of many developing countries. They had done so willingly and were now prepared to cooperate most disinterestedly in constituting, organizing and launching societies of national and independent authors in developing countries which expressed the desire for them. Nevertheless, the experience of CISAC with regard to the collection and distribution of royalties enabled it to affirm that such new national societies could survive only through the maintenance of an equitable and adequate protection of copyright.

2013.8 Mr. Malaplate drew attention to paragraphs (d) and (e) of Article 1 of the Protocol. Paragraph (e) afforded the possibility of such vague and broad reservations that a society of authors or an office entrusted with the collection of royalties might find it materially impossible to carry out its task. As regards paragraph (d) which excluded from the protection of the Convention broadcasts in public places, it was certain that such a reservation would mainly be prejudicial to national authors whose works were very largely utilized on the broadcasting networks of their respective countries.

2013.9 In conclusion, Mr. Malaplate emphasized that the Protocol would secure only an insignificant saving for the developing countries and, in any event, one which was quite disproportionate to the very substantial prejudice which would affect national authors first and foremost.

2014.1 Mr. FERNAY (International Writers Guild) stated that the Organization which he represented at the Conference was not a society of authors. It was an international association with the structure of a purely professional guild which was not responsible for the collection of fees and had no financial functions but simply grouped persons whose vocation in creating works was, by their efforts and according to their individual talents, to contribute to—even if not always to enrich—the cultural heritage of mankind.

2014.2 Authors, more than anybody else, were conscious of the imperative necessity to help the peoples of developing countries to have access to culture, to raise their level of thinking, to refine their tastes, and, in a word, to attain that intellectual level which was for all mankind the primary condition of dignity and independence. However, in the very name of that consciousness, in the name of that understanding and in the name also of the solidarity which must and did exist among creative workers throughout the world, Mr. Fernay drew the attention of the representatives of the developing countries to a point which in his view was of capital importance, one which had been propounded that very morning by a delegate, but upon which they had perhaps not sufficiently pondered.

2014.3 He asked whether the inclusion in the Berne Convention of a Protocol permitting those countries to restrict protection very considerably—and sometimes to go as far as to suppress it altogether—was really capable

of affording them effective cultural assistance or whether, on the contrary, it was not the surest way, despite the apparent immediate facilities and advantages, to hamper the long-term cultural development of those countries.

2014.4 He asked what exactly was the cultural development of a country: did it depend on the right which that country might have to use, free of charge or at minimum expense, works originating in foreign countries? Should it not rather depend upon fostering a national literary and artistic heritage in those countries? In other words, he asked whether the real cultural promotion of countries that had recently achieved independence depended not so much upon the treatment which those countries would accord to the authors of other countries, but far more upon the treatment accorded to their own authors.

2014.5 The International Writers Guild considered that the developing countries ought, in their own interests, to think first of their national authors, for experience had abundantly demonstrated that where there was no protection, or only an inadequate protection, there was no vocation and consequently no authors and no national heritage.

2014.6 The countries availing themselves of the benefits of Article 1(e) of the proposed Protocol, in order to restrict protection on their territory considerably, would be constrained to restrict it in respect of the works both of foreign authors and of their own nationals to whom it would be impossible to accord different treatment.

2014.7 The broadcasting organizations or the educational services of those countries now enjoyed an undoubted advantage in being able to make use of foreign works free of charge; it was indisputable that the peoples of those countries whose national genius, in the absence of authors, would find no expression, would at the cultural level remain in a state of stagnation, or would find themselves, contrary to the aim in view, kept in a state of intellectual dependence on foreign countries.

2014.8 Speaking in the name of 30,000 authors in countries of which some were highly developed while others were still developing (incidentally, whose development was ever complete?), 30,000 authors who sincerely and fraternally felt themselves at one with their confrères throughout the whole world, Mr. Fernay had made this declaration and, with all due esteem and sympathy for the developing countries, he asked them not to fail to take it into account.

2015.1 Mr. El Bassiouni (Union of National Radio and Television Organizations of Africa (URTNA)) said that, at its last session, the General Assembly of the Union he represented had examined the question of a Protocol to the Berne Convention and decided that a URTNA Delegation should attend the Stockholm Conference as observers.

2015.2 In so far as the question under discussion was concerned, there were three categories of African States: firstly, thirteen countries had signed the Convention and were members of the Berne Union; secondly, some African countries were awaiting the results of the Stockholm Conference before deciding to join the Union; and thirdly, there were countries which did not have a copyright law but which hoped to introduce one. Countries in the third category would be helped by the existence of a model law.

2015.3 African countries exchanged programs free of charge and the sending country always fulfilled the copyright requirements. African countries sent programs to, and received programs from countries outside the continent. In that way, the cultures of many advanced countries were broadcast free of charge on all African networks.

2015.4 He appealed to all members of the Main Committee to give favorable consideration to the question of the inclusion in the Berne Convention of a Protocol Regarding Developing Countries.

The meeting rose at 12:45 p.m.

SECOND MEETING

Wednesday, June 21, 1967, at 2:40 p.m.

GENERAL DISCUSSION (continued)

2016.1 Mr. Idowu (European Broadcasting Union (EBU)) said that most delegations agreed with the principle of assisting the less developed countries but there were also those who felt some anxiety about the possibility of intellectual exploitation. In his opinion, such anxiety was quite unjustified. The less developed nations, which accounted for approximately 60 per cent of the world's population, provided a large share of the world market for literary works, and particularly for books which were out of date in the developed countries. The non-exclusive license for translation, which would be granted under the terms of the Protocol, would allow developing nations to publish books in their national languages, without in any way preventing the author from publishing a translation himself.

2016.2 Another concession sought by the developing nations was a reduction of the term of protection—a burden on nations with limited financial resources—from 50 years to 25 years.

2016.3 The provisions of the Protocol would also help to raise the standard of education in developing countries and to further such branches of mass communication as broadcasting—his own special interest—which filled an important role in education in those countries. As a result, there would be a general rise in standards and, as time went on, the developing countries would be less dependent upon the developed countries.

2016.4 He assured the Main Committee that the concessions granted would not be abused and said that the adoption of the Protocol would constitute evidence of the goodwill of all nations.

ORGANIZATION OF WORK

2017.1 Mr. Bodenhausen (Director of BIRPI) said that the Committee had five main points to consider: firstly, the criterion to establish which countries could avail themselves of the Protocol; secondly, the content of the Protocol; thirdly, the question of duration; fourthly, the form of the Protocol—whether it should be a separate instrument or an integral part of the Convention; and, lastly, the date of entry into force.

2017.2 The last two questions were closely related to matters discussed in Main Committee IV and would in all likelihood be dealt with at a joint meeting of Main Committees II and IV, to be convened by the Coordination Committee. The question of duration, he suggested, should for the time being be postponed since it depended upon the content of the Protocol.

2017.3 There remained the questions of criterion and content. The first was a difficult matter, also depending to a certain extent on the content of the Protocol. He therefore suggested that the Committee should first take up the question of the content, the relevant proposals for which were to be found in paragraphs (a) to (e) of Article 1 of the Draft Protocol.

2017.4 In considering paragraph (a) of Article 1, the Committee should bear in mind that Main Committee I had decided, by a large majority, to maintain the reservation with respect to the right of translation in the last sentence of paragraph (3) of Article 25 in the Berne Convention. Article 1(c) of the Protocol was no longer needed, and should be deleted, since Main Committee I had decided that paragraph (2) of Article 9 in the Convention should stand.

2017.5 He suggested, therefore, that the Committee should proceed to consider Article 1(a), (b), (d) and (e) of the Protocol.

2018. The CHAIRMAN, no objections having been raised against the proposed procedure, invited comments on Article 1(a) of the Protocol.

RESERVATIONS FOR TRANSLATIONS (ARTICLE 1(a))[1] (S/160)

2019.1 Mr. KRISHNAMURTI (India) introduced the amendment to the Protocol submitted jointly, in document S/160, by the Delegations of Congo (Brazzaville), Congo (Kinshasa), Gabon, India, Ivory Coast, Madagascar, Morocco, Niger, Senegal and Tunisia.

2019.2 The sponsors of the amendment thought that some change in the text proposed in document S/1 was needed since the right of reservation, under the provisions of Article 5 of the Berne Convention as amended by the Paris Additional Act would not apply if the author had himself published a translation in a Union country. For example, once a translation into Urdu had been published in another country, it could not be published in India and the translated edition would then have to be imported. Moreover, under the same provisions, a developing country could only publish a translation after ten years and provided that, during that time, the author had not availed himself of his right to publish a translation. If a further three to four years were allowed for the actual translation, it would be about fourteen years before the translated edition were available for use.

2019.3 When the amendment to Article 5 was drafted, progress in science and technology was not so rapid as in the present day. Even in the past five years, ideas had been revolutionized. If educational needs were to be met, books would have to be made available before they were out of date.

2019.4 At the East Asian Seminar on Copyright, it had been decided that the provision, in Article V of the Universal Copyright Convention, for a seven-year period during which no compulsory license would be required, should be deleted since it had been thought that, so long as royalties were paid to the author, there was no need for such a restriction. The State concerned should be free to decide when a protected work was needed for its internal use and should pay compensation to the author while using that work.

[1] Unless otherwise specified all references in the captions are to the Draft Protocol Regarding Developing Countries (S/1, Annex II).

2019.5 The sponsors of the joint amendment therefore considered that the requirements of developing countries might be met if the provisions of the Universal Copyright Convention were adopted, with some modifications, for the procedure in the initial ten-year period. The amendment in paragraph (a) of Article 1 in document S/160 had been proposed with that in view. Under the proposed procedure, as soon as a book was published, a developing country could, after notice to the author, issue a non-exclusive compulsory license, if the author should refuse to grant a free license. Suitable compensation would then be paid to him. The author would also be at liberty to publish a translation within the initial ten-year period. If he availed himself of that opportunity, the compulsory license would be revoked when he published his translation. If not, then, at the end of the ten-year period, compensation would cease to be payable. The author would, of course, still receive compensation for the first ten years.

2019.6 In conclusion, he said that in his view the publication of a translation would not conflict with the sale of the original edition. In the case of Indian languages, many works, if not translated, would be denied to a large sector of the public.

2020.1 Mr. STRNAD (Czechoslovakia) thought that the proposal contained in document S/160 deserved very close study and that its advantages and disadvantages should be carefully weighed.

2020.2 That proposal attempted to reconcile the interests of authors and those of the developing countries, which rightly wished to have free access to the most recent cultural works.

2020.3 He emphasized in that regard that the developing countries, contrary to what had been said, had no intention of depriving authors of the enjoyment of their rights. They were content to propose the institution of a paying license, but stipulating shorter periods than in the Berne Convention as revised at Paris and in the Universal Copyright Convention.

2020.4 On the other hand, however, it might be feared that the proposed system would give rise to great administrative complications. The Czechoslovak Government had already expressed itself on that point in its preliminary observations, which appeared in document S/13.

2020.5 If the countries concerned nevertheless thought that the practical difficulties were not insurmountable, the Delegation of Czechoslovakia was ready to support their proposal.

2021.1 Mr. EVENSEN (Norway) said that his Delegation was favorably disposed towards helping developing countries and therefore supported the Protocol as proposed in document S/1; but it was somewhat hesitant about the amendment in document S/160 which, it feared, was too far-reaching and thus might actually hinder efforts to aid developing countries.

2021.2 He asked the Indian Delegate why, in item (ii) of Article 1, paragraph (a) (S/160) a ten-year period was stipulated, rather than a seven-year period. In any event, the provisions of that item were, in his view, irreconcilable with those of item (iii) (S/160) since, under the terms of the latter, it would appear that countries had absolute freedom to organize their domestic legislation as they wished, irrespective of whether or not a ten-year period had elapsed.

2022.1 Mr. KRISHNAMURTI (India) explained that item (ii) of Article 1, paragraph (a), reproduced the terms of Article 5 of the Berne Convention as amended by the Paris Additional Act, apart from a slight change to stipulate that the translation should have been issued in the country where it was to be used.

2022.2 Items (iii) to (vii) of Article 1, paragraph (a), which were based upon the provisions of the Universal Copyright Convention, would operate if the author refused to grant a free license for translation during the first ten years after the publication of his work. In that case, any member State so wishing could issue a compulsory license, but the author would still retain his right to publish a translation during the initial ten-year period. Failing such a provision, there would be no translated edition of a work if the author did not publish a translation himself and if he refused to grant a license therefor. Also, it might be some time before the author could make the necessary arrangements for the publication of a translated version of his work, in which case, under the provisions proposed in items (iii) to (vii), a developing country could issue a translation without affecting the author's right.

2023.1 Mr. BODENHAUSEN (Director of BIRPI) said that the provisions of items (i) and (ii) of Article 1, paragraph (a), as proposed in document S/160, had the same effect as those in paragraph (3) of Article 25 of the Convention, which Main Committee I had decided to retain. It would simplify matters considerably if the Delegate of India could agree to accept the provision in the Convention.

PROPOSAL TO ESTABLISH WORKING GROUP ON TRANSLATIONS

2023.2 If he had understood correctly, the Delegate of India had suggested that member States should have the possibility of issuing a compulsory license within the initial ten-year period after publication, to be revoked at the end of that period if, during the ten years, the author had himself published a translation in the country concerned. It was an interesting proposal. He therefore suggested that a Working Group might be established to examine how the proposal of the Delegate of India could be reconciled with the provisions of paragraph (3) of Article 25 of the Convention.

2024. Mr. EVENSEN (Norway) said that the explanation of the Delegate of India had confirmed his fear that the effects of the amendment in document S/160 might be somewhat far-reaching and hinder rather than help the efforts to reach a practical solution. He therefore supported the proposal of the Director of BIRPI for a Working Group.

2025. Mr. KRISHNAMURTI (India) said that he had no objection to the proposal for a Working Group. His only concern was that the proposal in document S/160 should receive due consideration and that suitable provision was made for developing countries.

2026.1 Mr. MAS (France) wished to clarify the position of France on paragraph (a)(iii) of Article 1 in document S/160 before the matter was referred to a Working Group.

2026.2 The Delegation of France had no comment to make on the extension of translation facilities to the official or regional languages of the developing countries.

2026.3 On the other hand, it made the most express reservations on the possible use, after the period indicated, of a compulsory license that would be issued without the permission of the author and without regard to his moral rights. It had, moreover, suggested in document S/177 that the period of seven years proposed by BIRPI should be raised to ten years.

2027.1 Mr. STRNAD (Czechoslovakia) pointed out that, at the East Asian Seminar on Copyright organized by BIRPI, several cases of publishers refusing requests for translation from developing countries had been put forward as arguments in favor of institution of a compulsory license.

2027.2 He further emphasized that, if such a license could not be granted before a period of ten years had elapsed, the developing countries might well be able to translate into their own language only works that were already old, which would be particularly unfortunate in the scientific field. They would find themselves obliged to buy those works abroad and to resell them to their nationals at prohibitive prices.

2028. Mr. BELINFANTE (Netherlands) said that his Delegation agreed with the proposal for a Working Group but could not, for the time being, subscribe to the principles embodied in the joint amendment, and particularly in paragraph (a) of Article 1 thereof. The Main Committee should remember that the text agreed in Stockholm would remain in force for a long time to come.

2029.1 Mr. PALUDAN (Denmark) said that nobody who had seen the immense need for education and development in the developing countries, and the poverty of the means at their disposal, could feel anything but sympathy with their wish to secure all possible help for their development. His Delegation therefore supported the text of the Protocol Regarding Developing Countries, as proposed in document S/1. But it should be remembered that the proposal was for the inclusion of an additional element within the Berne Union and that there was a limit to the extent to which the Union could deviate from its basic principles. If the proposal went too far, there would be no agreement and solutions would have to be found outside.

2029.2 There was obviously a divergence of views within the Main Committee—between the sponsors of the amendment in document S/160, on the one hand, and the countries representing the main producers of literary works in English and French, on the other. In his opinion, therefore, the sooner a Working Group was set up to reconcile those views, the better.

2029.3 Lastly, he drew attention to the amendment submitted by his Delegation in document S/146, the reasons for which were self-evident and required no further comment from him. He trusted that his Delegation's amendment would be taken into account both by the Committee and by the Working Group, if established.

2030. Mr. BODENHAUSEN (Director of BIRPI) suggested that the Working Group might be composed of the Delegates of Czechoslovakia, France, India, Ivory Coast, Morocco, Norway and the United Kingdom. Members of the Main Committee were, of course, free to make any other proposal if they desired.

2031.1 Mr. CIAMPI (Italy) pointed out that the Main Committee had still not expressed itself on the general content of the Protocol, or even on the question of whether it was desirable to group reservations concerning developing countries as an integral part of the Convention or as a Protocol additional to it. They might in fact wonder whether that might not lead to a third Convention which would be weaker than either the Universal Copyright Convention or the Berne Convention. In the future, the confusion of systems might result in the need to search for a general standard at the lowest level, or else to return to bilateral agreements. Thus, it is necessary to act with prudence without making hasty decisions.

2031.2 The Delegation of Italy reserved the right to return to that most delicate point when the conclusions of the Working Group had been communicated to the Main Committee.

2032. Mr. EVENSEN (Norway) said that he would unfortunately be unable to serve on the Working Group as he would be absent from Stockholm. He proposed the Delegate of Sweden in his place.

2033. The CHAIRMAN suggested that the Delegate of Israel should perhaps also take part in the Working Group and said that, if he understood the position correctly, the composition of the Working Group would be as follows: Czechoslovakia, France, India, Israel, Ivory Coast, Morocco and perhaps the United Kingdom.

2034. Mr. H'SSAINE (Morocco) said that, on those conditions, it would not be possible for him to take part in the meetings of the Working Group.

2035. The CHAIRMAN proposed that the Delegate of Tunisia should replace the Delegate of Morocco.

2036. Mr. FERSI (Tunisia) said that as a Delegate of a country of the Arab Group it was impossible for him to accept.

2037. The CHAIRMAN said that, apparently, he had misunderstood the proposal that had been made earlier. The list of members of the Working Group should be as follows: India, Ivory Coast, Tunisia, Czechoslovakia, France, Sweden and the United Kingdom.

2038. Mr. FERSI (Tunisia) said that he agreed to take part in the meetings of the Working Group.

2039. *It was decided to set up a Working Group composed of the representatives of India, Ivory Coast, Tunisia, Czechoslovakia, France, Sweden and the United Kingdom.*

The meeting rose at 4:10 p.m.

THIRD MEETING

Thursday, June 22, 1967, at 11:20 a.m.

RESERVATIONS FOR TERM OF PROTECTION (ARTICLE 1(b))

2040. The CHAIRMAN invited the Committee to continue its consideration of Article 1 of the Protocol (S/1, Annex II). The Working Party set up to consider paragraph (a) had not yet completed its work, so he suggested that attention should be turned to paragraph (b).

POINT OF ORDER

2041.1 Mr. SHER (Israel), speaking on a point of order, said his attention had been drawn to the incident at the previous meeting concerning his Delegation's possible membership of the Working Party on paragraph (a).

2041.2 It was a well-established rule of international law, and a rule and practice of international organizations, that membership of multilateral agreements or participation in organs of international bodies by any two States did not change the relations between those States or imply mutual recognition. The present Conference was technical in nature and the spirit of cooperation and compromise that characterized it had not, until the previous meeting, reflected the world political situation. The incident in question had, unfortunately, introduced into the Conference's deliberations considerations of a purely political nature.

2041.3 His Delegation had always been closely interested in the problems of the developing countries. The observations submitted by the Israeli Government (S/40) provided an example of its sincere wish to find a solution to the problems now under consideration that would be acceptable to all concerned. His Delegation now had the feeling that it would be prevented from contributing its full share to the work of the Main Committee and its Working Parties for reasons which had no connection with the merits of the subject under discussion.

2041.4 He deeply regretted that, in the circumstances, he felt compelled, under Rule 30 of the Rules of Procedure, to move the adjournment of the meeting until the following week to enable his Delegation to consult its Government and other participants in the meeting on how to act in a situation that was new both to the Conference and to BIRPI. He sincerely hoped that delegations which wished to discuss the matters before the Conference on their own merits would help his Delegation in the present matter.

2042.1 The CHAIRMAN said he had been unaware of any political incident at the previous meeting. The Main Committee had been considering the membership of the Working Party; six countries had been designated and when it had come to a choice between Israel and Sweden for the seventh place, it had seemed natural to choose Sweden, both as the host country and because of the important part it had played in preparing the text before the Committee; moreover, Israel had not taken part in the discussion on paragraph (a).

2042.2 He assured the Delegate of Israel that no political considerations had been involved. The contributions by the Government and Delegation of Israel to the work of the Committee and the Conference were greatly appreciated. He could not see that there were any grounds for adjourning the meeting and hoped that, in the interests of goodwill, cooperation and the smooth working of the Main Committee, the Delegate of Israel would not insist on his motion.

2043. Mr. SHER (Israel) said that, in the spirit of cooperation that had prevailed in the Conference and the Main Committees, he would have been willing to withdraw his motion if he had heard some expression of regret by those concerned and an assurance that current political issues would not be raised again.

2044. Mr. BODENHAUSEN (Director of BIRPI) assured the Delegate of Israel that no one had denied Israel's right to be a member of the Working Party. He hoped the Delegate of Israel would accept his sincere regrets for the misunderstanding.

2045. Mr. SHER (Israel) then declared that, in a spirit of cooperation, and feeling sure that the Chairman would take the necessary action if a similar situation arose, he was prepared not to press his motion for adjournment.

RESERVATIONS FOR TERM OF PROTECTION (ARTICLE 1(b)) (continued)

2046. The CHAIRMAN said that two amendments had been submitted to paragraph (b), one by the Delegation of Italy (S/162) and one by the Delegation of France (S/177). The Committee also had before it document S/160 which contained a proposed text for the Protocol to replace the text in document S/1, submitted by the Delegations of Congo (Brazzaville), Congo (Kinshasa), Gabon, India, Ivory Coast, Madagascar, Morocco, Niger, Senegal and Tunisia.

2047. Mr. MAS (France) thought that the Protocol should come midway between the Universal Convention and the Berne Convention, taken as a whole. For that reason, the Delegation of France proposed that, with regard to the translation of works, the term of protection should be increased from seven to ten years and that, for protection post-mortem, the period should be 30 years instead of 25 years.

2048. Mr. STRNAD (Czechoslovakia) was surprised that the Main Committee had before it proposals to lengthen the terms of protection, whereas the Additional Protocol provided for such periods to be reduced in favor of the developing countries. He recalled that the Berne Union did not comprise only countries which had ratified the Brussels Act, but also countries which had ratified the Rome Act and which were accordingly free to decide on the length of the term of protection, which might range from 15 to 50 and even 60 years. In these circumstances, it was illogical that developed countries could choose terms of protection of 20, 30 or 40 years, whereas developing countries were deprived of the right to fix such terms themselves. To secure equal treatment for all countries members of the Union, it would be advisable for the developing countries which had ratified the Brussels Act to benefit from the same conditions as the countries party to the Berne Convention which had ratified the Rome Act and for the length of the term of protection to be a matter for legislation in the developing countries.

2049.1 Mr. KRISHNAMURTI (India) said that the text agreed on by the Committee of Governmental Experts at Geneva in 1965 had been considered by the East Asian Seminar on Copyright in 1967, at which a suggestion had been made that the text of the Rome Act should be adopted for paragraph (b). That proposal was accordingly included in the amendment submitted by his own and other delegations in document S/160.

2049.2 He appreciated the point made by the Delegate of Czechoslovakia that if the period of protection were increased from 25 to 30 years some of the developing countries which were not members of the Berne Union might have difficulty in acceding to the Stockholm Act when the time came. But it was really immaterial whether the period was 25 or 30 years, at least as far as books were concerned, since very few books survived for so long. Not all the countries which were members of the Berne Union had adopted the 25-year period. Moreover, in developed countries where the period of protection was 25 years *post mortem*, many publishers offered some economic return for books the copyright of which had expired, even though they were not compelled to do so by law.

2049.3 The problem was to find a way of enabling countries which at present observed the provisions of the Rome Act to accede to the Stockholm Act. He suggested that the Assembly, or perhaps Main Committee I, might consider the possibility of introducing a reservation clause so that countries which were members of the Berne Union and had adopted Article 7 of the Rome Act could maintain their reservation when they adhered to the Stockholm Act. A similar compromise had been reached in the Rome Convention on Neighboring Rights in respect of manufacturers of phonograms.

2050. Mr. CIPPICO (Italy), introducing his Government's proposed amendment (S/162), said that it had been motivated by the considerations referred to by the Delegate of France. Its purpose was to provide, by means of the Protocol, an intermediate stage between the higher level of protection under the Berne Convention and the lower level under the Universal Copyright Convention.

2051. Mr. DRABIENKO (Poland) unreservedly subscribed to the statement made by the Delegate of Czechoslovakia.

2052.1 Mr. GOUNDIAM (Senegal) thought that the Protocol should not be considered as an intermediate text between the Rome Act and the Universal Convention.

2052.2 He would like countries which had recently acceded to the Berne Convention to benefit from the same advantages as countries which had duly ratified the Rome Act. In his opinion, the length of the term of protection should be 25 years.

2053. Mr. HARBEN (United Kingdom) said he supported the proposal to increase the term of protection from 25 to 30 years, for the reasons stated by the Delegates of France and Italy, but was prepared to accept the draft text in document S/1. He would, however, find it extremely difficult to accept a provision based on the text of the Rome Act.

2054.1 Mr. BODENHAUSEN (Director of BIRPI) said it was true that, as regards the period of protection, the text proposed in document S/1 was more favorable to developing countries than the Brussels text but less favorable than the Rome text; it could thus be regarded as an intermediate text.

2054.2 He suggested that the Committee might wish to vote first on the Italian amendment (S/163) as being further from the existing text than the French amendment (S/177).

2055. The CHAIRMAN put to the vote the Italian amendment (S/162).

2056. *The Italian amendment was rejected by 26 votes to 4, with 9 abstentions.*

2057. Mr. MAS (France) withdrew the amendment submitted by the Delegation of France (S/177).

2058. The CHAIRMAN put to the vote the text of paragraph (b) of Article 1 as contained in document S/1.

2059. *The text was approved unanimously, with 14 abstentions.*

RESERVATIONS FOR BROADCASTING (ARTICLE 1(d)) (S/149)

2060. The CHAIRMAN invited the Main Committee to consider Article 1(d), drawing attention to an amendment submitted by the Delegation of the United Kingdom (S/149).

2061. Mr. HARBEN (United Kingdom), introducing his Delegation's amendment (S/149), said that its purpose was to restrict the provisions of Article 11*bis* of the Rome Act to non-commercial public use of broadcasts. It would be unfair if those provisions could be used for profit-making purposes.

2062. Mr. CIPPICO (Italy) supported the amendment.

2063. Mr. MAS (France) supported the United Kingdom proposal. It was abnormal not to provide for the author's remuneration in the case of works performed in public for not profit-making purposes.

2064. The CHAIRMAN put to the vote the United Kingdom amendment in document S/149.

2065. *The United Kingdom amendment (S/149) was approved by 12 votes to 9, with 13 abstentions.*

2066. Mr. GOUNDIAM (Senegal) asked that the meaning of the expression "for profit-making purposes" in the United Kingdom amendment should be clarified. Did this clause apply to both public administrations and private undertakings?

2067. Mr. HARBEN (United Kingdom) suggested that the Drafting Committee might consider the question raised by the Delegate of Senegal.

2068. The CHAIRMAN put to the vote the draft text of paragraph (d) contained in document S/1, as amended by the United Kingdom amendment in document S/149.

2069. *The text, as amended, was approved by 17 votes to 1, with 18 abstentions.*

2070. Mr. STRNAD (Czechoslovakia) stated the reasons why his Delegation had abstained. It considered that the proposals submitted were inadequate, in particular as regards the term of protection. As the text of the Rome Act, which, in its opinion, was the most favorable to the developing countries, had not been adopted, the Delegation of Czechoslovakia had preferred to abstain rather than vote for a less satisfactory solution and to leave the decision to the developing countries which might find these proposals acceptable.

2071. Mr. CIAMPI (Italy) drew the Main Committee's attention to the fact that the text of the Convention as revised at Rome in 1928 contained no provision relating to the rights of television. The Delegation of Italy would therefore be inclined to add to the Program of the Conference concerning the Protocol a sentence mentioning the wireless diffusion of signs, sounds or images. If the Committee had some hesitation about including this sentence, the Delegation of Italy requested that reference should be made to it in the Committee's report.

2072. Mr. GOUNDIAM (Senegal) expressly requested that the summary record of proceedings should state that the United Kingdom amendment did not apply to public administrations.

2073. Mr. H'SSAINE (Morocco) supported the request of the Delegate of Senegal.

2074. Mr. ASCENSÃO (Portugal) stated that paragraph (d) referred formally to the provisions of the Rome Act which made the understanding and citation of these rules difficult because it was not always easy to have the 1928 text handy. Consequently, he asked that the contents of those provisions be reproduced in the final version of the Protocol and asked that this suggestion be conveyed to the Drafting Committee.

The meeting rose at 12:25 p.m.

FOURTH MEETING

Thursday, June 22, 1967, at 2:35 p.m.

RESERVATIONS FOR EDUCATIONAL, SCIENTIFIC OR SCHOLASTIC USES (ARTICLE 1(e)) (S/160)

2075.1 Mr. KRISHNAMURTI (India), introducing the amendment to Article 1(e) proposed by Congo (Brazzaville), Congo (Kinshasa), Gabon, India, Ivory Coast, Madagascar, Morocco, Niger, Senegal and Tunisia (S/160), said it was based on the unanimous recommendation of the participants in the BIRPI East Asian Seminar on Copyright of January 1967. The developing countries believed that it would not be sufficient if facilities were afforded them for educational, scientific and scholastic purposes only; facilities for cultural purposes would also be required if the masses of people unable to attend educational establishments were to be given some opportunity of acquiring knowledge. It had been said that restriction of the protection of literary and artistic works would amount to an expropriation of authors' rights. It should be realized, however, that the developing countries had no wish completely to expropriate the rights of their own authors, and there was no question that the treatment accorded to foreign authors should be different from that accorded to domestic authors. As was stated in the amendment proposed by the ten countries mentioned above, authors of literary and artistic works not intended primarily for educational, scientific or scholastic purposes would be entitled to receive equitable remuneration. In his general statement on the Protocol, he had referred to the importance of education in raising living standards. The question should be viewed not as a matter of trade but as a joint effort by developed and developing countries to rid the world of ignorance, poverty and disease.

2075.2 He hoped that during the meeting the Delegate of Israel would give further information regarding the proposals of his Government set out in document S/40. If funds such as those proposed by Israel were formed, developing countries should not be requested to contribute to them in foreign currencies.

2076.1 Mr. SHER (Israel) said that his Delegation hoped, before the next meeting, to circulate specific proposals which could either be embodied in the Convention or Protocol or submitted to a Working Group for further study.

2076.2 Israel's main purpose regarding the Article under discussion was to ensure that in developed countries the entire population, not merely a section of it, contributed to the development of the poorer countries. The latter were not in a position to pay for the right to use the books without which they could not hope to advance to any degree. Israel had therefore suggested, at the East Asian Seminar on Copyright and UNESCO, that, in developed countries, funds might be formed to compensate authors for copyright material used in developing countries. The exact manner in which such funds would be financed had not been decided; developing countries should not, however, be requested to contribute to them nor should a vast organization be established to collect the money payable to them. The Main Committee should endeavor to frame a provision closer in spirit to the provisions of the Berne Convention than the provision contained in document S/1.

2077. The CHAIRMAN said that the Conference was not competent to compel countries to float compensation funds. Did the Delegate of Israel wish to propose a specific amendment to Article 1(e)?

2078. Mr. SHER (Israel) agreed that the Conference could not compel countries to form funds. A provision could, however, be inserted in the Convention authorizing countries, if they so wished, to establish funds. It would then be the function of the developed countries to decide whether their authors were to be compensated for copyright material used in the developing countries. His Delegation had wished, before preparing a specific amendment, to hear the views of as many delegations as possible on the proposals contained in document S/40.

2079. Mr. ADACHI (Japan) said that his Delegation accepted in principle the text of the Protocol submitted in document S/1. It considered, however, that the developing countries should observe the basic principle of copyright protection. It had therefore proposed (S/127) that the words "to the extent justified by the purposes" be added at the end of paragraph (e).

2080. Mr. WALLACE (United Kingdom) said that he had already explained why the United Kingdom was in principle opposed to the Protocol. His Delegation had hoped that as a result of the Committee's debates the provisions of the Protocol would be narrowed rather than widened. The text for Article 1(e) as proposed in document S/160 had been made wider than the existing text in two respects. Firstly, the word "exclusively" had been replaced by the word "primarily" and, secondly, there was the possibility of licenses becoming compulsory for the publication of works for other than educational, scientific or scholastic purposes. The question was not whether it was reasonable for a developing country to do

what was suggested in document S/160 but whether a country which was a member of the Berne Union should be entitled to act in that manner. It would in any case be difficult for the United Kingdom to accept the Protocol; it would be even more difficult if the provisions of the Protocol were widened. The right under discussion was connected with the translation right, on which a Working Group had been set up. It might be wise if that Group, possibly enlarged, were to discuss both matters together.

2081. Mr. MULENDA (Congo (Kinshasa)), after recalling that his country was one of the sponsors of the joint proposal in document S/160, emphasized the difficult problem facing the Congo (Kinshasa) in the domain of education. The adequate infrastructure that had been left by Belgium had become inadequate owing to the population explosion and supplementary education had been organized in the form of extramural courses given by students. Some delegations had proposed that the reservations concerning protection should be restricted to literary and artistic works and to their use in educational establishments. But the special situation of the country required that those reservations should be very broadly interpreted, since the courses concerned were held under very varying conditions.

2082. Mr. RATOVONDRIAKA (Madagascar) stressed that Article 1(e) of the Protocol was of direct concern to his country, which was struggling against illiteracy; as education was often given outside schools in the developing countries, the proposed reservation should apply not only to schools, but also to social organizations, rural education centers, etc. In that regard, he asked the Committee not to demand too much of the conciliatory spirit which the developing countries had shown in the voting at the previous meeting.

2083. Mr. MAS (France) was in general agreement with the text proposed in the Protocol, but not with paragraph (e) as it stood, since that text could open the way to an extension of reservations which would deprive the Berne Convention of its substance and jeopardize the Union. He doubted whether the retention of paragraph (e) was justified, since provision was already made for reservations in Article 10. In submitting an amendment in document S/178, France had merely wished to show its goodwill. To take account of the comments made by the previous speakers, he proposed that the words "and centers of a rural nature" should be added after the words "vocational training centers" in the text of the French amendment. In conclusion, he wished to state that if Article 1(e) were maintained in its existing form, the Delegation of France would be unable to accept the text of the Protocol.

2084. Mr. FERSI (Tunisia) shared the views of the Delegates of the Congo and Madagascar and, having thanked the Delegate of France for his statement on the substantive issues, he asked him whether he would accept the following wording of the French amendment: "(e) reserve the right to restrict the protection of literary and artistic works when their utilization is for purely educational, scientific or instructional purposes. That utilization shall give an entitlement to equitable remuneration. In the absence of agreement between the parties, the remuneration shall be fixed by an authority designated by the national legislation." Finally, he expressed his agreement with the suggestion of the Delegate of the United Kingdom that that question of form should be referred to the Working Group which had been set up on the previous day to study the right of translation.

2085. Mr. MAS (France) thanked the Delegate of Tunisia but thought that the wording proposed by him was too close to the text in document S/1. He believed that, in the interest of clarity, they must maintain the wording "for the exclusive use of scholastic or educational institutions and vocational training centers and centers of a rural nature in connection with their pedagogical activities."

2086. Mr. CIAMPI (Italy) said that in principle his country was in favor of the wording proposed in document S/1 as being particularly suitable in promoting the struggle against illiteracy. It was for that reason that Italy was prepared to accept restrictions on authors' rights. He thought that the question should be studied further to clarify the position to be adopted in relation to private and religious and not only public schools. He supported the United Kingdom proposal to allow time for reflection and refer the matter to a Working Group. In his opinion, the Main Committee should first consider the means by which protection could be accorded to the authors of the developing countries, whose collaboration was needed, then eliminate any idea of the expropriation of the rights of authors, which would present a danger for the Berne Convention, and finally respect the moral rights of authors, not only authorship itself but also the other rights recognized in Article 6*bis* of the Convention.

2087. Mr. BELINFANTE (Netherlands) drew the Main Committee's attention to the amendment proposed by his Delegation (S/148). A clear distinction should be made between publication for educational or scholastic purposes and publication for other purposes. It would be too easy, under the existing text of Article 1(e), to claim that a publication or reproduction was issued for educational purposes. Restrictions for educational or scholastic purposes should only be allowed if those purposes were expressly mentioned either in the commentary accompanying the public performance of literary and artistic works, or, in the case of the reproduction of a work, in all copies of that reproduction. The proposal was compatible with the Japanese proposal (S/127) and did not detract from the United Kingdom, French or Italian proposals. For the reasons already stated by other delegations, the Netherlands could not accept the amendment proposed by ten countries (S/160).

2088.1 Mr. STRNAD (Czechoslovakia), speaking first as the Rapporteur of the Group which had been set up, said that the general statements and amendments to which the text of document S/1 had given rise showed that agreement was possible and that the problems could be resolved by a Working Group. It would appear that the reservation could be accepted, provided that it applied only to educational purposes and the utilisation of works in educational institutions. On one point, however, two opposing opinions had been expressed: according to the one, the author should be fairly remunerated if such a system were to be adopted; according to the other, the license should be free when it was requested for educational purposes. That aspect of the problem should therefore be clarified before it was referred to a Working Group.

2088.2 Turning to the views of his Delegation, Mr. Strnad thought that the need to struggle against illiteracy provided arguments in favor of a non-paying license. If the idea of a non-paying license was rejected by the industrialized countries, he wondered whether the developing countries could be or become parties to the Berne Convention, because the proposals that had been submitted were generally at variance with the spirit of that Convention. The problem was a fundamental one. Because their resources were limited, the developing countries might perhaps be induced, in case of rejection, to seek the educational material that they needed in countries outside the Union.

2088.3 He then stressed that the proposal submitted in document S/160 applied to literary, artistic and other works and not merely to textbooks. He recalled that in a speech in New Delhi in 1963, Mr. Chagla, an Indian

minister, had said that members of the liberal professions in the developing countries needed to keep themselves informed of progress in their sphere of activity and that they could do so if the price of imported books was not prohibitive for them; it was for that reason that India had suggested that it should be permissible for the works in question to be reproduced, even in the original version, in the developing countries. It was that situation which justified the request for a license, in default of which the developing countries would be obliged to forgo either the further training of their skilled personnel or their participation in the Berne Convention.

2089. Mr. FERSI (Tunisia) said that he was touched by the interest shown by some delegations in the authors of developing countries. But if the representatives of the developing countries were concerned to defend their fellow countrymen, they also knew that there was reciprocity. It was in their countries that the restrictions on authors' rights which were being asked for had first been applied and that authors had accepted the sacrifices asked of them in order to promote national and international culture. The supporters of restrictions had no intention of undermining the foundations of the protection of authors' rights for the benefit of anyone.

2090. Mr. GANDZADI (Congo (Brazzaville)) said he had experienced feelings of disappointment and shame on hearing some of the previous statements. Proclamations of sympathy for the developing countries had not been followed by positive gestures, but by statements about the danger of doing away with the authorship of works. The opponents of the proposed wording were the countries that had formerly guided the developing countries and knew their problems. There could be no comparison between the backwardness of some of the neglected regions of the European countries, for example, and that of the developing countries. The Delegate of the Congo called for action and thanked the Delegate of Czechoslovakia for having defended a cause which he thought to be lost, even if he still continued in hope. In conclusion, he asked that the names of those voting should appear in the record so that the developing countries might know who were their true friends.

2091. Mr. AMON D'ABY (Ivory Coast) stressed that the writers and artists of the developing countries were aware of the hardships suffered by their peoples. Hence, certain writers from the Ivory Coast, in order to reduce the expenses of theatrical companies, had forgone, up to the present, their royalties. Having had to choose between accession to the Berne Union and freedom of action outside any Convention, some States had opted for accession, although they were importers for the moment. The argument put forward by certain delegates when they said that the adoption of the Protocol would entail complete disruption of the Convention seemed to prove the case of those who were not members of the "club" of the affluent countries. The statements of sympathy for the developing countries could have been given practical expression by the adoption of clauses permitting those countries to use the works which they needed. The adoption of a Protocol drained of its substance could not fail to have unfortunate effects before long. While paying tribute to the initiative taken by the Delegate of Israel in proposing the setting up of a fund, he pointed out that there was no guarantee that the idea would be followed through and he closed by expressing the hope that specific measures would be taken.

2092.1 Mr. GOUNDIAM (Senegal) summarized the various positions adopted in relation to the proposal submitted by India and other developing countries in document S/160. Some delegations had asked that provision should be made for compulsory remuneration in all cases; others sought to preserve the principle of compulsory remuneration and the moral rights of authors; others again asked that the restriction should be applied only within the framework of educational institutions and vocational training centers and centers of a rural nature. As it had been suggested that a Working Group should be entrusted with the clarification of these ideas, he asked that the Main Committee should first decide on the following four questions: Should there be remuneration in all cases? Should the reservations apply to all categories of works? Should moral rights be respected? Should the reservations be restricted to educational institutions and vocational training centers?

2092.2 He thought that if the principle of compulsory remuneration were maintained in all cases, nothing positive would have been done for the developing countries. Recalling that the profits formerly made in the colonies had been invested elsewhere, he concluded by appealing to the generosity of the developed countries.

2093. Mr. MEINANDER (Finland) said that his Delegation fully supported the aim of the proposed Protocol. As, however, the undeniable obligations owed by developed to developing countries should be assumed by the entire populations of the former, not merely by persons who had created literary or artistic works, the solution proposed in the Protocol was not an ideal one. The question should be settled by other means than compulsory licenses. His Delegation therefore supported the views expressed by the Delegate of Israel. The question of the organization of cultural aid was, however, so intricate that it seemed premature to take any decision during the current session on the suggestion made by Israel. In any case, Finland was not convinced that the final solution of what was mainly a financial question should be sought within the framework of international copyright conventions. The matter should be studied further and the substance of the Israeli proposal should be mentioned in the final report of the Committee. For the time being, therefore, Finland supported the proposal made in document S/1; it would be unable to vote in favor of any extension of reservations beyond the limits laid down in that document.

PROPOSAL TO ADJOURN THE MEETING

2094. Mr. MIHINDOU (Gabon) subscribed to what the delegates of the developing countries had said and asked that discussion of the Protocol should be adjourned to Monday, June 26, 1967.

2095. Mr. ZAKÁR (Hungary) agreed with the Delegate of Senegal. Before setting up a Working Group, the Committee must decide what questions it should examine. Of the four questions put by the Delegation of Senegal the first, namely, whether there should be non-paying licenses, was the most important. Hungary was in favor of non-paying licenses.

2096. Mr. LENNON (Ireland) said that his Delegation supported the proposal contained in document S/1, subject to reservation regarding the criterion, and was prepared to accept the text of Article 1(e) as drafted in document S/1. It was also prepared to accept the text of the amendment (S/160) proposed by ten countries, on the understanding that, except in the case of works used for educational, scientific or scholastic purposes, authors would be entitled to remuneration.

2097. Mr. BODENHAUSEN (Director of BIRPI) said that two proposals were before the Main Committee. Firstly, the Delegate of Gabon had suggested that the meeting be adjourned, and, secondly, the Delegates of Senegal and Hungary had suggested that the Main Committee should give the Working Group definite instructions concerning the questions it was to study. It should be remembered that the question whether there should be non-paying licenses could not be put in that way; it depended on the subject for which the license was

required. He wished to suggest, therefore, that the Main Committee should continue its discussions rather than adjourn. Paragraphs (a) and (e) of Article 1 were obviously interrelated. When a translation was required for educational purposes, they would both be applicable at the same time. The question which paragraph should have priority would then arise. That was an important matter on which members should express an opinion for the guidance of the Working Group.

2098. Mr. NAMUROIS (Belgium) said that his Delegation was ready to accept some flexibility in favor of the developing countries; but whereas the proposals contained in document S/160 went so far that they would lead to the institution of a compulsory license for all works, those of Italy, France and the United Kingdom were perhaps too restrictive. The scope of the French proposal could be enlarged by extending the application of the restrictions to university and post-university education and by including the idea of scientific purposes; furthermore, the expression "educational organizations" would be preferable to "educational institutions." With regard to the question of whether the license should be paying or non-paying, he thought that if they inclined towards a paying license, they should give more thorough consideration to the system of regulations, perhaps at the national level, taking up the idea suggested by the Delegate of Israel.

2099. The CHAIRMAN said that the scope of paragraph (a) was wider than that of paragraph (e); it covered translations for all purposes, whereas paragraph (e) was concerned with reservations for educational, scientific and scholastic purposes only. The two subparagraphs did, however, complement each other.

2100. Mr. ROJAS (Mexico), speaking on the point of order raised by the Delegate of Gabon, referred to Rules 25, 28 and 31 of the Rules of Procedure (S/MISC/1/Rev) and said that the Delegate of Gabon's proposal should be put to the vote.

2101. Mr. FERSI (Tunisia), reminding the Main Committee that he had asked to speak immediately after the Delegate of Gabon, said he supported the proposal of the latter and asked that the discussion should be suspended.

2102. Mr. SHER (Israel), speaking on a point of order, said that if the meeting were adjourned the Main Committee might have difficulty in completing its work on time. He requested, therefore, that the vote be taken by roll-call.

2103. The CHAIRMAN put the proposal to adjourn the meeting to the vote.

2104. *The proposal was adopted by 15 votes to 14, with 11 abstentions.*

The meeting rose at 5:10 p.m.

FIFTH MEETING

Monday, June 26, 1967, at 9:30 a.m.

RESERVATIONS FOR EDUCATIONAL, SCIENTIFIC OR SCHOLASTIC USES (continued) (S/199)

2105.1 Mr. SHER (Israel) said that he had been promised the floor on Thursday, as the adjournment had not been in accordance with the rules. He would, however, speak on paragraph (e) of Article 1 of the Protocol.

2105.2 Paragraph (e) raised certain difficulties, both in the original and in document S/160. There was no clear indication concerning moral rights. Distortion was possible both in reproduction and translation; nor was the interrelationship between what might be said in the Protocol and what had been said in the Berne Convention clear. The record should therefore contain indications of how the Protocol should be interpreted on the question of moral rights.

2105.3 Document S/199 contained specific proposals resulting from document S/40. Not all were relevant to paragraph (e), but unless those specific proposals were dealt with his Government could not give its consent to the Protocol. In the proposals of the Delegation of Israel (S/199), the term of ten years had been considered short and was therefore extended to fifteen years, but it was the task of the General Assembly to prolong the effect of the Protocol and not of the Revision Conference. His Delegation had always held the view that the text of the Berne Convention previous to the proposed amendments included the right of translation, whenever reproduction was permitted. It was illogical that for developing countries reproduction should be allowed free of charge, while if such material was to be translated into their own language, they must wait seven years or more, or pay compensation.

2105.4 The new Article 2 set out in document S/199 mentioned the proper dimensions of concessions which, as had repeatedly been stated, should be limited, since the purpose was to help the developing countries and not to compete with non-members of the Union or the Universal Copyright Convention.

2105.5 The proposed addition at the end of Article 1 had been included at the request of the Delegation of India, since one of the difficulties of the developing countries was the lack of foreign exchange. It indicated clearly that foreign exchange rules should prevail, with the one exception that a way should be found for international organizations to use such funds and transmit the proceeds to recipients. Just compensation would thus not entail extra costs for the developing countries.

2105.6 The new proposal for Article 4 outlined a method of providing a general compensation fund which had already been mentioned.

2106.1 Mr. BODENHAUSEN (Director of BIRPI) said a Working Group had been set up for paragraph (a) which had already unanimously agreed on a compromise solution to be laid before the Main Committee; since, as the Delegation of Israel had shown, there were links between Article 1 (a) translation rights, and Article 1 (e) reproduction rights, it could only satisfactorily complete its task by making proposals also on Article 1 (e). He would therefore like its terms of reference to be extended to include the latter. If there was no objection, the Working Group could meet that afternoon.

2106.2 The new proposals submitted by the Delegation of Israel in document S/199 did not all refer to the same subject. The proposed addition in the paragraph 2 of that document was on the reservation period and would be discussed later by the Committee; the same applied to the proposal to delete Article 2. The proposed addition at the end of Article 1, and the insertion of a new Article 2 were on translation and reproduction and had in part already been examined by the Working Group. The Delegate of Israel's proposal would, however, be taken into account. The proposal to add a further Article 4 was an entirely new proposal which would no doubt be raised again at the appropriate moment. If the Main Committee agreed, paragraph (e) could be referred to the Working Group and the question of criterion could then be discussed, followed by that of duration and the new proposal by the Delegation of Israel.

CRITERION FOR THE DEFINITION OF A "DEVELOPING COUNTRY" AND ESTABLISHMENT OF WORKING GROUP ON THE SUBJECT (S/149, S/160, S/176)

2107. The CHAIRMAN noted that there was no objection to paragraph (e) being referred to the Working Group and asked that the comments by the Delegate of Israel be taken into account in their deliberations. The question of criterion was now before the Committee.

2108.1 As regards countries which could avail themselves of the Protocol, the Director of BIRPI had said the right was granted to any developing country in accordance with Article 1. That was repeated in the proposal by the Delegation of the United Kingdom in document S/149, with the important addition that the Protocol could only be invoked with the prior agreement of the Executive Committee of the Berne Union. There was also a proposal submitted in document S/160 by ten countries, including India, and one in document S/176 by the Delegation of France.

2108.2 The difference between the latter proposal and that in document S/1 was that the Executive Committee was not to play a part as in the United Kingdom proposal, but that the date of signing of the Brussels text would be indicated, thus limiting a country's capacity to invoke the Protocol. The importance of the criterion depended partly on the contents of the Protocol; once they were satisfactory to all countries concerned, the importance of the criterion would diminish. According to the proposal in document S/176, developing countries which had acceded to the Union since June 26, 1948, could invoke the Protocol; but would countries adhering in the future also be able to do so? If, in future, all countries were to be included, restriction would be reduced.

2108.3 He thought the general discussion on the criterion should be continued when the content of the Protocol had been decided on.

2109. Mr. KRISHNAMURTI (India) suggested that paragraph (f) of document S/160 which was linked to paragraphs (a) and (e) should be referred to the Working Group.

2110. Mr. AMON D'ABY (Ivory Coast) recalled that it had been decided to enlarge the Working Group. Would it be competent to continue its task as it was, or should it be enlarged forthwith?

2111. Mr. BODENHAUSEN (Director of BIRPI) thought it would be difficult to increase the size of the Group at the present stage, as it had already dealt with a large part of its problems and was about to conclude its work on Article 1(a) and (e) of the Draft Protocol. The results would be submitted to the Main Committee and, if the Group had to continue its work, new members could be appointed. It might prove necessary to increase the size of the Group if difficulties arose in connection with the criteria for determining what were developing countries.

2112. The CHAIRMAN said there should be another larger Working Group for the question of criterion, while the existing Group for paragraphs (a) and (e) could deal with paragraph (f) of documents S/160 as proposed by the Delegate of India.

2113. Mr. MAS (France) considered that whatever the terms of the Protocol might be, it was essential to define as precisely as possible what States could avail themselves of it. The provisions of the Protocol must be such as to favor the developing countries only. The Main Committee would therefore have to adopt a satisfactory definition of those developing countries which could avail themselves of the reservations, and that was a difficult task. The French Government had endeavored to find an objective criterion, which would be the date on which those countries had acceded to the Berne Union after the signature of the Brussels Act of June 26, 1948. In its observations on document S/1 in document S/13, the French Government had first recommended July 1, 1951, the date from which countries outside the Union could no longer accede to the Rome Act of 1928. It had appeared preferable, however, to propose the date of signature of the Brussels Act. That solution was undoubtedly not a perfect one and did not clear up all doubtful points for the future. He was prepared to discuss document S/176 with a view to finding a better formula. If the criterion proposed did not satisfy the majority of delegations, he would support the proposal of the United Kingdom (S/149).

2114.1 Mr. SHER (Israel) said he had hesitated to agree to refer paragraph (f) to the Working Group, as there was some connection between that subparagraph and what was to be decided in Main Committee I on Article 9. However, he was sure that the attention of the Working Group would be duly drawn to that circumstance.

2114.2 He considered unacceptable any definition of the criterion which did not leave it to the country to decide whether or not it was a developing country. He was not opposed to the substance of the French proposal, but would like to see a list of the countries to which the criterion might or might not apply, with the relevant dates of acceptance and ratification to show the full implications. He could not accept the United Kingdom's proposal which left it to a body to decide and he saw some difficulty in the proposal contained in document S/160 on which he would like the Director's opinion. He considered the beginning of Article 1 was unfair to developing countries, since by limiting application to countries adhering to the Stockholm Act, it prevented developing countries which had adhered to previous texts from acceding rapidly to the Protocol or the new administrative provisions to be annexed to the Berne Convention. The purpose was to assist the developing countries and not merely to see that they joined the Stockholm Act.

2115. Mr. BODENHAUSEN (Director of BIRPI) said, in reply to the comment of the Delegate of Israel, that the application of the Protocol was a matter of final clauses as dealt with by Main Committee IV. As the subject was also of interest to Main Committee II, there would be a combined meeting of Main Committees II and IV, possibly on Thursday June 29, to deal with the question of whether the Protocol was an integral part of the Stockholm Act and to which texts it would apply.

2116.1 Mr. FERSI (Tunisia) stated that his Delegation could not support any proposal to define the concept of developing countries. He recalled the discussion that had taken place in Main Committee I regarding the definition of the word "maker"; as no agreement had been possible, the Delegation of Italy had proposed that the Main Committee should have recourse to a presumption. A similar solution might be contemplated in the present case. Owing to the difficulty of defining the concept of underdevelopment, the United Nations had established a list of the countries concerned. An identical list had been inserted as a note to resolution 5.122 unanimously adopted by the General Conference of UNESCO at its 14th session; the following 24 member countries of the Berne Union were listed: Brazil, Cameroon, Ceylon, Cyprus, Congo (Brazzaville), Congo (Kinshasa), Dahomey, Gabon, India, Israel, Ivory Coast, Lebanon, Madagascar, Mali, Morocco, Niger, Pakistan, Philippines, Senegal, Thailand, Tunisia, Turkey, Upper

Volta and Yugoslavia. That list might establish a presumption. As a contributor to the newspaper *Le Monde* had very appropriately remarked, it was at present impossible to define the concept of developing countries, since there was no such thing as an underdeveloped people, a backward people, or a decadent people, but simply political and social situations which caused underdevelopment, maintained backwardness, or promoted decadence.

2116.2 As he did not wish to go too deeply into that question, he would opt for the solution in document S/1.

2117. Mr. GRANT (United Kingdom) asked that his Delegation be associated with the stand taken by the Delegation of France. Care must be taken to ensure that the Berne Convention was not exposed to dilution. There were great difficulties in defining a developing country; it might be done by the Executive Committee. Hence their suggestion. However, dates, as suggested by the Delegation of France, might provide a satisfactory solution.

2118.1 Mr. MULENDA (Congo (Kinshasa)) appreciated the fact that it was difficult to define what should be meant by developing countries. Another list of countries, established by BIRPI on October 15, 1966, in the trademark field, could be quoted, but only as an indication, because it mentioned countries that nobody could consider as being developing countries.

2118.2 He emphasized the difficulties involved in admitting the developing countries either into the framework of the Berne Union or into the framework of other specialized agencies of the United Nations, such as the United Nations Conference on Trade and Development or the Economic and Social Council.

2118.3 He found it difficult to reach a decision on the French proposal, as the fact that a country had entered the Berne Union after a particular date was not sufficient evidence to determine whether it was a developing country or not. He reserved the right to return to that point later.

2119.1 Mr. GOUNDIAM (Senegal) also considered it difficult to give a legal or factual definition of the term "developing country." Was it a question of economic development, or of cultural revolution, or of the two together? Furthermore, the content of the expression itself might change.

2119.2 The United Kingdom proposal that it should be left to an Executive Committee to determine what was a developing country did not appear to him to be a good solution either.

2119.3 Possibly provision should be made for consulting certain international organizations, for example the economic organizations of the United Nations, which could arbitrate in cases of dispute.

2120.1 Mr. MAS (France) explained that the purpose of the French proposal was to enable all the countries that had achieved independence since the Brussels Act to benefit from the advantages of the Protocol. The French proposal made a distinction between the member countries of the Berne Union which had participated in the various acts of revision and those which had acceded to the Union since the Brussels revision when they took the place of the countries which had formerly been responsible for them. Special provisions would have to be made for the second category of countries. The Delegation of France had adopted the practical criterion of a date—June 26, 1948—so as not to become involved in any legal or economic definition. Obviously other countries could adhere to the Berne Convention, as revised at Brussels, but they would not benefit from the provisions of the Protocol since the text specified: "Every developing country, etc." Those two conditions should, therefore, make it possible to determine the countries to which the Protocol applied.

2120.2 The Secretariat could supply a list of developing countries and that designation could easily be checked.

2121. Mr. CURTIS (Australia) agreed with the Delegations of France and the United Kingdom on the need to find a criterion to define more exactly which countries could invoke the Protocol. That could not be done until it was known what the Protocol contained. The French proposal included both criteria—the country that considered itself a developing country and the country which had joined the Union since the last revision conference, at a time when it could not itself have participated fully in discussions on the amendment of the Convention. Substantial changes had been made at the Brussels Revision Conference and the notion was introduced that a country could not accede to earlier Acts of the Convention.

2122.1 Mr. STRNAD (Czechoslovakia) thought it essential to find a logical and sensible solution. The fact that the French proposal had selected the date 1948 rather than 1951 did not seem to him to make any great difference. In any event, those developing countries which had acceded to the Berne Convention before the date selected would be excluded from the advantages of the Protocol. That would be the case in regard to certain countries of Asia and Africa. Was that the intention of those who had drafted the text?

2122.2 He would draw the attention of the members of the Committee to the situation prevailing before 1948; some countries had been protectorates of independent States which had conducted their international relations; others had been represented before the Rome Act (1928) by member States of the Berne Union. The date proposed by the French Government did not allow the inclusion of those countries; hence it did not satisfactorily define the countries which had or had not the right to avail themselves of the Protocol, particularly as other countries, after 1948, had made a declaration of continuity, that is to say that they agreed to be subject to the Berne Convention before achieving their independence. Those countries had not taken their decision with all the liberty which their new independence implied.

2122.3 He therefore considered that no date should be taken as a criterion and that reliance should be placed on the common sense of the countries concerned. Otherwise this sort of situation might arise: one North African country would be a member of the Berne Union and another would not, even though both of them were at the same level of social and cultural development. Every country should be given the possibility of deciding whether or not to avail itself of the provisions established in its favor by the Protocol. The only date that could be fixed was a time-limit for the deposit of the application for accession to the Protocol.

2123. Mr. LENNON (Ireland) thought it important that any criterion established by the Convention should be satisfactory to all Union countries. His Delegation thought each declaration should be examined by the Executive Committee and he would like that provision added to the proposal contained in document S/149.

2124.1 Mr. KRISHNAMURTI (India) said the criterion had been investigated in detail in 1965. His Delegation thought those discussions had been summarized most adequately in document S/1. Consequently, document S/160 had adopted the beginning of Article 1 without change.

2124.2 Discussions showed that there was not complete trust in the principal States which had joined or intended to join. It had been proposed that before a country could call itself a developing country, it must seek the concurrence of the Executive Committee of the Berne Union. India was a member of the Permanent Committee of the Berne Union and considered that the other members were no less sovereign States than India itself. If India were to remain a member, the Indian Delegation, composed of copyright experts, would be embarrassed at having to take a decision about another developing country.

2124.3 The criterion used in UNESCO—and it was about to be changed—was that those countries which produced less than a certain number of books and had fewer cinema seats and newspapers per thousand of population were developing countries.

2124.4 The French proposal suggested that the Protocol should be limited to countries that joined after a certain date. Any country which thought that even part of it was undeveloped should invoke it; he was certain that no unfair advantage would be taken of this possibility.

2125. Mr. CIPPICO (Italy) was gratified at the constructive handling of such a fundamental subject. His Delegation agreed that there should be some selection of countries entitled to benefit under the Protocol. It was hard to produce a criterion for a developing country and he suggested that literacy and school attendance might provide a practical and ethically satisfying approach, since some of the countries claiming copyright protection had, by their own efforts, achieved very high percentages in both. As mentioned at the opening of Main Committee II, his Delegation could supply data which included school attendance and literacy percentages.

2126.1 Mr. BODENHAUSEN (Director of BIRPI) said the various proposals advanced raised as many new questions.

2126.2 The Italian proposal would need to be put in writing and many elements would have to be provided; it would have to be known which countries came under the definition.

2126.3 There had also been references to the use of lists drawn up by United Nations bodies, such as the Economic and Social Council and the United Nations Conference on Trade and Development. The disadvantage was that the lists had been made for other purposes than copyright facilities; moreover the lists established would be inadequate as new countries had emerged.

2126.4 The French proposal referred to a further list. Though the Secretariat would willingly provide it, he failed to understand its purpose. He had noted from the statement by the Delegation of France that its proposal would cover not only countries which had acceded to the Union before 1948 but also to newly adhering countries. That was of course necessary, as otherwise the Protocol would be limited to present-day developing countries. But if the developing countries which had adhered before 1948 could still adhere to the Stockholm Act and invoke the Protocol, the criterion would disappear and what then was the meaning of the clause?

2126.5 He concluded by saying that the list of countries that had ratified and adhered to the Convention after 1948 would be issued. As, however, there was a substantive difference as to whether the Executive Committee was to play a role or not, he suggested a tentative vote on a proposal by the Delegation of the United Kingdom for the guidance of the Working Group.

2127. Mr. PALUDAN (Denmark) thought a list of the countries that could not avail themselves of the reservation, rather than a list of those who could, would be of interest.

2128. Mr. BODENHAUSEN (Director of BIRPI) said both lists would be provided.

2129. Mr. RIBEIRO (Brazil) thought that the exclusion of countries which had adhered before 1948 would amount to a discrimination against them.

2130. Mr. STRNAD (Czechoslovakia) directed the attention of the Committee to the fact that, according to the United Kingdom proposal, an Executive Committee should decide whether or not a country was a developing country. Such a provision was somewhat disquieting. The developing countries had hitherto constituted a minority in the Berne Union. It was difficult, therefore, to have confidence in the Executive Committee without knowing beforehand what its composition would be. For that reason, he would vote against such a solution.

2131. Mr. AMON D'ABY (Ivory Coast) emphasized, on behalf of his Delegation and of the delegations of the developing countries, the gravity of the decision which was to be taken. The Main Committee should shoulder its own responsibilities and not leave to an Executive Committee, as the United Kingdom proposal suggested, the task of deciding which countries might benefit from the advantages of the Protocol.

2132. Mr. MIHINDOU (Gabon) supported the statement by the Delegate of the Ivory Coast. It was not the Executive Committee, whatever its composition, but the Main Committee itself which should take a decision at the present time.

2133. Mr. MAS (France) noted that the Main Committee had several proposals before it and that the French text contained some ambiguities. In the circumstances, the best way to proceed would be to refer the question for consideration in all its aspects to a Working Group.

2134. Mr. AYITER (Turkey) thought that the United Kingdom proposal was incompatible with the spirit of the Protocol. He proposed that the principle of a list of countries should be adopted.

2135. Mr. RATOVONDRIAKA (Madagascar) wondered how an Executive Committee, created by the Assembly, could evolve a criterion which the Assembly itself was incapable of establishing. If the countries concerned were dissatisfied with the Executive Committee's decisions, would there be a superior body to which the dispute could be referred for settlement?

2136.1 Mr. FERSI (Tunisia) recalled that he had spoken of presumption rather than of definition. The discussion had shown that there were divergencies in the French and United Kingdom proposals, neither of which was satisfactory to the Delegation of Tunisia. It was for that reason that it was prepared to see the matter referred to the Working Group.

2136.2 He referred to the resolution adopted by UNESCO regarding Article XI of the Universal Copyright Convention, which dealt with the composition of the Intergovernmental Committee. As the developing countries were already in a minority in regard to that Convention, the African States had recommended that Article XI be amended so that they could become members of the Intergovernmental Committee. The United Kingdom proposal that the decision should be

taken by an Executive Committee, the composition of which was not fixed, was not acceptable to the developing countries, which were liable to find themselves in a minority in that body. If the French proposal were accepted, Tunisia and Morocco would be excluded from the benefit of the Protocol because they had been members of the Berne Union for a long time, whereas Israel, for example, would be considered as a developing country. Such a situation would be paradoxical.

2136.3 The list establishing a presumption constituted a third concrete proposal; it was supported by the Delegate of Turkey and it might satisfy the majority of the delegates.

2137. Mr. H'SSAINE (Morocco) shared the opinion of the Delegate of Tunisia.

2138. Mr. BODENHAUSEN (Director of BIRPI) said that many of the proposals made, including that by the Delegation of France, could be referred to the Working Group. One, however, raised a question of principle regarding the Executive Committee which the Working Group could not solve. A decision was needed thereon, since only if agreed upon could the United Kingdom's proposal become an element of discussion.

2139. Mr. FERSI (Tunisia) asked for a roll-call vote.

2140. The CHAIRMAN put the United Kingdom's proposal to the vote.

2141. *The proposal was rejected by 15 votes to five, with ten abstentions.*

2142. The CHAIRMAN proposed that the Working Group should be composed of: Brazil, Congo (Kinshasa), the Ivory Coast, India, Senegal, Czechoslovakia, the United Kingdom, France, Italy, Ireland and Denmark.

2143. Mr. PALUDAN (Denmark) proposed to stand down in favor of a delegate from the host country, Sweden.

2144. Mr. MULENDA (Congo, Kinshasa) regretted that the Committee had not accepted the proposal of the Delegation of the United Kingdom. If it had been possible to persuade the Delegation of the United Kingdom to dispense with the prior agreement of an Executive Committee to determine which were the developing countries, the task of the Working Group would have been considerably facilitated.

2145. The CHAIRMAN said the matter would have to be referred to the Working Group.

2146. Mr. AYITER (Turkey) proposed that the Delegate of Tunisia should be included among the members of the Working Group.

2147. The CHAIRMAN read out the new composition of the Working Group: Brazil, Congo (Kinshasa), the Ivory Coast, India, Senegal, Czechoslovakia, the United Kingdom, France, Italy, Ireland, Sweden and Tunisia.

2148. *The composition of the Working Group, as read out by the Chairman, was agreed.*

RESERVATIONS:
PERIOD OF DURATION (ARTICLES 2 AND 3)

2149. Mr. BODENHAUSEN (Director of BIRPI), passing to the question of duration of reservations, said that proposals concerning this question were contained in documents S/1, Annex II; Articles 2 and 3; S/160 and S/199, containing the new proposal by the Delegation of Israel.

2150. Mr. STRNAD (Czechoslovakia) recalled that the question of the periods during which reservations could be maintained had been discussed in the committees of experts of 1963 and 1965. In document S/1 a period of ten years had been prescribed and document S/199 provided for a period of 15 years which was renewable. The special conditions set out in Article 1 of the Protocol stemmed from the idea that at the end of ten years, or of 15 years, the developing countries would have overcome the difficulties arising from their accession to the Berne Convention. Research undertaken by UNESCO had shown, however, that the difficulties arising between industrial countries and developing countries might grow more rather than less acute as time went on. A period longer than that which had been arbitrarily fixed would appear, therefore, to be much more reasonable. He emphasized the importance of Article 3 in the form in which it appeared in the joint proposal (S/160), because it would enable a country to maintain the reservations appropriate to it until the time of its accession to the Act adopted by the next revision conference.

2151.1 Mr. SHER (Israel) said the Delegation of Czechoslovakia had not understood his proposal. Every country was in a process of constant development and its needs varied at various stages. He did not think it possible to establish for how long assistance in matters of intellectual property and copyright might be needed, nor did he believe that the needs of developing countries in ten or 15 years time could be known at present.

2151.2 Translation might have become unimportant; reproduction on a larger new scale and by new means might become the important element. Instruction might be mainly by satellite television or other new means, rather than by books, and the concessions for the developing countries would have to be adapted accordingly.

2151.3 In the beginning, the Delegation of Israel had believed 15 years to be a reasonable period but, and that was the main point, it should not be determined by a revision conference. There should be a continuous process whereby the Conference could extend the validity of the Protocol while, if necessary, deciding on a revision specifically for the developing countries.

2151.4 As no criterion of a developing country existed, it was impossible to define their needs in even ten years' time. Countries which had not yet gained independence might then have joined. Their level of development would be much lower than that of any present-day developing country and they would require a longer term. He did not wish to insist on the proposal contained in document S/199 but rather on the method of setting an initial term which would allow a continuous process of development.

2152.1 Mr. KRISHNAMURTI (India) thought there was no great difference between documents S/160 and S/199. The ten-year period in document S/160 was subject to a renewal period until the new Convention came into force. Revision conferences had been held approximately every 20 years. Should there be one in eight years' time, the new text could come into effect and it would be decided whether or not the Protocol was to remain valid and how it would apply.

2152.2 He thought the proposal of ten years to be followed by a further ten years logical. Document S/199 contained a provision that an extension beyond the 15-year period would be subject to the consent of the General Assembly. There would always be differences in views, whether it was the General Assembly or the revision conference that made the decision. Would the Delegation of Israel agree that any decision by the General Assembly should be subject to the majority vote

of the developing countries, members of the Assembly? That might be a possible solution, though he preferred the proposal in document S/160.

2153.1 Mr. CURTIS (Australia) said that by its very nature the document under consideration was temporary and transitional. Its purpose was to enable countries not members of the Berne Union to be parties to the revision of the Berne Convention, to join on terms suitable to their stage of development, but with the expectation of taking a step towards full membership.

2153.2 The present undertaking was something of an experiment, firstly because it was the first time in the Berne Convention where provision had been made for a defined group of countries to make reservations on substantive provisions; it must not be forgotten that though couched in protocol form, that was a substantive part of the Convention. Secondly, as stated by the Delegations of Israel, India and other States, rapid changes were occurring in the technical means of disseminating material and it was impossible to foresee developments even ten years ahead.

2153.3 He agreed with the principle set out in document S/160, namely that the provisions of the Protocol should be subject to review, both by the countries taking advantage of it and by the revision conference. As he had said, the Protocol was a substantive part of the Convention. Therefore any future revision should be by the body charged with the revision of the Convention, namely the revision conference, and not the General Assembly.

2153.4 Moreover, he deduced from the proceedings in Main Committee IV that it was intended that voting in the General Assembly should be by a two-thirds majority. When voting on changes in the Convention, the principle of unanimous vote had been followed by the Berne Convention. The period during which a country could invoke the Protocol was a substantive matter and again should be dealt with by the revision conference.

2154.1 Mr. SHER (Israel) said he had evidently failed to show why the proposals contained in documents S/1 and S/160 were unacceptable to his Delegation. He agreed with the Delegation of Australia that the measures being taken were transitional, but said they depended on what the needs of the developing countries would be when they came into effect. The proposals in document S/1 showed that the provisions granted under the Protocol were not connected with action taken by the developing countries. It read: ". . . until the entry into force of the Act adopted by the next Revision Conference . . ." If at the time ratification was required by ten countries, those countries were all developed countries, the concessions granted under the Convention would cease to have effect. As regards the proposals contained in document S/160, however, the ten countries proposing it were in effect saying that a developing country should not accede to the next step of the Convention because they would thereby lose the advantages of prior concessions. That would prove a deterrent to joining future provisions of the Berne Convention; that was why it was not acceptable to his Delegation.

2154.2 He would not insist on the General Assembly taking decisions. Other methods could be devised to safeguard the interests of the developing countries, but the duration of concessions should not be made dependent on activities not connected with the reason for granting those concessions.

2155. The CHAIRMAN announced that Main Committee II would meet at 9.30 the following morning and the Working Group at 3 p.m. that afternoon.

The meeting rose at 12:45 p.m.

SIXTH MEETING

Tuesday, June 27, 1967, at 9:40 a.m.

CRITERION FOR THE DEFINITION OF A "DEVELOPING COUNTRY" (continued)

2156. Mr. BODENHAUSEN (Director of BIRPI) drew attention to a proposal submitted by the Delegation of Italy relating to Article 1 (S/213) and suggested it be referred to the Working Group set up to consider a possible criterion for the definition of the concept of a "developing country."

2157. *It was so agreed.*

RESERVATIONS: PERIOD OF DURATION (ARTICLES 2 AND 3) (continued) (S/160)

2158. The CHAIRMAN invited the Main Committee to consider the question of the duration of the reservations available to developing countries under Articles 2 and 3 and the amended versions of those Articles proposed jointly by the Delegations of Congo (Brazzaville), Congo (Kinshasa), Gabon, India, Ivory Coast, Madagascar, Morocco, Niger, Senegal and Tunisia (S/160).

2159. Mr. HARBEN (United Kingdom) said that he fully agreed with the text of the Articles submitted in document S/1.

2160.1 Mr. AMON D'ABY (Ivory Coast) said that the developing countries did not regard as sufficient the suggestion of the Delegation of the United Kingdom that it should be specified that the period provided for the reservations of which the developing countries could avail themselves should not exceed ten years, and could in any case be prolonged only until the next revision conference, without even awaiting the ratification of the new Act resulting from the present Conference. It would be neither effective nor expedient that the application of the reservation clauses for the benefit of the developing countries might end as early as the next revision conference.

2160.2 It was in fact for imperative considerations known to all that the Berne Union had been led to envisage special provisions for the benefit of the developing countries. It was undoubtedly inadequate to leave the developing countries only some ten years to resolve the difficulties at present facing them.

2160.3 Furthermore, it was not known when the next revision conference would be held.

2160.4 Under those conditions, it would be wiser to stipulate that it was necessary to await both the meeting of the next revision conference and the ratification of the Act that would be produced on that occasion.

2161. Mr. MIHINDOU (Gabon) pointed out, as the Delegate of Czechoslovakia had done at the previous meeting, that the principal problem was whether it was possible to determine how long it would take the developing countries to advance beyond the present stage, in which it was indeed necessary to accord them certain privileges. *A priori* determination of such periods seemed impossible. Young States should therefore be left the possibility of benefiting from extremely long periods.

2162.1 Mr. MAS (France) feared that if it were made possible for States to renew any reservations which they might formulate until a new Act was adopted at the end of a new revision conference, they might be encouraged to avail themselves indefinitely of those reservations.

2162.2 Moreover, if the possibility of formulating reservations was limited to a period of ten years renewable until a further revision of the Convention, the States concerned would be left full discretion to accede or not to accede to a new Act. If they were unable to accede, the States could raise anew the question of the reservations that they would have to formulate at the time of the new negotiations to be held then, exactly as they had done within the framework of the present Conference of Stockholm.

2162.3 Under those conditions, it would be wiser to keep to the text proposed in the Program of the Conference (S/1, Annex II).

2163.1 Mr. STRNAD (Czechoslovakia) pointed out that the various versions of the Berne Convention (1886, 1896, 1908) had given rise to reservations which the States concerned, in that case the developed countries, had duly formulated, as they had been entitled to do without any restriction.

2163.2 In relation to the Berne Convention, there was therefore a tradition of leaving sovereign States the option to withdraw or extend their stated reservations when they themselves thought fit. It would be in accordance with that tradition to afford the developing countries the option that had been left to the industrialized countries themselves and to authorize the respective governments to decide the precise moment when they had no further need of recourse to those reservations and when they deemed it preferable to accede to the Act itself.

2164.1 Mr. BELINFANTE (Netherlands) said that he was also in favor of the proposal contained in document S/1, Annex II.

2164.2 The difference between the texts submitted in documents S/1 and S/160 was very slight. Both versions gave the developing countries every opportunity of maintaining the reservations until the next revision conference, which might be in 20 years' time, and thereafter, if they wished, by a fresh Protocol in the succeeding Act.

2164.3 The proposal in document S/160 might act as an inducement to some countries not to participate in copyright developments and not to ratify new conventions.

2165.1 Mr. KRISHNAMURTI (India) said he agreed with the Delegate of Czechoslovakia and saw no reason why the reservations in the Protocol should be restricted when the reservations in the Berlin and Rome Acts had been free of any restrictions.

2165.2 He hoped that the developed countries would be prepared to give more rather than less than was asked of them and would not make it appear that they wished to drive a bargain with the developing countries.

2165.3 The proposals in document S/160 made only minor changes in Article 2. In document S/1, the reservations would lapse automatically at the end of ten years unless they were explicitly renewed. Unforeseen natural and other crises might, however, make it impossible for developing countries to manifest their wishes with regard to the reservations precisely at the end of the ten-year period. That difficulty was obviated in the joint proposals (S/160), which made renunciation of the reservations voluntary.

2165.4 No provision was made in the BIRPI proposals to enable countries at the end of the initial ten-year period to maintain the reservations for less than a further ten-year period.

2165.5 It was impossible to say when the next revision conference would be held; it might take place even before ten-years had elapsed. Nor could any period for the duration of the reservations be indicated as a minimum suitable for all the developing countries.

2165.6 He considered that the provisions of the Berne and Rome Acts were fully satisfactory and he saw no need for innovations of the kind proposed in the Protocol.

2166.1 Mr. FERSI (Tunisia) said that he was not certain that Tunisia was here and now in a position to cancel the reservations that the Berne Convention had left it the option of formulating in the Brussels text.

2166.2 In relation to the decision to be taken, he endorsed the observations made by the Delegate of Czechoslovakia at the previous meeting and by the Delegate of India and recalled that his Government held to the view that the principle of the sovereignty of States should in no way be prejudiced. It was for that question of principle that the Delegation of Tunisia preferred the text of Article 3 proposed by several delegations (S/160) to the text of the Program of the Conference.

2166.3 Apart from that question of principle, there was no great difference between the two texts as regards substance. But it was essential that the countries concerned could themselves choose the moment when they could avail themselves of the reservations afforded by a Protocol that should moreover form an integral part of the Convention and not simply an Annex.

2167.1 Mr. BODENHAUSEN (Director of BIRPI) pointed out that there appeared to be a misunderstanding about the difference between the versions contained in documents S/1 and S/160. Document S/1 proposed that the reservations be maintained until the entry into force of the next revision Act, whereas document S/160 proposed that they be maintained until the country in question acceded to the Act adopted by the next revision conference.

2167.2 Some delegations appeared not to have noticed that the sovereign rights of all countries were respected by the provisions of document S/1 because the Protocol would remain in force until the entry into force of the next Act and, since that Act could only be adopted by unanimous decision, all the developing countries would be able to have their say in the matter. There was no question of forcing developing countries to accept the abolition of the Protocol before they wished to do so.

2167.3 On the other hand, supporters of the proposals in document S/160 would do well to note that by limiting the duration of the reservations to the moment of a country's accession to the new text, some countries might be unable to accede to an Act that was clearly to their advantage without renouncing the reservations available to them under the Protocol.

2168.1 Mr. STRNAD (Czechoslovakia) stated the relative advantages and disadvantages of the two drafts of the Protocol before the Main Committee (S/1 Annex II, and S/160).

2168.2 It was true that the text proposed in the Program of the Conference provided that any country concerned could maintain its reservations until the entry into force of a new Act. It was also true that as any new Act had to be adopted unanimously, any country concerned that took part in the negotiations could influence the final decisions, which in the end might be found to be more advantageous than the Protocol proposed at the Conference of Stockholm.

2168.3 Nevertheless, it should be remembered that the tradition established by the Berne Union required that only the votes of countries taking part in the voting should count for the final decision. Neither absences nor abstentions were taken into consideration. Countries that were unable for one reason or another to be present at the revision conference could not therefore avail themselves of the benefit attaching to the rule of unanimity. In that regard, the Delegate of Czechoslovakia instanced the case of several South East Asian countries that had shown much interest at New Delhi in January, 1967, in the Stockholm Conference but had not been able to come.

2168.4 One could therefore envisage the contingency that the new Act adopted might be less advantageous to the developing countries than the Stockholm Protocol proposed at Stockholm. It could be deduced from that that the rule of unanimity did not afford the developing countries sufficient protection.

2168.5 Furthermore, it could also be envisaged that the Act adopted at the end of the next revision conference might be more advantageous to the developing countries than the Additional Protocol of Stockholm. But it should not be forgotten that the developing countries did not all evolve at the same rate. It could happen that the countries that had developed most rapidly would find it to their interest to abandon their reservations at the next revision conference. For others, however, the Protocol of Stockholm would remain more favorable than the Act resulting from the following revision conference. The developing countries would therefore find themselves obliged either to oppose the new Act, even if it favored some of them, or to abandon their reservations.

2168.6 For these various reasons, the Delegate of Czechoslovakia thought that the text proposed in document S/160 was to be preferred.

2169.1 Mr. GOUNDIAM (Senegal) observed that the text proposed in the Program of the Conference did not have sufficient regard to the real situation in the developing countries. Those countries could be divided into two groups. The first comprised countries which, in the opinion of experts, would not be in a position to emerge from underdevelopment, and most of the developing countries were in that group. The second comprised countries which, again in the opinion of experts, had some chance of emerging from underdevelopment in the next 20 to 25 years and Senegal in particular belonged to that second group. It was therefore not realistic to impose a strict time limit on developing countries for the withdrawal of their reservations.

2169.2 In accordance with the text proposed in the Program of the Conference, the reservations formulated by the States concerned could be maintained until the entry into force of the Act resulting from the next revision conference. Before expressing an opinion on the two drafts of the Protocol before them, he would like to know what should be understood in the circumstances by "entry into force." Was it general entry into force by ratification of all the interested parties, or was it entry into force as provided in Article 28 of the Berne Convention adopted at Brussels, that was to say entry into force after the sixth ratification and, for countries of the Union that ratified subsequently, the entry into force specific to each one of them?

2170.1 Mr. SHER (Israel) said that he had submitted an alternative proposal in document S/199 because, in his view, there was no connection between the entry into force of the new Act and the needs of developing countries; to make the duration of the reservations dependent on the entry into force of the Act was therefore altogether unreasonable. Since, however, all delegates linked the two questions, he formally withdrew his amendment.

2170.2 Of the two versions before the Committee, he preferred the text in document S/1. As the Director of BIRPI had said, the amended version could act as a deterrent to acceptance of a new Act, the more so since, as the Delegate of Czechoslovakia had observed, the developing countries were likely to remain in a state of development.

2170.3 The divergence of views in the Main Committee was so wide that, as another alternative solution, he would like to put forward the suggestion that the duration be limited to a period to be fixed by the next revision conference, which could reach its decision in the light of the developing countries' needs instead of by guesswork, as was the case under the provisions of document S/1.

2171. Mr. STRNAD (Czechoslovakia) explained, for the Delegate of Israel, that he had never wished to say that the developing countries would always remain at that stage. Nevertheless, he still doubted whether all the developing countries would be in a position to abandon their reservations at the next revision conference.

2172. Mr. SHER (Israel) said that he had been referring to the Delegate of Czechoslovakia's second statement made at a previous meeting earlier in the debate.

2173. Mr. LENNON (Ireland) suggested that, before putting the question to the vote, a Working Party be set up to seek a compromise solution.

2174.1 Mr. STANESCU (Rumania) thought that it would be untoward, from the legal standpoint, to relate the Protocol Regarding Developing Countries to the entry into force of the new Act resulting from the next revision conference, the date of which was moreover uncertain, for the entry into force of the new text was dependent upon the accession of countries that might very well be countries other than those directly concerned by the Protocol. In fact, the Delegate of Senegal had rightly referred to Article 28 of the Brussels Act, which provided in paragraph (2) that ratification by only six countries of the Union was sufficient for the text to come into force. It could quite well happen that none of those six possible countries would be directly concerned in the Protocol Regarding Developing Countries.

2174.2 The text contained in document S/160 was legally more acceptable in the sense that a country lost the benefit of an Act only when a new Act came into force for it.

2174.3 As regards determining the probable duration of underdevelopment, only the countries concerned were in a position to determine in full knowledge of the facts whether the state of underdevelopment still persisted, or whether it had ended. In that respect, they should have confidence in the States that were directly concerned in the adoption of the Protocol and should not take it for granted that they would wish to abuse the privileges granted to them. The Protocol was, moreover, not a "gift" to the developing countries, but rather a debt that the other countries were paying to them. That was why they should give ample consideration to the actual needs of those countries.

2174.4 The text proposed in document S/160 therefore seemed to be the more rational of the two and more consistent with the spirit in which a solution of the problem should be sought.

2175. Mr. GOUNDIAM (Senegal) again asked the Secretariat to clarify the interpretation to be placed on the words "entry into force" in relation to the Act resulting from a new revision conference.

2176. Mr. BODENHAUSEN (Director of BIRPI) said that it was for each revision conference to stipulate, in the new version of the Berne Convention, the conditions for its entry into force. It was to be anticipated that the following conference would formulate provisions of the same kind as those of Article 28 of the Brussels Act and that it would restate the number of prior ratifications needed for the entry into force of the new version of the Convention.

2177. Mr. CURTIS (Australia) said that he was in favor of the adoption of the text in document S/1. The next revision conference would review the position and judge what action was appropriate. Since the reservations were a special concession made to developing countries that were not able as yet to accept the full conditions of the Convention, it was important that their temporary nature should be stressed. The Protocol should not in any circumstances be regarded as a permanent institution.

2178. The CHAIRMAN observed that the proposals in document S/1 were in no way permanently binding because developing countries would be in a position to prevent the adoption of any future Act. At the same time, difficulties might arise from the fact that developing countries could also prevent the introduction of changes that might be deemed desirable by the developed countries.

2179. *The joint proposals submitted in document S/160 for Articles 2 and 3 were approved by 18 votes in favor, 12 against, and 4 abstentions.*

AUTHORS' FUND: PROPOSAL FOR A NEW ARTICLE 4 (S/199)

2180. The CHAIRMAN invited the Delegate of Israel to introduce his proposal for a further Article, Article 4, submitted in document S/199.

2181.1 Mr. SHER (Israel) said that his proposal, submitted in document S/199, had been made for the first time at the East Asian Seminar on Copyright held at New Delhi in January 1967. He considered it the duty of international organizations, such as UNESCO, to help developing countries to get the assistance due to them from the developed countries; at the same time, it was necessary to protect the private rights of authors for which organizations such as the Berne Union and UNESCO had been fighting for many years.

2181.2 He had put his idea before UNESCO in April 1967. The utilization of authors' works was one of the most valuable aids to cultural development, but a balance had to be maintained between what was being given to the developing countries and the compensation authors were entitled to receive.

2181.3 His amendment was submitted as a means of bringing his idea before the Committee, although he was not sure that the time was ripe for detailed proposals to carry it out. The idea itself was simple. Authors' compensation could be provided out of an equalization fund financed by means of stamps affixed to books, dues collected from libraries and bookshops, or out of public funds; the choice of the method used could be left to the country concerned, which would also decide what compensation was fair.

2181.4 If the principle of his proposal met with the Committee's approval, he suggested that instead of a concrete plan, recommendations could be forwarded to BIRPI and to other international governmental and non-governmental organizations, inviting them to study the possibility of realizing a scheme of the kind.

2181.5 At the same time, information should be sought from developing countries and it should be made clear that the intention was not to tax a particular sector in the developed countries, but only to give the developing countries the cultural aid the developed countries should have provided when the former were under their control.

2182.1 Mr. STRNAD (Czechoslovakia) thought that the proposal formulated in paragraph 6 of document S/199 was undeniably of interest both for the developing countries and for the authors whose works were subject to the possible reservations arising from the Protocol Regarding Developing Countries. The Israeli proposal therefore merited thorough consideration. But at the present juncture it seemed that the suggestions contained in the proposal for a new Article 4 (a) and (b) were less satisfactory than those in the proposal for a new Article 4 (c) and (d).

2182.2 Nevertheless, if the explanation given by the Delegate of Israel meant that the idea of creating a special compensation fund would be referred to BIRPI for study with a view to the following revision conference, the Delegation of Czechoslovakia approved the proposal, provided that that general approval did not imply approved of the suggestions in paragraphs (a) and (b).

2183. Mr. BODENHAUSEN (Director of BIRPI) said that BIRPI would be prepared to undertake a study of the kind proposed. He suggested that the Delegate of Israel redraft his proposal in the form of a recommendation which could be submitted to the Main Committee at its final meeting.

2184. Mr. BELINFANTE (Netherlands) said that the Israeli proposal could not be accepted by the Conference. Similar ideas had been mentioned before but since no proposal embodying them had been included in the document prepared by BIRPI and the Swedish Government, delegates had no instructions regarding the question and without instructions they could not vote on a proposal that entailed the establishment of a new Organization and the expenditure of their Government's money. He would have no objection to the submission of a recommendation to study the idea before the next revision conference or an intermediate conference.

2185. Mr. SHER (Israel) withdrew his amendment. He suggested that a proposal be submitted to BIRPI to study the possibility of the establishment of an equalization fund since such a fund could be created without the revision of any of the existing Acts by action taken either voluntarily or by ad hoc bilateral or multilateral agreements.

2186. Mr. FERSI (Tunisia), like the Delegate of Czechoslovakia, made some reservations on Article 4 (a) and (b) in paragraph 6 of the Israeli proposal (S/199) and, in general, strongly supported the suggestions of the Director of BIRPI: it would be more reasonable to restate the whole proposal in the form of recommendations to BIRPI.

2187.1 Mr. CURTIS (Australia) said that the Israeli proposal was virtually equivalent to economic assistance within a plan for overall aid and was therefore outside the scope of the Conference.

2187.2 The implication of the proposal was that the Protocol was part not of a copyright agreement but of a technical assistance project. Consideration would have to be given to the measures that would be necessary if authors were to be given compensation derived from that kind of aid.

2187.3 It was strange that objections should be raised to Article 4 (a) and (b) of the proposal. It appeared to him only natural that countries that were allowed to use works in accordance with the reservations in the Convention should give an account of the use they made of those works. The information thus provided would, moreover, facilitate the work of the next revision conference in deciding whether the reservations should be maintained.

2187.4 Article 4 (c) dealt exclusively with the position in the developed countries. If the proposal meant that countries availing themselves of the reservations were relieved of the obligation to give nationals of other member States the same treatment as they gave to their own subjects, it must be made absolutely clear that the Protocol in no way overruled that fundamental idea of the Convention.

2188.1 Mr. MULENDA (Congo (Kinshasa)) said that his Delegation was greatly in favor of the idea put forward by the Delegate of Israel of entrusting BIRPI with a study of the feasibility of following up the proposals in Article 4 (c) and (d) of paragraph 6 of the initial Israeli proposal. Such proposals could not be other than beneficial to the developing countries, which were extremely grateful for all the efforts made in most international bodies to enable them to make up their arrears.

2188.2 He thought the suggestions contained in Article 4 (a) and (b) of paragraph 6 unacceptable, principally for practical reasons. BIRPI knew by experience that many Governments frequently failed to transmit information, however indispensable. Administrative reorganization was in progress in almost all the developing countries, and it would undoubtedly not be possible for them to ensure, as suggested in paragraph (a), the transmission of full information. Moreover, it seemed excessive to want such information at least once a year. If, finally, the suggestions in Article 4 (a) and (b) were to be taken into account, it would be sufficient to provide that countries should submit "periodical information," or should submit information "as far as possible."

2189. Mr. BODENHAUSEN (Director of BIRPI) said that he doubted whether BIRPI would be able to undertake the tasks proposed for it in Article 4 (a) and (b), but he had no objection to studying the question.

2190. Mr. KRISHNAMURTI (India) said that he fully agreed with the idea of the proposal, which gave formal expression to suggestions made by the Delegate of India in his opening statement to the Conference; he was of the opinion that it deserved consideration by BIRPI and other international organizations.

2191. Mr. BODENHAUSEN (Director of BIRPI) suggested that the Delegate of Israel submit a recommendation that BIRPI study the idea embodied in his proposal (S/199).

2192. *It was so agreed.*

ORGANIZATION OF WORK (continued) (S/149)

2193. *It was decided to defer consideration of the United Kingdom proposal (S/149) until the Joint Meeting of Committees II and IV.*

The meeting rose at 11:40 a.m.

SEVENTH MEETING

Thursday, June 29, 1967, at 2:40 p.m.

ORGANIZATION OF WORK (continued)

2194. The CHAIRMAN said that there were three matters still to be considered: the criterion for the definition of a developing country in the context of the Protocol (beginning of Article 1; provisions concerning translation rights (paragraph (a)); and restricted protection for exclusively educational, scientific or scholastic purposes (paragraph (e)).

2195.1 Mr. BODENHAUSEN (Director of BIRPI) said that the Joint Meeting of Main Committees II and IV held that morning had discussed both the Paris and the Berne Conventions. Since Main Committee II was concerned with the Berne Convention only, delegates should remember that if they were representing countries which were not members of the Berne Union, they could participate in the discussion only as observers and were not entitled to vote.

2195.2 The present position was that the question of the countries entitled to avail themselves of the reservations in the Protocol was still open. The Working Group set up to consider the subject had proposed a new wording for the beginning of Article 1 (S/224) and the Delegation of the Ivory Coast had proposed the addition of seven names to the list of developing countries referred to in the Working Group's proposal (S/234).

2195.3 The question of paragraph (a) was also still open; the Working Group for Article 1, paragraphs (a) and (e), had submitted a report on the subject, which included a proposal for a text for paragraph (a) (S/233).

2195.4 It would be recalled that the Main Committee had already approved paragraph (b) without change and agreed that paragraph (c) should be deleted because the same provision appeared in the Convention. It had approved paragraph (d) with two changes—the inclusion of the text of the relevant provisions of the Rome Act and the addition proposed by the Delegation of the United Kingdom (S/149, paragraph 2)—and referred it to the Drafting Committee.

2195.5 The Working Group for Article 1, paragraphs (a) and (e) had included in its report (S/233) a proposed text for paragraph (e).

2195.6 A revised text for Articles 2 and 3 submitted jointly by ten delegations (S/160) had already been approved by the Main Committee.

2195.7 In addition to the matters relating to the text of the Protocol, a proposal had been submitted by the Delegation of Israel (S/228) concerning measures for implementing the Protocol. The proposal had been submitted to Main Committees II and IV jointly, but as it related solely to document S/1, it was clearly intended for Main Committee II.

2196. The CHAIRMAN suggested that the Main Committee should first consider the proposals relating to the text of the Protocol and then the proposal by the Delegation of Israel.

CRITERION FOR THE DEFINITION OF A "DEVELOPING COUNTRY." TEXT PROPOSED BY THE WORKING GROUP (S/224 and S/234)

2197. Mr. BODENHAUSEN (Director of BIRPI) said that the Working Group set up to consider a possible criterion for the definition of the concept of a "developing coun-

try" had unanimously adopted the draft text shown in its report (S/224) under which the definition of a developing country would be based on the list of developing countries annexed to resolution 1897(XVIII) adopted by the General Assembly of the United Nations at its Eighteenth Session on November 13, 1963, and which could be found on page 191 of NIR "Scandinavian Journal on Intellectual Property." That list, however, was no longer up to date because other countries had become independent since 1963. Consequently, the Delegation of the Ivory Coast had proposed, in document S/234, the addition of seven countries (Botswana, Gambia, Ivory Coast, Kenya, Lesotho, Malawi and Zambia). The proposal seemed a reasonable one since the Working Group's text provided also for countries which had been or might be designated as developing countries by the General Assembly of the United Nations subsequent to the adoption of resolution 1897(XVIII) in 1963.

2198. Mr. BELINFANTE (Netherlands) said he had no objection in principle to the proposals in document S/224 and S/234. He wondered, however, what would be the position if the United Nations one day decided that a country was no longer developing and removed it from the list. Would that country still be a developing country for the purposes of the Berne Union or would the Berne Union have to follow the decisions of the United Nations?

2199. Mr. SHER (Israel) said that his Delegation would be obliged to vote against the Working Group's proposal, both in the Main Committee and in the Plenary, because the list in question was based on a political criterion and had nothing to do with the question of copyright. He too was interested in the problem raised by the Delegate of the Netherlands.

2200. Mr. AMON D'ABY (Ivory Coast) said that the countries mentioned in the list (S/234) which his Delegation proposed to add to the list appearing in the Annex to resolution 1897(XVIII) of the General Assembly of the United Nations were incontestably developing countries. Several had attained independence after the list had been adopted by the General Assembly in 1963, but the list could not be regarded as complete because the Ivory Coast, which had gained its independence in 1960, was not included. Yet no one would think of suggesting that the Ivory Coast was a developed country; if it were, it would be the only one in the continent of Africa!

2201. Mr. SHER (Israel) said that although he was not opposed to the proposal of the Delegation of the Ivory Coast in substance, he would have to vote against it for the same reasons that he would have to vote against the Working Group's proposal.

2202. Mr. BODENHAUSEN (Director of BIRPI) suggested that the Main Committee should decide either to be guided by the United Nations in establishing the list of developing countries, or to adopt its own method. It could not do both.

2203. The CHAIRMAN said that the difficulty was that the United Nations list was not up to date and the matter had to be decided for the purposes of the Convention before a new United Nations list was produced. The Committee could agree that the United Nations list should be followed, but it would have to decide whether or not the seven countries proposed by the Ivory Coast should be added.

2204. Mr. SHER (Israel) agreed with the Director of BIRPI.

2205. Mr. GOUNDIAM (Senegal) considered that the list drawn up by the General Assembly of the United Nations was in no way definitive, as witness the case of the Ivory Coast, which had been omitted from the list. It was most unlikely that the Delegation of the Ivory Coast would leave the Conference without seeing the name of its country put on the list. Moreover, the Delegation of Senegal thought that the Main Committee could take the initiative in this field by adding to the proposed list those countries which, it was hoped, might attain independence before the next regular session of the General Assembly. It was surely unnecessary to compel those countries to await the decision of the United Nations in order to accede to the Berne Convention.

2206. Mr. FERSI (Tunisia) also considered that the United Nations list was purely indicative. There could be no objection to its being brought up to date, as all the delegations agreed that the countries appearing on the list were developing countries. Hence the Delegation of Tunisia would vote in favor of the list.

2207.1 Mr. MAS (France) suggested the following solution: the Main Committee could draw up forthwith a list of those countries which were at present members of the Berne Union and which were entitled to take advantage of the clauses and reservations of the Protocol; it could then add to the list, without fear of challenge, the other developing countries which might be able to avail themselves of the provisions of the Protocol.

2207.2 In addition, the Delegation of France would propose, as a future step, the establishment of a joint committee, one half of whose members would be drawn from countries which had acceded to the Protocol and one half from countries which were not developing countries. The joint committee would be given the task of evaluating applications to accede to the Protocol submitted by any countries which might join the Union; such evaluation would be made on the basis of data supplied by the United Nations or its Specialized Agencies.

2208. Mr. KRISPIS (Greece) said that there were two questions to be decided. The first was which countries should be included in the list of developing countries, in which connection he thought it would be better to draw up a list for the Convention and not refer to the United Nations list. The second was which countries would be included in the future, upon which point he was not yet in a position to comment.

2209. Mr. KRISHNA RAO (India) said that the Committee was missing the essence of the problem by concentrating on the letter rather than the spirit of the proposal. If the seven countries listed in the Ivory Coast proposal had been members of the United Nations at the time the resolution was passed, they would obviously have been included in the list of developing countries. If anyone had doubts on legal grounds, the text could be amended to refer to countries designated by the Conference, in addition to the countries in the United Nations list. There was no reason why the matter should be dependent on action by the United Nations.

2210. Mr. SHER (Israel) said that what he objected to and what would oblige him to vote against the two proposals was the reference to the United Nations list as being the only criterion for defining a developing country. All the suggestions made during the present discussion were new ones: he had heard no support for the Working Group's proposal.

2211. Mr. BODENHAUSEN (Director of BIRPI) pointed out that since the Working Group had adopted its report unanimously, there was no need for its members to express support for its proposal. It was a little dis-

couraging to find that many members of the Working Group were now submitting new proposals and that they appeared to be thinking on lines which had been discussed and rejected by the Working Group.

2212.1 Mr. BELINFANTE (Netherlands) observed that his question, to which the Delegate of Israel had also referred, had not yet been answered. The issue was an important one, because it was natural to expect that developing countries would eventually become developed. Since however, his question had not been answered, he proposed that the Main Committee should accept the Working Group's text (S/224) in principle and agree to the addition of the names proposed by the Ivory Coast (S/234) to the United Nations 1963 list of developing countries. It should also add a text, to be referred to the Drafting Committee, to the effect that if a country appearing in the current United Nations list of developing countries did not appear in a future revised United Nations list, it should no longer be considered as a developing country for the purposes of the Berne Convention.

2212.2 Unless such a provision were added, the Berne Union would always have two different kinds of members: those who gave the protection normally provided under the Berne Union and those who availed themselves of exceptions and would continue to do so even after they had become sufficiently developed economically, socially and culturally, to assume the obligations of the Berne Union.

2213. Mr. KRISPIS (Greece) said he had at first thought it would be better for the Organization to have its own list of developing countries. After listening to the Delegate of the Netherlands, however, he supported the Working Group's proposal for a reference to the list annexed to resolution 1897(XVIII) of the United Nations General Assembly, provided it were understood that any changes decided on by the United Nations General Assembly would also be accepted for the Convention.

2214. Mr. LENNON (Ireland) said that, in reaching its conclusions, the Working Group had been actuated by a spirit of friendly cooperation and a desire to reach a unanimous conclusion. He did not think that the wording of the Working Group's text should be considered as binding if a variation could be found which met any of the objections raised in the discussion. There was no reason why it should not be agreed that, for the future, the list would be based on any future list drawn up by the United Nations. For present purposes, however, it might be better to draw up a list based on the current United Nations list, but without any indication of its derivation, with the addition of any names that were required.

2215. Mr. MAS (France) shared the views of the Delegate of Ireland. The Working Group had decided unanimously to take as a basis the list approved by the General Assembly of the United Nations, and it was to that list to which the Main Committee should refer. In that connection, the Delegation of France wished to point out that its previous statement was not in any way intended to challenge the unanimous decision of the Working Group but merely to suggest a procedure by which the list could be kept up to date.

2216. Mr. FERSI (Tunisia) said he was prepared to support the Delegation of Ireland's proposal, in view of the unanimity achieved by the Working Group.

2217. Mr. BODENHAUSEN (Director of BIRPI) said that if he had correctly understood the proposal of the Delegate of Ireland, the Working Group's text would be taken as a starting point and there would be two possible additions: the addition of the United Nations list of the seven countries proposed by the Delegate of the Ivory Coast; and the addition of a reference to future decisions by the United Nations General Assembly, which would be interpreted as meaning that when the General Assembly of the United Nations added a country to its list of developing countries or decided that a country was no longer a developing country, the list of developing countries under the Convention would be altered accordingly.

2218. Mr. SHER (Israel) observed that under the proposal of the Delegate of Ireland the list of developing countries would not remain stationary, and in that case he could support the Working Group's definition provided that all the countries regarded as developing countries by the United Nations Conference on Trade and Development (UNCTAD) were also included in it.

2219. The CHAIRMAN said there appeared to be no opposition to the addition to the list of developing countries of the seven countries enumerated in the proposal submitted by the Delegation of the Ivory Coast (S/234).

2220. *The proposal submitted by the Delegation of the Ivory Coast (S/234) was approved unanimously.*

2221. Mr. SHER (Israel) pointed out that his acceptance had been conditional on the inclusion of the countries regarded as developing countries by UNCTAD. The UNCTAD list had been drawn up more recently than the United Nations list and was based on a different criterion for the definition of a developing country. In the interests of objectivity, the countries appearing in both lists should be included in the list of developing countries for purposes of the Convention.

2222. The CHAIRMAN observed that Israel was on the UNCTAD list.

2223. Mr. AYITER (Turkey) said that his country's name was not included in the list annexed to resolution 1897 (XVIII) of the General Assembly of the United Nations, and he asked that it should be placed on the list in document S/234.

2224. Mr. BODENHAUSEN (Director of BIRPI) said that, to the best of his knowledge, Turkey did not appear on any list of developing countries. Moreover, Turkey had made a reservation in regard to translation under the existing system of the Berne Convention and it therefore had no need to seek the benefits of the Protocol regarding developing countries.

2225. The CHAIRMAN invited the Main Committee to vote on the inclusion of Turkey in the list of developing countries.

2226. *There was one vote in favor, one vote against, and 19 abstentions. The proposal to include Turkey in the list of developing countries was accordingly rejected.*

2227. Mr. CURTIS (Australia) said he had abstained for reasons of principle. It had been stated earlier in the Main Committee that the Executive Committee of the Berne Union would not be competent to determine which countries were developing countries and which were not, because its members would be people well versed in copyright but not in economics. The Delegation of Australia had no knowledge of economics and was therefore not competent to judge whether or not a country was a developing country. Consequently, it could not judge in the case of Turkey or any other countries mentioned during the discussion.

2228. Mr. KRISHNA RAO (India) agreed with the Delegate of Israel. In view of events since the adoption of the United Nations list, such as the holding of the UNCTAD meeting in 1964, and in view of the fact that UNCTAD was due to meet again in 1968, it should be

made clear that developing countries as defined by UNCTAD were to be considered as developing countries for purposes of the Convention.

2229. Mr. RIBEIRO (Brazil) said that the United Nations and the UNCTAD lists had been drawn up on the basis of different criteria: the United Nations list was based on a very broad definition, whereas the UNCTAD list was based on considerations relating solely to trade. At the United Nations General Assembly in 1966, the Second Committee had discussed the criteria for defining developing countries and had confirmed those used when drawing up the 1963 list.

2230. Mr. BODENHAUSEN (Director of BIRPI) observed that it was unfortunate that the Delegates of Israel and India had not been present when the subject had been discussed by the Working Group. The points raised by the Delegate of Israel had been discussed and the possibility of including all countries in the UNCTAD list had been rejected because of the difference in the criteria used when drawing up the United Nations and the UNCTAD lists, as just pointed out by the Delegate of Brazil.

2231. The CHAIRMAN put to the vote the proposal by the Delegate of Israel that mention in the list of developing countries approved by UNCTAD should be included in the Working Group's proposal as a criterion for defining developing countries for purposes of the Convention.

2232. *The proposal was rejected by 9 votes to 2, with 25 abstentions.*

2233. The CHAIRMAN put to the vote the text proposed by the Working Group (S/224), with the addition of a reference to the countries listed in the amendment submitted by the Delegation of the Ivory Coast (S/234) and the inclusion of wording to the effect that any country declared by the United Nations General Assembly as being no longer a developing country would not be entitled to continue to avail itself of the Protocol.

2234. *Subject to those amendments, the text proposed by the Working Group (S/224) was approved by 29 votes to 1, with 7 abstentions.*

2235. Mr. SHER (Israel) said he had voted against the Working Group's text, even as amended, for the reasons he had already given and he would also be obliged to vote against it in the Plenary if the additions he had mentioned earlier were not made to it.

2236. Mr. KRISHNA RAO (India) said it was unfortunate that so many votes had had to be taken on a proposal which was essentially acceptable to an overwhelming majority of the Main Committee. He suggested that, in spite of the voting, the Director of BIRPI might contact the delegates who had not agreed with the Working Group's text and endeavor to submit a new wording which would be acceptable to everyone. There might still be time to reach a satisfactory agreement.

2237. The CHAIRMAN suggested that the Director of BIRPI should be requested to act on the suggestion of the Delegate of India with a view to producing a text that would obtain the Main Committee's unanimous approval.

2238. *It was so agreed.*

RESERVATIONS FOR TRANSLATIONS: TEXT PROPOSED BY THE WORKING GROUP (S/233)

2239. The CHAIRMAN drew attention to the text proposed by the Working Group in its report (S/233).

2240.1 Mr. BELINFANTE (Netherlands) expressed the disappointment felt by the Delegation of the Netherlands at the proposals of the Working Group on Translation Rights (S/233). His Delegation was quite aware that the proposal was a compromise, but it nevertheless regretted that the solution proposed under the Berne Convention was less favorable to authors than that of the Universal Convention.

2240.2 In addition, the Delegation of the Netherlands had two comments to make on the document submitted by the Working Group. The first concerned the passage of document S/233 dealing with the transmittal of compensation due to authors. If one said that a "transmittal would always be subject to any national currency regulation" that might, if the worst came to the worst, amount to a "non-transmittal." That would mean that one interpreted the word "transmittal" to signify "non-transmittal." Such an interpretation could go too far and furthermore might give rise to abuses, although there might sometimes be cases in which a State would have difficulty in transmitting the sums due to authors, without thereby infringing the provisions of the Convention. It was more debatable, however, to say that it had been unanimously agreed that that interpretation should be mentioned in the report of Main Committee II. It was an interpretation which the Delegation of the Netherlands was unable to accept.

2240.3 His Delegation's second comment concerned paragraph (a)(v) of the proposed text. In his view, the wording was obscure, and it was impossible to understand the paragraph without reading the explanatory argument. Did the paragraph mean that a translation which had been made under a compulsory license in a developing country could be lawfully exported to another developing country but not to a country of the Berne Union which had not signed the reservations in the Protocol or to a country which was not a member of the Union? The present text could be interpreted less strictly. It was therefore desirable that it should be reviewed by the Drafting Committee.

2241.1 Mr. BODENHAUSEN (Director of BIRPI), replying to the comments of the Delegate of the Netherlands, began by saying that the report of the Working Group was the result of a compromise which the Group had achieved in spite of numerous difficulties and which was no less favorable to authors than the system laid down in the Universal Convention. On the contrary, while the compulsory license could take effect after a period of three years instead of the seven years laid down in the Universal Convention, at the end of that period the author could acquire exclusive rights for the whole term of protection by publishing the translation himself.

2241.2 It should also be pointed out that the reference to unanimity in the report of the Working Group referred solely to the unanimity achieved in the Group and not in the Committee.

2241.3 Lastly, in regard to the interpretation of paragraph (a)(v), it should be noted that the provision had been taken almost literally from the text of the Universal Convention. That text, which existed since 1952, had proved its worth and had already been the subject of court decisions. It was for that reason that the Working Group had felt able to adopt it as it stood. Moreover, the apprehensions expressed by the Delegation of the Netherlands in regard to interpretation were unfounded, as it was clearly understood that a developing country could not export translations to countries not benefiting from the same system of licensing or which did not permit this kind of importation. Hence the scope of the provision was much more restricted than the Delegation of the Netherlands thought.

2242. Mr. FERSI (Tunisia) said he wished to allay the fears expressed by the Delegate of the Netherlands in regard to the transmittal of compensation due to authors; Tunisia had always been scrupulously careful in providing for these transmittals and there was nothing in its proposal which might lead to authors being deprived of their rights or even to such transmittals being stopped at any future stage. The sole purpose of the provision was to take account of the varying methods of payment adopted by national legislations, a matter on which Tunisia had its own preferences. He therefore hoped that the Delegation of the Netherlands would take account of the declaration of the Delegation of Tunisia.

2243.1 Mr. BELINFANTE (Netherlands) assured the Delegate of Tunisia that the Delegation of the Netherlands had never doubted the intentions of Tunisia and had never for one moment thought that it might fail to meet its obligations. His remarks were directed solely to the wording of the paragraph containing some statements which, in his view, might be given too wide an interpretation.

2243.2 In regard to paragraph (a)(v) of the proposed text, the explanations provided by the Director of BIRPI confirmed the interpretation given by the Delegation of the Netherlands but the provisions in their present form lacked clarity. The argument that the text was in conformity with the wording of the Universal Convention, which could scarcely be regarded as a model of masterly style, was by no means convincing. However, it should not be forgotten that the Universal Convention applied to all countries which were bound by the same rules, whereas the Protocol was a special rule reserved for certain countries only. For this reason it was desirable and necessary that the text in question should be as clear as possible, and the Drafting Committee should therefore be instructed to clarify and simplify it. Lastly, the fact that the Universal Convention had been referred to, on several occasions, by the courts in different countries was scarcely an argument in its favor; it might even be an indication that the text of that Convention erred on the side of obscurity.

2244. Mr. H'SSAINE (Morocco) supported the statement of the Delegate of Tunisia and assured all the delegations present that Morocco had never evaded its obligations and was continuously transferring very substantial sums to the associations of French authors. He also wished to inform the Main Committee that his country had concluded an agreement with those associations covering all works exploited or performed on Moroccan television and in public establishments.

2245. Mr. DE SANCTIS (Italy) gave his general approval to document S/233 but said he had reservations concerning the provisions of paragraph (a)(viii) of the proposed text, for which there was no justification in law or in equity. There was no reason why an author who did not avail himself of the right conferred in paragraph (a)(i) during the term of ten years should forfeit all right to compensation for any uses made after the expiry of the term of ten years, on the pretext that a translation under compulsory license had been published during that period and after the expiration of a period of three years from the date of first publication. Publication, even under compulsory license, was a method of exercising the author's rights which fulfilled the conditions laid down in paragraph (a)(i). In those circumstances, was it right that an author whose work had been translated and perhaps published in a very large edition, should be obliged, after three years and within a period of ten years, to publish another translation which would compete with the first translation (published under compulsory license) or else lose all future compensation? The Delegation of Italy was particularly anxious to draw the attention of the Committee to that point, which seemed to be an unjust infringement of the author's rights. The Delegation of Italy therefore considered that paragraph (a)(viii) should be deleted and replaced by a different wording.

2246. Mr. BODENHAUSEN (Director of BIRPI) thought that the reservations expressed by the Delegate of Italy were not justified in law or in equity. From the legal point of view, a translation published under compulsory license after the expiration of a period of three years from the date of first publication but within a period of ten years did not have the effect of perpetuating the exclusive right, in view of the fact that the translation concerned was neither made nor authorized by the author. Hence, if there was no longer any exclusive right, there was no longer any justification for compensation after the end of the ten-year period because the translation in question would then have fallen into the public domain and anyone could thus publish another translation without paying compensation. For that reason, there was no justification in equity for a continuation of payments by the person who had applied for a compulsory license during the first ten years. That was the basis on which the Working Group had drawn up the present provisions.

2247.1 Mr. SHER (Israel) asked what was meant by "publish" in the context of the Working Group's proposal. If he was correct in thinking that it meant not merely offering for sale from outside a country, but rather publishing in a country by way of printing or reproduction or in any other way, his Delegation's amendment proposing limitation of importation from countries outside the Union (S/199) would be covered. If his interpretation of "publish" was incorrect, he would return to the subject later.

2247.2 The Working Group's proposals for paragraph (a) seemed rather hard on the author. They provided, in effect, that unless a work had been translated into the language of a particular country, the author's exclusive right of making or authorizing the translation of his work into the language of that country ceased to exist after ten years, and besides, that a compulsory license for translation into that language might be granted after three years. It seemed unjust that if the author had not availed himself of his exclusive right before a compulsory license for translating had been granted, that is, after a period of three years, his right to remuneration would still cease at the end of the ten-year period during which he had exclusive rights instead of ten years after the compulsory license had been granted. There was nothing in the Working Group's report to explain the proposal.

2248. Mr. DE SANCTIS (Italy) said he had been very interested to hear the explanation given by the Director of BIRPI in regard to paragraph (a)(viii). Like the Delegation of Israel, the Delegation of Italy was not fully convinced that the proposed provisions were truly equitable. It considered that if a translation was published under compulsory license after a period of three years but before the expiration of a period of ten years, this should have the effect of safeguarding the author's translation rights; in those circumstances, why should not the author's rights be safeguarded during the whole period of the translation rights, even if that involved a system of entitlement to compensation? It was scarcely equitable that an author whose work was translated in a given country within the ten years following the period of three years from the date of first publication, should lose the benefit of that right.

2249.1 Mr. BODENHAUSEN (Director of BIRPI) observed that the question raised by the Delegate of Israel in connection with the provisions under consideration was the familiar one of whether "publication" meant distribution in a particular country or the printing and distribution of a work in that country. As everyone was aware, the interpretation was not the same in every country. He did not think it was possible to do more

than indicate that the work must be published by an author in order to enable him to regain his exclusive rights; a decision as to meaning of " publication " would have to be left to the tribunals and courts of the countries concerned.

2249.2. The point referred to by the Delegate of Italy had been an important element in the Working Group's compromise. The Working Group had envisaged that —albeit in rare cases—an author might want to publish a translation in a country where a translation had already been made under compulsory license. However, unless he did so within ten years, his exclusive right would lapse and the work would become completely free in the language of translation. It had been felt that it would be unjust if the person who had been granted a compulsory license could make a translation only against payment, while in the event of the work becoming free, anyone else could make a translation without payment. Consequently, as part of the compromise, a provision had been included stipulating that remuneration would lapse with the expiry of the author's exclusive rights.

2250. The CHAIRMAN said that the provision had been included in the interests of justice and equity, to ensure that the same treatment was given to a person who brought out a translation after ten years and to a person who brought out a translation within the period of three to ten years.

2251.1 Mr. SHER (Israel) said he still did not understand the position. His difficulty could be illustrated by two examples. In the case of a person who offered his work for translation in a country—and that would be equivalent to causing it to be published, according to paragraph (a)(i), provided he found a translator, and even if he agreed that all remuneration would remain in the country—his right of translation would exist until 50 years after his death. If, however, that person were unable to find a translator, and another person obtained a non-exclusive compulsory license after three years, the book would then fall into the public domain and the author's rights would lapse after ten years. He could not see any justice or equity in depriving an author of his rights after ten years in such circumstances. With regard to the question of publication, he appreciated the difficulties, but the Main Committee was concerned with a new rule and not with the interpretation of existing rules.

2251.2 To take another example, if a new book were published in English in the United Kingdom and the author and publishers were willing that it should be published and sold in India, but the Indian Government refused an import license, that would amount to a refusal to allow publication. In the view of his Delegation, mere importation should not be deemed to amount to publication. Otherwise, if, for example, 50 copies were imported into India, the Indian Government would no longer be able to avail itself of the rights under paragraph (e)(i)(S/233), which he was sure was not the Working Group's intention. He urged that if it were not already made clear in the draft, the text should be revised to make it clear that for the purpose of the Protocol, " published " meant published by way of printing and did not include the right of importation.

2252. Mr. HARBEN (United Kingdom) suggested that it might not be wise to vote on paragraph (a) alone. The Working Group had made no progress until it had discussed paragraphs (a) and (e) together, and the Main Committee should do likewise before voting.

2253. The CHAIRMAN said that paragraph (e) had been referred to the Working Group after it had finished its work on paragraph (a).

2254. Mr. SHER (Israel) agreed with the suggestion of the Delegate of the United Kingdom.

2255. Mr. BELINFANTE (Netherlands) also supported the Delegate of the United Kingdom. His Delegation was not very satisfied with paragraph (a), but if no change were made in paragraph (e), it might be able to vote for the two together. In any case, until the Main Committee knew whether paragraph (e) would remain as it was, it should not vote on paragraph (a), in respect of which several delegations wanted to propose amendments. It would be better to vote on the two together.

2256. Mr. FERSI (Tunisia) shared the view of the Delegate of the United Kingdom that the vote should be taken after the Main Committee had considered paragraph (e).

2257. The CHAIRMAN said that paragraphs (a) and (e) appeared to have nothing in common. He did not see how they could be voted on together.

2258. Mr. BODENHAUSEN (Director of BIRPI) suggested that the Committee might like to discuss paragraph (e) and then decide how to vote.

RESERVATIONS FOR EDUCATIONAL, SCIENTIFIC OR SCHOLASTIC USES: TEXT PROPOSED BY THE WORKING GROUP (S/233)

2259. The CHAIRMAN invited the Main Committee to consider the Working Group's proposal.

2260.1 Mr. HESSER (Sweden), Chairman of the Working Group, in reply to a question from the Chairman, explained that paragraph (e)(ix) had been inserted provisionally, since the final form depended on a decision by Main Committee I concerning the relationship between reproduction and translation in general. That decision had now been made and it provided that in principle the exceptions would be allowed for translation as well. He agreed with the Chairman that paragraph (e)(ix) should not contain any reference to paragraph (e)(viii) because paragraph (e)(viii), which was concerned with exceptions for works intended exclusively for educational purposes, should refer to original works and works in translation. That was his personal view.

2260.2 The purpose of the reference to subparagraphs (i) to (viii) was to clarify how the provisions on compulsory license in paragraphs (a) and (e) should be used in different cases. In the case of a work in translation, subparagraph (viii) would apply, but in the case of a work in its original form, paragraph (e) as a whole would apply.

2261. Mr. SHER (Israel) asked for clarification of the relationship between the special rights under subparagraph (viii) and the rights under subparagraphs (iv) and (vi). The opening words of subparagraph (viii) seemed to imply the removal of the right to name the author, under subparagraph (iv), and the right to grant a compulsory license even if the author published his work or caused it to be published in accordance with the provisions of subparagraph (vi). He did not believe that that was what was intended, for it would be restricting moral rights and permitting a compulsory license even if the author used the work.

2262.1 Mr. HARBEN (United Kingdom) said that the question put by the Delegate of Israel had given him an opportunity of stating his own understanding of the effect of paragraph (e)(viii) and the position of the United Kingdom in the matter. As he understood the proposal, the effect would be a system similar to the one proposed for translations, which should apply to the reproduction and publication of works for educational purposes generally. The author would have a period of three years in which to establish his own exclusive rights. But in the more closely defined category of

educational institutions organized for teaching purposes, national legislation in the developing countries would have the freedom to allow the use of works without respect for any of the author's rights under the Convention, that is, for rights relating to consent, payment, and moral rights. That came very close to the provisions under Article 1(e) of the Protocol as proposed in document S/1: the freedom was essentially the same, although its scope was a little more precisely defined. That, as he saw it, was the difference between subparagraphs (i) to (vii), on the one hand, and subparagraph (viii) on the other.

2262.2 The United Kingdom Government had indicated clearly in its written comments that it could not accept that idea of freedom to authorize the taking and use of works, even for educational purposes, without at least the payment of equitable remuneration. Reference was made in the Working Group's report (S/233) to the statement of the Delegate of the United Kingdom that his Government would have to reserve its position on subparagraph (viii) because of its insistence on at least equitable remuneration. He had refrained, in the present discussion, from commenting on a number of minor points referred to by other delegates, because he considered that if subparagraph (viii) could be removed, or if the principle of equitable remuneration could be incorporated in it, the compromise as a whole would be workable.

2262.3 He would restate briefly the reason for his Government's attitude. The crux of the question was not so much the use, for teaching purposes, of works with an extensive market elsewhere—for example, novels used as set books for certain courses of study. The real problem related to the use of works created solely for teaching purposes: authors and publishers of which relied solely on that market for return for their work. As he understood the situation thus created, subparagraph (viii) would allow such works to be taken, copied and used without remuneration, a practice which might have dangerous results, and could not be supported for three reasons.

2262.4 In the first place, as the Delegate of Australia had pointed out at the joint meeting, the Conference was considering economic aid to the developing countries rather than the simplification of authors' rights. Secondly, in such circumstances, it was obviously wrong to levy assistance from one section of the community, namely the authors and publishers. Thirdly, and perhaps more important, the United Kingdom regarded the proposal as a sufficiently grave departure from the established principles of the Berne Union to constitute at least the beginning of a threat to its existence. Consequently, his Government could not support a compromise containing subparagraph (viii), but could support a compromise excluding that provision, or including it, provided that it embodied the idea of equitable remuneration.

2263. Mr. ROJAS (Mexico), speaking on behalf of his own Delegation and the Delegations of Argentina and Uruguay, endorsed the comments of the Delegate of the United Kingdom. In the spirit of international cooperation, the three Delegations might be prepared to consider the Working Group's proposal as a workable compromise, provided subparagraph (viii) was not included in its present form.

2264. Mr. BODENHAUSEN (Director of BIRPI) suggested that if there were no more speakers, the Main Committee might wish to vote on the United Kingdom proposal to delete paragraph (e)(viii)(S/233) which had been supported by Mexico, as being furthest from the Working Group's text. If the subparagraph were retained, there would then be the question whether it should be referred to in subparagraph (ix).

2265.1 Mr. CURTIS (Australia) said that two points had emerged from the discussion. In the first place, his Delegation was looking for a compromise solution in the Protocol which would respect the economic rights of authors. Since that principle was not contained in subparagraph (viii), his Delegation would find it difficult to accept the Protocol with subparagraph (viii). If the principle of equitable remuneration for authors could be introduced into subparagraph (viii), it would be possible to take a more liberal view of the whole Protocol, for subparagraph (viii) was the only part of the Protocol which overrode the economic interests of the authors. It allowed the expropriation of an author's work intended specifically for educational purposes in schools—a principle which was completely at variance with the rest of the Convention and also with some of the views expressed by delegates who supported the Protocol in the Main Committee.

2265.2 The suggestion by the Director of BIRPI regarding voting overlooked the possibility of a compromise by amending subparagraph (viii) so as to provide for equitable remuneration for authors. The Delegation of Australia, like the Delegation of the United Kingdom, was concerned on behalf of the authors of educational textbooks and could foresee a more liberal use of material in schools where it was not specifically intended for educational purposes.

2265.3 Moreover, a point not yet mentioned in the discussion was that subparagraph (viii) as now proposed would allow developing countries invoking the Convention to print and export for profit the works provided, without remuneration to the author. He understood the wish of the developing countries to have works readily available in cheap editions at low cost for use in schools. But he would lose all sympathy with a proposal which included export for profit to another country. One of the fundamental principles which ought to be recognized was that if somebody made a profit out of the work of an author, the author ought to receive some recompense.

2266. Mr. BODENHAUSEN (Director of BIRPI) suggested that the Main Committee might wish to postpone the vote in view of the possibility of a compromise proposal from the Delegate of Australia. If the Delegate of Australia wished to consult other delegates and submit a proposal, the discussion might be adjourned until such a proposal had been circulated.

2267. The CHAIRMAN suggested that the delegates concerned should be consulted, since subparagraph (viii) was itself a compromise proposal; moreover, a proposal concerning it had been made by the Delegate of the United Kingdom and supported by the Delegate of Mexico.

2268. Mr. SHER (Israel) referred to his request for an interpretation of subparagraph (viii) and said that he might, as a compromise, be prepared to agree that, for certain specified uses of educational material, the author need not be paid compensation. He could not, however, agree to the removal of the author's name, as now provided under subparagraph (viii): far from constituting fair use of the work it would be tantamount to confiscation of the work.

2269. Mr. KRISPIS (Greece) asked if there was any provision in the Convention for a mark which could be placed on original or translated works to indicate that they were subject to the terms of the Protocol.

2270. Mr. BELINFANTE (Netherlands) suggested that, in view of the comments of the Delegates of Australia and Greece on publication for import to other countries, and his own comments on the complicated wording of subparagraph (viii), the Drafting Committee might examine the texts of subparagraphs (iv) and (viii) and ensure that

no ambiguity remained. If that could be done, many of the apprehensions that had been apparent during the discussion might disappear.

2271. Mr. GAMBA (Central African Republic), speaking at the invitation of the Chairman, said that after listening to the various opinions which had been expressed, he considered that the Protocol was too important a matter to be voted on in a hurry and that all the points in dispute should be settled in advance.

2272. Mr. ZAKÁR (Hungary) referred to the suggestion of the Delegate of Australia and asked how, and by whom, the amount of equitable remuneration would be fixed.

2273. The CHAIRMAN said it would be a matter for domestic legislation.

2274.1 Mr. KRISHNA RAO (India) said he would make no apology for what he was going to say, since so many other delegations had gone back on their decision in the Working Group.

2274.2 His Delegation had carefully considered the proposed revisions of paragraphs (a) and (e) and had just received instructions from its Government. In a spirit of compromise, it would accept the three-year period proposed in paragraph (a), but it could not accept the proposals in paragraph (e). His Government had been prepared to accept subparagraph (viii) of paragraph (e), which related to works intended exclusively for educational purposes, although it was more restrictive than the BIRPI draft; but the restrictions on such works embodied in subparagraphs (i) to (vii) would make the Protocol valueless to the developing countries, for they excluded from its provisions the works that those countries needed for education. All that remained was a compromise which was of no practical use to the developing countries.

2274.3 He proposed that paragraph (e) should be split into two parts: one comprising subparagraph (viii) and the other subparagraphs (i) to (vii), amended so to make them applicable to all works. He also supported the proposal of the Delegate of Sweden to delete subparagraph (ix).

2274.4 He had on other occasions stressed his country's vital need to improve its educational facilities, in order to satisfy, at least in part, its people's crying demand for education. If the minimum provisions he now proposed were not accepted, his Government would be forced to go through the agonizing process of reappraising its attitude to the whole Convention. There was a time in the life of every country when it became more important to attend to the needs of its people than to pay lip service to outmoded conventions.

2275. Mr. FERSI (Tunisia) entirely shared the views of the Delegate of India and reminded the Main Committee that subparagraph (viii) proposed by the Working Group (S/233) had already been the subject of considerable compromise on the part of the six developing countries which had proposed the text (S/160). Hence, the Delegation of Tunisia hoped that that text would be left unchanged by the Working Group.

2276. Mr. CURTIS (Australia) said he hoped there would be time for consultation with delegates on both sides of the issue. He wanted to understand the needs of the developing countries regarding subparagraph (viii). He appreciated their urgent need to produce works without the long formalities provided for under subparagraphs (i) to (vii) and to have the possibility of using material and skills on a wider basis. They would not, for example, want the possibility of providing cheap editions of textbooks for schools to be subject to withdrawal if the author published his own edition under the provisions of subparagraphs (i) to (vii). But it seemed, from the stand taken by delegations of developing countries, that there might be other difficulties. He would not wish to force a compromise without a full knowledge of difficulties which had not so far been explained in the Main Committee but which seemed to have caused concern over subparagraph (viii). He had a proposal to make, but would like time for consultation first.

2277. The CHAIRMAN said he was prepared to adjourn the discussion if the Delegate of Australia would submit a compromise proposal after consultation with delegations of both developing and developed countries.

RESUBMISSION OF ARTICLE 1(a) AND (e) TO THE WORKING GROUP

2278.1 Mr. PALUDAN (Denmark) said that, despite the excellent work of the Working Group, there were still some points that were not fully cleared up and could be debated without the divergent views becoming closer. He suggested that the Working Group should be asked to meet again. Its composition was well balanced and, if the Delegate of Australia were to participate, it might be able to reach a compromise.

2278.2 He also thought that the discussions at the present meeting were closely linked to the question of the status of the Protocol. Perhaps the compromise proposal could embody more flexibility on that question. It would not, of course, be in order for the Working Group to consider that question, but it might be discussed informally among members.

2279. Mr. FERSI (Tunisia) endorsed the statement made by the Delegate of Denmark.

2280. Mr. MULENDA (Congo (Kinshasa)) hoped that the study of the points under dispute would be entrusted to the same Working Group, which already had a thorough knowledge of the subject.

2281. Mr. AMON D'ABY (Ivory Coast) shared the view of the Delegate of Congo (Kinshasa) that the same Working Group should be asked to review the procedural questions raised in subparagraph (viii), in the spirit of conciliation which had previously prevailed in the Group's discussions.

2282. Mr. BODENHAUSEN (Director of BIRPI) suggested that the Delegate of Australia might consult informally with delegations of developed and developing countries and inform the Secretariat if there was any likelihood of a compromise proposal. The Working Group could then hold another meeting with the participation of the Delegate of Australia. That was the only possibility: the Working Group had exhausted all other possibilities.

2283. Mr. MAS (France) thought that the Main Committee would be able to make more rapid progress if the procedural questions were solved in the Working Group.

2284. The CHAIRMAN asked if the Committee would agree to the procedure outlined by the Director of BIRPI.

2285. *It was so **agreed.***

2286. Mr. KRISPIS (Greece) asked if the Working Group could also consider the suggestion he had made earlier in the meeting regarding the possibility of a mark for publications which were subject to the Protocol.

APPOINTMENT OF DRAFTING COMMITTEE

2287. The CHAIRMAN suggested that a Drafting Committee, composed of the following Delegations, should be appointed to deal with the proposals and suggestions

made during the meeting: France, India, Italy, Ivory Coast, Brazil, Senegal, Czechoslovakia, Tunisia, United Kingdom and Sweden.

2288. *It was so agreed.*

The meeting rose at 6 p.m.

EIGHTH MEETING

Monday, July 1, 1967, at 2:30 p.m.

ORGANIZATION OF WORK (continued)

2289. The CHAIRMAN said the Working Group had met on July 1 in an attempt to find a solution to the problem concerning Article 1 of the Protocol Regarding Developing Countries. Delegations had asked for more time in the hope that a working solution might be found; he suggested accordingly that the meeting of the Committee should be suspended until 4 p.m.

2290. *It was so agreed.*

The meeting was suspended at 2:45 p.m. and resumed at 4:10 p.m.

2291. The CHAIRMAN announced that, thanks to a spirit of cooperation manifested by all the delegations concerned, a formula, which he hoped would be acceptable, had been found for both paragraphs (a) and (e) of Article 1. He expected that delegates would want some time to study the texts and suggested that the meeting be adjourned.

2292. *It was so agreed.*

The meeting rose at 4:30 p.m.

NINTH MEETING

Wednesday, July 5, 1967, at 9:45 a.m.

DRAFT TEXT OF THE PROTOCOL REGARDING DEVELOPING COUNTRIES (S/249)

Article 1(e)

2293.1 Mr. BODENHAUSEN (Director of BIRPI) drew the Committee's attention to the three documents circulated to it (S/249, S/249 Add., S/253). He said he understood that the wording suggested in document S/249 Add. had only been the subject of informal agreement by the Working Group. If that was so, it should not be regarded as a proposal before the Main Committee for consideration unless it was formally submitted by a delegation.

2293.2 He reminded the Main Committee that at the third joint meeting of Main Committees II and IV an Article 5 had been adopted for inclusion in the Draft Protocol. The effect of that Article would be to allow countries to apply the provisions of the Protocol before ratifying the Convention.

2294. The CHAIRMAN said that the Director had correctly stated the position with regard to the addition suggested in document S/249 Add. There had been no more than informal agreement among members of the Working Group that in principle the Protocol should contain a provision designed to restrict the import and sale of works of the kind referred to in Article 1(e) of document S/249, thus giving practical effect to the general opinion that developing countries should not be free to profit from such works commercially.

2295. Mr. HARBEN (United Kingdom) proposed that the text of document S/249 Add. should be added to document S/249 and be regarded as an integral part thereof.

2296. The CHAIRMAN thought that the words "in the same language" in the addition suggested in document S/249 Add. might be taken to imply that the provisions enunciated in it only applied to reproductions in the original language, and not to translations, whereas the general agreement among members of the Working Group had been that they should apply to both.

2297. Mr. HARBEN (United Kingdom) thought that the words queried by the Chairman related solely to copies manufactured in, and then exported from, a country which had entered the reservation provided in the proposed Article 1(e). Those words would obviously not prevent that country from taking a work and translating it into its own language before reproducing it in translation for educational purposes, although they would mean that such a country could only export the work translated into its own language and not retranslate it into another language. He thought that was the general opinion of delegations, but if there was any ambiguity in the wording of document S/249 Add. it could be removed by the Drafting Committee.

2298. Mr. FERSI (Tunisia) supported the proposal of the United Kingdom but suggested the deletion of the words "in the same language" which might inconvenience relations and trade between the developing countries.

2299.1 Mr. STRNAD (Czechoslovakia) observed that the Working Group had had no knowledge of the proposal of the United Kingdom contained in document S/149, the principle of which had been subsequently accepted in the course of a joint meeting of Main Committees II and IV, at the time when the text of the Protocol Regarding Developing Countries was discussed. The adoption of that principle authorizing the developed countries to avail themselves of the Protocol in their colonies caused the question to be presented in quite a different light. From the economic point of view, the proposal of the United Kingdom was of capital importance as the industry of a metropolitan country could thus provide the necessary technical equipment for the mass production of works in the developing countries and thereby hamper the development of the national industry in those countries.

2299.2 The Delegation of Czechoslovakia supported the amendment proposed by the Delegate of Tunisia suggesting the deletion of the words "in the same language" but, having regard to the new elements that had appeared, it would perhaps be advisable for the members of the Main Committee and especially the delegates of the developing countries to confer so as to evolve a joint solution affording them a guarantee against imports from territories which were still under the influence of a metropolitan country.

2300. Mr. DE MENTHON (France) considered that the new proposal made by the Delegate of the United Kingdom was entirely in keeping with the interpretation which had been given to the Working Group when, at the request of the Delegation of France, it had been specified that import and export possibilities should be restricted to exchanges between countries which had made the same reservations. The Delegation of France therefore supported the new proposal by the United Kingdom.

2301.1 Mr. KRISHNAMURTI (India) stressed that it had been generally agreed among members of the Working Group that developing countries, by entering the reservation provided for in the proposed Article 1(e), should not be in a position to profit commercially by selling educational works to countries other than developing countries which had entered the same reservation. He understood that to be the view of the Delegation of the United Kingdom.

2301.2 He noted the opinion of the Delegate of the United Kingdom that the words "in the same language" in the addition suggested in document S/249 Add. would not act as a bar to translation or the reproduction of translations.

2301.3 He suggested that the problem raised by the Delegate of Czechoslovakia might be solved by suitable drafting.

2301.4 There was no need to vote on either the United Kingdom or Tunisian proposals if the principle implied in the contents of document S/249 Add. was accepted by the Main Committee and if the matter was referred to the Drafting Committee to bring out the clear intention that developing countries could not sell educational works to developed countries, but that they could exchange them in the original language or in translation with countries in the same position as themselves and having the same language. He therefore suggested that the Committee adopt that course.

2302. Mr. FERSI (Tunisia) entirely shared the point of view of the Delegation of India. It did not appear to serve any useful purpose to take a vote at the present stage as all outstanding questions would be submitted to the Drafting Committee.

2303. Mr. HARBEN (United Kingdom) said he fully agreed with the suggestion of the Delegate of India. His Delegation would therefore withdraw its proposal.

2304. Mr. DE MENTHON (France) was entirely in agreement with the suggestion of the Delegation of India as regards both procedure and substance.

2305. Mr. FERSI (Tunisia) considered that there was disagreement regarding the very principle of the proposal submitted by the Delegate of the United Kingdom. He had understood that the Delegation of India would be prepared to accept it, subject to deletion of the words "in the same language," which entirely changed the meaning of the proposal. If that were not the case, was it to be understood that the Delegation of India would be prepared to accept the proposal of the United Kingdom unchanged?

2306. The CHAIRMAN pointed out to the Delegate of Tunisia that firstly, the Delegate of the United Kingdom was not insisting on any particular wording and had offered to withdraw his proposal and, secondly, that he thought the position of the Delegation of India was that of the meeting as a whole, namely that the Drafting Committee should be instructed to formulate a suitable provision to give effect to the principle that the sale of educational works by developing countries which had entered the proposed reservation on the subject should not be allowed to become a commercial proposition.

2307. Mr. KRISHNAMURTI (India) said that the Chairman had correctly interpreted the point of view of the Delegation of India.

2308. Mr. FERSI (Tunisia) was satisfied with the explanations given by the Chairman, but would like to emphasize that Tunisia could only accept the proposal of the United Kingdom if the Drafting Committee could devise a legal formula enabling the developing countries to defend themselves against a certain form of commercial exploitation.

2309.1 Mr. HARBEN (United Kingdom) thought there might not be complete agreement on the substance of what the Drafting Committee was to be instructed to do. The Delegation of India had just accepted the Chairman's summing-up of the Drafting Committee's task as conforming exactly to its intentions. That summing-up had not, however, made any reference to the words "in the same language." The purpose of those words was to prevent developing countries which had taken works for educational purposes and translated them, or not, according to their needs, from being allowed to translate educational works for export only.

2309.2 He therefore formally proposed that the Drafting Committee should be requested to devise a formula which, firstly, would make it impossible for a developing country to exploit commercially, by way of international distribution, any works it had taken for its own educational purposes, and, secondly, whilst preventing it from translating for export, would allow it to translate such works for its own educational purposes. The latter point was the one on which disagreement might exist.

2310. Mr. HESSER (Sweden) thought there was general agreement that translations for export should be prohibited. In his opinion, however, the wording proposed for Article 1(e)(S/249) already made it clear that such was the case, since it only authorized reproduction for certain purposes, which did not include export. Perhaps it would suffice to cover the point in the general report.

2311. Mr. FERSI (Tunisia) agreed with the suggestion of the Delegation of Sweden which, in his opinion, was the most reasonable. If the developing countries had asked to benefit from special conditions, it was obviously not for commercial reasons. It would, therefore, suffice to include in the report of the Committee the clarification given by the Delegate of the United Kingdom.

2312. Mr. HARBEN (United Kingdom) disagreed with the view that the wording referred to by the Delegate of Sweden was sufficient to prohibit translation for export. Since the rights granted to authors under the Berne Convention did not include the right to control the export of their works, the whole question of such exports was not referable to the Convention. Consequently, in the absence of specific wording in the Convention on the conditions under which works could be exported, it could be held that they could be exported freely.

2313. Mr. HESSER (Sweden) explained that what he had meant was that a reproduction made solely for export purposes was not allowable under the wording to which he had referred.

2314. Mr. LENNON (Ireland) agreed with the Delegate of Sweden in his interpretation of the wording proposed for Article 1(e) in document S/249, since that wording defined the limited field within which a country could restrict the protection afforded by the Convention.

2315. Mr. BELINFANTE (Netherlands) disagreed with the Delegate of Sweden that the wording to which he had referred made the addition suggested in document S/249 Add. superfluous. Although the words "exclusively for teaching, study and research" made it clear that the right in question could not be invoked solely to authorize reproduction for export, that was not the issue at stake; the point was whether educational books which had been reproduced under the authority of Article 1(e) could subsequently be exported. Similar provisions to those contained in document S/249 Add. were to be found in the wording proposed for Article 1(a) and (d), and such a provision was equally necessary for paragraph (e).

2316. Mr. BODENHAUSEN (Director of BIRPI) agreed with the Netherlands view that uniformity should be maintained in Article 1 and said that the lack of a provi-

sion in paragraph (e) corresponding to those in paragraphs (a) and (d) would cause confusion. He was in favor of the matter being referred to the Drafting Committee.

2317. Mr. HESSER (Sweden) agreed that the difficulty could best be resolved by the Drafting Committee.

2318. *It was decided to request the Drafting Committee to submit wording conforming with the wishes of the Committee for the second part of Article 1(e) of the Draft Protocol Regarding Developing Countries.*

Article 1(a), (d) and (e)

2319. The CHAIRMAN invited the Committee to consider the wording of Article 1(a), (d) and (e) as proposed in document S/249, paragraphs (b) and (c) having already been dealt with.

2320.1 Mr. BELINFANTE (Netherlands) suggested that the Drafting Committee should make the wording of the first two lines of paragraph (d) uniform with the corresponding wording of paragraphs (a), (b) and (c).

2320.2 The wording "imported and sold" in Article 1(a)(v) and (d)(iv) had been copied from the Universal Copyright Convention and was not completely suitable. He therefore suggested that the Drafting Committee should replace it with a formula similar to that of the corresponding wording of document S/249 Add., which was more directly applicable to the Berne Convention.

2320.3 The Delegation of the Netherlands had made a proposal concerning the first part of paragraph (e) in document S/148. The report of the Working Group had said that the Netherlands proposal did not fit in with its own proposal on the subject and should be dropped. He agreed with that view as far as the wording of the Netherlands proposal was concerned, but he nevertheless maintained that the idea of expressly mentioning the purpose of the restriction on copyright protection was a valuable one. It would give a clear indication to the copyright owner as to what his position was.

2321. *The wording of Article 1(a), (d) and (e) of the Draft Protocol Regarding Developing Countries, as submitted in document S/249, was approved.*

Article 1 (beginning)

2322. The CHAIRMAN invited the Committee to consider the proposal contained in document S/253.

2323.1 Mr. HESSER (Sweden) introduced the proposal and said that the enumeration of developing countries proposed in document S/249 was regarded as unsatisfactory by the Nordic Delegations because the list reproduced in Annex I to the Draft Protocol was based on a United Nations resolution which was four years old; furthermore, the list of new countries given in Annex II was not comprehensive. In any case, the Conference was not competent to decide what countries should be regarded as developing countries. It might be some years before a further resolution on the subject was adopted by the General Assembly of the United Nations; in the meantime, new developing countries would be debarred from the benefits of the Protocol. A more flexible year-to-year formula was necessary. The Nordic Delegations regarded that need as being met by the words "established practice," since the United Nations had to determine regularly which countries were to benefit from economic aid or from relaxations of the obligation to pay contributions. The proposal in document S/253 would not exclude any country already listed in document S/249 and would open the door to new countries.

2323.2 He suggested that the text of the Nordic Delegations' proposal might be improved by substituting the word "regarded" for "designated" in the beginning of Article 1.

2324. Mr. DE MENTHON (France) said that he did not understand very well the meaning of the expression "established practice of the General Assembly of the United Nations..." which appeared in the proposal of the Nordic Delegations. Was it to be understood thereby that the United Nations should be consulted every time the question arose again? If the Main Committee considered that the list contained in the Annex was incomplete and that it would be preferable to avoid all reference to a specific solution, it could adopt the following formula: "any country designated as a developing country by a decision of the United Nations." That formula would present the advantage of covering all possible cases, including that of countries that might achieve independence in the future, because it was probable that the United Nations would then have to take a decision with regard to them.

2325.1 Mr. STRNAD (Czechoslovakia) understood the concern of the Delegation of Sweden. If it was decided to incorporate in the Protocol a principle according to which the list of developing countries was and would remain established by decisions of the United Nations, it would also be necessary to take into account those countries which, also pursuant to a decision of the United Nations, would cease to be considered as developing countries.

2325.2 In the opinion of the Delegation of Czechoslovakia, it would perhaps be preferable to say: "those countries mentioned in the Annex to the Protocol and all countries wishing to accede thereto and in a situation comparable to that of the countries listed in the said Annex shall be regarded as developing countries."

2326. Mr. EVENSEN (Norway) said he did not think there was any disagreement as to the principle involved. The Czechoslovak suggestion had merits. With regard to the French proposal, he thought the word "decision" should be avoided, since it had a special meaning in the Charter of the United Nations.

2327. Mr. GOUNDIAM (Senegal) recalled that in the course of the debates of the Working Group entrusted with defining the concept of a developing country, the Delegation of Senegal had proposed the formula "countries manifestly in process of development," as that formula would present the advantage of applying to all still dependent countries as soon as they had achieved independence. In the case of a country which was already independent but which was not mentioned in the list, the criterion of a United Nations decision could then be invoked.

2328.1 Mr. STRASCHNOV (Monaco) shared the concern of the Delegation of France as regards the vagueness of the formula proposed by the Nordic countries. On the other hand, the proposed preamble was over-rigid, since a country so manifestly in process of development as Malta did not appear either in Annex I or Annex II. Furthermore, only Annex I could be amended from time to time, whereas Annex II could only be amended by a revision conference. Thus, even if the list contained in Annex I were subject to the decisions of the United Nations, a time-lag of several years in relation to political reality was inevitable.

2328.2 The Delegation of Monaco therefore thought it would be necessary to seek a form for the preamble which was both more flexible and more general in character.

2329. Mr. AMON D'ABY (Ivory Coast) also considered that the formula proposed by the Nordic Delegations was lacking in clarity. For its own part, the Delegation of

the Ivory Coast considered that the Conference should establish a list of the countries which were "manifestly" developing countries, in accordance with the suggestion of the Delegation of Senegal, so as to avoid a situation where the status of every new independent country could only be decided by a revision conference; the Conference could also adopt a preamble drafted in such a way that it could be adapted to the case of new independent countries.

2330. Mr. STRNAD (Czechoslovakia) stated that it was a question of finding a formula applicable not only to countries achieving independence but also to countries uniting to form a Union or a new State, or to regions which, on the other hand, seceded. It was obvious that the United Nations list would not be revised every time that a situation of this kind arose. It was therefore essential that the Protocol should contain a formula applicable to all cases without exception.

2331. Mr. SHER (Israel) said that the formula proposed in document S/253 was the best possible one in the circumstances. Since 1963 there had been four United Nations General Assembly resolutions which, instead of determining which were the developing countries, defined the countries which were not developing countries. It could therefore be assumed that the remainder—at present 96 countries—were developing countries. Those resolutions were adopted from year to year because they dealt with contributions. The Conference was not competent to decide what countries were developing countries. The United Nations, on the other hand, was not only the organization best fitted to do so but also had an established practice in the matter. The Delegation of Israel therefore supported the proposal of the Nordic Delegations.

2332. *The proposal submitted in document S/253 was approved by 17 votes in favor, 7 against and 11 abstentions.*

2333. Mr. SHER (Israel) said he wished to make it clear that the Government of Israel regarded the establishment of the list of developing countries as a matter of principle; it did not itself intend to take advantage of the Protocol or any part of it.

Article 4

2334. The CHAIRMAN invited the Committee to consider the wording of Article 4 as proposed in document S/249.

2335. Mr. BODENHAUSEN (Director of BIRPI) said the wording in question was related to a proposal originally made by the Delegation of the Netherlands. The Secretariat had thought it necessary to add the provision concerning notification of loss of developing country status. He himself suggested the addition of a further provision to the effect that the notification should not become effective until one year after it had taken place, in order to allow time for the necessary adjustments.

2336. Mr. BELINFANTE (Netherlands) agreed with the Director's suggestion.

2337. Mr. STRASCHNOV (Monaco) pointed out that the amendment to the preamble of the Protocol would necessitate the amendment of Article 4.

2338. Mr. STRNAD (Czechoslovakia) observed that it was not merely a question of drafting an amendment. In fact, Article 4 should prescribe either a term within which the resolution concerned should enter into force, or transitional provisions concerning acquired rights, so as to avoid the case where at a given moment a country, regardless of its own will in the matter, would find its legal and economic situation radically altered from one day to another.

2339. Mr. BODENHAUSEN (Director of BIRPI) suggested that the Article might be worded to the effect that if, according to the established practice of the General Assembly of the United Nations, a country ceased to be a developing country, the Director-General would notify the fact to that country and to all Union countries and the country concerned would not be able to apply the Protocol after a period of one year from the date of the notification.

2340. The CHAIRMAN pointed out that the Article had to be carefully worded so as to exclude the possibility of any country being deprived of the benefits of the Protocol unless there was justification for it.

2341. Mr. HESSER (Sweden) said it was only logical that the wording of Article 4 should be consistent with that of Article 1.

2342. The CHAIRMAN invited the Main Committee to decide whether Article 4 of the Draft Protocol Regarding Developing Countries, as proposed in document S/249, should be amended to make it consistent with the wording of the Article 1 as adopted by the Main Committee and whether the Drafting Committee should be requested to prepare suitable wording to that effect.

2343. *It was so decided.*

AUTHOR'S FUND (continued) (S/228)

2344. Mr. SHER (Israel) recalled that the Main Committee still had to deal with the proposal contained in document S/228, the aim of which was to empower BIRPI, in association with other organizations, to undertake a study on the setting-up of machinery to ensure equitable remuneration for authors. Israel was anxious that the idea should not be shelved.

2345. Mr. BODENHAUSEN (Director of BIRPI) said that his Organization was prepared to undertake the study should the proposal be accepted.

2346. Mr. FERSI (Tunisia) and Mr. H'ssaine (Morocco) were opposed to the proposal of the Delegation of Israel.

2347. *The proposal submitted in document S/228 was approved by 12 votes in favor, 10 against and 16 abstentions.*

APPOINTMENT OF THE DRAFTING COMMITTEE (continued)

2348. Mr. BODENHAUSEN (Director of BIRPI) reminded the meeting that a Drafting Committee had been set up. It consisted of the Delegations of Brazil, Czechoslovakia, France, India, Italy, Ivory Coast, Senegal, Sweden, Tunisia and the United Kingdom.

The meeting rose at 11:35 a.m.

TENTH MEETING

Saturday, July 8, 1967, at 9:50 a.m.

DRAFT TEXT OF THE PROTOCOL REGARDING DEVELOPING COUNTRIES (continued) (S/272)

2349.1 The CHAIRMAN invited attention to the Drafting Committee's proposed draft text in document S/272. The text represented a compromise reached after long

discussions and he hoped it would meet with the Main Committee's unanimous approval. He assumed that any comments on it would relate to drafting points only. If any member of the Main Committee should wish to raise a point of substance, it would be necessary, in accordance with Rule 35 of the Rules of Procedure (S/Misc/1/Rev.), for the Main Committee to decide by a two-thirds majority of the delegations present and voting to reopen the matter.

2349.2 In reply to a question by Mr. CIPPICO (Italy), he pointed out that under Rule 21(2) of the Rules of Procedure, a quorum was not necessary for the conduct of the Main Committee's business.

2350. Mr. HARBEN (United Kingdom) said that in a number of places the Drafting Committee had agreed on the text on the understanding that certain remarks by delegates would be mentioned in the Main Committee's report. He suggested that the Draft Protocol should not be voted on until the relevant parts of the report were available and members of the Main Committee had had time to study them.

2351. The CHAIRMAN saw no reason to defer approval of the Draft Protocol. Delegates could raise any points when the Main Committee considered its draft report (S/270) and amendments could be made if necessary.

2352. Mr. LABRY (France) supported the Chairman, in view of the fact that delegations would have the right to revert to certain points during consideration of the report.

2353. Mr. STRNAD (Czechoslovakia) asked whether the Protocol would be put to the vote as a whole or paragraph by paragraph.

2354. Mr. BODENHAUSEN (Director of BIRPI) confirmed that, under Rule 41 of the Rules of Procedure, any delegate could request that the Draft Protocol be voted on in parts and the Main Committee would vote on such a request. The compromise reached by the Drafting Committee was, however, based on the text as a whole. If any part of it were rejected, the whole Protocol might fall. He suggested that it might be wiser to vote on the whole text—even if the voting were postponed until the remainder of the report was available—rather than risk reopening discussions which could only be abortive.

2355. The CHAIRMAN pointed out that the Rapporteur had attended all the meetings of the Working Group and of the Drafting Committee; if there were any omissions in the report, they could be drawn to his attention and remedied.

2356. Mr. BELINFANTE (Netherlands) said that, quite apart from the question of the draft report, he was not in a position to vote on the Draft Protocol because he had not yet had time to read it. He suggested that if the meeting were suspended to allow delegates time to study the Draft Protocol, the remainder of the draft report might be available by the time it was resumed.

2357. Mr. FERSI (Tunisia) agreed with the Director of BIRPI that the Protocol ought to be adopted as a whole. It was the product of long and difficult negotiations and it had already been approved in substance. The Drafting Committee had only made changes of form. In regard to the report, which was still in draft, delegations were obviously quite free to make whatever reservations they deemed necessary. Consideration of the report should be kept quite separate from the adoption of the Protocol, as the latter had already been generally approved and accepted. The Delegation of Tunisia therefore saw no reason why a vote could not be taken immediately before the addendum to the draft report was circulated.

2358. Mr. SHER (Israel) agreed that the Main Committee was now discussing the wording and not the substance of the Protocol. He also agreed with the Director of BIRPI that to vote on parts of the Protocol separately would upset the balance of the whole. Whereas, however, the report was normally a means of clarifying the Committee's intentions on certain matters, and the Rapporteur could be asked to amend it if necessary, it was conceivable that the report might reveal places where the Draft Protocol did not clearly express the Main Committee's intentions. If, having voted on the Protocol as a whole, the Main Committee could, if necessary, and without a two-thirds majority vote, reconsider any drafting points after it had studied the report, he would suggest that the Draft Protocol be put to the vote immediately on that understanding.

2359. Mr. KRISHNAMURTI (India) agreed with the comments of the Director of BIRPI and the Delegate of Tunisia and with the first part of the remarks of the Delegate of Israel. As a member of the Drafting Committee, which had worked on the text for a whole day, he could assure delegates that great care had been taken to ensure that the text contained no changes in the substance of what the Main Committee had agreed on. The Rapporteur had noted all the points which the Drafting Committee considered should be clarified in the report. The Main Committee would be able to see whether the clarifications were satisfactory when it considered the report. He agreed with the delegates who considered that the Draft Protocol should be approved first and the report considered later.

2360. Mr. MAS (France) supported the Delegation of Tunisia and the other delegations which felt that the Protocol should be approved as a whole. As the text was the result of a compromise between different points of view, it would be unwise to put it to the vote piecemeal.

2361. Mr. ABDERRAZIK (Morocco) agreed that the Protocol should be put to the vote as a whole.

2362.1 Mr. HARBEN (United Kingdom) agreed that the Draft Protocol should be voted on as a whole, but thought that it would then be even more important for delegates to see the remainder of the report before voting. He had complete confidence in the Rapporteur, but feared that the Draft Protocol might not be fully comprehensible to delegates who had not attended the Drafting Committee unless they could study it in conjunction with the report.

2362.2 He suggested that if anyone were opposed to his request for a suspension it should be put to the vote.

2363.1 Mr. STRNAD (Czechoslovakia) said that his Delegation had been anxious to know whether the Protocol would be put to a vote as a whole—which was what his Delegation wanted. As that was the case, his Delegation wished to reiterate its strong reservations in regard to Article 6, which was undesirable and completely out of place in the Protocol.

2363.2 He went on to point out the difficulties which confronted him as Rapporteur. His task would be made very much easier if, whenever inquiries showed that a particular text or proposal gave rise to differing interpretations among the delegations concerned, those delegations would state their position clearly in plenary session; that would eliminate all misunderstanding. The cooperation of certain members of the Main Committee was necessary, too, when a discussion ranging over a number of problems had to be summarized, as it was not always easy to make a synthesis of ideas, however clearly they were expressed. A Rapporteur should not be required to settle on his own the extremely delicate questions arising in a document which would be an official text for many years to come.

2364. Mr. FERSI (Tunisia), speaking on a point of order, proposed that the Main Committee should vote on the Protocol without further delay, as the proposed text had already been accepted unanimously. There was no reason why the report could not be considered subsequently.

2365. The CHAIRMAN said that the Delegate of Tunisia had accepted the amended draft of Article 6 and his comments were mentioned in the part of the report which was still awaited. He hoped that the Main Committee would be able to approve the Draft Protocol unanimously.

2366. Mr. LABRY (France) reminded the Main Committee that the Delegate of Tunisia had indeed accepted the amendment to Article 6, but with the express proviso—and the Delegation of France had supported the proposal—that his statement should appear in the report. The Delegation of France also considered that the points raised by the Rapporteur were worthy of consideration by the Main Committee.

2367.1 Mr. SHER (Israel) said that in view of the Rapporteur's statement of substance regarding Article 6, he must recall his own statement, during the voting on that Article, that the Government of Israel was opposed to any kind of colonialism, whether in respect of territory or a group of people, and that the Article had nothing whatsoever to do with colonialism. As the Rapporteur had himself observed, development was a slow process, and the Government of Israel was anxious to help the countries concerned to achieve development as rapidly as possible. Since the application of the reservations under the Protocol to the territories referred to in Article 6 would help those territories to accelerate their education, his Delegation had not voted against the inclusion of Article 6 in the Protocol. He hoped that his statement would be included in full in the Main Committee's report.

2367.2 With regard to the problem of voting on the Draft Protocol, he thought that any difficulties might be resolved when the rest of the report became available.

2368. Mr. BODENHAUSEN (Director of BIRPI) suggested that the delegates who had asked for their statements to be included in the report might agree that, since their statements would be reported in the minutes of the present meeting, there was no need for them to appear in the report.

2369. Mr. ZAKÁR (Hungary) agreed with the delegates who considered that the Draft Protocol should be put to the vote and that there was no need to see the draft report first. He also agreed that, as a compromise achieved after arduous discussions, the Draft Protocol should be voted on as a whole.

2370. Mr. SHER (Israel) explained that he had in fact wished to have his statement recorded in the minutes. He hoped that the report would contain only a brief mention of the subject.

2371. Mr. BELINFANTE (Netherlands) said he could not vote on a document he had not read. The Delegate of Tunisia, who had attended the Drafting Committee, had said that the Draft Protocol contained everything that the Main Committee had agreed upon, but other members of the Drafting Committee had referred to changes made by it. It was essential, therefore, for delegates who were not members of the Drafting Committee to be given time to read and check the text for themselves. If a vote were taken at once, he would be unable to participate in it.

2372. Mr. AMON D'ABY (Ivory Coast), pointed out that all the delegations, except those of the United Kingdom and the Netherlands, were willing to proceed immediately to a vote on the Protocol. The Delegation of the Ivory Coast therefore urged the Chairman to ask the two Delegations concerned whether they were still unwilling to approve the Protocol until they had considered the addendum to the draft report or whether they would give further proof of their spirit of conciliation by agreeing to join with the other delegations in voting forthwith.

2373. The CHAIRMAN, after a brief exchange with Mr. Harben (United Kingdom) and the Director of BIRPI, said he would suspend the meeting until the remainder of the report had been distributed.

The meeting was suspended at 10:45 a.m. and resumed at 11:45 a.m.

2374. The CHAIRMAN drew attention to the addendum to the draft report (S/270/Add.1). Now that the relevant part of the report was before the Main Committee he hoped that the Draft Protocol would be approved unanimously.

2375. Mr. HARBEN (United Kingdom) regretted that his Delegation would have to abstain: it had received precise instructions to that effect from its Government.

2376. Mr. BELINFANTE (Netherlands) said that, apart from minor drafting points, he was satisfied with the text of the Draft Protocol and would vote in favor of it.

2377. The CHAIRMAN then asked whether there was any objection to the Draft Protocol as contained in document S/272.

2378. *The Draft Protocol (S/272) was approved without opposition.*

DRAFT REPORT OF MAIN COMMITTEE II

2379. The CHAIRMAN invited the Main Committee to consider its draft report (S/270 and S/270/Add.).

2380.1 The RAPPORTEUR submitting the draft report (S/270 and S/270/Add.) began by drawing attention to certain corrections which were to be made. In regard to the English version, the document containing the draft report (S/270) should be dated "July 7" and not "June 7," and in document S/270/Add., the words "Article 25" should be replaced by "Article 25(1)(b)(i)."

2380.2 The Drafting Committee had changed the order of the paragraphs in the report. Hence the paragraph dealing with the term of protection would be inserted before the first full paragraph dealing with the translation license, and the opening phrase of the latter paragraph would be amended to read: "The translation license combines the translation license referred to *in Articles 25 and 27* of the Convention..." Finally, as a result of rearrangements, paragraph (c) of the Article 1 concerning broadcasting was to become paragraph (d). The object of these changes was to ensure that the reservations concerning the term of protection, the rights of translation, reproduction and broadcasting and the reservation concerning the special license for educational purposes should be listed in the Protocol in the same order as in the Convention itself.

2380.3 It would also be necessary to make it clear that the proposal of the Ivory Coast (S/234), referred to seven African States, and that in the subsequent paragraph dealing with the joint proposal of the Delegations of Denmark, Finland, Norway and Sweden (S/253), the words "such as UNESCO" should be deleted, as should all reference to the lists contained in the Annexes to

document S/249. In the part of this paragraph, the text should read: "...implied that the country concerned receives assistance from the United Nations or its Specialized Agencies. The final text was produced..." The sentence beginning "That wording therefore..." would be deleted, as it referred to the United Nations list which had given rise to dispute.

2381.1 Mr. FERSI (Tunisia) urged that mention should be made at the beginning of the paragraph in the report referring to Article 6 after the words "eighth meeting" of the fact that the Delegation of Tunisia had stated that it would vote against any proposal which would allow the colonial powers to use the excuse that certain countries were not yet independent in order to require that the Protocol should be applied to them, and that it was therefore opposed to the inclusion of Article 6 in the said Protocol.

2381.2 The Delegation of Tunisia saw no objection to the mention of all the delegations which had supported it, provided that this mention was made in the report and not in the summary record.

2382.1 Mr. SHER (Israel) regretted that the matter had been taken up. As he had indicated before the suspension, the inclusion of statements by delegations would overburden the report and would be contrary to its purpose.

2382.2 As a way out of the difficulty, he suggested that it should be indicated in the report that some delegations had made statements concerning Article 6 and that those statements would be found in the relevant minutes. If this suggestion were not acceptable, he would ask for the inclusion of a short reference to the two statements he had made on the subject. He would, however, prefer to see a short neutral statement in the report, without any mention of the names of delegations, but with a cross-reference to the minutes so that anyone interested could refer to them.

2383. The RAPPORTEUR remarked that, while other delegations had expressed reservations in regard to the inclusion of Article 6 in the Protocol, their declarations were not identical with the declaration made by the Delegation of Tunisia; their import and scope were slightly different. It would be difficult to take account in one short paragraph of the report of all the shades of opinion which had been expressed. As the Delegate of Czechoslovakia he would be pleased to meet the wishes of Tunisia, but it remained to be seen whether the other delegations would agree to this.

2384. Mr. KRISHNAMURTI (India) said that the question had first arisen in the joint meeting of Main Committees II and IV and had then been referred to Main Committee II. He suggested that it might be indicated in the report that the Delegation of Tunisia which had been a member of the Drafting Committee had agreed to the draft of Article 6, subject to the statements he had made on the subject. As he had restated his position at the present meeting, it would be recorded both in the minutes of the joint meeting and in the minutes of the present meeting.

2385. Mr. SHER (Israel) said that the Rapporteur's solution seemed to be the best one in the circumstances and he was willing to leave the matter in the hands of the Rapporteur and the Chairman. He had wished to indicate that if mention was made of the views on one side of the question, it should be balanced by a mention of all the other views on the subject. It would be better not to mention all those opinions, since an explanation would then have to be given of why they had been included. He would not insist on a specific text, as long as the text was well balanced like the rest of the report.

2386. Mr. FERSI (Tunisia) said that his Delegation was much more concerned with the substance of the matter than with the form of words used, as those delegations which had expressed a view on the subject had been unanimous on one essential point: that Article 6 was out of place in the Protocol. Hence the report should bring out this unanimous opinion. His Delegation would not insist that the text of its declaration should be included in the report. It would be sufficient if the declaration was referred to in the summary record.

2387. The RAPPORTEUR suggested that the four Delegations (Tunisia, India, Israel, Czechoslovakia) which had made a declaration during the present meeting should be mentioned in the report along with the Delegation of Tunisia, with an indication that they had expressed reservations concerning Article 6; such mention would be followed by a reference to the summary record in which the declarations appeared.

2388. Mr. SHER (Israel) said that either all the delegations should be named or none of them. He would be satisfied with a reference to "several delegations" although that would not fully cover his point. If, however, any delegation were mentioned by name, he would have to insist on the inclusion of a statement of his Delegation's position both on the question of colonialism and on the inclusion of Article 6.

2389. *The Rapporteur's proposal was adopted.*

2390. Mr. MAS (France) congratulated the Rapporteur on his remarkably clear and concise document, which had the approval of the Delegation of France. A few slight drafting changes were, however, required in the next to the last paragraph of the addendum (S/270/Add.). In the phrase beginning "The reference to the practice...", the text should be reworded to read: "...a country to which the status of developing country ceases to be applicable."

2391. *The amendments of the Delegate of France were adopted.*

2392. Mr. RIBEIRO (Brazil) proposed that in the fifth paragraph (document S/270) the words "United Nations Development Program through the" be inserted before the words "United Nations or its Specialized Agencies..."

2393. Mr. AMON D'ABY (Ivory Coast) supported the proposal of the Delegation of Brazil.

2394. *The Brazilian amendment was adopted.*

2395. Mr. KRISHNAMURTI (India) observed that Article 1 of the Protocol (S/272) did not indicate by whom a country would be regarded as a developing country. He suggested that the report should include a reference respecting the method of deciding when a country should be regarded as a developing country under Article 1.

2396. The RAPPORTEUR reminded the Main Committee that this question had given rise to long and difficult discussions in the Drafting Committee, the Working Group and the Main Committee itself, and that no wording had been found which satisfied everyone. The wording which he himself had proposed had given rise to such opposition that he hesitated to repeat it. He thought it might be possible to fall back on the practice established by the United Nations.

2397. Mr. BODENHAUSEN (Director of BIRPI) said that the Director General of the Organization would be responsible for deciding whether a country notifying itself as a developing country could be so regarded in conformity with the established practice of the United

Nations General Assembly. When in doubt, he would, of course, consult the United Nations Secretariat and, if necessary, inform the country in question that in his opinion it could not be accepted as a developing country in accordance with the practice of the United Nations General Assembly and of the Berne Union. The Berne Union, to which the Director General would have to report, would make the final decision.

2398. The RAPPORTEUR considered that the procedure outlined by the Director General was probably the most satisfactory.

2399. Mr. BELINFANTE (Netherlands) proposed that in the seventh paragraph of document S/270 the words "(the original Article (1)(c) of the Protocol)" be inserted after the word "Article 9(3)." It was not clear from the existing text that the Protocol had never contained an Article 9(3).

2400. The RAPPORTEUR entirely agreed with the proposal of the Delegation of the Netherlands.

2401. *The Netherlands amendment was adopted.*

2402.1 The RAPPORTEUR read out the following amendments to document S/270/Add. which had been submitted by the Delegation of the United Kingdom: in the paragraph to be inserted before the penultimate paragraph the words "not be distributed" to be replaced by the words "be imported into Ceylon but not"; the following words to be added to the end of the paragraph: "In the same paragraph, it has been made clear that only copies of a work published in a country exclusively for the relevant educational purposes may be imported and sold in other countries availing themselves of the reservations; the effect, therefore, is that such copies will be in a language relevant to the educational needs of that country"; the second sentence of this paragraph as amended, to be transposed to the end of the paragraph.

2402.2 The purpose of the amendment and of the provision as a whole was to avoid conflict between reproductions made under the Protocol and those made under the Convention itself.

2403. The CHAIRMAN observed that there would be no point in a country permitting the import of educational books unless they were in a language that was relevant to the education in that country.

2404. The RAPPORTEUR, in reply to a comment by Mr. Belinfante (Netherlands), said that the example was quoted to show that, whereas Ceylon was a country which might avail itself of the Protocol and could import the books in question, Japan was a country which could not benefit under the Protocol.

2405. *The United Kingdom amendments were adopted.*

2406.1 Mr. HARBEN (United Kingdom) proposed the following amendment to the addendum to the draft report (S/270/Add.): in the first of the three paragraphs to be inserted before the last paragraph, after the word "territory," the following words to be inserted: "judged by the same principles as sovereign countries"; the last sentence of the paragraph to be deleted.

2406.2 The amendment was proposed because, since certain difficulties concerning declarations on behalf of territories which were not responsible for their own external relations had been carefully resolved in the text of Article 6, there was no need to mention them in the report.

2407. *The United Kingdom amendment was adopted.*

2408. *The draft report contained in documents S/270 and S/270/Add., as amended, was adopted unanimously.*

AUTHOR'S FUND (continued): DRAFT RESOLUTION (S/228)

2409. The CHAIRMAN drew attention to the draft resolution at the end of the Draft Protocol (S/272). As explained in the next to the last paragraph of the report just adopted (S/270), the resolution had been submitted to Main Committees II and IV by the Delegation of Israel (S/228).

2410. *The draft resolution submitted by the Delegation of Israel (S/228) was approved without opposition, with 6 abstentions.*

CLOSING REMARKS

2411. The CHAIRMAN thanked the members of the Main Committee for their help in overcoming the difficult problems encountered in their task of drafting a Protocol that would be generally acceptable. It was gratifying that the text had been approved without opposition. He also thanked the Delegate of Sweden, both as representative of the host country, and for his contribution to the Main Committee's successful work. Lastly, he thanked the members of the Secretariat for their cooperation and help and the observers of Governments and of intergovernmental and non-governmental organizations for their participation.

2412.1 Mr. DE MENTHON (France), speaking on behalf of the Delegation of France, said he was sure he was expressing the feelings of all delegations in paying tribute to the Chairman for the spirit of international cooperation which he had shown at all times throughout the particularly difficult discussions. Thanks to his untiring efforts, the Main Committee had finally been able to draw up a text which had been adopted without opposition. This text might not, perhaps, entirely meet the wishes of all concerned but, as the Chairman had rightly pointed out, compromise was the very essence of all international negotiations.

2412.2 He could not close without mentioning the distinguished part played by the Delegate of Czechoslovakia in his capacity as Rapporteur of the Committee.

The meeting rose at 1 p.m.

MAIN COMMITTEES II AND IV

Chairman: Mr. Joseph VOYAME (Switzerland)
Secretary: Mr. Klaus PFANNER (BIRPI)

FIRST MEETING

Thursday, June 29, 1967, at 9:30 a.m.

ELECTION OF CHAIRMAN

2413. Mr. BODENHAUSEN (Director of BIRPI) invited members to appoint a chairman for the joint meeting of Main Committees II and IV.

2414. *On the proposal of Mr. Hesser (Sweden), it was decided to elect a member of the Delegation of Switzerland as Chairman of the Joint Committee.*

2415. Mr. MORF (Switzerland) appointed Mr. Voyame as Chairman of the Joint Committee.

ORGANIZATION OF WORK

2416.1 The CHAIRMAN thanked the Delegates and pointed out that the following documents were before the joint Committee:

1. Memorandum of the Secretariat containing a list of the problems to be discussed (S/235)
2. Two proposals by the Delegation of Israel (S/227 and 228)
3. A joint proposal by the Delegations of Argentina, Mexico and Uruguay (S/231)
4. A proposal by the Delegations of France and Italy (S/236)
5. A proposal by the Delegation of the United Kingdom (S/95).

2416.2 The CHAIRMAN suggested that there were two questions confronting the Joint Committee: (1) should the additional Protocol Regarding Developing Countries, which had been dealt with by Main Committee II, be an integral part of the Stockholm Act? (2) when countries had acceded to the Stockholm Act, would that Act apply to all works, regardless of their country of origin?

2416.3 Dealing only with the Berne Convention for the moment, he thought that the attitude of delegates would depend on the contents of the Protocol. But Main Committee II had not yet completed its work; the Working Groups had more or less completed their work (S/224 and S/233) but they had not yet reported to the Main Committee. He suggested that the joint meeting should have a general and informal discussion while awaiting the conclusion of the deliberations of Main Committee II.

2416.4 There being no objection to that procedure, he invited general discussion on the first question to which he had referred.

GENERAL DISCUSSION: INTEGRATION OF PROTOCOL REGARDING DEVELOPING COUNTRIES INTO STOCKHOLM ACT

2417.1 Mr. PARDO (Argentina) wished to make a general statement on the reasons for the amendment submitted by the Delegations of Mexico and Uruguay and his own Delegation (document S/231).

2417.2 The purpose of the Protocol, namely to give the developing countries easier and greater access to the sources of knowledge available in the advanced countries, was in itself quite admirable. His Delegation was, however, doubtful whether the Protocol constituted the sole or even the best method, for it might well result in reducing creative stimulus. The sponsors of the amendment did not think that acceptance of the Draft Protocol would constitute an improvement, nor that the Protocol and the Act need form an integral whole. They wished to make a positive contribution without having to incur material consequences such as would result, for example, if the clause in Article 1(a)(viii) of the proposed text reproduced in document S/233 were approved. Nor would they like to have to choose between their own interests and the adoption of the Act. For those that did not wish material considerations, particularly economic, to enter into the Protocol, they thought document S/231 provided a fair compromise.

2418.1 Mr. BOERO-BRIAN (Uruguay) said that the record of the first meeting of Main Committee II would show that during the general discussion of the additional Protocol, the Delegations of Argentina, Mexico and Uruguay which had submitted the joint proposal by the Delegation of Mexico, had jointly opposed the Protocol. Many other delegations had also expressed objections and the result had been the proposal by the Chairman to adopt the procedure now being followed in respect to discussion.

2418.2 In agreement with the statement by the Delegation of Argentina, his Delegation thought the Protocol did not provide adequate machinery if it were to be part of the Act as stated in Article 20*bis*, since provisions would have to be incorporated in the Act to permit ratification of a single instrument. Their reason for requiring a separate Protocol was that it entailed the obligation to allow member countries the widest possibility of partial ratification.

2418.3 Under Article 25 it was possible to opt for Articles 1 to 20*bis*, which were the substantive provisions, and the Protocol Regarding Developing Countries or to opt for the administrative provisions only, that is Articles 21 to 23. His Delegation thought the choice insufficient. The third option contained in the joint proposal provided a wider choice, and would not prevent any country preferring the basic provisions from accepting them. It was a legal principle that by accepting the whole, one also accepted a part of that whole, and the proposal would facilitate the widest possible adherence, thus encouraging universality. Unless there was such a third option, his Delegation would have to reserve the right formally to oppose the Protocol, however reluctantly. They were confident, however, that a satisfactory solution would be found.

2419. Mr. RAYA MARIO (Spain) congratuled the Chairman and the Secretariat on the system of discussion proposed by them which would facilitate study of the question by the two Main Committees concerned. He supported the proposals by the Delegations of Argentina,

Mexico, and Uruguay, and wished to associate his Delegation with the statements made by the Delegations of Argentina and Uruguay. By separating the Protocol from the substantive clauses of the Convention, the greatest number of accessions would be ensured and the Protocol could be ratified separately. He considered that point to be one of extreme importance for the success of the Convention.

2420.1 Mr. SHER (Israel) said that in his Delegation's opinion the proposal in document S/231 was something new in the system of the Union. The decision taken by the Conference regarding the application of earlier texts especially in view of the Protocol would, he was sure, be for many years a subject of discussion by professors of law. The legal problems involved were of the greatest importance and theoretically it was not even certain that they could be solved. However, viewed practically, what was the principle of the Union? Hitherto it had been that although countries could adopt different legal systems under the various texts, they were, nevertheless, members of one Union. Countries, members of one Union, could thus apply—according to the text which they had accepted—different rules as regards, for instance, the term of protection. Although there had been no rule of reciprocity except in the very early Acts, but rather a unilateral acceptance of certain rules at certain stages of the Union's development, all Union countries had had one rule. There were three problems to be considered in connection with the application of any rules: one concerned time; one, space; and one, contents.

2420.2 As regards contents, it had already been stated that every country was bound by the last text adhered to. As regards space, every country must observe towards all others the rule of the latest text adopted, even though for citizens of that State another country which had acceded to an earlier text might provide less protection, in accordance with the text last adopted by them. As to time, the question was being faced for the first time, since hitherto once a text had been ratified, those ratifying it had been bound thereby. Now, however, there was a Protocol which many countries believed could be adhered to, although the Convention would not then have come into force.

2420.3 Finally, when a country became a member of the Union, it had to adopt the general legal system embodied in the Union, that is, if a country became a member of the Berne Union after the Stockholm Act had come into force, it must adopt the legal system on international copyright embodied therein, even if certain countries were not required to accept the legal order embodied in the Stockholm Act as such, but in the Stockholm Act as modified by the Protocol. If he was correct as to the legal effect of the system, the Protocol must form a whole with the Convention, as otherwise it would not become part of the legal order of the Union and would not have to be ratified. What then would be the relationship between the countries that had ratified it and those which had not? Would the rule of reciprocity apply? Or could it be assumed that those not ratifying the Protocol need grant no rights to a country acceding to the Protocol, because the interrelationship existing under the general legal system of the Union no longer applied? He welcomed the proposal to set up a small working group and had merely wished to draw attention to some of the implications.

2421. Mr. LABRY (France) asked the Chairman if the point under discussion was solely whether the Protocol was to be an integral part of the Stockholm Act, or whether they could now embark on the important legal problem arising in connection with Article 27 of the Berne Convention.

2422. The CHAIRMAN asked delegates to keep to the first question as far as possible.

2423.1 Mr. DE SANCTIS (Italy) said he reserved the right to speak again on particular points when the meeting had decided whether the Protocol was to form part of the Berne Convention or to be ratified separately, as was suggested in the joint proposal S/231.

2423.2 It was clearly difficult to deal solely with the question of the Protocol without referring to the other problems to which it was linked, such as the question of whether Article 25*quater*, the deletion of which was proposed in document S/9 Corr. 1, was to be retained. If it was deleted, that would have repercussions on other questions. It therefore seemed necessary to set up a Working Group to settle the very complex legal problems involved.

2424. The CHAIRMAN agreed that all those questions were linked but said that as they were now having a general and informal discussion, delegates would be able to revert to particular points.

2425.1 Mr. KRISHNAMURTI (India) said the need for a Protocol to meet the requirements of the developing countries had been accepted almost unanimously in 1965; whatever its contents it should be an integral part of the Convention, as otherwise it could not be used with respect to works whose country of origin was not a party to the Stockholm Act. India could continue in the Union and adopt the Stockholm Act subject, however, to two conditions: the Protocol must apply to all works whose country of origin was a Union country, and it must be rapidly available to India, not only as regards works from countries adopting the Stockholm Act, but also from countries continuing to adhere to earlier texts.

2425.2 His Delegation could not accept the proposal in document S/231. He hoped the countries that held such views would not stipulate reservations under the Protocol, but would leave it to the other developing countries participating to decide their own actions under the provisions of the Convention.

2426.1 Mr. STRNAD (Czechoslovakia) said that some countries would vote against the Protocol, as they found its contents unacceptable; as unanimity was required, there was therefore a danger that the Protocol might be rejected. But the rule of unanimity would also enable the developing countries to prevent the Stockholm Act from coming into force if they considered it to be against their interests.

2426.2 If there was to be no link between the Stockholm Act and the Protocol, what value would the Protocol have? Not being an integral part of the Convention, it could not be anything more than a special agreement between countries which did not accept the Stockholm Act as it stood. Article 20 of the Berne Convention made provision for special agreements, provided that they granted to authors more extensive rights than those granted by the Convention. Those who argued in favor of a separate Protocol were advocating a solution which ran counter to the spirit of the Convention and which would not satisfy the developing countries.

2426.3 It might be useful to consider a compromise on the following lines : (1) it would be expressly stated in the Convention that the Protocol formed an integral part of the Convention for those countries which ratified the totality of the Stockholm Act; (2) it would be stated that the Protocol would be open for accession by countries which were members of the Union, even before the ratification of the Stockholm Act, in order that its provisions might apply to the developing countries in the shortest possible space of time. The Working Group might consider that solution.

2427. Mr. HARBEN (United Kingdom) said the statement made on behalf of Uruguay, Argentina and Mexico—which, if the recommendation of Main Committee II was accepted, would be considered developing countries for the purpose of the Protocol—showed clearly that many countries, and not only developed ones, feared that the system of aid to developing countries proposed in the Protocol lacked efficacy and might do more harm than good. The Delegation of the United Kingdom shared those doubts and had already made it clear in written comments and statements in Main Committee II that they did not support the system proposed in the Protocol; there appeared to be two schools of thought in relation to problems at the national and international levels of copyright protection necessary to develop education and intellectual resources in developing countries. There was a danger that they might prove incompatible and that unless the joint proposal could be accepted in principle, the work of Main Committee II would be doomed to failure. While they supported the proposal in document S/231, they did not necessarily support the drafting of the proposal. He thought that the amendments of the text which would be required if the Protocol were to be separate and optional would be more suitably discussed in a Drafting Committee.

2428. Mr. GOUNDIAM (Senegal) thought that the amendment proposed by the Delegation of Argentina, Mexico and Uruguay (S/231) constituted a special system of international law differing from that of the Berne Union, and he drew attention to the danger of a proliferation of differing systems. His Delegation was opposed to the introduction into the Berne Union of a new system which would enable the Protocol to be separated from the rest of the Convention. Under the solution proposed by BIRPI and the Swedish Government, the Protocol, being an integral part of the Stockholm Act, did not require ratification if that Act had been ratified. That was the only satisfactory solution. The Delegate of Argentina had claimed that to link the Protocol to the Convention would jeopardize the development of national cultures, but these could develop in a linear manner. It would be undesirable to raise sociological problems of that kind in the present forum. The countries of Latin America also said that, if the Protocol became an integral part of the Convention, few States would ratify the Stockholm Act; but if the Protocol was separated from the Convention, those same States would not ratify it, in order to safeguard the rules of protection contained in the Convention, and the developing countries would be sacrificed. He was therefore opposed to a separation of the two instruments.

2429.1 Mr FERSI (Tunisia) said he regretted that it had proved impossible to give a clear definition of a developing country. Moreover, if the joint proposal (S/231) was adopted, the Protocol would no longer be an integral part of the Stockholm Act, and this would hamper developments at the international level. He had the impression that some countries were reserving their position, whereas the need for change was becoming widely realized; it was in order to work towards universality in protection that the Universal Copyright Convention had been added to the Berne Convention.

2429.2 He wished that the Secretariat of BIRPI could have prepared a study of the background of the Protocol, indicating why and for how long the developing countries had expressed a wish for assistance, showing how the African meeting in Brazzaville, the seminars in Asia and all the meetings of jurists had made it possible to draw up the present text. Some delegates might not perhaps be aware of the preparatory work which had been carried out to ensure that the Stockholm Revision Conference would be capable of achieving unselfish collaboration on a humanitarian basis.

2429.3 Like the Delegate of Czechoslovakia, he was opposed to any separate agreement and he favored the integration of the Protocol in the Stockholm Act. He hoped that the Berne Union would not be a closed club but a genuine union open to those countries which wished to make culture the heritage of all. He also felt that the Protocol should be capable of application before the Stockholm Act entered into force, so that the developing countries might reap the benefits of this instrument at the earliest possible moment. At the present stage of the discussion, he would appeal to everyone to exercise moderation and cooperation, as it would be peculiarly unfortunate if the work of Main Committee II and the Working Groups, which had been fraught with many difficulties, was to end in failure. He asked that further discussion should be adjourned, to give everyone time for reflection. He was extremely anxious that they should find a solution, because Tunisia, a developing country, had been a member of the Berne Union for a long time and he was better acquainted than many others with the urgent need for life and culture in the developing countries.

2430. The CHAIRMAN pointed out to the Delegate of Tunisia that the background of the Protocol was set out in document S/1. He reminded him that the discussion would be resumed when Main Committee II had completed its work.

2431. Mr. CURTIS (Australia) restated his Delegation's position which, he said, had been made clear at the first meeting of Main Committee II; he regretted that what appeared to be economic assistance of a particular kind to developing countries, had become interwoven with questions of substantive copyright. He thought economic questions should have been dealt with separately and that efforts should have been concentrated on shaping an instrument, applicable to all countries, on substantive questions of copyright. His Delegation had, however, said that if the great majority supported the idea of a Protocol, making copyright material accessible to developing countries under conditions different from those rendering such material accessible in developed countries, it would cooperate in seeking a solution which struck a balance between the legitimate interests of developing countries and the legitimate economic interests of authors. His Delegation's attitude would be influenced by the question of whether the substantive provisions of the Protocol paid due regard to the economic interests of authors and publishers. As the substance of the Protocol was not yet known, his Delegation would reserve its stand on the relationship between the Protocol and the Berne Convention until such time as the provisions were known.

2432. Mr. AMON D'ABY (Ivory Coast) supported all the views expressed by the delegates of the developing countries, and said that he was in favor of making the Protocol an integral part of the Stockholm Act. The Spanish-speaking delegations had expressed apprehension about that solution right from the start of the work of Main Committee II. He himself had thought that they had shifted their position and tried to find common ground. He regretted that he had been mistaken and he would reserve the right to speak at a later stage.

2433. Mr. CIPPICO (Italy) noted the considerable divergence of views on the item under discussion, the solution of which was vital to the success of the Conference. He regretted the differences of opinion even among the developing countries, since it was obvious that a strong desire for agreement existed. Naturally, the prospective donor countries would be in the most difficult position, but the goal had been well defined by the Delegate of Tunisia when he spoke of the fundamental importance of reaching agreement on a basis of common humanity. That should be borne in mind, even though the situation could not be assessed until the contents of the Protocol were known.

GENERAL DISCUSSION: APPLICABILITY OF DIFFERENT TEXTS OF BERNE CONVENTION

2434.1 Mr. LABRY (France) said that under the terms of a bilateral agreement dated May 21, 1948, a joint French-Italian commission had been set up to deal with questions of intellectual property, among other matters. That was the background to the joint proposal (S/236) which suggested that discussions should be based on the text of Article 27 in Document S/9 and not on that given in corrigendum 1, which was an interpretation of certain provisions of Article 27 of the Brussels Act and which ran completely counter to the initial provisions. The French Government had formulated its comments on the basis of Document S/9 and not on corrigendum 1. As the meeting was now engaged in a general preliminary debate, he would concentrate on the legal aspect of the problem.

2434.2 He would begin by stressing the great importance of the provisions of Article 27. The original BIRPI draft was based on the traditional and universal principles of public international law. One of those principles was that a sovereign State could not allow obligations to be imposed on it unless it had expressly agreed, under the procedures of its constitution, that those obligations should become applicable to it. That principle was enshrined in all conventions, including that of Berne. Since March 1883, the protection provided by the Paris Union had been extended, by virtue of the principle enunciated in Article 2 (assimilation of foreigners to nationals). If a State which had ratified the Paris Convention amended its legislation, it could not refuse to grant to all nationals of countries of the Union, and to assimilated non-nationals, the same rights which were given to its nationals. The problem had arisen when the Berne Convention had been revised at Brussels and reservations had been made. The States which had ratified the Brussels Act were free to apply the principle of assimilation or to avail themselves of the reciprocity clauses in regard to certain Acts. Paragraph (3) of Article 27 of the original BIRPI draft (S/9) was extremely important, and its wording had been approved by the French Government. But corrigendum 1 to Document S/9 was based on a different interpretation: those States which had ratified the Stockholm Act could apply it to all the States of the Union, even those which had not ratified it. That would have the effect of making the ratification provisions meaningless because, if a State was bound solely by reason of the fact that it had signed a document at Stockholm, what would be the purpose of ratification, and what would be the purpose of the national parliament itself? Such were the implications of the corrigendum, and he could not accept them.

2434.3 It would be possible to keep to the Brussels text, but that would not be a satisfactory solution, because the documents which had been distributed reflected an interpretation which might subsequently be challenged by the traditional interpretation adopted in international public law. A contrary interpretation could, of course, be included in the general report, but it would have no legal value.

2434.4 The Delegation of France must insist that the original BIRPI wording should be included in the Convention; if that was not done, when the time came for the vote in the Plenary Assembly the French Government would be obliged to vote against the application of the new provisions to any country before that country had given its express agreement by means of ratification. He agreed that changes were taking place in the law at the present time, but he maintained that in this particular case no other interpretation could be accepted, owing to the clear contradiction between the original BIRPI draft and corrigendum 1, which made it impossible for the French Government to accept the new text as it stood.

2435.1 Mr. DE SANCTIS (Italy) reminded the meeting that corrigendum 1 to Document S/3 contained a proposal to omit paragraph (3) of Article 18 of the Paris Convention, and that corrigendum 1 to Document S/9 proposed the omission of Article 25*quater* and paragraphs (2) and (3) of Article 27, and to add a sentence to paragraph (1) of the same Article 27. In its written comments, the Italian Government had expressed doubt as to the possibility of accepting those amendments, which had never been considered at the meeting of the Committee of Experts in May 1966. Further comments on those corrigenda had been made by several governments, including that of the United Kingdom. In his view, no serious consequences would flow from the differences of doctrine and jurisprudence in regard to Article 18 of the Lisbon Act, Article 27(1) of the Brussels Act and the earlier and later Acts revising those two Conventions. The situation would be different if the Stockholm Act contained reservations which might result in a diminution of protection. That was why authors in the countries of the Union were anxious that the actual text of the Convention should contain a clear interpretation of the following principles: (i) when protection operated between countries of the Union which had acceded to different Acts, the most recent Act should prevail; (ii) when protection operated between countries outside the Union which were parties to the Stockholm Act and countries of the Union which were not parties of that Act, the applicable provisions should be those of Article 25(1)(b) either of an earlier Act or of the Stockholm Act, in which the provisions were somewhat different, subject to reciprocity of treatment.

2435.2 The principle upon which those texts were based was that the link between all the countries of the Union was the same, regardless of the successive Acts to which those countries might have acceded or which they might have ratified. It was therefore a fairly flexible principle, which enabled the States concerned to make reservations in regard to the term of protection, to translation, etc.

2435.3. The Delegation of Italy did not wish to make any formal statement, but would ask the meeting to take Document S/236 into account and ensure that Article 18 of the Paris Convention and Article 27 of the Berne Convention were studied on the basis of Documents S/3 and S/9. He must insist that an interpretative rule should be drafted dealing with the scope of the obligations accepted by countries of the Union and with the interpretation of the successive Acts affecting the Berne Convention. He thought that satisfactory results could be achieved by a Working Group.

2436.1 Mr. BOWEN (United Kingdom) said he would speak only on Article 27 of the Berne Convention. The Brussels and earlier Acts had not clearly settled the question of the obligations existing between countries which had accepted different Acts. In strict legal theory, two countries could only be bound by an Act to which both were parties; in the circumstances of the Berne Convention, this might lead to impossible situations. A sufficient legal link for countries parties to differents Acts arises from membership of the Berne Union. Berne Union countries had recognized this, by establishing a system whereby each country gives the protection demanded by the latest Act, to which it is a party, to the works of any country party to the same or any other Act, and expects in return that each such country will give to the works the protection required by the latest Act to which that country is a party. The United Kingdom Copyright Act of 1956, the Copyright Act of 1965 of the Federal Republic of Germany, and the Swedish Copyright Act of 1960, were good examples.

2436.2 The text of Article 27 in Document S/9 gave rise to many difficulties and uncertainties. Some arose because the Berne Convention, rightly, not only gives

rights to authors, but seeks to balance these against the needs of copyright users, and from one Act to another the point of balance shifts. For example, the Brussels Act allows a user to use works protected by copyright in reporting current events, while the Rome Act contains no such provisions. If therefore an author belonged to a Rome Act country and the user to a Brussels Act country, a third country, party to both, would be in breach of its obligations to the user's country in refusing to permit the work to be used for the purpose stated in the Brussels Act and in breach of its obligations to the author's country if it allowed the work so to be used.

2436.3 Another example might result from the rule of the interpretation concerning films which was to be introduced by the Stockholm Act. If countries A and B ratified the Stockholm Act and both recognized artistic contributors as copyright owners of a film and, if this film is made by a maker from country B, while the artistic contributors were nationals of a country C, party only to the Brussels Act, the presumptions of Article 14 would operate in country A to prevent the artistic contributions from opposing the exploitation of the film. This would give grounds for complaint by country C which, by not ratifying the Stockholm Act, had not agreed that its artistic contributors should be subject in a Stockholm Act country to the system of presumption.

2436.4 The text in document S/9 was unacceptable to the Delegation of the United Kingdom. They considered it impossible to apply different systems of copyright to work originating from countries adhering to different Acts of the same Convention. Document S/9 corrigendum 1 sought to remedy the defects, but it did not go far enough to satisfy practical requirements. The Convention must explicitly provide that a Union country should give to all other Union countries the protection demanded by the latest text to which it was a party. Any other system was impossible to operate, was contrary to the practice established by Berne Union countries, and lent no significance to the fact of membership in the Berne Union.

2436.5 He proposed that Article 27 be worded as in document S/95, of which Article 27(1) gave effect to the principle that a country must give the protection demanded by the latest text to which it was a party to the works of authors from all other countries, while Article 27(2) required that those other countries should give authors from the first country the protection demanded by the latest Act to which they were parties. Such provisions were consistent with established practice, would give significance to membership, would enable sensible results to be achieved and would remove doubts and uncertainties for authors and users which would follow from adoption of the text in S/9.

2437.1 Mr. HESSER (Sweden) said the tendency to treat corrigendum 1 as a document of secondary importance was incorrect. As could be seen from Rule 32, paragraph (2), of the Rules of Procedure, the corrigenda replace the original proposals and form the basis of discussion to which amendments could be made.

2437.2 In what followed, he was speaking on behalf of the Danish and Norwegian Governments, as well as of the Swedish Government. The discussion appeared to suggest that the corrigendum proposed revolutionary changes; actually it was seeking to maintain the Berne Convention text with drafting changes. There was room in the Berne text for the different interpretations said to exist, although in practice the interpretation or rather application explained by the Delegation of the United Kingdom, was mainly applied, namely the Union system, whereby a country entering the Union could claim protection for works in all other countries, on the basis of the latest text of the Berne Convention the other country had adhered to, while each Union country could do likewise in the new member country. In many cases, Union countries with an overall application of the Berne Convention did not apply the same texts. Argentina, Mexico and Uruguay were new members of the Berne Union which they had joined by acceding to the Brussels text. They nevertheless expected protection in countries adhering to the Rome or Berlin versions of the Berne Convention and vice versa. That applied not only to clauses on protection but also on exceptions.

2437.3 For example, the Brussels text contained a clause on ephemeral recordings. Every country acceding to the Brussels text allowed broadcasting companies to make such recordings even with regard to works originating in countries still being party to an earlier Act. Were that not so, the work would have to be interrupted at certain moments, because the country in question had not adhered to the Brussels text. Most countries applied the rule of the latest text in practice, and the sole purpose of corrigendum 1 was to maintain a system which made such application possible.

2438.1 Mr. STRNAD (Czechoslovakia) drew attention to certain weaknesses in the solution proposed by the Swedish Government (corrigenda to S/3 and S/9). In particular, it would be unwise to believe that the difficulties connected with the relations between the successive Acts affecting the Berne Convention could be solved by the Stockholm text, because some countries would accede to the Stockholm Act and others would not.

2438.2 In order to dispel doubts as far as possible and to enable all countries to accede to the Convention, an interpretative protocol would have to be drawn up, in the form of a separate instrument. That was the solution which had been adopted in 1896 for the Berne Convention. The same thing could be done now, and Article 27 fo the Berne Convention, as worded in Document S/9, could be incorporated in a separate protocol. That protocol would be open to all countries, even to those which were not parties to the Stockholm Act.

2438.3 Document S/9 and corrigendum 1 started from the idea that the most recent Act must provide the basis for protection. He himself did not accept that interpretation. In the Brussels Convention, mention had been made in Article 11*bis* of the right of communication to the public. Those countries of the Union which applied the Rome revision of that text could not be required to grant protection in accordance with rules which were not contained in that text. Each country could only be bound by the Act to which it had acceded.

ESTABLISHMENT OF WORKING GROUP

2439. The CHAIRMAN declared the discussion closed and suggested that a Working Group should be set up consisting of the following countries: Argentina, Czechoslovakia, France, India, Italy, Senegal, Spain, Sweden, Switzerland, Tunisia and the United Kingdom.

ORGANIZATION OF WORK (continued)

2440. Mr. BODENHAUSEN (Director of BIRPI) proposed that Main Committee II should meet in the afternoon to finish its work, as that was essential if the Working Group was to be able to carry out its mandate.

The meeting rose at 12:40 p.m.

SECOND MEETING

Monday, July 3, 1967, at 9:30 a.m.

ORGANIZATION OF WORK (continued)

2441. The CHAIRMAN informed delegates that, as the Working Group had not yet concluded its work, it would be impossible to resume the discussions forthwith. He invited the Director of BIRPI to indicate the timetable for the following three days.

2442. Mr. BODENHAUSEN (Director of BIRPI) told the Committee that the Coordination Committee had decided on the following timetable for the first three days of the week: Monday: 11 a.m. and 2:30 p.m., Main Committee I; 2:30 p.m., Main Committee II. Tuesday: 9:30 a.m., Main Committee I; 9:30 a.m., Joint Working Group for Main Committees II and IV; 11 a.m., Main Committee IV; 2:30 p.m., joint session of Main Committees II and IV; 2:30 p.m., Main Committee V. Wednesday: 9 a.m., joint meeting of Main Committees I and II; 9:30 a.m., joint meeting of Main Committees IV and V; 2:30 p.m., Main Committee IV.

The meeting rose at 9:40 a.m.

THIRD MEETING

Tuesday, July 4, 1967, at 4:45 p.m.

PROPOSALS OF THE WORKING GROUP

2443.1 The CHAIRMAN said that the proposals of the Chairman of the Working Group were based on the discussions in the Working Group and the Chairman's note. As would be seen from that note, the Working Group had limited its discussion to the Berne Convention and had accepted two working hypotheses: (i) the Protocol Regarding Developing Countries would in essence contain the provisions drawn up in Main Committee II; (ii) the Protocol would form an integral part of the Convention and would have to be ratified at the same time as the Convention (unless Articles 21 *et seq.* were ratified separately).

2443.2 In regard to the question as to which Act applied between countries of the Union, two separate cases were involved: (i) application as between States which were already parties to the Union; (ii) application in regard to countries which were not yet parties to the Union. To deal with the first case, the Working Group proposed a new wording of paragraphs (1) and (2) of Article 27, which combined the two paragraphs in one. He would suggest that that paragraph be referred for examination to Main Committee IV, whose responsibility it was. In regard to the second case, the Working Group had been unable to find a solution, and it proposed that the Brussels text, which contained no provision on the subject, should be retained.

2443.3 Finally, in regard to the application of the Protocol, it would be difficult to keep to the Brussels text, in view of the varying interpretations to which it was subjected. Hence the Working Group proposed a new wording for Article 27(3). After reading out the proposed wording, he pointed out that it was not yet definitive, as it still had to be submitted to the Drafting Committee. He invited delegations to submit their comments on the Working Group's proposals.

2444. Mr. PARDO (Argentina) said a member of the Delegation of Argentina had attended the meetings of the Joint Working Group, and his Delegation did not in principle oppose the text for Article 27, paragraph (3) proposed by its Chairman; it continued, however, to have reservations, since the suggested deletion of the proposed Article 25*quater* of the Convention (S/9) had introduced a new element. For the sake of clarity, however, he proposed deleting from the suggested text for paragraph (3) the words: "...which are not party to this Act ... permitted by Article 25(1)(b)(i),".

2445. The CHAIRMAN pointed out that the Working Group had worked on the assumption that the Protocol would form an integral part of the Convention; that assumption was still valid and hence the amendment submitted by the Delegate of Argentina might be considered as a drafting amendment.

2446. Mr. AMON D'ABY (Ivory Coast), referring to the problem of the relation between the Protocol and the Convention, said that, as the Working Group had only put forward a hypothesis, the fact must be accepted that no definite place had been found for the Protocol in the Act itself, which was disturbing. Hence his Delegation and certain other African and Asian delegations intended to submit an amendment on this subject.

2447. The CHAIRMAN said that the question which had been raised by the Delegate of the Ivory Coast would be dealt with later.

2448. Mr. FERSI (Tunisia) said he had some reservations in regard to the last lines of the new draft of paragraph (3), but he would prefer not to express any opinion until the African delegations had submitted their amendment in writing.

2449. The CHAIRMAN asked Mr. Fersi exactly what kind of reservation he wished to make. If the assumption that the Protocol was an integral part of the Convention was confirmed, would he withdraw his reservations?

2450. Mr. FERSI (Tunisia) reminded the Committee that the text was still in course of preparation. Hence he would reserve his position.

2451. The CHAIRMAN said that it would be impossible to wait any longer and if there was to be a new proposal it would have to be submitted forthwith and in concrete form.

2452. Mr. FERSI (Tunisia) proposed that the vote should be taken and said that he would vote against the text which had been suggested for the new paragraph (3) of Article 27.

2453. Mr. BODENHAUSEN (Director of BIRPI) thought it would be inadvisable to vote at the present stage and suggested that the Delegate of Tunisia should merely reserve his position, which would allow him to speak again when the question of the link to be established between the Protocol and the Convention had been settled.

2454. Mr. FERSI (Tunisia) accepted the Director's suggestion.

2455. The CHAIRMAN took note of the fact that the Delegate of Argentina had entered some reservations in regard to paragraph (3). He suggested that the joint Committee should adopt paragraph (3), on the understanding that the Drafting Committee would take account of Argentina's drafting amendment.

2456. *It was so agreed.*

2457. The CHAIRMAN invited the joint Committee to turn to the question of the anticipated application of the Protocol (S/9, Article 24*quater*). As some differences of opinion in regard to the interpretation of Article 25*quater* had come to light in the course of the discussion, the Working Group proposed that a new Article 5 should be added to the Protocol, the text of which he read out.

2458.1 Mr. KRISHNAMURTI (India) suggested that the words "date of" be inserted before the word "signature" in the first sentence of paragraph (1), which would then read: "Any country of the Union may declare, as from the date of signature of this Convention..."

2458.2 The developing countries could only hope that the developed countries would make the declaration in question rapidly, as otherwise the provisions of the Protocol would lose their purpose. Many delegations from the developing countries were very concerned about the situation and consultations were continuing in the hope of finding a method of dealing with it.

2459. Mr. BELINFANTE (Netherlands) asked why this provision, which was included in the Convention itself, was now to be incorporated in the Protocol. He could see no advantage in that change.

2460. The CHAIRMAN replied that certain delegates had thought that Article 25*quater* of the Convention could only enter into force when a minimum number of ratifications had been deposited. It was true that the same kind of problem would arise in connection with the Protocol, but there was another and more important reason: to enable those developing countries which were bound by the Brussels text to accede to the Protocol, as well as those bound by the Stockholm text.

2461.1 Mr. CURTIS (Australia) said his Delegation did not object to the principle underlying the proposed new Article 5, but would reserve its position until it had seen the final text of the other Articles in the Protocol. If on the hypothesis adopted by the Working Group, the Protocol became an integral part of the Convention, it would not come into force before the entry into force of the substantive Articles, and the position would hardly be improved by introducing Article 5 into the Protocol in place of Article 25*quater* in the Convention; a point concerning the interpretation and operation of conventions was involved.

2461.2 If, moreover, it was intended that certain provisions should come into operation immediately on conclusion of the Conference, without waiting for the entry into force of the Stockholm Act, that could not be achieved by the inclusion of provisions in an instrument which could not enter into force until ratified by the requisite number of countries. Article 5 could have no greater status than a Resolution of the Conference recommending a certain course of action to member countries. In those circumstances a Resolution might be more appropriate and the legal position would certainly be clarified.

2462. The CHAIRMAN said that the Working Group had not thought fit to give Article 25*quater* the form of a Resolution of the Conference, as its Chairman had suggested. He inquired whether the delegations were prepared to take up that idea.

2463. Mr. STANESCU (Rumania) thought that the Delegate of Australia was right and that, if the provision was inserted in the Protocol, it would not take effect until the provisions of the Convention themselves entered into force. If it really was desired that the Protocol should be applied forthwith, a suitable legal procedure would have to be devised. It seemed that the solution proposed by the Working Group could not be adopted.

2464. The CHAIRMAN said that those problems had been examined by the Working Group, and that Article 25*quater* of the Berne Convention, like Article 5 of the Protocol, formed an independent provision. It was agreed that special provisions could be made to bring forward the date of entry into force. It was on that basis that the Working Group had made its proposal for a new Article 5.

2465. Mr. DE SANCTIS (Italy) said he approved the text of Article 5 as it had been proposed by the Working Group, and he reminded the joint Committee that all the arguments which had been put forward had been examined by that Group. Failing a special resolution of the Conference, special arrangements could be made in the Convention or the Protocol to enable certain provisions to enter into force. Any country of the Union could declare that it would apply the Protocol immediately on signature. There was nothing to prevent the Conference from introducing into the Protocol special clauses governing the entry into force of its provisions. That would be an intermediate solution between a separate Protocol and a Protocol linked to the Convention, and it would give adequate freedom of manoeuvre.

2466. Mr. GOUNDIAM (Senegal) said that in practice certain agreements could enter into force immediately on signature, in spite of provisions of domestic law requiring ratification, which might take place subsequently. Article 25*quater* could contain a provision concerning entry into force, followed by a declaration in the form of an annex.

2467. The CHAIRMAN pointed out that the new Article 5 of the Protocol would incorporate paragraph (2) of Article 25*quater*, which stated that the declaration became effective from the date on which it was deposited.

2468. Mr. STRNAD (Czechoslovakia) considered that any Convention could be amended with the unanimous agreement of the signatory countries present and voting. If the Stockholm Conference agreed unanimously that the Protocol should enter into force immediately on signature, before the Stockholm Convention had been ratified, there would be no reason not to accept the rule set out in Article 5. It would merely have to be made clear that unanimous agreement did not imply that all the countries which had voted for the principle undertook to apply the provisions of the Protocol. A declaration to that effect by the countries concerned would be necessary.

2469. Mr. BODENHAUSEN (Director of BIRPI) explained that paragraphs (2) and (3) of Article 25*quater* would be transferred bodily to Article 5 of the Protocol. Article 5(2) stated that the declaration must be made in writing and deposited with the Director General, so that there would be no danger of the vote in favor of immediate application giving rise to any misunderstandings. It appeared that the joint Committee was in agreement on the substance of the matter and that the Drafting Committee could be asked to deal with the question of where the provision was to be inserted—either in the Protocol or in a resolution of the Conference. But it was essential that the joint Committee should decide forthwith whether the Protocol should or should not form an integral part of the Convention.

2470. Mr. PARDO (Argentina) expressed his Delegation's conviction that the many and increasing difficulties surrounding the problem could only be solved by separating the Protocol from substantive Articles 1 to 20 of the Convention.

2471.1 Mr. RAYA MARIO (Spain) observed that the possibility of the anticipated application of the Protocol had the unanimous approval of the joint Committee; there was clearly a desire to bring it into effect as rapidly as possible. That being the case, the Protocol should be an independent instrument. The objections Article 25*quater* gave rise to were of a technical nature and concerned legal interpretation. The Working Group had felt that Article 5 should be inserted in the Protocol because it would facilitate the anticipated application and provide a means for independent ratification and acceptance of the Protocol. Each country of the Union could then adhere independently to the Protocol in accordance with its own national legislation.

2471.2 While the joint Committee was agreed on the need to speed up ratification, delegations must know the exact contents of the declaration concerned. Drafting would be of the greatest importance if a formula was to be found which would be acceptable to all and would permit ratification of the Protocol.

2472. Mr. BELINFANTE (Netherlands) agreed that Article 5 as proposed by the Working Group was satisfactory and that it would enable the Protocol to enter into force before the Convention. It would not be contrary to international public law to state in that Article that the provisions of the Protocol would become effective immediately. But the question as to whether that provision should be contained in the Protocol or in a separate Resolution was a question of substance which could not be referred to the Drafting Committee.

2473. Mr. KRISHNAMURTI (India) said that doubts had been expressed as to whether Article 25*quater* or the new Article 5 proposed for inclusion in the Protocol for Developing Countries could come into operation before the Convention came into force. In its anxiety to ensure that the developing countries would be able to benefit under the Protocol, his Delegation suggested that, whichever provision was decided upon, it should be inserted in the Convention. As the Conference was a plenipotentiary one, a supporting resolution should be prepared, and also a declaration by means of which any country could state its willingness to extend concessions under the Protocol to works of which it was the country of origin. Countries need not make such a declaration immediately, but a reasonable time limit should be set for its making.

2474. Mr. JELIĆ (Yugoslavia) said it frequently occurred that certain provisions became effective before the instruments containing them entered into force, and that procedure did not give rise to any difficulties. There was nothing unconstitutional about it, and national legislations authorized the application of certain provisions before they had been ratified and entered into force.

2475.1 Mr. CURTIS (Australia) said the discussion had not changed the viewpoint of his Delegation. If the proposed Article 5 was to apply only to countries signatory to the Convention, the act of signing the Convention was sufficient indication that they had agreed, as between themselves, to apply its provisions. If the Article was to apply to all countries, whether signatory or not, then according to the procedure laid down in Article 5, two countries—one developed and one developing—might agree between themselves that one would apply and the other recognize the provisions of the Protocol. That would be in order, since it would be a bilateral agreement that was involved.

2475.2 He had, however, understood that there was a suggestion that the procedure would acquire a higher status if included in the Protocol which was an integral part of the Convention. Any such interpretation was unacceptable to his Delegation.

2476. Mr. McDONALD (Canada) said he was grateful to the Delegate of Australia for pointing out the legal problem connected with Article 5. There were various possible solutions, but as the joint Committee was agreed on the substance, he recommended following the Director's suggestion to refer the text to the Drafting Committee. The joint Committee could then proceed to the problem of the relationship between the Protocol and the Convention on which there might well be disagreements of substance.

2477. The CHAIRMAN said he noted that the joint Committee was in agreement on the substance of the matter, and that the differences of opinion in regard to drafting could be referred to the Drafting Committee, as had been suggested by the Director of BIRPI. In any case, the object of the joint meeting was to reach agreement in principle and not to undertake drafting work.

2478. *It was so agreed.*

2479.1 Mr. STRASCHNOV (Monaco) drew the attention of the joint Committee to the fact that it had approved Article 5(3) dealing with "rights acquired." He wondered whether that was intended to apply to existing rights of authors which had come into existence before the declaration of application or to rights assigned to third parties, such as publishers, with the result that the contracts continued to be valid.

2479.2 What would happen when a country bound itself by Articles 1 to 20*bis*, that is, when the declaration lost its effect? Would the Protocol then affect "rights acquired," or would they continue?

2480. Mr. HESSER (Sweden) said the clause was a normal one in international conventions instituting new regulations in certain legal fields. For instance, in the case of authors' rights acquired by contract before the Protocol took effect, such a contract would remain valid even in respect of rights affected by reservations.

2481. Mr. STRASCHNOV (Monaco) thought that where such rights were transferred to a third party, such as a publisher, before the declaration of application was made, the Protocol would have no real effect, and the benefits to be obtained from it would be greatly diminished. A provision of that nature was normal in international conventions, but in the present Convention it applied only to the declaration of anticipated application in the Protocol. There was no similar provision for the normal application of the Protocol or the Convention, and he failed to see the logic of the system.

2482. Mr. HESSER (Sweden) said the clause appeared, for instance, in the Rome Convention on Neighboring Rights (Article 30). If a new regulation was to be brought into effect rapidly, such a clause would be needed, as private parties would have no time to adjust to new regulations. If the transitional period was reasonably long such a clause would not be essential, which might explain why it did not appear in the body of the text of some conventions. In a declaration whose sole purpose was to bring regulations into force immediately, however, such a clause would be of practical interest.

2483. Mr. LABRY (France) asked the Delegate of Sweden whether the clause covering the reservation of "rights acquired," placed where it was, meant that those rights would only be effective until the Convention entered into force definitively, or whether the reservation would continue to apply after the Convention had entered into force.

2484. Mr. HESSER (Sweden) said he was sure that the practical application of such a clause would present difficulties in many cases and would have to be left to the Courts to decide.

2485. Mr. KRISHNAMURTI (India) said that his Delegation and the delegations of other developing countries were grateful to the Delegate of Monaco for having pointed out certain legal difficulties. The rights in question might be acquired either under a contract or under the Convention. To the extent that the Berne Convention did not stipulate formalities for the acquisition of rights, the Courts might interpret the clause as meaning rights acquired under the Convention, in which case the Protocol would become meaningless. He thought that the provision might be accepted if included in the substantive part of the Convention, but it should definitely be excluded from the Protocol.

2486. Mr. DE SANCTIS (Italy) thought that the question which Mr. Straschnov had raised was a very important one. Several international Acts contained provisions safeguarding "rights acquired." There were no such provisions in the Berne Convention, but there were in the Universal Copyright Convention and in the Rome Convention on Neighboring Rights. Paragraph (3) of Article 25*quater* should not be interpreted as not safeguarding "rights acquired" in general, although it was introduced here specifically in connection with the anticipated application of the Protocol. The Drafting Committee would be able to find a suitable wording for inclusion in the Convention. With regard to the special question of the anticipated application of the Protocol, he appreciated the reasons put forward by the Delegate of Sweden, and he thought that the provision in paragraph (3) dealing with "rights acquired" should be retained. It would be wise to add to the Convention a general provision dealing with the same problem.

2487. Mr. GOUNDIAM (Senegal) thought that the idea of "rights acquired" was a complex one and that it might be counterbalanced by the concept of public rights (*ordre public*). In his view, the existing text should be retained and its interpretation left to the national Courts.

2488. Mr. LABRY (France) was in favor of inserting a general provision on "rights acquired" in the Convention itself.

2489. The CHAIRMAN asked the Delegate of India to indicate whether he was proposing the deletion from the Protocol of paragraph (3) of the new Article 5.

2490. Mr. KRISHNAMURTI (India) replied that his Delegation had suggested that paragraph (3) of Article 25*quater* could, if necessary, be retained in the Convention but should be eliminated from the Protocol. Paragraph (3) of Article 5 as proposed for the Protocol should be deleted.

2491. Mr. BOWEN (United Kingdom) did not think that "rights acquired" referred to rights of authors given by the Convention. In his opinion, it meant rights acquired by third parties from authors prior to the date of the Declaration. For instance, should an author write a book and promise a publisher that he should print it and have sole distribution rights in India, although the Indian Government might wish to take advantage of the Protocol it could not affect the rights of that publisher. However, that would not apply if the same occurred after the date of the Declaration. It was merely a matter of drafting; the use of the term "rights acquired from the author" might meet the case.

2492. Mr. SHER (Israel) said that if he had correctly understood what the Delegate of the United Kingdom had suggested, not only rights but also obligations would remain in force. For example, in the case of an Indian publisher publishing a book under a license granted by an English author, the rights acquired would remain in force and the author could not deprive the publisher of his rights as a result of a new legal situation. In such a case, however, the Indian Government might legislate that the book be produced under different conditions because it was required for educational purposes. The conditions of contract would nevertheless remain binding between the parties and the publisher would therefore have to continue payments to the English author, although Indian national legislation had changed. In his opinion, Article 25*quater* referred to public rights, that is, rights under the Convention. To facilitate the application of the Convention by the developing countries, he proposed that that Article be deleted.

2493. The CHAIRMAN said that the joint Committee had before it a proposal by the Delegate of India to delete from the Protocol paragraph (3) of the new Article 5. The French proposal to add a general provision to the Convention was a matter for Main Committee I, to whom it would be referred.

2494.1 Mr. STRNAD (Czechoslovakia) drew the attention of delegates to some specific cases in which difficulties might arise if no provision was made for the settlement of "rights acquired." The Protocol provided for the issue of a license to translate works published in the original language after a period of ten years. Under that system, taking the case of a work published fifteen years previously in the United Kingdom and hitherto protected, would that work be regarded as "free" under the proposed system if a developing country availed itself of a reservation in regard to translation? Could it be freely published and distributed? That would be rather dangerous for publishers and authors who had already entered into agreements and incurred expenditure with a view to publishing those works in developing as well as developed countries. That interpretation of paragraph (3) also implied that, until the Convention entered into force, publishers would probably be unwilling to publish a work by an author from a developing country if the original publication had taken place more than ten years previously. The question was an important one and deserved to be studied by the Working Group.

2494.2 Another example which could be quoted was that of a developing country availing itself of the right to reduce the term of protection to the new minimum (25 years). In such a case, would all existing agreements in regard to publishing, theatrical performances and cinematographic works be called in question? That would be a serious threat to the interests of authors in developing countries, and the Protocol would become a two-edged weapon.

2494.3 He would urge the joint Committee not to reach a decision without thoroughly examining all the consequences of the provisions which it was proposing to adopt.

2495. The CHAIRMAN thought it would be difficult to postpone the solution of the problem. The main thing was to lay down principles. It would be for the judges in the national courts to decide on particular cases.

2496. Mr. HESSER (Sweden) said it was a generally accepted principle that new legislation could not affect rights granted before its enactment. It might be misleading to insert the clause in the Protocol and not in the Convention, and it might therefore be wise to delete it from the former and rely on general legal principles, particularly since, as the Delegate of Senegal had explained, public rights must operate to some extent in certain cases.

2497. Mr. HARBEN (United Kingdom) said his Delegation remained opposed to the deletion of paragraph (3) of Article 25*quater*.

2498. Mr. KRISHNAMURTI (India) suggested that Main Committee II should discuss the matter.

2499. The CHAIRMAN, replying to the Delegate of India, said that Main Committee II could not discuss the question without having the views of Main Committee IV. It would therefore be necessary to proceed to a vote.

2500. Mr. LABRY (France) speaking on a point of order, said it would be most regrettable if the joint Committee were to vote after a confused discussion on the important question of "rights acquired," the effects of which could not be foreseen. In any event, the Delegation of France would vote against the deletion of paragraph (3).

2501. The CHAIRMAN asked the delegates to vote on the Indian proposal to delete paragraph (3) from Article 5.

2502. *That proposal was adopted by 23 votes to 7 with 8 abstentions.*

INTEGRATION OF PROTOCOL REGARDING DEVELOPING COUNTRIES INTO STOCKHOLM ACT (continued)

2503. The CHAIRMAN invited the joint Committee to consider the question as to whether the Protocol should form an integral part of the Convention—in other words, whether it should be ratified at the same time as Articles 1 to 20*bis*. The Delegations of Argentina, Mexico and Uruguay had submitted a joint proposal on that point (S/231).

2504. Mr. TORRES SANTIESTEBAN (Cuba) asked whether Cuba could be considered as a developing country and whether or not it could benefit from the Protocol.

2505. The CHAIRMAN replied that that was a question for Main Committee II.

2506. Mr. PARDO (Argentina) said that at the first joint meeting of Main Committees II and IV his Delegation had presented a draft amendment to Document S/9 on behalf of the Delegations of Argentina, Mexico and Uruguay. There had been much subsequent discussion and the conclusions had been confusing. The main confusion had been caused by the fact that according to Article 25*quater*, the Protocol and Articles 1 to 20*bis* must be ratified simultaneously. The Main Committee had had an example of the sudden difficulties that might arise when the Indian Delegate had raised the question of what could happen if Article 5 was included in the Protocol. All the difficulties in respect of the anticipated application of the Protocol arose from insistence on joint ratification of the Protocol and the amendments to the substantive articles of the Brussels Act. The problem of the relationship between countries adhering to the Union by accession to the Stockholm Act and those adhering by accession to the Brussels Act had already been solved. Since most countries were willing to make the benefits of the Protocol available to those desirous of having them, he failed to understand why the situation need be complicated by insistence on retaining two distinct elements as one.

2507. Mr. FERSI (Tunisia) said he would vote against any provision which was intended to dissociate the Protocol from the Convention.

2508. Mr. AMON D'ABY (Ivory Coast) emphasized the good faith shown by the developing countries in supporting the Protocol and thus respecting the intellectual property of all authors. They could have made use of works of the intellect without resorting to agreements of that kind, which were liable to recoil on them. He therefore urged that the Protocol should form an integral part of the Convention.

2509. Mr. GOUNDIAM (Senegal) reminded the joint Committee that Conventions existed containing Protocols which did not need to be ratified separately. It would be contrary to the spirit of the Berne Convention to establish two categories of text.

2510. Mr. STANESCU (Rumania) reiterated that the Protocol would be meaningless unless it formed an integral part of the Convention. It gave the developing countries an opportunity of making certain reservations, and, if it was not incorporated in the Stockholm Act itself, it would go unnoticed. From the discussions which had taken place in Main Committee II, it seemed clear that delegations wanted the provisions of the Protocol to be implemented. There might be differences of opinion on the contents of the Protocol and on the question of the extent to which countries could make reservations, but it was essential that the principle of the integration of the Protocol in the Convention should be safeguarded.

2511. Mr. TORRES SANTIESTEBAN (Cuba) said his Delegation thought the Protocol should be integrated in the Stockholm Act. If the Protocol was separate from the Act, he believed there would be very few ratifications and consequently those ratifying it would be at a disadvantage.

2512. The CHAIRMAN put to the vote the proposal of the Delegations of Argentina, Mexico and Uruguay (S/231).

2513. *The proposal was rejected by 27 votes to 4 with 6 abstentions.*

2514. Mr. BODENHAUSEN (Director of BIRPI) replying to a question in regard to voting rights, said that the Delegation of Uruguay was not able to vote because that country's accession to the Berne Convention would not take effect until July 10, 1967.

APPLICABILITY OF PROTOCOL TO TERRITORIES (S/149)

2515 The CHAIRMAN invited the joint Committee to consider a proposal of the Delegation of the United Kingdom (S/149) which contained a paragraph (paragraph 4) dealing with the introduction of a territorial clause as Article 1 B of the Protocol.

2516. Mr. FERSI (Tunisia) said he would vote against the proposal, as he considered that in the very near future all peoples would be in a position to ratify international conventions themselves.

2517. Mr. CHAMBERLAIN (United Kingdom) pointed out that the United Kingdom's proposal was not a territorial application article in the classic sense, since that already existed in the main body of the Convention. His Delegation had repeatedly expressed its views on the Protocol, but it nevertheless considered that there should be some facility for a dependent territory—by nature a developing one—to which the Convention and the Protocol were extended under Article 26, to avail itself of the reservation specified in the Protocol, should it so desire.

2518. Mr. BELINFANTE (Netherlands) supported the United Kingdom proposal because the Netherlands were responsible for the external relations of two overseas countries which, in their own interest, ought to be able to make their own decision as to whether they wished to take advantage of the provisions of the Protocol.

2519. Mr. STRNAD (Czechoslovakia) said he had already opposed the provision when it had been examined by the Working Group, and he would therefore have no option but to vote against it.

2520. Mr. GOUNDIAM (Senegal) said that territorial clauses frequently occurred in certain conventions and that they had been used in some African countries. In his view, the industrialized countries should be compelled to extend the provisions of the Protocol to those countries for whose external relations they were responsible.

2521. Mr. SINGH (India) said he failed to understand the logic behind the proposal. If developed countries wished to provide facilities in excess of those covered by the Protocol, they might do so. They could make works available without remuneration or if some remuneration must be paid they could arrange for rates which were below the standards insisted on in the Protocol to help areas now being kept under their rule. He saw no need for the clause, which only suggested that the developed countries concerned wished to enjoy some of the benefits accorded to the developing countries. Consequently, he opposed the proposal.

2522. Mr. RIBEIRO (Brazil) said he strongly favored the proposal, which would enable dependent territories not only to have access to the Protocol for developing countries, but thereby to gain greater access to culture, which was a basic factor in their achievement of freedom and independence.

2523. Mr. STRASCHNOV (Monaco) inquired whether the provisions of Article 26 of the Berne Convention had been retained. They dealt with certain territories which were not responsible for their own external relations. If the Protocol was an integral part of the Convention, Article 26 would meet the point made in the United Kingdom proposal, which would therefore not be needed. It was superfluous to include provisions of that kind in the Protocol.

2524. Mr. BELINFANTE (Netherlands) pointed out that the reason why the Netherlands West Indies and Surinam had not cut themselves off entirely from the Netherlands was because they had not wished to do so. The Netherlands Government was responsible for their external relations, and for that reason he was in favor of the United Kingdom proposal, which would enable those overseas countries to secure the benefits of the Protocol.

2525. Mr. STANESCU (Rumania) said that the same dilemma arose whenever territorial clauses were discussed. Provisions which were basically advantageous to countries under outside administration had to be accepted, but there was a natural reluctance to accept the fact that such situations still existed. Moreover, as Mr. Straschnov had pointed out, the measures proposed by the Delegate of the United Kingdom appeared to duplicate Article 26. For those reasons, he would abstain from voting on the proposal.

2526. Mr. STRNAD (Czechoslovakia) said that the Protocol was available to all the developing countries, but the territories under trusteeship were not included in any list because they were in the process of disappearing. Many countries were made up of separate territories which were independently administered but nonetheless formed a unity. Some countries were still under foreign administration but they were, after all, part of an economic unit and the advantages accruing to the metropolitan countries would automatically be granted to them. He supported the Indian proposal and would vote against that of the United Kingdom.

2527. Mr. LABRY (France) said he would vote for the United Kingdom proposal.

2528. The CHAIRMAN put the United Kingdom proposal (S/149) to the vote.

2529. *After a first vote which gave rise to a misunderstanding in regard to participation, a second vote was taken.*

2530. *The United Kingdom proposal was adopted by 14 votes to 2, with 9 abstentions.*

2531. Mr. SHER (Israel) said that as a general rule his Government objected to any form of government which was not the result of self-determination and therefore to the application of any convention which recognized that governments might hold responsibility for the foreign relations of territories. The present Convention was a special case, since the countries responsible for the foreign relations of certain territories had the option to grant copyright or not. His Delegation believed that they should be assisted in providing appropriate legislation which might be used after independence had been attained. For both reasons, therefore, his Delegation had abstained in the vote.

CLOSING WORK OF THE JOINT COMMITTEE

2532. The CHAIRMAN said that the joint Committee had completed its agenda. The proposal of the Delegation of Israel (S/277) would be referred to the Drafting Committee.

2533. At the request of the Chairman, Mr. GOUNDIAM (Senegal) agreed to submit his Delegation's proposal (S/246) to Main Committee II at the appropriate time.

2534. The CHAIRMAN asked the Delegate of Tunisia, who had reserved his position on the first question considered by the joint Committee, whether he was against the decision which had been taken.

2535. Mr. FERSI (Tunisia) said he had only reserved his position because he thought that a new draft was to be submitted. He was not against the decision which the joint Committee had taken.

The meeting rose at 7:25 p.m.

MAIN COMMITTEE III

Chairman: Mr. Lucian MARINETE (Rumania)
Secretary: Mr. Charles-L. MAGNIN (Deputy Director, BIRPI)
Rapporteur: Mr. Alfred Capel KING (Australia)

FIRST MEETING

Tuesday, June 13, 1967, at 10 a.m.

OPENING OF THE MEETING

2536.1 The CHAIRMAN said that the Committee's task was to deal with the question of including inventors' certificates in the Paris Convention for the Protection of Industrial Property, thus broadening the scope of the Convention and bringing it into line with present-day conditions, a question which had originally been raised by the Delegation of Rumania at the Lisbon Conference in 1958.

ORGANIZATION OF WORK

2536.2 The Government of Sweden, with the assistance of BIRPI, had prepared a proposal for amending Article 4 of the Paris Convention (S/2) and the Governments of France and Italy had submitted amendments to that proposal. Furthermore, the United Kingdom Government had submitted a further proposal relating to an amendment of Article 1(2) of the Convention.

2536.3 He suggested that the Committee should first discuss the substance of the problem and then appoint a drafting committee to prepare a draft text for its consideration and approval.

GENERAL DISCUSSION: PROPOSAL FOR INCLUDING INVENTORS' CERTIFICATES IN ARTICLE 4 OF PARIS CONVENTION

2537. Mr. BRENNER (United States of America) supported the proposed amendment to Article 4 contained in Document S/2. His Government's attitude was set out in the comments quoted in Document S/14 and had been stated in the Plenary meeting of this Conference by the head of his Delegation. His Delegation would give careful consideration to the amendments proposed by other governments.

2538.1 Mr. MAST (Federal Republic of Germany) said that his Delegation supported the insertion in the Paris Convention of provisions on inventors' certificates because they were important to some members of the Union. It accepted in principle the proposed amendment shown in document S/2, but would like to receive further clarification in respect of the entitlement to claim priority rights. His Delegation also supported the French amendment which, though not essential, was expedient and helpful, but reserved judgement on the Italian amendment until it had been discussed.

2538.2 While his Government's Delegation at the 1965 meeting of the Committee on Inventors' Certificates had expressed itself in favor of the idea underlying the United Kingdom proposal, he felt it would be wise to defer consideration of it until the next revision conference in Vienna. His country had no experience of the system of granting inventors' certificates, and his Delegation felt that before broadening the definition of "industrial property" in Article 1(2) to include inventors' certificates, it should be ascertained whether they should not also be specifically mentioned in other articles of the Convention, in particular in Article 5*ter*.

2539.1 Mr. GAJAC (France) reminded the Committee that his Government had given absolutely firm approval in principle to the inclusion in Article 4 of the Paris Convention of a provision which would put inventors' certificates on the same footing as patents for the purpose of the right of priority. The changes of wording proposed by France did not imply any departure from the spirit behind the proposed amendment; their object was merely to give better expression to the intention of those who had drafted the amendment. At the appropriate time he would be prepared to give any explanations which might be required concerning the form and purpose of the French proposal.

2539.2 In regard to the United Kingdom proposal to insert a reference to inventors' certificates in Article 1(2) of the Convention, the Delegation of France shared the view of the representative of the Federal German Republic. The Delegation of France was prepared to take part in any discussions which might be held on the point, but the United Kingdom proposal raised some extremely important questions of principle on which it would be premature to take any final decision. Hence the Delegation of France was of the opinion that the Main Committee should limit itself solely to consideration of the amendment of Article 4 of the Convention.

2540.1 Mr. VAN NIEUWENHOVEN HELBACH (Netherlands) said he supported the proposed amendment to Article 4 in principle, but he had doubts regarding the wording, particularly the phrase 1: "shall be treated in the same manner." He preferred the IAPIP wording proposed at its Tokyo Congress and had asked the Secretariat to distribute its text. When the requisite period of 24 hours after the text had been available to Delegations had elapsed (Rule 33 of the Rules of Procedure) he intended to propose that it be accepted as a basis for discussing the text to be inserted in the Convention.

2540.2 He had no serious objections to the United Kingdom proposal at the present juncture, but felt that it required more study and should be dealt with at the Vienna revision conference.

2541.1 Mr. ARMITAGE (United Kingdom) said his Government fully supported the general principles of the proposed amendment to Article 4. He would comment on the wording at the appropriate time.

2541.2 As for his Government's proposed amendment to Article 1(2), his Government felt that, despite the decision by BIRPI and the Swedish Government not to

recommend the proposal to the present Conference, it was worth putting forward at this time—even if consideration of other amendments to articles other than Article 4 was postponed until the Vienna revision conference—because its implications for the Convention were only limited. He would not press the amendment if it were heavily opposed, but he would like it to be thoroughly discussed and would reserve the arguments in favor of the proposal until it came to be discussed in detail.

2542. Mr. DELICADO (Spain) supported the suggestion that the United Kingdom amendment should be referred to the Vienna revision conference. He also supported the French proposal regarding the amendment of Article 4.

2543.1 Mr. ANGEL-PULSINELLI (Italy) reminded the Main Committee of the substance of the Italian Government's observations contained in Document S/14, on the proposal to amend Article 4. The Italian Government was in favor of introducing the concept of the inventor's certificate into the Paris Convention, but solely for the purpose of exercising the right of priority. Further, the wording of the proposed amendment should be altered in order to avoid any ambiguity.

2543.2 The Delegation of Italy did not consider it appropriate to apply the provisions of Article 1(2) of the Convention to inventors' certificates.

2544.1 Mr. PÁLOS (Hungary) stressed the progressive nature of the proposed amendment and the advantages which it would bring in regard to cooperation between the States of the Union. From the point of view of the Paris Convention there was no difference between the inventor's certificate—an institution which was recognized by the laws of the socialist countries and which was intended to protect industrial property—and the traditional patent. The filing of an application for an inventor's certificate had the same purpose as the filing of a patent, and it was carried out under exactly the same conditions in regard to the description of the invention, the date of registration of the application and the examination of this application. Nevertheless, although the inventor's certificate, in its outward form, met the requirements laid down in the Paris Convention, its legal effects were different from those of a patent. Under the system of the inventor's certificate, the patentee was not the inventor but the State, which was required to remunerate the inventor in accordance with the law. The Paris Convention made no provision of that nature, but the idea of a moral reward was to be found in Article 4*ter*, which provided that "the inventor shall have the right to be mentioned as such in the patent." The system of inventors' certificates was sometimes critized on the grounds that it did not confer any exclusive right. But the inventor's certificate did confer an exclusive right on the patentee—in this case the State—who decided which enterprise or enterprises should be entitled to exploit the invention protected by the certificate. The difference between the two systems lay in the procedures for applying the exclusive right of exploitation. But in view of the fact that the Paris Convention did not deal with the question of exclusive rights, the inventor's certificate did not run counter to that Convention, whether or not it conferred such a right.

2544.2 For all material purposes, an application for an inventor's certificate complied with all the conditions laid down by Article 4, and there could be no objection from the legal point of view to such an application providing the basis for a right of priority.

2544.3 Moreover, as the Paris Union aspired to universality, it was only right that it should recognize all forms of industrial protection, whatever their origin. The inventor's certificate was merely one form of patent, adapted to suit the conditions prevailing in the countries with socialist systems. Hence the amendment of Article 4 of the Paris Convention would have the effect of extending the international scope of the protection of industrial property, a development which the Delegation of Hungary would naturally welcome.

2545. Mr. SAVIĆ (Yugoslavia) supported the proposed amendment to Article 4 as it appeared in Document S/2.

2546. Mr. STAMM (Switzerland) informed the delegates that his Delegation approved the principle of an amendment that would assimilate the notions of inventor's certificate and patent, subject to editorial improvement. The Swiss Government would not, however, support the proposal put before the Conference because other questions had not yet matured. They could be settled at the Diplomatic Conference of Vienna.

2547. Mr. IVANOV (Bulgaria) said that in Bulgaria the law made no distinction between applications for patents and applications for inventors' certificates. He supported the proposed amendment to Article 4, which he believed would help to extend cooperation between countries. He would also support any improvement of the proposed text.

2548.1 Mr. VŠETEČKA (Czechoslovakia) approved the substance of the text of the amendment but felt that the form could be improved upon. In this connection, it would be useful to take inspiration from the French and Italian proposals in drawing up the final text.

2548.2 The Delegation of Czechoslovakia considered that the United Kingdom proposal was extremely interesting and suggested, in the event that agreement could not be reached on the matter at that Conference, that it should be examined in detail for the purposes of the forthcoming Vienna Conference.

2549.1 Mr. MAKSAREV (Soviet Union) congratulated the Delegate of Rumania on his appointment as Chairman of the Main Committee, as this appointment paid tribute to the services rendered by that country in introducing the question of an amendment concerning the inventor's certificate in the text of the Paris Convention, this question having been raised for the first time by the Delegate of Rumania at the Lisbon Conference. He thanked all countries that supported the amendment to Article 4 of the Convention even if their legislation did not acknowledge the notion of inventor's certificate.

2549.2 In the Soviet Union, the inventor's certificate and the patent were on an equal footing as regards the requirements for filing the declaration, defining priority, etc. The inventor's certificate and the patent were two forms of protection of an invention that were legally identical. Both attested to the filing of the declaration of invention, to the inventor's right of priority, and to the authorship of the invention, and both created an exclusive right in the invention.

2549.3 The difference between the patent and the inventor's certificate, as forms of protection of the rights of invention, concerned only this last point: the exclusive right of exploiting the invention. In the case of the patent, this exclusive right could belong to the patentee, whereas, in the case of the inventor's certificate, this right belonged to the State.

2549.4 The BIRPI Committee of Experts and the Swedish Government, as well as the IAPIP Conference at Tokyo, had presented an amendment to Article 4 of the Convention to the effect that applications for inventors' certificates would also serve to establish priority. The Delegation of the Soviet Union supported these proposals. It felt that the Drafting Committee might usefully take into account the modifications proposed by France, Italy, and other countries, and hoped that in its final form the text might win unanimous approval.

2549.5 In regard to the United Kingdom proposal to introduce the idea of inventors' certificates in Article 1(2) of the Convention, he would point out that the Japanese Government had already circulated a written proposal concerning other articles of the Convention. While supporting the principle of the United Kingdom proposal, the Delegation of the Soviet Union considered that it would be more practical to refer the question (after a preliminary consideration) to the Conference for the revision of the Paris Convention which was to be held in Vienna in 1970. There were other amendments which might be considered, such as the inclusion of the idea of inventors' certificates in Article 1(4). All these proposals deserved careful study, but the Delegation of the Soviet Union considered that it would be wiser to deal only with Article 4 at the present stage.

2549.6 In conclusion, he wished to thank all those countries which supported the amendment of Article 4 of the Convention and to point out that in the year 1966 the Soviet Administration had recorded 2,380 applications for patents and 108,000 applications for inventors' certificates, which came from foreign countries as well as from Soviet citizens and organizations.

2550. Mr. THALER (Austria) said that his Delegation approved in principle the amendments put forward by the Swedish Government and BIRPI (S/2). As for the United Kingdom proposal, it was liable to give rise to doubt and uncertainty, and it would be wiser to retain Article 1(2) in its present form.

2551. Mr. CZERWINSKI (Poland) said he was delighted that the Stockholm Conference should be considering proposals for the extension of the Paris Convention. The Delegation of Poland approved the text put forward by the Swedish Government and BIRPI but would welcome any proposal to clarify and extend still further the sense and scope of the existing provisions.

2552. Mr. VON ZWEIGBERGK (Sweden) said he had been gratified by the support for the proposed amendment. He had also listened with interest to what had been said by the Delegate of the Soviet Union and other Eastern European countries on the importance of inventors' certificates to their countries. He had also noted with interest that most delegates considered that the Committee should deal only with the proposal to amend Article 4. As regards the wording of the proposed amendment, he was open to suggestions, but felt it would be better to refer the matter to a drafting committee.

2553. Mr. LENNON (Ireland) supported the present amendment to Article 4 and agreed that the wording should be submitted to a drafting committee.

2554. Mr. DEGAVRE (Belgium) said that his Government approved the BIRPI proposal in principle. The Belgian Delegation would take account of any suggestion put forward by the Drafting Committee in regard to the final wording of the amendment. His Delegation saw no objection to the Committee studying the United Kingdom amendment to Article 1(2), although such action appeared to be premature.

2555. Mr. MORAIS SERRÃO (Portugal) supported the amendment to Article 4 put forward by the Swedish Government and BIRPI, and suggested that consideration of the United Kingdom amendment should be deferred until the preparatory work for the Vienna Conference was undertaken.

2556. Mr. SÁNCHEZ BARONA (Ecuador) supported the plea of the Delegate of the United Kingdom for discussion of his Government's proposed amendment to Article 1.

2557. Mr. GABAY (United Nations) said that in the course of preparing its report on the Role of Patents in the Transfer of Technology to Developing Countries, the United Nations had carefully studied the system of inventors' certificates. Recognition of the inventor's certificate for purposes of priority rights was a welcome development and an important step in the establishment of universal recognition of all systems of reward and protection for inventors, adapted to the needs and the economic and social systems of various countries.

2558.1 Mr. MATHÉLY (International Association for the Protection of Industrial Property), speaking also on behalf of the International Chamber of Commerce, reminded the Committee that the members of IAPIP had approved the new provision for Article 4, but that in order to ensure legal accuracy they had proposed a form of words somewhat different from that submitted by BIRPI. There were three characteristics of a legal right: its purpose, the conditions under which it was exercised and its effects. In the case under consideration: the new provision provided that a right of priority could be claimed on the basis of an application for an inventor's certificate; it should therefore be stated that an application for an inventor's certificate "shall be recognized as giving rise to a right of priority;" that was the term which was used in Article 4A(2) of the Convention and which should be incorporated in the new Article 4 in order to give uniformity of wording.

2558.2 Furthermore, the new provision sought to assimilate an inventor's certificate to a patent in regard to the right of priority. That assimilation would be expressed precisely and completely if it was stated that the inventor's certificate would give rise to a right of priority "under the same conditions and with the same effects as a patent." For that reason, IAPIP would prefer a text reading as follows: "Applications for inventors' certificates, filed in a country in which applicants have a right to apply, at their own discretion, either for a patent or for an inventor's certificate, shall give rise to the right of priority instituted by the present Article, under the same conditions and with the same effects as an application for a patent. Conversely, in those countries in which applicants can choose between a patent and an inventor's certificate, an inventor's certificate can be applied for by claiming priority, under the terms of the present Article, for an application for a patent or a utility model or for an inventor's certificate."

2559. The VICE-CHAIRMAN, Mr. VAN BENTHEM (Netherlands) took the Chair.

2560.1 Mr. MARINETE (Rumania), said that his Government approved the BIRPI amendment in principle. After examining the amendments submitted by France, Italy, IAPIP and the United Kingdom, the Delegation of Rumania had come to the conclusion that, despite differences of form, they were identical in substance. It would therefore be for the Drafting Committee to submit a text which would satisfy all the delegations.

2560.2 In regard to the proposals to widen the scope of the Convention, particularly that put forward by the United Kingdom, the Delegation of Rumania considered that they were of the greatest interest but hoped, nevertheless, that their sponsors would not press for them to be discussed at the present Conference. They should be referred for study to whatever body was ultimately entrusted with the preparatory work for the Vienna Conference, such as a BIRPI group of experts.

2560.3 As the Main Committee would have to limit itself to a study of the amendment to Article 4, he wished to draw the particular attention of those representatives who would be serving on the Drafting Committee to the provisions of Article 11 which referred to Article 4. In drawing up the final text of the amendment, the Main

Committee would have to take due account of the link between these two articles, and it was important that the text which was adopted should not involve any amendment of the provisions of Article 11.

2561. The CHAIRMAN resumed the Chair.

ORGANIZATION OF WORK (continued)

2562. The CHAIRMAN noted that the representatives of 22 countries and the observers for the United Nations and for IAPIP had expressed themselves in favor of the amendment to Article 4, subject to drafting changes. He proposed that the work of drafting should be entrusted to the Drafting Committee.

2563. *It was so decided.*

2564.1 Mr. ARMITAGE (United Kingdom) said that opinion among the delegates who had so far spoken appeared to be almost unanimously in favor of leaving amendments to articles other than Article 4 to be discussed at the Vienna revision conference. Moreover, a number of delegates had suggested that further amendments to the Convention should be considered by an expert committee prior to the revision conference. In the circumstances, he withdrew his Government's proposed amendment to Article 1 although it had not yet been formally moved.

2564.2 His Government had had no intention of proposing a far-reaching amendment to the Convention; one purpose had been merely to remove an apparent inconsistence which would result from amending Article 4 as proposed. If Article 4 was so amended, inventors' certificates would ipso facto become a category of right with which the Convention was concerned, and it would be inconsistent not to include them in the definition of the scope of the protection of industrial property in Article 1(2).

2564.3 The proposal did not, he believed, carry any implication of equivalence between patents and inventors' certificates. Its only practical effect would have been, under Article 2, to ensure the right of the nationals of all Member countries to enjoy national treatment in other countries of the Union, in respect of inventors' certificates. He hoped that this brief explanation would prove useful in connection with any future study of the problem.

2565. Mr. YOSHIFUJI (Japan) said that he would not repeat the proposal which had been already made by the Government of Japan in writing, and which was included in Document S/14. He welcomed the withdrawal of the amendment by the Delegate of the United Kingdom as he believed that the Main Committee should confine its discussions to the amendment of Article 4. He supported the amendment proposed in Document S/2.

2566. Mr. KING (Australia) supported the proposed amendment to Article 4 in principle. He would reserve his comments on the text of the amendment until he had heard further explanation and discussion of the French and Italian amendments.

COMPOSITION OF THE DRAFTING COMMITTEE

2567. The CHAIRMAN informed the Main Committee that, following consultations, the following 11 countries were proposed as members of the Drafting Committee: Czechoslovakia, France, Germany (Federal Republic), Italy, Netherlands, Spain, Sweden, Switzerland, Soviet Union, United Kingdom and United States. He invited the delegations of the countries concerned to indicate their decision and, if they accepted, to appoint their representatives on the Drafting Committee.

2568.1 The VICE-CHAIRMAN read out the names of the members of the Drafting Committee.

2568.2 Czechoslovakia would be represented by Mr. Všetečka, France by Mr. Gajac, the Federal Republic of Germany by Mr. Singer, Italy by Mr. Angel-Pulsinelli, the Netherlands by Mr. van Nieuwenhoven Helbach, Spain by Mr. Delicado, Sweden by Mr. Uggla, Switzerland by Mr. Stamm, the Soviet Union by Mr. Boguslavski, the United Kingdom by Mr. Armitage, and the United States by Mr. Brenner.

The meeting rose at 12:40 p.m.

SECOND MEETING

Thursday, June 15, 1967, at 9:35 a.m.

TEXT PROPOSED BY THE DRAFTING COMMITTEE

2569. The CHAIRMAN invited attention to Document S/74, which contained the draft of a new section to be added to Article 4 of the Paris Convention, prepared by the Drafting Committee set up at the previous meeting.

2570.1 Mr. BRENNER (United States of America), Chairman of the Drafting Committee, introduced the document. The proposed text was simpler, clearer and more precise than the text appearing in Document S/2.

2570.2 He informed the Main Committee that the Drafting Committee had appointed two of its members, Mr. Gajac (France) and Mr. Uggla (Sweden), to sit on the General Drafting Committee.

2571. The CHAIRMAN invited the members of the Main Committee to vote on the text proposed by the Drafting Committee.

2572. Mr. THALER (Austria), Mr. DEGAVRE (Belgium), Mr. LEONARDOS (Brazil), Mr. MIQUELON (Canada), Mr. VŠETEČKA (Czechoslovakia), Mr. GAJAC (France), Mr. NARAGHI (Iran), Mr. ANGEL-PULSINELLI (Italy), Mr. MORAIS-SERRÃO (Portugal), Mr. DELICADO (Spain), Mr. STAMM (Switzerland), Mr. BOGUSLAVSKI (Soviet Union), Mr. SAVIC (Yugoslavia), approved the text without reservation and congratulated the Drafting Committee and its Chairman, Mr. Brenner, on the speed and efficiency with which they had worked.

2573. Mr. KING (Australia), Mr. IVANOV (Bulgaria), Miss OLSEN (Denmark), Mr. EEROLA (Finland), Mr. MAST (Federal Republic of Germany), Mr. LENNON (Ireland), Mr. YOSHIFUJI (Japan), Mr. VAN NIEUWENHOVEN HELBACH (Netherlands), Mr. NORDSTRAND (Norway), Mr. CZERWINSKI (Poland), Mr. SCHOEMAN (South Africa), Mr. ZWEIGBERGK (Sweden), Mr. ARMITAGE (United Kingdom), and Mr. BRENNER (United States of America), indicated that the proposed text was entirely acceptable to their Delegations.

2574. Mr. MAGNIN (Deputy Director, BIRPI) proposed a drafting change to the French text only—the replacement, in paragraph (2), of "*dans les termes*" by the words "*selon les dispositions.*"

2575. Mr. GAJAC (France) supported the proposed amendment, which would bring the French text closer to the English.

2576. *The proposal was adopted.*

2577. The CHAIRMAN noted with satisfaction that the Main Committee's work had been completed, thanks to the valuable labors of the Drafting Committee and its Chairman, Mr. Brenner. He also thanked Mr. Mathély, the observer for IAPIP, who had given the Committee his valued assistance. As the proposed text had received unanimous support, he proposed that the Main Committee should adopt it.

2578. *The draft text of Article 4-I was adopted by acclamation.*

2579. Mr. MAGNIN (BIRPI), on behalf of the Director of BIRPI, congratulated the Drafting Committee on the result of its work and expressed his appreciation of the chairmanship of Mr. Brenner, whose realism, courtesy, and confidence, had made it possible to carry out a task which presented serious difficulties. He also thanked Mr. Mathély, the Rapporteur general of IAPIP for his collaboration.

The meeting rose at 10:20 a.m.

THIRD MEETING

Friday, June 16, 1967, at 2:30 p.m.

DISCUSSION AND APPROVAL OF THE DRAFT REPORT (S/90)

2580.1 The CHAIRMAN thanked Mr. King for his work as Rapporteur and stated that the report accurately reflected the discussions which had taken place in the Main Committee. In those circumstances, he hoped that the report would give rise to few comments and that it would be possible to reach agreement rapidly.

2580.2 He invited discussion of the report, paragraph by paragraph.

Paragraph 1

2581.1 Mr. MAST (Federal Republic of Germany) said that the name of the Vice-Chairman, Mr. Van Benthem, was misspelt in the English version.

2581.2 The abbreviation of the International Association for the Protection of Industrial Property should—he thought—be AIPPI. In the English text of S/90 it was given as IAPIP and AIPIP subsequently. He would like to know which was correct.

2582. Mr. BENDIAB (Algeria) said his Delegation hoped that the amendment to Article 4 would apply to the whole Convention and, in particular, to Article 1(2) and Article 11. He asked that his proposal should be mentioned in the report.

2583. The CHAIRMAN asked that the spelling of his name in paragraph 1 should be corrected; it should be spelt with a single *t*.

2584. The RAPPORTEUR said the drafting points raised could easily be dealt with; he did not, however, recall that the Delegate of Algeria had originally spoken on that point or that there had been any reference to the substance of the Algerian proposal. Could the Delegate of Algeria repeat what he wished to see included in the record of the third meeting?

2585. Mr. BENDIAB (Algeria) insisted that his statement should be included in the report, as the work of the Main Committee was not yet concluded.

2586. Mr. BODENHAUSEN (Director of BIRPI) apologised to the Committee for the fact that he had not been able to follow its deliberations as he had had to be present at other meetings. He confirmed that, as the statement of the Delegate of Algeria had not been made during the previous meeting, it could not be included in the report, but that it would be mentioned in the summary record of the present meeting.

2587. The CHAIRMAN said he understood that Mr. Bendiab's statement referred to other proposals, particularly that of the Delegate of the United Kingdom, which were mentioned in paragraph 3 of the report. He pointed out that the proposal of the Delegation of Algeria could be considered when that paragraph was discussed.

2588. Mr. BENDIAB (Algeria) accepted the procedure suggested by the Chairman.

2589. Mr. BOGUSLAVSKI (Soviet Union) thought he was right in assuming that the matter would be discussed in connection with paragraph 6 of the report, where reference was made to the United Kingdom proposal; his Delegation would then speak on that point.

2590. The CHAIRMAN agreed with the remarks of the Delegate of the Soviet Union.

2591.1 Mr. ARMITAGE (United Kingdom) agreed with the remarks made by the Director of BIRPI. As he remembered, only one country—he believed Ecuador—had supported the United Kingdom proposal regarding Article 1(2) at the Main Committee's first meeting and the other delegations that had expressed a view had all thought consideration should be deferred. On that basis he had withdrawn the United Kingdom proposal.

2591.2 A fair way to represent the proceedings when the Main Committee came to paragraph 6 might be to add at the end of the report a statement recording the position of the Delegate of Algeria; the record of what had happened on the opening day should not, however, be altered as this would prove confusing.

2592. Mr. ANGEL-PULSINELLI (Italy) shared the view of the Delegate of the United Kingdom. It was the task of the Main Committee to adopt the report and not to record a new statement. A sentence could be added to the report, however, to ensure that it reflected all aspects of the debate.

2593. *Paragraph 1 was adopted.*

Paragraph 2

2594. Mr. GAJAC (France) drew attention to an obscure passage in this paragraph, which was presumably due to an error of translation: "...prévoit l'octroi de ces certificats *au lieu* de brevets..."

2595. The RAPPORTEUR said the English text referred to the grant of such certificates as an alternative to the grant of a patent and was thus clear. Possibly the French translation had not quite taken the full sense of the English text.

2596. Mr. MAGNIN (Deputy Director, BIRPI) said he too had noted this error of translation. He proposed that the phrase should be replaced by the following: "...prévoit l'octroi *soit* de certificats, *soit* de brevets..."

2597. *Paragraph 2 was adopted, subject to the above drafting correction to the French text.*

Paragraph 3

2598. Mr. GAJAC (France) asked that the French text of the new section of Article 4 of the Paris Convention, which was to be approved, should appear alongside the English text, as the text of Document S/2 has been modified.

2599. *Subject to that comment, paragraph 3 was adopted.*

Paragraph 4

2600.1 The RAPPORTEUR said that during a conversation the Delegate of the Netherlands had suggested that the word "instead" might cause confusion.

2600.2 He, himself, agreed that the passage might read more clearly if the words "...if they wished apply either for patents or inventors' certificates" were substituted for "...if they wished apply instead for patents." He would like the correction to be incorporated.

2601. *Paragraph 4, as amended, was adopted.*

Paragraph 5

2602. The RAPPORTEUR said the Delegate of the Netherlands had suggested inserting in the sentence beginning: "The Netherlands Delegation..." the words "to be" before the word "substituted." He agreed and would like the alteration to be included.

2603. *Paragraph 5, as amended, was adopted.*

Paragraph 6

2604.1 Mr. ARMITAGE (United Kingdom) asked that the word "only" be deleted in the second sentence (English text) since the sentence following showed clearly that the proposal had two effects—a formal one, to make the wording of the Convention more consistent, and a substantive one, regarding national treatment.

2604.2 He also asked that in the third sentence (English text) the word "practical" be substituted for "possible" which was a typist's error.

2605. The RAPPORTEUR agreed that those amendments should be incorporated.

2606. The CHAIRMAN asked the Delegate of Algeria if he was satisfied with the explanations given.

2607. Mr. BENDIAB (Algeria) said he would have preferred to see a reference in the report to the position of Algeria, which had not accepted the withdrawal of the United Kingdom proposal.

2608. The CHAIRMAN reminded the Committee that he had spoken during the discussions in his capacity as Delegate of Rumania, and suggested that a group of experts should study the proposals put forward by the United Kingdom and other delegations to introduce the idea of the inventor's certificate in other parts of the Paris Convention. No mention was made of that proposal in the report. A sentence might perhaps be inserted to indicate briefly that the Delegation of Rumania was anxious that BIRPI should convene a meeting of experts to consider the question.

2609.1 The RAPPORTEUR agreed and said that the matter could be covered by adding a sentence at the end of paragraph 6, giving the substance of the Chairman's remark.

2609.2 As the Delegate of Algeria's remarks had not been made during the original discussion, he was not in a position to include in the Report the statement made at the third meeting.

2610.1 Mr. BOGUSLAVSKI (Soviet Union) said that when speaking on the United Kingdom proposal at the Committee's first meeting, the Delegation of the Soviet Union had pointed out that it was inappropriate to consider the United Kingdom proposal in Stockholm where they were concerned only with amendments to Article 4 and that the proposal should be considered at Vienna.

2610.2 In view of the Soviet Union and Rumanian proposals and also of the proposal submitted in writing by the Delegate of Japan, he proposed that a general sentence be added at the end of paragraph 6, stating that a wish had been expressed to revert to the United Kingdom proposal at the next Diplomatic Conference and for a general study, preceded by an expert study by BIRPI, to be made at Vienna.

2611. Mr. ARMITAGE (United Kingdom) agreed and asked that any reference to the wish expressed by several delegations should be inserted before the last sentence of paragraph 6, since the United Kingdom had withdrawn its proposal after those wishes had been expressed.

2612. Mr. BODENHAUSEN (Director of BIRPI) agreed to undertake the studies in question and suggested inserting the following sentence before the last sentence of paragraph 6: "Several delegations recommended that this problem be dealt with by the next revision conference after preparatory studies under the guidance of BIRPI, which BIRPI promised to undertake."

2613. *Paragraph 6, as amended, was adopted.*

Paragraph 7

2614. The RAPPORTEUR said that in the first sentence the words "each of" were misplaced. This passage should read: "of each of the Delegations of France, Italy, the Netherlands..."

2615. *Paragraph 7 was adopted.*

Paragraph 8

2616. *Paragraph 8 was adopted without discussion.*

Paragraph 9

2617. Mr. LENNON (Ireland) wished the Delegation of Ireland to be included among those who had expressed approval.

2618. The RAPPORTEUR explained that owing to a typist's error "Ireland" had appeared as "Iceland." The error would be rectified.

2619. The CHAIRMAN speaking as Delegate of Rumania, asked that his country should be added to the list of countries mentioned in paragraph 9.

2620. *Paragraph 9, as amended, was adopted.*

Paragraphs 10 and 11

2621. *Paragraphs 10 and 11 were adopted without discussion.*

2622. *The report, as a whole, was adopted.*

CLOSING REMARKS

2623. The CHAIRMAN stated that the Main Committee had reached the end of its work. All delegations had manifested a spirit of mutual comprehension and had carefully studied the documents which had been put before them. He wished to thank them all, and particularly the French and Italian Delegations, together with the experts of IAPIP who had supplied texts supplementing the document prepared by the Swedish Government in collaboration with BIRPI. He also wished to thank the latter for preparing the basic document.

2624. Mr. BODENHAUSEN (Director of BIRPI) congratulated Main Committee III on the speed with which it had worked and the results which it had achieved. He thanked the Chairman and the Rapporteur and expressed his thanks to all concerned for the work which had been achieved.

2625. The VICE-CHAIRMAN, Mr. Van Benthem, thanked the Chairman and said it was largely due to his excellent conduct of the Committee's business that the work had been completed so rapidly and successfully.

2626. The CHAIRMAN declared the discussions closed and expressed his thanks to the Rapporteur, Mr. King.

The meeting rose at 3:15 p.m.

MAIN COMMITTEE IV

Chairman: Mr. François SAVIGNON (France)
Secretary: Mr. Klaus PFANNER (BIRPI)
Rapporteur: Mr. Valerie DE SANCTIS (Italy)

FIRST MEETING

Tuesday, June 13, 1967, at 9:30 a.m.

OPENING OF THE MEETING

2627. The CHAIRMAN welcomed participants and declared the work of Main Committee IV open.

ORGANIZATION OF WORK

2628.1 The CHAIRMAN proposed to begin by examining the proposals concerning the administrative provisions, namely, Articles 13 to 13*quater*, contained in document S/3 (Paris Convention) and Articles 21 to 22 of document S/9 (Berne Convention). He proposed that the document regarding the Paris Union (S/3) and the document regarding the Berne Union (S/9) should be examined at the same time, as the proposals were almost identical.

2628.2 *These proposals were adopted unanimously.*

2628.3 He first of all called for general comments.

GENERAL DISCUSSION

2629. Mr. DE SANCTIS (Italy) observed that documents S/3 and S/9 contained several references to the Intellectual Property Organization (IPO). The Delegation of Italy proposed omitting any specific reference to IPO in the proposals for revising the Paris Convention and the Berne Convention, for it would be illogical to refer to IPO. It was not certain that IPO would be established and, even if it were, it would be possible for each country to accede to the Paris Convention or the Berne Convention without acceding to the IPO Convention.

2630. Mr. WINTER (United States of America), replying to the observations of the Delegate of Italy, said that it was necessary to make a reference to the IPO Convention in the text of the Paris Convention, mainly because of matters concerning administrative cooperation. The constitution of IPO should be assumed.

2631. Mr. KRIEGER (Federal Republic of Germany) stated that his Delegation fully agreed with the point of view expressed by the Delegation of the United States.

2632. Mr. MORF (Switzerland) said that the Swiss Federal Council considered its supervisory function an honor, but that it was prepared to accept the transfer of this function to Member States, should they so desire, on the understanding that the Swiss Government would continue to exercise it for States which were not yet Members of IPO.

2633. Mr. LORENZ (Austria) pointed out that his Delegation had submitted proposed amendments in writing which had not yet been distributed.

2634. Mr. LABRY (France) said that in his view any reference to IPO which might appear in texts adopted by the Main Committee should be regarded as adopted with reservations, as it would be necessary to await the decisions taken by Main Committee V before any final decision could be taken.

2635. The CHAIRMAN asked the Delegation of Italy whether it could endorse the proposal made by the Delegation of France.

2636. Mr. DE SANCTIS (Italy) replied in the affirmative.

2637. The CHAIRMAN took note of this reply. There would accordingly be no vote on the original Italian proposal.

2638. Mr. EKANI (African and Malagasy Industrial Property Office (OAMPI)) said that, in view of the difficulty of discussing general principles without any proposal in writing, he would not put forward the proposals regarding OAMPI until the meeting was invited to consider the document containing them (S/15).

2639. The CHAIRMAN observed that there were no further general comments and accordingly proposed that the Main Committee should consider Article 13 of document S/3 (Article 21 of document S/9).

ASSEMBLY

Article 13 (S/3) and Article 21 (S/9)[1]

2640. Mr. LORENZ (Austria) commented on the proposals submitted by the Delegation of Austria in document S/24. The first of these proposals consisted in inserting in subparagraph (2)(a) the words: "adopt the financial regulations of the Union." It was obvious that, in view of the necessary coordination between the Paris and Berne Conventions and the IPO Convention, these financial regulations could be only a special addendum, for one Union, to the financial regulations of IPO. In any case, Article 13 should state that it was for the Assembly to adopt the financial regulations of its Union.

2641.1 The CHAIRMAN proposed discussing Article 13 paragraph by paragraph. The amendments proposed by Austria would be discussed in connection with the paragraphs to which they related.

[1] At the beginning of these summary minutes on the discussion of each Article concerning the administrative provisions of the Paris Convention, a parallel citation is given to the corresponding Article in the Berne Convention. Unless otherwise specified all references to Articles in the captions are to documents S/3 and S/9.

2641.2 *This proposal was accepted.*

ASSEMBLY: COMPOSITION AND REPRESENTATION

Article 13(1) (S/3) and Article 21(1) (S/9)

Article 13(1)(a)

2642.1 The CHAIRMAN invited comments on paragraph (1)(a).

2642.2 *Article 13(1)(a) was adopted unanimously.*

Article 13(1)(b)

2643. The CHAIRMAN invited comments on subparagraph (b).

2644. *Article 13(1)(b) was adopted unanimously.*

Article 13(1)(c)

2645. The CHAIRMAN invited comments on subparagraph (c).

2646. *Article 13(1)(c) was adopted unanimously.*

ASSEMBLY: TASKS

Article 13(2) (S/3) and Article 21(2) (S/9)

Article 13(2)(a)(i)

2647. The CHAIRMAN invited comments on paragraph (2)(a)(i).

2648. Mr. EKANI (African and Malagasy Industrial Property Office (OAMPI)) recalled the proposal of the twelve States which were members of OAMPI (S/15). It was a question of permitting a plurality of countries, members of a Union and grouped together in a single Office, to be represented by a single delegation or by their common organ, which would then have as many votes as the said Office had member States. This proposal did not infringe the rule that one State should have only one vote; but nothing prevented one or more States from giving a proxy to a single delegation. He referred in this connection to the precedent of the Lisbon Conference where one delegation represented two States.

2649. Mr. RAZAFINDRATANDRA (Madagascar) said that the proposal submitted by OAMPI was also a proposal by the Delegation of Madagascar.

2650.1 The CHAIRMAN asked the Delegate of Madagascar to put his proposal in writing. It could then be discussed on Thursday, June 15.

2650.2 He observed that *Article 13(2)(a)(i) was adopted unanimously.*

Article 13(2)(a)(ii)

2651. The CHAIRMAN invited comments on Article 13(2)(a)(ii).

2652. Mr. LABRY (France) recalled that, in accordance with Article 25 of document S/9 (Article 16 of document S/3), a country of the Union could accede to the Stockholm Act without acceding to Articles 21 to 23 of document S/9 (Articles 13 to 13*quinquies* of document S/3). He therefore proposed adding at the end of item (ii) a provision stating that due account should be taken of any comments made by those countries of the Union which were not bound by the provisions of Articles 21 to 23 of the Berne Convention (Article 13 to 13*quinquies* of the Paris Convention). Revision conferences also concerned these member States.

2653. Mr. LORENZ (Austria) noted that there would in future be two parallel systems for revisions. At present, the revision proposals were prepared by the host country with the assistance of the International Bureau. In this mixed system what would be the role of the host country with regard to countries bound by the Stockholm Act?

2654. Mr. DE SANCTIS (Italy) said that his Delegation associated itself with the comments of the Delegations of France and Austria. The new system would be complicated during the transitional period and it would be expedient to take account of the views of all countries of the Union.

2655. Mrs. RATUSZNIAK (Poland) stated that the Delegation of Poland supported the proposal of the Delegation of France.

2656. Mr. BOGSCH (Deputy Director, BIRPI) said that BIRPI was entirely in agreement with the remarks of the Delegation of France. The Vienna revision conference would no doubt be prepared in accordance with the present rules—namely, by the host country with the assistance of BIRPI—as it would be some years before the Stockholm texts came into force.

2657.1 The CHAIRMAN said that a vote would be taken on the French proposal as soon as it had been distributed in writing.

2657.2 He observed that, with this reservation, *Article 13(2)(a)(ii) was adopted.*

Article 13(2)(a)(iii)

2658. The CHAIRMAN invited comments on Article 13(2)(a)(iii).

2659. *Article 13(2)(a)(iii) was adopted unanimously.*

Article 13(2)(a)(iv)

2660. The CHAIRMAN invited comments on Article 13(2)(a)(iv).

2661. *Article 13(2)(a)(iv) was adopted unanimously.*

Proposal by Delegation of Austria (Article 13(2)(a)) (S/24)

2662. The CHAIRMAN invited comments on the first proposal made by Austria in document S/24 to the effect that Article 13 should state that the Assembly should adopt the financial regulations.

2663. Mr. EVENSEN (Norway) asked the Delegate of Austria to explain his proposal.

2664. Mr. LORENZ (Austria) said that the Austrian proposal did not affect the provisions relating to finances (Article 13*quater* of document S/3). It was merely intended to state in Article 13 that the Assembly was competent to adopt the financial regulations referred to in Article 13*quater*. It was obvious that these financial regulations would have to be linked with the financial regulations of IPO. It was understood that the basic rules relating to finances would remain in the Convention and that the financial regulations would deal only with administrative and technical procedure.

2665. Mr. EVENSEN (Norway) stated that, in spite of the explanations by the Delegate of Austria, he was still of the opinion that the formulation of this amendment was not clear and should be annotated.

2666. The CHAIRMAN said that the question was whether anything should or should not be added to Article 13. He asked for the opinion of the Main Committee.

2667. Mr. EVENSEN (Norway) stated that, in the opinion of the Delegation of Norway, the amendments proposed by the Delegation of Austria seemed superfluous.

2668. Mr. LABRY (France) said that the Delegation of France supported the Austrian proposal. Since Article 22(8) (S/9) referred to the financial regulations, it was necessary to state who would adopt these regulations.

2669. Mr. KRIEGER (Federal Republic of Germany) stated that he supported the Austrian proposal.

2670. Mr. BOGSCH (Deputy Director, BIRPI) said that BIRPI had no objection to the adoption of the Austrian proposal. It might of course be considered that the question of the adoption of the financial regulations was covered by paragraph (2)(a)(i) ("deal with all matters concerning ... the implementation of its Convention"), but the point could also be stated specifically, in accordance with the Austrian proposal.

2671. The CHAIRMAN asked the Main Committee to decide on the principle of adopting a new item on the lines proposed by the Delegation of Austria (S/24).

2672. *The Main Committee decided in favor by 31 votes to 1, with 6 abstentions.*

2673. The CHAIRMAN said that the final drafting of the new text would be done in conjunction with the final drafting of the Main Committee's proposals.

2674. Mr. LORENZ (Austria) asked that this should be the case for all proposals that the Main Committee might adopt.

2675. The CHAIRMAN agreed.

Article 13(2)(a)(v) to (viii)

2676. The CHAIRMAN invited comments on Article 13(2)(a)(v) to (vii).

2677. *Article 13(2)(a)(v) to (viii) was adopted unanimously.*

Article 13(2)(a)(ix)

2678. The CHAIRMAN invited comments on Article 13(2)(a)(ix).

2679. Mr. MAZARAMBROZ (Spain), with reference to Articles 13 to 13*quinquies*, asked what was the quorum required for the adoption of amendments.

2680. Mr. BOGSCH (Deputy Director, BIRPI), in reply to the Delegate of Spain, stated that the whole question of amendments should be read in conjunction with Article 13*quinquies*. The mention of amendments in Article 13(2)(a)(ix) was only a reference to Article 13*quinquies* where the whole procedure for amending Articles 13*bis*, 13*ter*, 13*quater* and 13*quinquies* was provided for. He suggested that the matter be taken up when Article 13*quinquies* was examined.

2681. Mr. DE SANCTIS (Italy) thought that the question raised by the Delegate of Spain was important. At present, diplomatic conferences were responsible for the revision of all provisions of the Conventions. The new regulations proposed would allow the Assembly to revise the administrative provisions. The Delegation of Italy thought in these circumstances that a very adequate quorum should be adopted.

2682. Mr. STANESCU (Rumania) thought that this was a simple question of legislative technique. The fears of the Delegation of Spain were not entirely justified, since Article 13(2)(a)(ix) was to be supplemented by Article 13*quinquies*.

2683. Mr. MAZARAMBROZ (Spain) stated that in view of the various statements made, he considered that the matter had been sufficiently clarified.

2684. The CHAIRMAN observed that *Article 13(2)(a)(ix) was therefore adopted unanimously.*

Article 13(2)(a)(x)

2685. The CHAIRMAN invited comments on Article 13(2)(a)(x).

2686. *Article 13(2)(a)(x) was adopted unanimously.*

Article 13(2)(a)(xi)

2687. The CHAIRMAN invited comments on Article 13(2)(a)(xi) and the Austrian proposal relating thereto in document S/24.

2688. Mr. LORENZ (Austria) said that his Delegation's proposal included an alternative. Whatever variant the Main Committee might choose, it was nevertheless advisable to state that the other functions of the Assembly were the functions allocated to it by the Paris Convention (or the Berne Convention).

2689. Mr. MORF (Switzerland) thought that paragraph (2)(a) should be amplified. It was necessary to mention in the Paris Convention (and the Berne Convention) the powers and functions of the Assembly contained in the IPO Convention. Similarly, he wondered whether the text of Article 13*quater*(8) should not appear here.

2690. The CHAIRMAN observed that the comments of the Delegation of Switzerland referred to the first alternative submitted by the Delegation of Austria.

2691. Mr. VASSILEV (Bulgaria) agreed with the Austrian proposal.

2692. Mr. MAZARAMBROZ (Spain) stated that, in connection with the Austrian proposal relating to item (xi), it would be desirable to clarify the question as to who would be responsible for carrying out such functions.

2693. Mr. DALEWSKI (Poland) declared that the Delegation of Poland supported the Austrian proposal.

2694. Mr. LABRY (France) said that the Delegation of France preferred the second alternative proposed by the Delegation of Austria. A list of tasks was always in danger of being incomplete. Moreover, his Delegation also agreed with the Swiss proposal that certain powers allocated to the Assemblies by the IPO Convention should appear in the Paris and Berne Conventions.

2695. Mr. BOWEN (United Kingdom) declared that, in his view, the matter under consideration did not so much involve a point of principle but rather a question of drafting. The Delegation of Austria proposed to list the functions, to which there was no objection. However, it was not advisable to limit here the functions of the Assembly of the Paris Union by restricting such functions as allocated to it by the text of the Paris Convention only, because other conventions, such as the IPO Convention, may well allocate certain other functions to the Paris Union Assembly.

2696. Mr. STANESCU (Rumania) thought, like the Delegation of the United Kingdom, that this was a question of drafting, but one which required some clarification. It should be stated that the functions of the Assembly were those established by the Paris Convention (or by the Berne Convention). His Delegation also endorsed Mr. Labry's observations: the second alternative proposed by Austria was preferable.

2697. Mr. BOGSCH (Deputy Director, BIRPI) said that if the item did not mention all the tasks allocated to the Assembly, this was for the reasons given in the Commentary (paragraph 66 of document S/3). This was a question of drafting technique.

2698. The CHAIRMAN said it would be possible either to refer here to all the powers which might be allocated to the Assembly by the IPO Convention or by the other provisions of the Paris (or Berne) Convention, or to adopt the much wider formula contained in the second alternative submitted by the Delegation of Austria. He asked the Main Committee to decide on this matter.

2699. Mr. LORENZ (Austria) said that, even if the second alternative were adopted, it would be necessary to include in the Convention the powers allocated to the Assembly by the IPO Convention. Failing this, it would be necessary to say: "exercise all other functions allocated to it by the present Convention and by the IPO Convention."

2700. Mr. KRIEGER (Federal Republic of Germany) stated that he supported the proposal of the Delegate of Austria to mention in item (xi) not only the present Convention but also the IPO Convention. If this was acceptable, the observations made by the Delegate of the United Kingdom would be taken into account.

2701. Miss NILSEN (United States of America) stated that her Delegation believed that the point under consideration was only a matter of drafting. The Delegation of the United States would prefer to have a general statement inserted in the text rather than a list of functions. Such a statement would also include a reference to the IPO Convention. The Delegation of the United States was not opposed to a specific list but it appeared preferable to insert a general statement.

2702. Mr. MAZARAMBROZ (Spain) declared that he agreed with the last proposal made by the Delegate of the United States and that it was not necessary in his view to insert a complete list of the functions to be fulfilled by the Assembly. He thought it necessary, however, not only to mention one convention but also to refer to the IPO Convention.

2703. Mr. MORF (Switzerland) agreed with the last proposal made by Mr. Lorenz. In this way, the desire of the Delegation of Switzerland to have the powers relating to the appointment of the Director General and the transfer of the headquarters of the Organization included in the Paris Convention (and the Berne Convention) would be satisfied.

The meeting rose at 12:30 p.m.

SECOND MEETING

Tuesday, June 13, 1967, at 2:30 p.m.

ASSEMBLY (continued)

Article 13 (S/3) and Article 21 (S/9)

2704. The CHAIRMAN announced that a redraft of the Austrian proposal (S/24) was in process of reproduction. In the circumstances, he proposed that the Committee should continue its examination of Article 13 (document S/3).

Article 13(2)(b)

2705. Mr. MORF (Switzerland) pointed out that, in accordance with Article 13(2)(b), the Assembly was to take into consideration the advice of the Coordination Committee of the Organization. Paragraph 67 of the Commentary (S/3) explained that the Assembly would be under no obligation to follow that advice. Would it not be better to say that the Assembly should make its decision after having noted the advice of the Coordination Committee?

2706. Mr. BOGSCH (Deputy Director, BIRPI) acknowledged that the wording suggested by the Delegate of Switzerland was more direct and possibly more correct from the legal point of view, but added that it reduced the persuasive force of the paragraph. He had no preference for one or the other. The really important word was "advice," which showed that no obligation was involved.

2707. The CHAIRMAN proposed that the Drafting Committee should take note of the comments made by the Delegate of Switzerland.

2708. *With that reservation, Article 13(2)(b) was adopted unanimously.*

ASSEMBLY: VOTING

Article 13(3) (S/3) and Article 21(3) (S/9)

2709. The CHAIRMAN opened the discussion on paragraph (3).

Article 13(3)(a) (S/37)

2710. Mr. RAZAFINDRATANDRA (Madagascar) reminded the Committee that he had submitted an amendment that morning which sought to allow several countries to constitute a single delegation (S/37). That amendment was to be discussed on Wednesday. He would make the same reservation with regard to votes if his amendment was adopted.

2711. The CHAIRMAN asked the Delegate of Madagascar whether his reservation applied to both the subparagraphs (a) and (g).

2712. Mr. RAZAFINDRATANDRA (Madagascar) said that it applied to both subparagraphs. In his view, it would be right and proper for the single delegation to have the same number of votes as the number of countries which it represented.

2713. The CHAIRMAN replied that each country was entitled to one vote and not to several. He thought that the Delegate of Madagascar would find nothing to object to in subparagraph (a), though he might do so in subparagraph (g), and he suggested that subparagraph (3)(a) could be adopted if the Delegation of Madagascar was able to support that proposal.

2714. Mr. RAZAFINDRATANDRA (Madagascar) expressed his agreement.

Article 13(3)(b) (S/61)

2715. Mrs. RATUSZNIAK (Poland) stated that the quorum should be raised to half the member States. Article 13(3)(b) and (c), read together, could have the effect that proposals could be adopted by a small portion of the total number of member States. He pointed out that the rules of procedure of the Security Council of the United Nations, as well as those of other organizations, provided for a quorum of one-half.

2716. Mr. CONK (Czechoslovakia) said that his Delegation had already submitted proposals in writing that morning with regard to paragraph (3)(b) (S/61). He wished to urge, however, that the quorum of one-third should be replaced by a quorum of one-half, particularly in view of the fact that some Unions had a very small number of member States.

2717. Mr. RIBEIRO (Brazil) said that the point would be the subject of a formal proposal, which was being put forward by some Latin American countries, and he requested that the discussion be adjourned.

2718. The CHAIRMAN asked the Delegate of Brazil whether the proposal had been handed in to the Secretariat.

2719. Mr. RIBEIRO (Brazil) said it had not yet been handed in because it had been submitted to the African group and the point was linked with paragraphs (3)(g) and (4)(a).

2720. Mr. VASSILEV (Bulgaria) endorsed the view expressed by the Delegations of Czechoslovakia and Poland with regard to the quorum. He referred to the reason advanced by BIRPI in paragraph 69 of the Commentary in document S/3: "based on past experience." He was anxious, however, that due account should be taken of the important role played by the Assembly and he considered that the quorum should be increased from one-third to one-half at least.

2721. Mr. ARTEMIEV (Soviet Union) said that the quorum of a third of the member States would enable a minority to be responsible for decisions, in view of the fact that decisions may be taken by simple majority under paragraph (3)(c). For this reason, he supported the remarks of the Delegations of Poland and Czechoslovakia.

2722. Mr. LABRY (France) shared the apprehensions which had been voiced by previous speakers. A quorum of one-third did seem inadequate. Its adoption would lead to the provisions of the Convention being amended on the basis of too few votes.

2723. Mr. AZABOU (Tunisia), Mr. PÁLOS (Hungary) and Mr. DE SANCTIS (Italy) were in agreement with the view expressed by the Delegations of Poland, Czechoslovakia, Bulgaria and France in regard to the quorum.

2724. Mr. BODENHAUSEN (Director of BIRPI) pointed out that there were two sides to the problem of the quorum—one theoretical and one practical. Theoretically, he would entirely agree with those delegations which supported a quorum of one-half of the member countries, but in practice the attendance of half of the eighty or so members of the Paris Union at the Assemblies depended on circumstances. Some distant countries, for instance, lacked the resources required for the sending of delegations if they had no accredited representatives in Geneva. And for those who did send delegations, there would be a waste of money if the Assembly had to be convened again.

2725. Mr. BOULBINA (Algeria) fully supported the proposed Czechoslovak amendment to increase the quorum to one-half. After hearing the explanations given by the Director of BIRPI, he felt obliged to point out that the decisions which had to be taken should be taken on the basis of interventions and not of abstentions. That was essential for the efficient working of the Assembly.

2726. Mr. MAZARAMBROZ (Spain) pointed out that the Committeee was practically unanimously in favor of raising the quorum to one-half. However, the arguments of the Director of BIRPI were of a certain weight. He suggested a compromise; it should be agreed that, when required, the budget for the preceding period could be prolonged without it being necessary to obtain the votes of countries not represented.

2727. Mr. KRIEGER (Federal Republic of Germany) supported the remarks of the Director of BIRPI. He said that, in view of the practical consequences of any large quorum, his Delegation preferred the text as it stood in the draft. As a compromise, he suggested that the quorum should be a third or, if not attained, thirty.

2728. Mr. LORENZ (Austria) proposed that, in view of the wishes expressed by a large number of countries, the Committee should meet the demands of those countries which asked for a larger quorum, while allowing countries which were not represented in the Assembly to signify their approval in writing so that the quorum could be achieved subsequently.

2729. Mr. GRANT (United Kingdom) asked the Director what proportion of Unionist members usually attended BIRPI meetings.

2730. Mr. BODENHAUSEN (Director of BIRPI) said that there were usually not more than 35 members present.

2731. Mr. LABRY (France) observed that it was difficult to compare a Committee of Experts with an Assembly, the purpose of which was to amend the provisions of a convention. It would be wise to retain a reasonable quorum in order to avoid "snap" amendments. A larger quorum was needed for the Assembly than for some committees.

2732. The CHAIRMAN pointed out that it was not possible to take a vote on the question as there was an amendment drawn up by the Latin American group. A compromise would have to be found.

2733. Mr. RIBEIRO (Brazil) was prepared to support the Czechoslovak proposal. He would not put forward any special proposal, but he wished to mention that at all international meetings in Geneva at least two-thirds of the Members were represented.

2734. The CHAIRMAN said that the Unions had their traditions, too, and the procedures of other organizations could not necessarily be applied to meetings on intellectual property. It was essential to try to reconcile the different points of view. The arguments adduced by the Director seemed to him to be very cogent. He wished to allow time for the study of a compromise proposal and he invited those delegations which had suggested an increase in the quorum to send representatives to work out a compromise proposal during an interval in the meeting. He asked if there were any comments on the Austrian draft amendments contained in document S/39, which had already been circulated.

Article 13(2)(a)(xi) (continued) *(S/39)*

2735. Mr. VASSILEV (Bulgaria) supported the Austrian draft (S/39), particularly the first paragraph. He would abstain in any vote on the second paragraph.

2736. Mr. KRIEGER (Federal Republic of Germany) supported the Austrian proposal set out in document S/39.

2737.1 Mr. NORDENSON (Sweden) considered that the functions of the Union Assemblies under the IPO Convention should be reflected in the Paris and Berne Conventions themselves.

2737.2 Reference to these functions was made in the Austrian proposal. He drew the attention of the Committee to the consequences of such a formula; some member States of the Unions would not be Members of IPO but, theoretically, IPO could impose certain obligations on the Union Assemblies. Thus, members of the Unions would have obligations imposed on them by a forum in which they were not represented. He proposed that item (xii) (S/39), as proposed by the Delegation of Austria, be rejected but that (xi) (S/3) could be maintained and that a new item should be added to reflect the question of obligations.

2738. Mr. BOGSCH (Deputy Director, BIRPI) pointed out the fundamental difference between item (xii) (S/39) and (xi) (S/3)—item (xi) used the word "functions" and item (xii) the word "rights." No obligations could be imposed by IPO on the Paris and Berne Unions. The Assemblies of those Unions would only exercise certain privileges under the IPO Draft Convention, for example in connection with the election of the Director General.

2739. Mr. MORF (Switzerland) said he could accept the Austrian proposal contained in document S/39. If it was accepted by the other delegations, the proposal which he had made that morning would become redundant.

2740. Mr. DALEWSKI (Poland) supported the proposal of the Delegate of Switzerland.

2741. Mr. LORENZ (Austria) explained that paragraph 2 of document S/39 was intended to ensure coordination of duties and tasks to preserve the complete autonomy of the existing Unions. It was essential that no Union should be burdened with a task which it did not want.

2742. Mr. BENÁRD (Hungary) declared that his Delegation supported the Austrian proposal as formulated in document S/39.

2743. Mr. VILKOV (Soviet Union) stated that his Delegation could not support paragraph 2 of the Austrian proposal.

2744. The CHAIRMAN said that, if any progress was to be made, the debate would have to be continued using the IPO draft as a working hypothesis.

2745. Mr. DE SANCTIS (Italy) said that he was not in a position to accept paragraph 2 of the Austrian proposal at the moment. In view of what the Chairman had said, he wondered whether the wording proposed by BIRPI and Sweden could not be retained for the present.

2746. Mr. MAZARAMBROZ (Spain) said that the Delegation of Spain accepted paragraph 1 of the Austrian proposal. As regards paragraph 2, he suggested that the rights to be exercised by the Unions should be mentioned specifically.

2747. Mr. BRADERMAN (United States of America) supported the formula put forward by the Chairman. He suggested that the Committee should assume, for working purposes, that there would be an IPO Convention. Otherwise this discussion would have to be adjourned until Main Committee V had completed its deliberations.

2748. Mr. LABRY (France) agreed wholeheartedly with the Delegate of the United States. With regard to the Austrian proposal, he fully approved paragraph 1, but on paragraph 2 he shared the views of Sweden. The problem was a legal one.

2749. Mr. NORDENSON (Sweden) suggested that, since the Unions should not accept obligations imposed by another body, difficulties could be avoided by amending item (xii), set out in paragraph 2 of the Austrian proposal (S/39), to read "exercise such rights as are given to it in the IPO Convention to the extent that the Assembly assumes such rights."

2750. The CHAIRMAN observed that there appeared to be no opposition to paragraph 1 of the Austrian proposal. With regard to paragraph 2, objections had been raised by the Delegation of Sweden and supported by other delegations. It was too early to take a vote. A written draft would be required to take account of the most recent comments by the Delegation of Sweden. As no objections had been raised, he proposed that the meeting should be suspended in order that a small group could meet to deal with Article 13(3)(b).

Article 13(3)(b) (continued)

2751. The CHAIRMAN, after the meeting resumed, asked what progress had been made on the subject of the quorum by the group which had met during the break in the meeting.

2752. Mr. BODENHAUSEN (Director of BIRPI) replied that it had unfortunately proved impossible to achieve unanimity, but that a very large majority had favored an increase in the quorum for the Assembly to one-half of the member States. As a safety measure, if necessary, a postal vote could be taken among the absent States within a period of three months; those States would be asked to indicate whether they were in favor of or against the proposal or wished to abstain. If the quorum was achieved, the decision would be valid. Abstentions recorded in writing would be included in the calculation for the quorum. This proposal by Austria had been supported by the Delegation of Poland. The Delegation of France had reserved the right to alter its decision.

2753. The CHAIRMAN said that it was impossible to take a decision until the draft proposal had been circulated. He invited discussion on Article 13(3)(c) concerning the majority required for decisions.

Article 13(3)(c) (S/61)

2754. Mr. PÁLOS (Hungary) observed that the question of the vote was extremely important because the way in which it was solved would have a considerable influence on the future of the Union. If decisions were taken by a simple majority, the Union would not have the necessary stability. The main purpose of the Committee's work was to make the Paris Union independent and to enable it to exercise an effective control over the operation of its administrative organ. It would also carry out the auditing of the accounts. The various points of view would therefore have to be reconciled. Decisions of the Assembly should be taken either by unanimous vote or by a massive majority. He proposed that the Assembly should take its decisions by a two-thirds majority.

2755. Mr. CONK (Czechoslovakia) pointed out that the proposals which his Delegation had submitted that morning (S/61) included a two-thirds majority.

2756. Mr. ARTEMIEV (Soviet Union) said that the draft was inconsistent. The budget and program of the Union could be adopted by a simple majority, but in less important matters, for example, admission of

observers, a qualified majority was required. He considered that decisions should in all cases be taken by a two-thirds majority.

2757. Mr. MAZARAMBROZ (Spain) expressed the view that, if the quorum was raised to one-half of the countries members of the Assembly, then, in general, it was sufficient for decisions to be taken by simple majority. However, he considered that the text should distinguish between cases where a simple majority was sufficient and cases in which a qualified majority was required. Those decisions necessitating a qualified majority should be listed.

2758. Mr. IVANOV (Bulgaria) said that all decisions should be taken by a two-thirds majority of the votes cast.

2759. Mr. DALEWSKI (Poland) supported the remarks of the Delegates of Hungary and Czechoslovakia.

2760. Mr. BODENHAUSEN (Director of BIRPI) drew attention to the practical consequences of the choice before the Main Committee. The Assembly had to vote among other things on the triennial budget and the election of the members of the Executive Committee. Admittedly, a two-thirds majority gave a feeling of reassurance, but what would happen if the qualified majority was not achieved? The Organization would be hamstrung.

2761. The CHAIRMAN pointed out that postal voting might be spread out over a period of three months. But each vote taken in an Assembly affected the subsequent one and it would be difficult to operate an Assembly if the votes were not taken in succession. The only way of reaching a completely clear solution would be to adopt the Polish and Austrian proposal (S/58). It might be possible to adopt a qualified majority of two-thirds for all decisions, whatever their nature, or a simple majority for the less important decisions. If it was the general view of the Committee that a qualified majority was required, the problem would have to be carefully studied. He hoped that a proposal would be submitted on the following day.

2762. Mr. LORENZ (Austria) thought that the problem of the quorum and of the method of voting was a very delicate one and suggested that consideration of the matter should be deferred until the following afternoon.

2763. The CHAIRMAN stated that the question would not be discussed until the following day. In the circumstances, it seemed advisable to defer discussion of subparagraphs (e) and (f), which dealt with voting. The discussion of subparagraph (g) would be held over until the proposal of the Delegation of Madagascar was considered.

ASSEMBLY: SESSIONS

Article 13(4) (S/3) and Article 21 (4) (S/9)

Article 13(4)(a)

2764. The CHAIRMAN then invited comments on Article 13(4)(a).

2765. Mr. RIBEIRO (Brazil) proposed the deletion of the word "preferably."

2766. Mr. BOGSCH (Deputy Director, BIRPI) said that the word "preferably" had been chosen by the preparatory Committees in 1965 and 1966 so that, in exceptional circumstances, the Assembly could meet in places other than Geneva.

2767. Mr. LAURELLI (Argentina) supported the remarks of the Delegate of Brazil. He said that developing countries had competent representatives in Geneva, and therefore generally preferred that Assemblies of Organizations based in Geneva, of which they were members, be held there.

2768. Mr. RIBEIRO (Brazil) thought there was no need for the Berne Union and the Paris Union to meet at the same time.

2769. The CHAIRMAN pointed out that the subparagraph provided for two conferences. It might prove necessary to convene a meeting at a different period from that of the Assembly. Perhaps it would be possible to replace the word "preferably" by a stronger term.

2770. *Article 13(4)(a) was adopted in principle and referred to the Drafting Committee.*

Article 13(4)(b)

2771. The CHAIRMAN turned to Article 13(4)(b).

2772. Mr. LORENZ (Austria) said he was submitting a provision similar to Article 13*bis*, dealing with the Executive Committee. He hoped that the document would be circulated in time.

2773. Mr. PHAF (Netherlands), referring to paragraph (4)(a), wondered whether it would not be advisable to envisage the possibility of revision conferences being convened at the same period as the Assembly.

2774. Mr. BODENHAUSEN (Director of BIRPI) said that revision conferences would meet in the host country.

2775. The CHAIRMAN returned to subparagraph (b).

2776. *Article 13(4)(b) was adopted unanimously.*

ASSEMBLY: RULES OF PROCEDURE

Article 13(5) (S/3) and Article 21(5) (S/9)

2777. The CHAIRMAN turned to Article 13(5).

2778. Mr. PÁLOS (Hungary) raised the question of the financial regulations mentioned in Article 13*quater*(8). He proposed that the words "and financial regulations" should be added to paragraph (5).

2779.1 The CHAIRMAN pointed out that two different questions were involved. The reference here was to the rules of procedure of the Assembly itself and not to the financial regulations which had been mentioned at the previous meeting.

2779.2 In these circumstances, he declared *Article 13(5) to be unanimously adopted.*

EXECUTIVE COMMITTEE

*Article 13*bis *(S/3) and Article 21*bis *(S/9)*

2780. The CHAIRMAN invited the Main Committee to consider Article 13*bis*.

2781. Mr. LORENZ (Austria) said he would like discussion of that Article to be deferred to the next day. Many of the provisions concerning the Executive Committee were based on those dealing with the Assembly.

2782. The CHAIRMAN suggested that, to save time, the Main Committee should turn to Article 13*ter*.

INTERNATIONAL BUREAU

*Article 13*ter *(S/3) and 21*ter *(S/9)*

INTERNATIONAL BUREAU: GENERAL TASKS

*Article 13*ter*(1) (S/3) and Article 21*ter*(1) (S/9)*

2783. The CHAIRMAN opened the discussion on paragraph (1).

2784. Mr. DE SANCTIS (Italy) said that he had no amendments to propose, but would like to make a general comment: paragraph (1)(a) traced the history of the Bureaux, but he wondered whether a phrase could not be added, such as "under the common title of International Bureau."

2785. The CHAIRMAN proposed, with the agreement of Mr. de Sanctis, that the comment made by the latter should be referred to the Drafting Committee.

2786. Miss NILSEN (United States of America) stated that the Delegation of the United States would submit a proposal for an additional provision to be inserted between paragraphs (1)(a) and (1)(b).

2787. Mr. KRUGER (South Africa) said that paragraph (1)(c) should be made subject to such directions as the Executive Committee shall issue. The powers of the Director General were unlimited under this provision as it stood.

2788. The CHAIRMAN remarked that it appeared to be the wish of the Main Committee to retain the text proposed in document S/3.

INTERNATIONAL BUREAU: PARTICULAR TASKS

*Article 13*ter*(2) (S/3) and Article 21*ter*(2) (S/9) (S/46)*

2789. Mr. MORF (Switzerland) said he had handed in to the Secretariat a proposal in connection with Article 13*ter*(2) (S/46) under which the list of tasks devolving upon the International Bureau would be extended to include the preparation of draft periodical reports, programs and triennial and annual budgets.

2790. Mr. BOGSCH (Deputy Director, BIRPI) said the Secretariat had no objection in principle, and he suggested that the question should be referred to the Drafting Committee which would decide whether or not the points were covered by the existing text.

2791. The CHAIRMAN noted that that procedure was approved.

2792. *Article 13*ter*(2), as amended by document S/46, was adopted.*

INTERNATIONAL BUREAU: MONTHLY PERIODICAL

*Article 13*ter*(3) (S/3) and Article 21*ter*(3) (S/9)*

2793. The CHAIRMAN opened the discussion on Article 13*ter*(3).

2794. *Article 13*ter*(3) was adopted unanimously.*

INTERNATIONAL BUREAU: MONTHLY PERIODICAL (COPIES)

*Article 13*ter*(4) (S/3) and Article 21*ter*(4) (S/9)*

2795. The CHAIRMAN opened the discussion on Article 13*ter*(4).

2796. *Article 13*ter*(4) was adopted unanimously.*

INTERNATIONAL BUREAU: FURNISHING INFORMATION TO COUNTRIES

*Article 13*ter*(5) and Article 21*ter*(5) (S/9)*

2797. The CHAIRMAN opened the discussion on Article 13*ter*(5).

2798. *Article 13*ter*(5) was adopted unanimously.*

INTERNATIONAL BUREAU: CARRYING OUT OF STUDIES

*Article 13*ter*(6) (S/3) and Article 21*ter*(6) (S/9)*

2799. The CHAIRMAN opened the discussion on Article 13*ter*(6).

2800. *Article 13*ter*(6) was adopted unanimously.*

INTERNATIONAL BUREAU: PARTICIPATIONS IN MEETINGS

*Article 13*ter*(7) (S/3) and Article 21*ter*(7) (S/9)*

2801. The CHAIRMAN opened the discussion on Article 13*ter*(7).

2802. *Article 13*ter*(7) was adopted unanimously.*

INTERNATIONAL BUREAU: CONFERENCES OF REVISION

*Article 13*ter*(8) (S/3) and Article 21*ter*(8) (S/9)*

2803. The CHAIRMAN opened the discussion on Article 13*ter*(8)(a).

2804. Mr. LORENZ (Austria) considered that paragraph (8) should be redrafted to bring it into line with similar articles in other conventions.

2805. Mr. BOGSCH (Deputy Director, BIRPI) said that BIRPI was agreeable to the harmonization of these articles.

2806. The CHAIRMAN said that the text would be referred to the Drafting Committee.

2807. Mr. MORF (Switzerland), referring to subparagraph (a), wondered whether the term "cooperation" adequately reflected the concept of the subordination of BIRPI to the Executive Committee.

2808. The CHAIRMAN replied that in this case the word "cooperation" was appropriate.

2809. Mr. BOGSCH (Deputy Director, BIRPI) said the leading idea had always been that the Director should be able to express his views at revision conferences with a measure of independence. The proposed wording was intended to continue that tradition, which was considered to be a useful one, particularly in interested quarters.

2810. The CHAIRMAN asked Mr. Morf whether he wished to maintain his point.

2811. Mr. MORF (Switzerland) said he did not.

2812. Miss NILSEN (United States of America) stated that the Delegation of the United States would submit a proposal to the Main Committee for an additional provision to be added after paragraph (8)(a).

2813. The CHAIRMAN suggested that, if there were no comments, *paragraph (8) was adopted.*

INTERNATIONAL BUREAU: OTHER TASKS

*Article 13*ter*(9) (S/3) and Article 21*ter*(9) (S/9)*

2814. Mr. LORENZ (Austria) said he had submitted a written proposal to add at the end of paragraph (9) the words "by the present Convention or by the organs of the Union."

2815. The CHAIRMAN asked whether that proposal could be discussed forthwith.

2816. Mr. PHAF (Netherlands) inquired whether the paragraph with that addition would mean that certain tasks could be assigned to the Bureau under special agreements.

2817. Mr. LORENZ (Austria) replied that there was no question of individual Unions being able to assign tasks to the Paris Union. It would be possible to find a form of words if there was agreement on the intentions.

2818. Mr. BOGSCH (Deputy Director, BIRPI) said that the International Bureau would be under the constant supervision of the Assembly and Executive Committee. Consequently, the proposed addition appeared to be superfluous.

2819. Mr. EVENSEN (Norway) supported the views of Mr. Bogsch.

2820. The CHAIRMAN noted that two proposals were before the Committee: one was to retain the text as worded, and the other was to specify the tasks to be assigned to the International Bureau. He called for a vote on the principle of the Austrian amendment.

2821. *The Austrian amendment was rejected by 8 votes in favor, 10 against, and 11 abstentions.*

2822. The CHAIRMAN stated that *the text of paragraph (9), as set out in document S/3, was adopted.*

The meeting rose at 6:30 p.m.

THIRD MEETING

Wednesday, June 14, 1967, at 9:30 a.m.

ASSEMBLY: TASKS (continued)

Article 13 (S/3) and Article 21 (S/9)

2823. The CHAIRMAN proposed that the Committee should return to Article 13 while continuing to postpone consideration of the provisions of paragraph (3) concerning votes (quorum, majorities, and representation).

Articles 13(2)(a)(ii) (continued)

2824. The CHAIRMAN, this proposal having been accepted, invited comments on Article 13(2)(a)(ii).

2825. Mr. LORENZ (Austria) recalled the question that he had raised the day before on the subject of document S/29: what was the exact meaning of the qualifying adjective "due?"

2826. Mr. LABRY (France) said that the adjective concerned had no special significance. The important point was to state that comments by member States of the Union not bound by Articles 21 to 23 (Berne Convention) should be taken into consideration.

2827. The CHAIRMAN said this was a question of wording which would be referred to the Drafting Committee. He announced that, subject to that reservation, *subparagraph (a)(ii) was adopted.*

Article 13(2)(a)(xii) (S/47)
(S/24 and S/47)

2828. The CHAIRMAN proposed to open discussion of a new paragraph (2)(a)(xii) submitted in document S/47 by the Delegation of Sweden.

2829. Mr. DE SANCTIS (Italy) stated that the Delegation of Italy supported the text as proposed in document S/47 because it considered that the rights given to the Assembly in the IPO Convention should be accepted by the Paris and Berne Conventions.

2830. Mr. LAURELLI (Argentina) said he had a pragmatic proposal to make. In view of the fact that three texts were proposed, and to avoid a long discussion on these texts, he suggested that the authors meet together in order to propose a joint text.

2831. The CHAIRMAN pointed out that document S/47 constituted the joint text.

2832. Mr. BOULBINA (Algeria) proposed that in document S/47 the word "approval" should be replaced by the word "acceptance" and that the exact wording could be considered later.

2833. Mr. KRIEGER (Federal Republic of Germany) pointed out that his Delegation supported the Swedish proposal contained in document S/47 without any reservation. He added that his Delegation was also prepared to support the Algerian proposal on the matter of drafting.

2834. Mr. DESBOIS (France) proposed the following wording: "subject to its acceptance, provided that the Convention is adopted." The Assembly would, of course, have to approve both the diminution and extension of its powers.

2835.1 The CHAIRMAN stated that the proposal contained in document S/47 was adopted in principle, subject to the observations of the Delegations of Algeria and France. That decision would be transmitted to the Drafting Committee.

2835.2 He recalled that item (xi) had been changed in accordance with the amendment contained in document S/24 and that the Drafting Committee would be responsible for the wording of item (xii).

2835.3 He then invited comments on paragraphs 3 and 4 of document S/24.

2836.1 Mr. LORENZ (Austria) proposed that these paragraphs should be dealt with when paragraph 5 of document S/24 was discussed, as the said paragraphs 3 and 4 derived from item 5.

2836.2 *It was so agreed.*

EXECUTIVE COMMITTEE

*Article 13*bis *(S/3) and Article 21*bis *(S/9)*
(S/29, S/30 and S/31)

2837. The CHAIRMAN opened the discussion of Article 13*bis*, together with documents S/29, S/30, and S/31.

EXECUTIVE COMMITTEE: ESTABLISHMENT

*Article 13*bis*(1) (S/3) and Article 21*bis*(1) (S/9)*

2838. The CHAIRMAN invited discussion of paragraph (1).

2839. *Article 13*bis*(1) was adopted unanimously.*

EXECUTIVE COMMITTEE: COMPOSITION

*Article 13*bis*(2) (S/3) and Article 21*bis*(2) (S/9) (S/37)*

2840. The CHAIRMAN then invited comments on paragraph (2)(a).

2841. Mr. RIBEIRO (Brazil) considered that it was necessary to take into account the financial provisions, particularly those contained in Article 13*quater*(1).

2842. Mr. LAURELLI (Argentina) stated that he supported the proposal made by the Delegation of Brazil.

2843. Mr. RIBEIRO (Brazil), replying to a question by the Chairman, stated that he did not propose any amendment to paragraph (2)(a). It was not possible, however, to discuss the question of the ex officio seat in Article 13*bis* until Article 13*quater*(7)(a) had been considered. In any event, only a question of simple drafting was involved.

2844.1 The CHAIRMAN stated that *Article 13*bis*(2)(a) was adopted unanimously, subject to drafting changes.*

2844.2 He then invited comments on paragraph (2)(b).

2845. Mr. RAZAFINDRATANDRA (Madagascar) recalled his proposal at the end of document S/37.

2846. Mr. BODENHAUSEN (Director of BIRPI) pointed out that the proposal of the Delegation of Madagascar could be put into effect in an Assembly, but was, by its very nature, impossible to operate in a restricted Committee.

2847. The CHAIRMAN expressed his agreement with Mr. Bodenhausen. He asked Mr. Razafindratandra to consider the possibility of withdrawing his proposal.

2848. Mr. RAZAFINDRATANDRA (Madagascar) stated that he would give his decision later.

2849. The CHAIRMAN then announced that *Article 13*bis*(2)(c) was adopted unanimously since there is no objection to it.*

COMPOSITION (continued)

*Article 13*bis*(3) (S/3) and Article 21*bis*(3) (S/9)*

2850. The CHAIRMAN called for comments on Article 13*bis*, paragraph (3).

2851. Mr. DA CRUZ (Portugal) stated that in his view the number of countries members of the Executive Committee corresponding to one-fourth of the number of the countries members of the Assembly seemed to be exaggerated. The proportion should not exceed one-fifth.

2852. Mr. VASSILEV (Bulgaria) supported the proposal as contained in document S/3.

2853. The CHAIRMAN said that the proposal of Portugal had not been supported. *The text of Article 13*bis*(3), as contained in document S/3, was therefore adopted unanimously.*

COMPOSITION (continued)

*Article 13*bis*(4) (S/3) and Article 21*bis*(4) (S/9) (S/48)*

2854. The CHAIRMAN then invited comments on Article 13*bis*, paragraph (4).

2855. Mr. PETERSSON (Australia) referred to the Australian proposal contained in document S/48 amending paragraph (4) of Article 13*bis* to delete the remainder of the sentence after the word "distribution." He pointed out that a balanced geographical distribution was a common requirement contained in the conventions of most other international organizations such as the World Health Organization, the International Telecommunication Union and the Universal Postal Union; he added that the stress on the word "need" in regard to countries members of the Special Unions was neither advisable nor necessary.

2856. Mr. LORENZ (Austria) pointed out that the proposed amendment contained in document S/48 was submitted by the Delegation of Australia and not by the Delegation of Austria, which did not support the proposal.

2857. Mr. RIBEIRO (Brazil), Mr. LAURELLI (Argentina) and Mr. RAZAFINDRATANDRA (Madagascar) declared that they were in support of the Australian proposal contained in document S/48.

2858. Mr. KRIEGER (Federal Republic of Germany) stated that he preferred to maintain the present text as contained in document S/3. Mr. AZABOU (Tunisia) and Mr. LABRY (France) also declared that they were in support of the BIRPI text.

2859. The CHAIRMAN then called for a vote on the amendment contained in document S/48.

2860. *The amendment was rejected by 30 votes to 5, with 5 abstentions.*

2861. *Article 13*bis*(4), as contained in document S/3, was accordingly adopted.*

2862. Mr. PISK (Czechoslovakia) suggested that the word "balanced" in Article 13*bis*(4) should be replaced by "equitable" as this word was closer to the French text and was used in the charters of other inter-governmental international organizations.

2863. The CHAIRMAN stated that the observation would be transmitted to the Drafting Committee.

COMPOSITION (continued)

*Article 13*bis*(5) (S/3) and Article 21*bis*(5) (S/9)*

2864. *Article 13*bis*(5)(a) was adopted unanimously.*

2865. *Article 13*bis*(5)(b) was adopted unanimously.*

EXECUTIVE COMMITTEE: TASKS

*Article 13*bis*(6) (S/3) and Article 21*bis*(6) (S/9) (S/29 and S/30)*

2866. *Article 13*bis*(6)(a)(i) was adopted unanimously.*

2867. *Article 13*bis*(6)(a)(ii) was adopted unanimously.*

2868. The CHAIRMAN then invited comments on Article 13*bis*(6)(a)(iii) together with document S/30.

2869. Mr. LORENZ (Austria), commenting on the amendment proposed by his Delegation, considered that it should be made quite clear that the Executive Committee was not competent to make any decisions on proposals exceeding the triennial period.

2870.1 The CHAIRMAN, commenting on an observation by Mr. Labry, said that the word "biennial" contained in document S/30 should be replaced by the word "triennial."

2870.2 *He announced that Article 13*bis*(6)(a)(iii) was adopted unanimously.*

2871. *Article 13*bis*(6)(a)(iv) was adopted unanimously.*

2872. *Article 13*bis*(6)(a)(v) was adopted unanimously.*

2873. The CHAIRMAN then invited comments on Article 13*bis*(6)(a)(vi), together with documents S/29 and S/30.

2874. Mr. BOGSCH (Deputy Director, BIRPI) recognized that there might be a certain parallelism in Article 13 on the Assembly and in Article 13*bis* of the Executive Committee because the Coordination Committee is composed of the two Executive Committees of the Paris and Berne Unions. He suggested that this matter be reserved until the final text of the IPO Convention was established to see whether, in fact, it would be necessary to have a rule similar to the one adopted in connection with the Assembly.

2875. Mr. KRIEGER (Federal Republic of Germany) believed that the proposal made by Mr. Bogsch was logical and he supported it.

2876. Mr. PHAF (Netherlands) expressed his agreement with Mr. Bogsch. The text concerned could not, however, be identical with that proposed for Article 13, in view of the fact that the Executive Committee would have certain functions assigned to it by the Assembly.

2877.1 The CHAIRMAN expressed his agreement.

*Article 13*bis*(6)(a)(vi) was therefore referred to the Drafting Committee* on the basis of the text proposed for Article 13.

2877.2 The CHAIRMAN then invited comments on Article 13*bis*(6)(b).

2878. Mr. MORF (Switzerland) recalled the drafting proposal that he had made in regard to Article 13(2)(b), namely, to replace the words "take into consideration" by the words "make a decision after having heard the advice of."

2879. The CHAIRMAN stated that the observation in question would be transmitted to the Drafting Committee.

2880. Mr. RAZAFINDRATANDRA (Madagascar) informed the Chairman that he would withdraw his Delegation's proposed amendment to Article 13*bis* contained in document S/37.

2881. The CHAIRMAN announced that *Article 13*bis*(6)(b) was therefore adopted unanimously.*

EXECUTIVE COMMITTEE: SESSIONS

*Article 13*bis*(7) (S/3) and Article 21*bis*(7) (S/9) (S/29 and S/30)*

2882. *Article 13*bis*(7)(a) was adopted unanimously.*

2883. The CHAIRMAN then invited comments on Article 13*bis*(7)(b) together with documents S/29 and S/30.

2884. Mr. LABRY (France), commenting on the proposals contained in document S/29, said the Delegation of France agreed that in certain cases the Director General should be able to convene the Executive Committee on his own initiative. His Delegation therefore proposed that the Executive Committee should meet: (a) on the initiative of the Director General; (b) at the request of the Chairman of the Committee; (c) at the request of one-fourth of the countries members of the Committee.

2885. Mr. BODENHAUSEN (Director of BIRPI) supported that proposal.

2886. The CHAIRMAN announced that *that proposal was adopted*, and that it would be transmitted to the Drafting Committee.

2887. Mr. LORENZ (Austria) also supported the French proposal. No purpose would, therefore, be served by discussing the proposal of the Delegation of Austria contained in document S/30.

2888. The CHAIRMAN said that *the Committee was therefore in agreement with the amendment contained in document S/29, which would be referred to the Drafting Committee.*

EXECUTIVE COMMITTEE: VOTING

*Article 13*bis*(8) (S/3) and Article 21*bis*(8) (S/9)*

2889. *Article 13*bis*(8)(a) was adopted unanimously.*

2890. The CHAIRMAN then invited comments on Article 13*bis*(8)(b).

2891. Mr. MAZARAMBROZ (Spain) stated that, since the quorum for the Assembly had been raised from one-third to one-half of the members present and voting, and in view of the fact that the quorum composed of one-half was provided in the text for the Executive Committee, he suggested that if this quorum of one-half was not obtained, then there should be a provision for a consultation in writing of the States members of the Executive Committee.

2892. The CHAIRMAN asked Mr. Mazarambroz if he wanted States to be consulted when the quorum of one-half was not reached.

2893. Mr. MAZARAMBROZ (Spain) replied in the affirmative.

2894. Mr. DE SANCTIS (Italy) proposed that the quorum be raised. In his opinion, the prescribed quorum was insufficient in view of the fact that the Executive Committee was composed of a limited number of countries.

2895. Mr. PHAF (Netherlands) stated that he was in favor of maintaining the quorum proposed in document S/3.

2896. Mr. AZABOU (Tunisia) stated that he also was in favor of maintaining it.

2897. Mr. KRIEGER (Federal Republic of Germany) declared that his Delegation was also in favor of the text contained in document S/3. He pointed out that if a higher quorum was decided upon for the Executive Committee, this could lead to difficulties which might prevent the Executive Committee from taking action.

2898. Mr. LABRY (France) considered the Executive Committee must be in a position to take decisions. The quorum should therefore neither be increased nor decreased. Hence, he was in favor of maintaining the wording in document S/3.

2899. Miss NILSEN (United States of America) stated that her Delegation wished to maintain the text as contained in document S/3.

2900.1 The CHAIRMAN noted that all the Delegations except that of Italy and, from a different point of view, that of Spain, were in favor of the quorum prescribed in document S/3. He therefore declared that *Article 13*bis*(8)(b) was adopted.*

2900.2 He then invited comments on Article 13*bis*(8)(c).

2901. Mr. PÁLOS (Hungary) recalled that his Delegation had spoken in favor of a qualified majority for the decisions of the Assembly. The situation being, in his opinion, the same as regards the Executive Committee, the Delegation of Hungary proposed that provision be made for a two-thirds majority.

2902. Mr. ARTEMIEV (Soviet Union) stated that his Delegation also supported the views expressed by the Delegation of Hungary.

2903. Mr. CONK (Czechoslovakia) proposed that a two-thirds majority be retained for the Executive Committee because the voting system now applied for the Conference of Representatives of the Paris Union is based on a two-thirds majority of the votes cast. He saw no reason why this procedure should be changed.

2904. Mr. BOULBINA (Algeria) stated that he was in favor of the two-thirds majority.

2905. Mr. KRIEGER (Federal Republic of Germany) said that he would welcome the views of the Director of BIRPI on this question. He repeated that, if a two-thirds majority was decided upon for the quorum of the Executive Committee, practical difficulties would be faced and the Executive Committee might be prevented from operating.

2906. Mr. BOWEN (United Kingdom) said that he preferred the text as contained in document S/3. He pointed out that the Executive Committee had to act within the limits set by the Assembly and mostly in matters of secondary importance. Consequently, a simple majority appeared to be quite sufficient.

2907. Mr. PHAF (Netherlands) noted that the Conference of Representatives constituted a parallel to the Assembly and not to the Executive Committee; the Executive Committee as it existed at present did not take its decisions by a qualified majority. He therefore agreed with the opinions expressed by the Delegations of the Federal Republic of Germany and of the United Kingdom.

2908. Mr. IVANOV (Bulgaria) said that his Delegation was also in favor of a two-thirds majority for the Executive Committee which corresponded to the majority requested in the Assembly because decisions taken in the Executive Committee largely depended on decisions taken by the Assembly. He added that such competence could best be implemented by a larger number of countries in the Executive Committee which required a qualified majority.

2909. Mr. LABRY (France) stated that he was in favor of maintaining the text contained in document S/3. The Executive Committee should be permitted to keep in touch with the day-to-day administration of the Convention.

2910. Mr. MAZARAMBROZ (Spain) suggested that, instead of a simple majority of the members present and voting, one-half of the States members of the Executive Committee would be required to carry a decision.

2911. Mr. DALEWSKI (Poland) said that he had supported a two-thirds majority for the quorum required in the Assembly and that he was also in favor of a two-thirds majority for the Executive Committee.

2912. Mr. BOULBINA (Algeria) said he would prefer a qualified majority, so as to enable the Executive Committee to prepare the work of the Assembly under optimum conditions.

2913. Mr. PETERSSON (Australia) declared that he was in favor of the proposal contained in document S/3. He pointed out that the Executive Committee was already composed of one-fourth of the total number of States members of the Assembly and that a quorum of one-half of these members appeared to be sufficient.

2914. Mr. AZABOU (Tunisia) proposed that in view of the similarity between Article 13(3)(c) and Article 13*bis*(8)(c), discussion should be suspended until the Committee had adopted the text of Article 13(3)(c).

2915. Mr. MORF (Switzerland) shared the opinion of the Delegations of the Federal Republic of Germany, the United Kingdom, the Netherlands and France. The problem regarding the majority was not, in fact, the same for the Assembly as for the Executive Committee.

2916. Mr. SAVIĆ (Yugoslavia) shared the opinion of the Delegation of Hungary.

2917. Miss NILSEN (United States of America) said that her Delegation associated itself with the delegations in favor of the text as contained in document S/3 and with the views expressed by the Delegate of Switzerland.

2918. Mr. BODENHAUSEN (Director of BIRPI), replying to Mr. Krieger, stated that a practical problem was involved. The Executive Committee had to take executive decisions promptly. He doubted whether the two-thirds majority rule was workable for the Executive Committee. It might be acceptable for the Assembly, if coupled with some reservations concerning the budget, but it would be hazardous to adopt it for the Executive Committee. He had no objection, however, to suspending decision until the text of Article 13(3)(c) had been adopted.

2919. The CHAIRMAN said that he had no objections to such an adjournment. *Agreed.*

2920. *Article 13*bis*(8)(d) was adopted unanimously.*

2921. The CHAIRMAN then invited comments on Article 13*bis*(8)(e).

2922. Mr. KRIEGER (Federal Republic of Germany), with reference to Article 13*bis*(8)(e), wished to draw attention to his proposal for amending a corresponding provision for Article 13(3)(g) in document S/35. This was merely a matter of drafting and he proposed that the same amendment be considered for subparagraph (e) of Article 13*bis*(8).

2923. The CHAIRMAN stated that the amendment proposed by the Delegation of the Federal Republic of Germany would be referred to the Drafting Committee, as had been done in the case of Article 13(3)(g).

2924. Mr. LORENZ (Austria) stated that in documents S/30 and S/31 his Delegation had proposed an addition to paragraph (8) of Article 13*bis*. In his opinion, it would be well to make provision for a secret ballot in cases where delicate problems were involved.

2925. Mr. BODENHAUSEN (Director of BIRPI) wondered whether this question could not be dealt with in the rules of procedure of the Executive Committee.

2926. Mr. BOWEN (United Kingdom) said that his Delegation was of the opinion that different considerations apply for the Assembly and for the Executive Committee. For the Executive Committee the question is merely a matter of mechanics and he preferred to leave the possibility of a secret ballot out of the Convention as this was merely a rule of procedure which could be included in the rules of procedure of the Executive Committee.

2927. Miss NILSEN (United States of America) said that her Delegation supported the views expressed by the Director of BIRPI and by the Delegate of the United Kingdom. The matter of a secret ballot could be included in the rules of procedure.

2928. Mr. AZABOU (Tunisia), Mr. LABRY (France), and Mr. DE SANCTIS (Italy) shared the opinion of Mr. Bodenhausen.

2929. Mr. LORENZ (Austria) thought the important thing was to make provision somewhere for a secret ballot. He would be satisfied if the rules of procedure of the Executive Committee provided for the possibility of secret ballots.

2930. The CHAIRMAN said that *Article 13*bis*(8)(e) was therefore adopted.*

EXECUTIVE COMMITTEE: OBSERVERS

*Article 13*bis*(9) (S/3) and Article 21*bis*(9) (S/9)*

2931. *Article 13*bis*(9) was adopted unanimously.*

EXECUTIVE COMMITTEE:
RULES OF PROCEDURE

*Article 13*bis*(10) (S/3) and Article 21*bis*(10) (S/9)*

2932. *Article 13*bis*(10) was adopted unanimously.*

The meeting rose at 12:30 p.m.

FOURTH MEETING

Wednesday, June 14, 1967, at 2:30 p.m.

INTERNATIONAL BUREAU: TASKS (continued)

*Article 13*ter *(S/3) and Article 21*ter *(S/9)*
(S/32)

2933. The CHAIRMAN declared that Article 13*ter* (S/3) concerning the International Bureau was to be examined. He invited the comments of delegates on paragraph (1)(a). The only points to be considered were those that had been held over from the previous afternoon. Document S/32, which had been distributed in the morning, contained the proposal of the Delegation of the United States.

*Article 13*ter*(8)* (continued)

2934. Miss NILSEN (United States of America) said that the Delegation of the United States had only one proposal concerning 13*ter*. It was contained in document S/32 and related to an insertion in paragraph (8) which would fall between subparagraphs (a) and (b); (b) would become (c). It would be desirable to include a specific provision to this effect even though it only reflected the present practice of BIRPI.

2935. The CHAIRMAN specified that the proposed insertion would be in paragraph (8) of Article 13*ter*.

2936. Mr. KRIEGER (Federal Republic of Germany) supported the proposal of the Delegate of the United States. In his view, consultations with international non-governmental organizations would be useful and the adoption of the proposal would only confirm the present practice of BIRPI.

2937. Mr. AZABOU (Tunisia) asked whether paragraph (8) had not already been adopted on the previous day.

2938. The CHAIRMAN explained that what was before the meeting was an addition and not an amendment.

2939. Miss NILSEN (United States of America) pointed out that the Delegation of the United States had referred to this proposal the previous day, but at that time it had not yet been distributed.

2940. Mr. LORENZ (Austria) said that the Delegation of Austria supported the proposal made by the Delegation of the United States. It would seem useful to have a similar provision in the Berne Convention. He asked whether it was necessary to make an explicit proposal.

2941.1 The CHAIRMAN thought that the provisions of the Berne Convention that would receive the same application as those of the Paris Convention could be rapidly reviewed. Whenever a different wording ought to be applied to the Berne Convention, it would have to be explicitly formulated.

2941.2 He assumed that there was no objection to the United States proposal. It could therefore be added to the text of paragraph (8)(b) in the final version.

*Article 13*ter*(9)* (continued)
(S/30)

2942. The CHAIRMAN asked whether there were any comments with regard to paragraph (9) as proposed by the Delegation of Austria (S/30).

2943. Mr. PHAF (Netherlands) recalled that the question had been settled on the previous day by a vote.

2944. The CHAIRMAN agreed that that observation was perfectly correct.

ASSEMBLY AND EXECUTIVE COMMITTEE:
VOTING (continued)

*Article 13 and Article 13*bis*; Article 21 and Article 21*bis
(S/58)

2945.1 The CHAIRMAN indicated that he had received a proposal designed to settle the question of voting, that was to say, the majority and the quorum in Articles 13 and 13*bis*.

2945.2 He recalled that all matters relating to the quorum, the majority and representation in Article 13, namely, subparagraphs (b) and (c), had been held over. The proposals of Austria and Poland concerning Article 13, paragraph (3)(b) had been distributed in the morning. A Working Group had met in the afternoon of the previous day and its work was reflected in document S/58.

2946. Mr. LORENZ (Austria) explained that the position of the Delegation of Austria was the following: it had been ready to adopt Article 13(3)(b) but, as there had been some opposition, its contribution had been to try

to collaborate in a draft. It was necessary to come to a conclusion on the idea underlying that draft. The main idea was that, if there were 100 members, 50 representatives would be needed, and not 48, to make up the necessary quorum. The decision taken by the 48 countries would thus have to be regarded as provisional and the Director of BIRPI would notify countries not represented of the decisions provisionally taken. If two States subsequently declared against the decision taken, there would nevertheless be a quorum.

2947. Mr. SHUKLA (India) remarked that, with regard to the Berne Union, the formation of an Executive Committee was contemplated, in which some participants would have the right to vote while others would only have the status of observers. This was not the present situation in the Permanent Committee of the Berne Union.

2948. Mr. BODENHAUSEN (Director of BIRPI) said that the Committee was not at present discussing the Executive Committee but rules concerning the Assembly. Matters concerning the Executive Committee of the Berne Union had already been dealt with by the Main Committee. He explained that the voting rules of the Permanent Committee of the Berne Union did not allow for observers to vote; they only had the right to intervene. The position would remain the same in the new Executive Committee.

2949. Mrs. RATUSZNIAK (Poland) stated that the Delegation of Poland was in favor of an unconditional quorum of one-half. It had put its name to document S/58 as a proof of its willingness to reach a compromise.

2950. Mr. PHAF (Netherlands) said that the last Austrian intervention had not increased his enthusiasm regarding compromise. But he preferred the present wording which he had before him.

2951. Mr. RAZAFINDRATANDRA (Madagascar) wondered whether, after having heard the explanation given by the Delegate of Austria on the subject of the 48 States present and the two States absent, that meant that decisions taken would not be adopted.

2952. The CHAIRMAN considered that reversal of the majority would place the Assembly in a curious situation that would be difficult to clear up.

2953. Mr. SHUKLA (India) said that the administrative provisions proposed the establishment of an Executive Committee corresponding to the present Permanent Committee of the Berne Union. As questions of major importance would be dealt with in the Assembly of the Union, the Executive Committee taking up only minor questions, was it really necessary to have an Executive Committee?

2954. The CHAIRMAN answered that questions concerning the Executive Committee had been dealt with in the morning.

2955. Mr. BOULBINA (Algeria), referring to the proposal submitted by the Delegations of Austria and Poland, said that the Delegate of Austria had only raised the question of presence. The problem of the vote, of the majority, was secondary. It was for that reason that provision was to be made to validate decisions taken in the absence of some States.

2956. Mr. BODENHAUSEN (Director of BIRPI) thought that the Committee should not let itself become bogged down in academic arguments. If, in the example given by the Delegate of Austria, there was unanimity among 48 States, it was probable that there would be at least two States in favor among those absent.

2957. Mr. ARTEMIEV (Soviet Union) said that the Delegation of the Soviet Union considered that the proposal of the Delegations of Austria and Poland was a skilful and acceptable compromise solution.

2958. Mr. PISK (Czechoslovakia) would welcome the adoption of a quorum of one-half, but, in principle, agreed that there should be a compromise procedure for the case where the quorum was not attained. He suggested that the second sentence of the proposal of the Delegations of Austria and Poland set out in document S/58 should read: "If the quorum is not attained at the session and the decision cannot be delayed..."

2959. Mr. MAEDA (Japan) stated that his Delegation was against the compromise proposal for two reasons. Firstly, the procedure was confusing and cumbersome and would lead to delays. Secondly, it was theoretically possible, in extreme cases, for five or six countries to make a provisional decision. For these reasons, he would prefer the quorum to be fixed at either one-third or one-half.

2960. Mr. PHAF (Netherlands) wondered how things would work out if the additional Czechoslovak amendment was adopted and the written procedure was applied only in case of urgency.

2961. Mr. LORENZ (Austria) shared the uneasiness of the Netherlands Delegate. When would there be an emergency? As far as the draft was concerned, there were omissions. On the principle itself, there was already a procedure for written communication. A second fundamental question would arise if that solution were adopted. The procedure might lead to an unworkable result when related questions were involved.

2962. The CHAIRMAN considered that the solutions outlined should be formulated more precisely.

2963. Mr. STANESCU (Rumania) thought that the proposals for a larger quorum should prevail because decisions ought to be taken by a quorum that reflected a majority. He was in favor of the Polish and Austrian proposals. He found the remark of the Delegate of Japan interesting. The problem of abstention had already been raised.

2964. Mr. MAZARAMBROZ (Spain) suggested that a solution to this problem would be to establish the rule that a quorum of one-third was necessary to reach provisional decisions but that a quorum of one-half was necessary for decisions to be carried.

2965. Mr. PÁLOS (Hungary) thought that the discussion on the quorum had been very useful. The Polish and Austrian compromise would be in the general interest. Referring to the misgivings expressed by the Delegate of Japan as to what would happen if the quorum were not attained, he thought that was something which would occur only very rarely in practice. He warmly supported the proposals of the Delegations of Austria and Poland.

2966. Mr. BOULBINA (Algeria) supported the proposal of Austria and Poland. The Assembly would meet every three years, or in extraordinary sessions, and hence the raising of the quorum from a third to a half could not hamper the activities of BIRPI.

2967.1 Mr. BOWEN (United Kingdom) declared that the United Kingdom Delegation supported the draft as it stood in document S/3. He said that a quorum of a third reflected a proper balance between the need to have sufficient numbers to obtain real representation at meetings and the practical question of the number of countries which in fact were likely to attend meetings. However, as he understood that many delegates would prefer a quorum of one-half but were prepared to accept a compromise such as that contained in document S/58, he had a suggestion to make.

2967.2 The second sentence of the proposal set out in document S/58 provided for provisional decisions to be taken even if the quorum was much less than one-half. The Delegation of the United Kingdom considered that no decision should be taken unless one-third of the members of the Assembly were represented. He suggested that the last sentence should be amended to the effect that decisions taken should be adopted unless, within a four-month period, a majority pronounced themselves against the decision.

2968. Mr. VASSILEV (Bulgaria) said that, after studying the Polish and Austrian drafts, he found the wording of document S/58 acceptable.

2969. Miss NILSEN (United States of America) supported the United Kingdom proposal. She considered that it provided a workable solution as it gave all countries the possibility of being heard, but would not delay the entry into force of decisions.

2970. Mr. KRIEGER (Federal Republic of Germany) stated that the Delegation of the Federal Republic of Germany preferred the present text as it stood in document S/3. The previous day, a working group had met to try to find a compromise. A common solution had not been found and he had understood that the meeting had resulted in two proposals. Apart from the proposal of the Delegations of Austria and Poland, the Delegation of France had proposed that there should be a quorum of one-half for all amendments to Articles 13 to 13*quinquies* but a quorum of only one-third to deal with all other matters.

2971. Mr. BODENHAUSEN (Director of BIRPI) said he wished to clarify that particular point. There had been only one proposal before the Working Group, but the Delegation of France had reserved the right to return to its position concerning the quorum. France had not done so following that reservation.

2972. Mr. NORDENSON (Sweden) said that the Delegation of Sweden in principle supported the proposal contained in document S/58 but, like the Delegation of the United States, was in favor of the proposal of the Delegate of the United Kingdom. He asked the Delegate of the United Kingdom if his intention was that a provisional decision should stand unless a majority of member States opposed the decision—this would require a qualified majority for negative decisions—or did he envisage that a simple majority of the member States taking part in the decision would be sufficient?

2973. Mr. BOWEN (United Kingdom) said that he was not concerned with obtaining a majority of the countries who attended the meetings, but a participation of a majority of the members of the Assembly in making decisions.

2974. Mr. LORENZ (Austria) said he only wished to comment on the supplementary proposal made by the Delegation of the United Kingdom. He had thought of a solution on the lines of the one put forward by the United Kingdom, namely, not to augment the quorum, but to require a specific majority of the member States. In that case, however, the quorum would have to be substantially reduced.

2975. Mr. AZABOU (Tunisia) said his Delegation approved the proposal of the Delegations of Austria and Poland (S/58) in its present form.

2976. Mr. DE SANCTIS (Italy) was in favor of the proposal contained in document S/58 together with the supplementary proposal of the United Kingdom and the United States. Having heard the remark of the Delegate of Sweden, however, he thought that the Drafting Committee would now be in a position to draft a complete text.

2977. Mr. PHAF (Netherlands) agreed with the Delegation of Italy that the proposal should be referred to the Drafting Committee, since otherwise the Committee would be inundated with proposals and counter-proposals.

2978. The CHAIRMAN said they would have to wait for the Working Group's draft, and there could be no hope of settling the question forthwith. The Delegations of Argentina, the United Kingdom, Tunisia, Rumania and Australia had asked for the floor and the list of speakers on this point was now closed.

2979. Mr. SHUKLA (India) supported the proposal of the Delegations of Austria and Poland with the modifications suggested by the Delegation of the United Kingdom.

2980. Mr. LAURELLI (Argentina) said that he considered the proposal of the Delegations of Austria and Poland set out in document S/58 could be left as it was and that a Working Group should draft a new clause containing the United Kingdom proposals for the consideration of the Committee.

2981. Mr. STANESCU (Rumania) fully supported the proposal of the Delegations of Austria and Poland (document S/58). It reflected the spirit of what had been said on the previous day.

2982. Mr. AZABOU (Tunisia) said his Delegation was opposed to the Netherlands proposal and associated itself with the Delegation of Argentina.

2983. Mr. BOWEN (United Kingdom) repeated that his intention was that a majority of the countries members of the Assembly should be required to pronounce itself.

2984. Mr. PETERSSON (Australia) supported the original draft set out in document S/3. However, if agreement could not be reached on that draft text, he would be satisfied with the United Kingdom proposal.

2985. The CHAIRMAN suspended the meeting to enable a Working Group to prepare a written proposal.

The meeting was suspended at 4:20 p.m. and resumed at 5 p.m.

Proposal of the Working Group on voting (S/78)

2986. The CHAIRMAN announced that the Working Group had succeeded in drafting a text during the interval.

2987. Mr. BODENHAUSEN (Director of BIRPI) informed the Committee that the Working Group had reached agreement very rapidly and unanimously on the text appearing in document S/78. The difference between the old and new text was that the phrase "but one-third of the countries members of the Assembly are present" had been added. This was followed by the postal vote. If the required quorum and majority were obtained within the stipulated period, the decision would be secured. The Delegation of the United Kingdom was satisfied. There had therefore been unanimity in the Working Group.

2988. The CHAIRMAN asked whether, in those circumstances, and subject to drafting changes, there was any opposition to the proposal.

2989. Mr. MAZARAMBROZ (Spain) said that, as he had not yet had a chance to look at the new draft set out in document S/78, he was not in a position either to oppose or to approve it.

2990. Mr. PÁLOS (Hungary) asked that members should be enabled to study the draft more closely.

2991. The CHAIRMAN said he was prepared to defer consideration of the point so that delegations could reach a decision in full knowledge of the facts.

ASSEMBLY: VOTING

Article 13(3)(c) (continued)
(S/30)

2992. The CHAIRMAN proposed that the Main Committee should continue its work and resume discussion of Article 13(3)(c) concerning the majority.

2993. Mr. BODENHAUSEN (Director of BIRPI) said that the idea of a two-thirds majority was acceptable to BIRPI, provided that emergency arrangements were made for the budget (S/30, Article 13*quater* 4(f)). If there was no majority or quorum, the program and budget of the previous year would have to continue automatically.

2994. The CHAIRMAN said that document S/30 presented an amendment along those lines and that it should be taken into consideration.

2995. Mrs. RATUSZNIAK (Poland) said that the Delegation of Poland accepted the proposal of the Director of BIRPI.

2996. Mr. KRIEGER (Federal Republic of Germany) pointed out that, in spite of the remarks of the Director of BIRPI, his Delegation still preferred the original text in document S/3.

2997. Mr. ARTEMIEV (Soviet Union) considered that the proposal of the Director of BIRPI was perfectly acceptable.

2998. Mr. CONK (Czechoslovakia) stated that he was completely satisfied with the proposal submitted by Mr. Bodenhausen.

2999. Mr. MORF (Switzerland) said he too would have preferred to maintain a simple majority, but since BIRPI accepted that increase, he also would accept it.

3000. The CHAIRMAN asked the Delegation of the Federal Republic of Germany whether it wanted a vote to be taken.

3001. Mr. KRIEGER (Federal Republic of Germany) said that his Delegation did not insist on a vote on this question.

3002. The CHAIRMAN thought that the Committee was prepared to amend Article 13(3)(c) so as to increase the required majority to a majority of two-thirds of the votes cast, subject to adoption of the proposal of the Director of BIRPI which was based on the amendment set out in document S/30. The Chairman noted that there was no opposition. *It was therefore so decided.*

3003. *Article 13(3)(c) was therefore adopted with the above proviso.*

Article 13(3)(d) *and* (e)

3004. The CHAIRMAN said he thought there would be no comments on subparagraphs (d) and (e).

3005. Mr. MORF (Switzerland) said he wished to raise a question on subparagraph (d), which provided that decisions to admit observers to meetings should require two-thirds of the votes cast. Would not a simple majority suffice?

3006. The CHAIRMAN said it had just been decided that the Assembly should make its decisions by a two-thirds majority; hence he did not think that smaller majorities could be required if the rule was a two-thirds majority. He informed the Delegate of Switzerland that, if he thought that certain less important decisions should not require a two-thirds majority, he should submit a formal proposal to that effect.

3007. Mr. MORF (Switzerland) withdrew his question.

3008. Mr. STANESCU (Rumania) pointed out that some delegations had remarked on the previous day that a two-thirds majority would not be suitable for the invitation as observers of countries which were not members of the Union. If the Delegation of Switzerland were to make that proposal, Rumania would support it; if not, the Delegation of Rumania would itself submit the proposal. A simple majority should suffice for the invitation of non-member countries as observers.

3009. Miss NILSEN (United States of America) urged that the rule of the two-thirds majority be retained with regard to the admission of observers whether non-member States or organizations.

3010. Mr. BODENHAUSEN (Director of BIRPI) explained the reason for the two-thirds majority laid down for observers. That majority had been adopted for political reasons. From a formal standpoint it would be difficult to go back on the decision which had been taken.

3011. The CHAIRMAN stated that it would be difficult to return to a simple majority for certain questions, since that would be to undo the work which had been accomplished. He asked whether the Delegation of Rumania wished to press its proposal.

3012. Mr. STANESCU (Rumania) replied that he withdrew his proposal.

3013. Mr. KRIEGER (Federal Republic of Germany) was not convinced that subparagraph (d) could be dropped as the Main Committee had not decided on a simple rule for a two-thirds majority; it had provided that if this majority had not been achieved, a written procedure would take place. Would this rule also apply to the matters considered under subparagraph (d)?

3014. The CHAIRMAN said that the rules which had just been adopted referred to the quorum and seemed to apply to all votes. No distinction was made as to the subject involved. It was a question of a simple quorum and not of a majority.

3015. Mr. KRIEGER (Federal Republic of Germany) agreed with the Chairman.

3016. Mr. MORF (Switzerland) inquired whether, if subparagraph (d) were deleted, the suggested procedure would hold up the work of the Assembly?

3017. The CHAIRMAN explained that subparagraph (d) would be dropped, as it no longer served any purpose. Subparagraph (f) had been adopted and subparagraph (g) had been held over for discussion on the following day.

EXECUTIVE COMMITTEE: VOTING

*Article 13*bis*(8)*(c) (continued)

3018. The CHAIRMAN invited the Main Committee to deal with the majority rules to be provided for the Executive Committee, Article 13*bis*(8)(c).

3019. Mr. BODENHAUSEN (Director of BIRPI) recalled what he had said on the previous day. There was a profound difference between a vote of the Assembly and a vote of the Executive Committee. The same system would be very dangerous for the Executive Committee.

Although a two-thirds majority had been adopted for the Assembly, a simple majority should be allowed for the Executive Committee to enable it to function.

3020. The CHAIRMAN asked delegations whether they wished to press for a two-thirds majority after having heard the explanation of the Director of BIRPI. If there was no objection to maintaining the text of Article 13*bis*(8)(c), it would be considered as adopted.

3021. *Article 13*bis*(8)(c) was adopted unanimously.*

FINANCES

*Article 13*quater *(S/3) and Article 22 (S/9) (S/62 and S/78)*

3022. The CHAIRMAN noted that the agenda called for study of Article 13*quater*.

3023. Mr. MAZARAMBROZ (Spain) pointed out that the Delegation of Spain had submitted a proposal to BIRPI for an addition to paragraph (3) of Article 13*quater*. This document had not yet been distributed and he wondered if delegates were aware of the proposal.

3024.1 The CHAIRMAN asked if any delegations were not aware of the Spanish statements. They were to be found in document S/15. The text would be reissued in a separate document which would be distributed on the following day.

3024.2 Turning to general matters, the Chairman noted that document S/62 (proposals of the Delegations of France, the Federal Republic of Germany, Italy and the United States) had been circulated. It was an amendment to Article 13*quater* of document S/3 and had already been agreed to by several delegations. The Committee would have to study it for the continuation of the discussion.

3025. Mr. BOGSCH (Deputy Director, BIRPI) reminded the Committee that the French Government had submitted comments on the financial clauses of IPO (which necessarily referred also to the financial clauses of the Paris and Berne Conventions) which criticized the concept of the budget of the Organization. Other Governments had also commented on this concept. An effort had therefore been made to present this problem in a clearer form than that in which it had originally been put forward in the documents prepared by BIRPI on the request of the Swedish Government. The Committee would receive a paper containing new financial proposals for IPO; document S/62 reflected the incidence of these proposals on S/3 and S/9. The main difference was that the expression "budget of the Organization" had been replaced by "budget of the Conference" and the expression "common expenses" by the words "expenses common to the Unions."

3026. Mr. MAZARAMBROZ (Spain) referred to the proposal for the text of Article 13(3)(b) set out in document S/78. He expressed the view that the question of written replies should be made clearer if weight was to be given to the decisions of the Assembly.

3027. Mr. BODENHAUSEN (Director of BIRPI) said he had not fully understood the point made by the Delegate of Spain. He proposed to see the Delegate of Spain and discuss it with him.

3028. The CHAIRMAN passed to document S/78 containing the proposals of the Working Group.

3029. Mr. PÁLOS (Hungary) said he would be very glad to receive further clarification.

3030. The CHAIRMAN said that a few minutes would be devoted to document S/78 on the following day. He hoped that only drafting amendments would be involved.

The meeting rose at 5:50 p.m.

FIFTH MEETING

Thursday, June 15, 1967, at 9:30 a.m.

ASSEMBLY:
VOTING BY REGIONAL GROUPS (S/37)

3031. The CHAIRMAN invited the meeting to consider document S/37, which contained a proposed amendment by the Delegation of Madagascar to allow States grouped together under the terms of an international agreement in an Intellectual Property Office to be represented by a single delegation or by that common organ.

3032. Mr. RAZAFINDRATANDRA (Madagascar) recalled that his Delegation had withdrawn its proposals concerning the Executive Committee. It had also withdrawn its second proposal concerning the Assembly. The grounds for the first proposed amendment concerning the Assembly were essentially to introduce the concept of regional grouping. That concept had been favorably received, notably by the United Nations. In the field of industrial property, OAMPI was the first concrete achievement on the lines of such regional grouping. Later, other groupings might be made, especially in South America, Africa or Asia. It was advisable to take account of that trend.

3033. Mr. AMON D'ABY (Ivory Coast) indicated that his Delegation supported the amendment proposed by the Delegation of Madagascar.

3034. Mr. LEDOUX (Senegal) indicated that his Delegation also supported the proposal. He stated that, in accordance with Article 1 of the Libreville Agreement, OAMPI was the sole industrial property service for each of the twelve member States. Decisions taken by the twelve Ministers responsible for industrial property who made up the Administrative Council of OAMPI were directly applicable in the twelve States. That explained why the United Nations had instanced OAMPI as an example to be followed in the developing countries.

3035. Mr. EKANI (African and Malagasy Industrial Property Office (OAMPI)) explained that the purpose of the proposal submitted by the Delegation of Madagascar had been to ensure the effective participation in the Paris Union of the States grouped together in OAMPI. That proposal had a direct bearing on the future of industrial property, especially in the developing countries. One of the aims of the present Conference was to create a new world-wide Organization. It was therefore expedient to enable all States to take part in the life of that Organization. Moreover, Mr. Ekani pointed out that industrial property had hitherto been based on the principle of territoriality, a principle that was now in question; they should strive resolutely to make progress beyond that principle; in that respect, one of the most original and most promising approaches was to be found in regional grouping, of which OAMPI was a model. In the last analysis, the question was whether these attempts at grouping would be made within the framework of the new Organization.

3036. Mr. LABRY (France) thought that the proposed amendment that had been submitted was worthy of the special attention of the Conference. When the African countries and Madagascar had gained their independence, they had agreed to remain within the Paris Union, but in order to do so they had set up a single Industrial Property Office without which they could not have remainded members of the Union. Since one of the objectives of the new Organization would be to attract new States to the Paris and Berne Unions, it would be paradoxical not to take into consideration the special

problems that were raised for certain States that were already members of the Paris Union. In concluding, Mr. Labry expressed the hope that it would be possible to reach a positive solution that would take into consideration the interests of all.

3037. Mr. AZABOU (Tunisia) declared that his Delegation warmly supported the proposal submitted by the Delegation of Madagascar.

3038.1 Mr. LAURELLI (Argentina) declared that his Delegation considered the practical and realistic activities undertaken by OAMPI with the deepest sympathy and much expectation. Though fully understanding the concern expressed by the countries favorable to the proposal contained in document S/37, and taking into consideration the aspirations of the African countries for development, his Delegation regretted to say that the proposed draft was not adequate and contained problems of a legal nature.

3038.2 This was a Diplomatic Conference of plenipotentiaries and all decisions taken were of importance on the international level and to create a precedent such as this may well lead to difficulties. Though acceptance of the proposal may have pragmatic results within the framework of intellectual property, they may have repercussions of a political nature in other bodies in the United Nations family of organizations, the extent of which is both complex and unpredictable. Though South American countries are in favor of regional groupings, they have never supported a similar system, and therefore he regretted that he was not in a position to support the proposal.

3039.1 Mr. BRADERMAN (United States of America) said that he had listened with interest to the very eloquent statements made by various delegates, suggesting that several States grouped together be represented by a single State. This was a very important point. The United States was fully in support of developing countries and had already shown particular interest in the regional grouping of countries. It was fully realized that the developing States suffered from a shortage of qualified personnel in the field of industrial property, and an answer to this problem was a common Patent Office such as OAMPI.

3039.2 However, he did not believe that the proposals as contained in document S/37 would further the interests and development of industrial property in the countries concerned. It was not the practice in modern international organizations to have one regional office voting for several countries. The solution proposed was not necessarily desirable. Although some systems provided for a weighted voting or voting by proxy, the Delegate of the United States knew of no organization which provided for a system similar to the one proposed. It was doubtful whether a group voting system would really be to the benefit of developing countries. An exchange of views was however most beneficial. One representative could very well express the consensus of opinion on a regional basis.

3039.3 With reference to the matter of expenses, raised in connection with the attendance of several delegates at meetings which presumably would be held in Geneva, it should be recalled that most African States had diplomatic representatives in Switzerland or in neighboring countries. OAMPI might therefore delegate one technically qualified representative who could advise the diplomatic representatives of its member States.

3039.4 He believed that the proposal in document S/37 would create an undesirable precedent, and he urged the Delegate of Madagascar not to press this matter. The Delegation of the United States would gladly participate in any examination of the problem with a view to finding a practical solution for the countries concerned.

3040. Mr. MWENDWA (Kenya) declared that, in view of the arguments put forward, he fully supported the OAMPI proposal which he considered to be of great assistance to developing countries.

3041. Mr. GRANT (United Kingdom) said that, after hearing the carefully reasoned remarks of the other delegations, he considered that the OAMPI proposal deserved careful examination. It was obvious that all States wished to help the developing countries of OAMPI. Nevertheless, the proposal put forward contained dangers. The Paris Union had developed in recent years as a result of discussions between States, but if such a proposal was accepted, it would lead to a situation where one delegate would come to a meeting with a pocketful of votes and this delegate would be committed to voting in one direction only. Alternatively, such votes would be used by one person in favor of a solution which the States absent had not had the opportunity of debating. He therefore hoped that the Delegate of Madagascar would not press his proposal.

3042. Mr. TROTTA (Italy) said that the member countries of OAMPI had the full sympathy of his Delegation. The question of voting in international organizations was, however, a delicate matter. The rule in all international organizations was that a delegation should have only one vote. He wondered whether, in those conditions, the proposed amendment submitted by the Delegation of Madagascar was the best solution for the problem facing the twelve member States of OAMPI, recognizing, however, the necessity of trying to satisfy their just interest in being effectively represented at all discussions.

3043. Mr. LEDOUX (Senegal) did not contest that the rule stated by Mr. Trotta existed in the international organizations. A new fact had, however, made its appearance in the previous few years, namely, the appearance of the non-aligned States. In the countries that made up that grouping there was a growing tendency to delegate powers of representation to other States. Mr. Ledoux referred in that connection to the meeting that had only just been held at Accra to set up the future West African Economic Community, at which it had been accepted that any State that was a member of the Community could be represented by another member State, which would also have the right to vote in the name of its principal. In conclusion, Mr. Ledoux urged that a solution be found to the special problems of the countries that were members of OAMPI, either in the form of the Malagasy amendment, or in some other form.

3044. Mr. PISK (Czechoslovakia) declared that his Delegation had great sympathy for the Malagasy proposal. He did not think that the danger of creating a precedent was fully substantiated. The proposal as contained in document S/37 was not really in contradiction with the principle of the sovereignty of States because each of these States, having a common office, would be free to mandate another State to represent its interests. However, the present formulation was too broad in its scope and required some redrafting and in this respect he would gladly participate in any examination of the proposal.

3045. The CHAIRMAN, noting that conflicting opinions had been expressed, suggested that an attempt should be made to reconcile the points of view in a Working Party that could meet immediately if the deliberations of the Committee were to be suspended for that purpose for an hour.

COMPOSITION OF WORKING GROUP ON VOTING BY REGIONAL GROUPS

3046. The Working Group would be made up of the delegates of the following countries: Brazil, Congo (Brazzaville), Czechoslovakia, France, Ivory Coast, Madagascar, Senegal, Tunisia, United Kingdom and the United States, and the observer of OAMPI.

The CHAIRMAN suspended the meeting.

ASSEMBLY: VOTING (continued)

(S/78 and S/82)

3047. When the Committee resumed its deliberations, Mr. BOGSCH (Deputy Director, BIRPI) announced that the Working Group had had a very useful exchange of views in a very relaxed atmosphere, but that it needed a further meeting to reach a conclusion.

3048.1 The CHAIRMAN suggested that the decision on the Malagasy proposal should be postponed until the following morning so that the Working Group could meet before the next meeting.

3048.2 *It was so agreed.*

3048.3 Reverting to Article 13, the Chairman recalled that paragraph (3)(b) had not been finally adopted on the previous day as amended by document S/78 (proposal of the Working Group).

3049. *Article 13(3)*(b), *as amended by document S/18 was therefore unanimously adopted.*

3050. Mr. MAZARAMBROZ (Spain), with reference to the conversation he had had with the Director of BIRPI, said that he agreed with the proposal in document S/78, but wished it to be recorded in the report that this proposal meant that, for the quorum, all written replies, whether affirmative or negative, or mere acknowledgements, should be included in the count.

3051. The CHAIRMAN indicated that the statement of Mr. Mazarambroz would, of course, appear in the minutes.

FINANCES (continued)

*Article 13*quater *(S/3) and Article 22 (S/9) (S/62)*

3052. The CHAIRMAN invited comments on Article 13*quater*, including document S/62.

3053. Mr. VASSILEV (Bulgaria) proposed a drafting amendment to the text of paragraph (b) in document S/62: he proposed that the phrase "its contribution to the budget of expenses common to the Unions" should be replaced by the words "its contribution to the expenses common to the Unions."

3054. The CHAIRMAN noted that this was a drafting proposal; it would be referred to the Drafting Committee.

FINANCES: DEFINITION OF THE BUDGET

*Article 13*quater *(1) (S/3) and Article 22(1) (S/9) (S/62)*

3055. The CHAIRMAN noted that there had been no comment on paragraph (1)(a).

3056. *Article 13*quater*(1)(a) was therefore unanimously adopted.*

3057. *Similarly, Article 13*quater*(1)(b) was also adopted unanimously in the form in which it appeared in document S/62, subject to the drafting proposal of the Delegation of Bulgaria.*

3058. The CHAIRMAN next invited discussion on subparagraph (c) amended by document S/62.

3059. Mr. MORF (Switzerland) raised the following question: the draft of the IPO Convention (S/10) made provision for the Coordination Committee to give advice, in particular on the common expenses to be included in the budgets of the various Unions (Article 8(3)(i)). Here, on the other hand, it was stated that the share of the Union in common expenses should be in proportion to the interest that the Union had in them. What would happen if the Assembly of the Union were not to share the opinion of the Coordination Committee?

3060. Mr. BOGSCH (Deputy Director, BIRPI) recalled that the role of the Coordination Committee was purely advisory. Each Union would be free to follow or not to follow the advice of that Committee. That, moreover, corresponded to the existing situation in the Inter-Union Coordination Committee.

3061. Mrs. RATUSZNIAK (Poland) wished to make on behalf of her Delegation a reserve with regard to the word "*Conference*" as contained in document S/62 as there was a possibility that, in establishing the IPO Convention, there will be changes in respect to this proposed body.

3062. Mr. PHAF (Netherlands) drew attention to the fact that document S/62 proposed the deletion of the words "or also to the Organization as such." Did that signify that the expenses of the Organization as such would not be considered as common expenses?

3063. Mr. BOGSCH (Deputy Director, BIRPI) thought that that was a matter to be discussed within the framework of discussions on the IPO Convention. In reply to Mr. Phaf, he thought that, in fact, the budget of common expenses was the budget of the Unions and not that of IPO.

3064. Mr. ARTEMIEV (Soviet Union) declared that his Delegation was in agreement with the joint proposal as contained in document S/62 in relation to item (B) but he wished to reserve his position with regard to the body called the "Conference."

3065. The CHAIRMAN noted that there were no more comments on subparagraph (c). *Article 13*quater*(1)(c) was therefore adopted unanimously, as amended by document S/62.*

FINANCES: COORDINATION OF BUDGETS

*Article 13*quater*(2) (S/3) and Article 22(2) (S/9) (S/62)*

3066. The CHAIRMAN invited comments on paragraph (2), as amended by item C in document S/62.

3067. *Article 13*quater*(2) was adopted unanimously, as amended by document S/62.*

FINANCES: SOURCES OF INCOME

*Article 13*quater*(3) (S/3) and Article 22(3) (S/9)*

3068. The CHAIRMAN invited comments on paragraph (3)(i).

3069. *Article 13*quater*(3)(i) was adopted unanimously.*

3070. The CHAIRMAN invited comments on paragraph (3)(ii).

3071. *Article 13*quater*(3)(ii) was adopted unanimously.*

3072. The CHAIRMAN invited comments on paragraph (3)(iii).

3073. *Article 13*quater*(3)(iii) was adopted unanimously.*

3074. The CHAIRMAN invited comments on paragraph (3)(iv).

3075. *Article 13*quater*(3)(iv) was adopted unanimously.*

3076. The CHAIRMAN invited comments on paragraph (3)(v).

3077. *Article 13*quater*(3)(v) was adopted unanimously.*

FINANCES:
PROPOSAL REGARDING PRIORITY FEES (S/82)

3078. The CHAIRMAN invited the meeting to consider document S/82.

3079.1 Mr. MAZARAMBROZ (Spain) with reference to document S/82 declared that the proposal of the Delegation of Spain found its origin in the experience which different countries had encountered in the serious financial problems confronting the Unions. A number of countries had found difficulties in increasing their yearly contributions, the more so as there were many other organizations to which they had to contribute.

3079.2 Referring to other sources of income for the Unions, he recalled the Madrid Union for the international registration of trademarks which offered a clear example of what the financial support of the direct beneficiaries can represent. Although it was simpler to increase the yearly contributions of the States, it was easier to obtain funds from those directly interested in the advantages offered to them by the Paris Convention.

3079.3 He emphasized that it would not represent any burden for the national industrial property offices to collect special fees on behalf of BIRPI for invoking priorities. There were several possibilities for raising these fees, for instance in the form of stamps. The revenues thus obtained could be deducted from the contributions by States or, at least, could make future increases of such contributions unnecessary.

3080. Mr. LEDOUX (Senegal) wondered whether the proposal of the Delegation of Spain might not entail financial imbalance for the developing countries. The budget of OAMPI was at present balanced owing to a policy of austerity. The budget revenue was derived solely from fees. He wondered whether that budget might not be unbalanced if the Spanish proposal were to be adopted; in that case OAMPI would have to call for contributions from the States.

3081. Mr. RAZAFINDRATANDRA (Madagascar) shared the fears expressed by Mr. Ledoux.

3082. Mr. MORF (Switzerland) recalled that BIRPI had proposed financial measures in document S/12. It was proposed in that document that the Conference might adopt a resolution whereby a study of the Spanish proposal would be undertaken and any decision referred to the Vienna Conference. It was in fact at Vienna that a decision should be taken on this proposal which affected the material right: would not non-payment of the fee entail the loss of the right of priority?

3083.1 Mr. MARINETE (Rumania), with reference to the proposal contained in document S/82, wished to congratulate the Delegate of Spain for his initiative, though he doubted whether the example chosen—the international registration of trademarks and the international deposit of industrial designs—was entirely convincing. The Delegate of Spain was no doubt well aware of the considerable advantages that applicants benefited from such registrations, but that if they had to pay extra fees for obtaining priority rights which were written in the substantive clauses of the Lisbon Act (Article 4-c), this might lead to difficulties.

3083.2 He declared himself in agreement with the views expressed by the Delegate of Switzerland: the proposal involved provisions of the Paris Convention not included on the agenda of this Conference, and, therefore, he was not in a position to support, here and now, the proposal contained in document S/82.

3084. Mr. BOWEN (United Kingdom) also expressed congratulations to the Delegate of Spain for his proposal. However, acceptance of such a proposal would constitute a considerable change in the present system. It would involve a transfer of part of the financial burden to private firms, a burden which was now borne by the member States. Though the proposal offered considerable attraction, there were legal difficulties involved. For example, if a State accepted to collect fees on behalf of BIRPI, relying on a right written in the Paris Convention, this would be contrary to Article 2 of the Lisbon Act of the Paris Convention, on national treatment. There were also difficulties of an administrative nature. The proposal should be examined, not here but at the Vienna Conference. His Delegation was prepared to support the draft resolution contained in BIRPI document S/12.

3085. Mr. HEWITT (United States of America) declared that he had noted with interest the contents of the Spanish proposal but that it appeared to be premature to adopt it now and to insert it in the text of the Paris Convention. His Delegation was prepared to study the proposal and to support the resolution contained in BIRPI document S/12. This was not to be construed as a rejection of the Spanish proposal. Any decision in the present Conference would, however, be premature.

3086. Mr. PHAF (Netherlands), who referred to the fears expressed by Mr. Ledoux and Mr. Razafindratandra, did not understand how the Spanish proposal could involve financial obligations for the States, since the fee would be paid by the applicants and not by the national industrial property offices.

3087.1 Mr. MAZARAMBROZ (Spain) said that the fears expressed by the Delegates of Senegal and Madagascar were unfounded since the priority fees would not burden the budgets of the national offices as they would be paid by the applicants.

3087.2 In answer to the argument of the Delegate of Rumania that this proposal was premature, the Delegate of Spain said that, in his view, this was the right time to examine his proposal because it was of a financial and administrative nature and the Stockholm revision dealt par excellence with administration and finances. What was important was to lay down here the principle; the details for implementing the proposal could be dealt with at a later stage.

3087.3 The proposed priority fees would be so modest—for example, 5 Swiss francs per application—that they would hardly increase the expenses of applicants.

3087.4 The distribution of BIRPI priority stamps would involve no appreciable burden on national offices. He wished to urge the Committee to express an opinion now on the principle of accepting this new source of finances and not delaying the matter until the Vienna Conference. He recalled that BIRPI had already proposed that States should increase their contributions. For some countries this may prove to be unacceptable. Consequently, other sources of revenue should be opened.

3088. The CHAIRMAN proposed that discussion of the Spanish proposal (S/82) should be deferred to a later meeting.

The meeting rose at 12:45 p.m.

SIXTH MEETING

Thursday, June 15, 1967, at 2:30 p.m.

FINANCES: PROPOSAL REGARDING PRIORITY FEES (continued) *(S/82)*

3089. The CHAIRMAN stated that the Delegation of Spain intended to amend its proposal in document S/82 and had asked that consideration of that document should be postponed. He inquired whether the Delegation of Spain was agreeable to a postponement until Monday.

3090. Mr. MAZARAMBROZ (Spain) said that he intended to submit a proposal for a new version of the proposal of the Delegation of Spain for an addition to paragraph (3) of Article 13*quater* (S/82), which he hoped would be acceptable. The new proposal would give countries with financial problems the option of collecting a fee for each patent application where the right of priority established by the Paris Convention was invoked. The fee would be a nominal one—1 US dollar or 5 Swiss francs in respect of each application. The introduction of such a fee would solve the problem of an increasing contribution for many countries.

3091. The CHAIRMAN stated that discussion would be resumed when the new version of the Spanish proposal was circulated the following Monday.

FINANCES: CONTRIBUTIONS OF MEMBER COUNTRIES

*Article 13*quater*(4) (S/3) and Article 22(4) (S/9)*

3092. The CHAIRMAN proposed that discussion of Article 13*quater*(4) should be resumed.

3093. *Article 13*quater*(4)*(a), (b), (c) *and* (d) *was adopted unanimously.*

3094. Article 13*quater*(4)(e) gave rise to certain observations.

3095. Miss NILSEN (United States of America) suggested that the last two sentences of subparagraph (e) should be referred to the Drafting Committee; she took the view that it would be preferable to put these points in the rules of procedure rather than in the Convention itself.

3096.1 The CHAIRMAN proposed that the observation of the Delegation of the United States be referred to the final Drafting Committee.

3096.2 *It was so agreed.*

3097. Mr. ARTEMIEV (Soviet Union) considered that the question of the application of sanctions, of the kind set out in subparagraph (e), involved a matter of principle. A Government, member of the Paris Union, would not fail to carry out its financial obligations unless unfortunate circumstances obliged it to do so. Non-payment of contributions might, for example, be due to financial difficulties in the case of developing countries. For this reason, the Delegation of the Soviet Union urged the deletion of this subparagraph in its entirety.

3098. The CHAIRMAN stated that the Soviet Union's proposal was to delete Article 13*quater*(4)(e).

3099. Mr. BOULBINA (Algeria) considered that the provision in question could be particularly dangerous as it might give rise to discussions of a political nature. He supported the Soviet proposal for the deletion of subparagraph (e).

3100. Mr. BODENHAUSEN (Director of BIRPI) said it was not for him to express an opinion. He wished, however, to draw the attention of the Committee to the fact that several countries were somewhat in arrears with the payment of their contributions.

3101. Miss NILSEN (United States of America) considered it desirable that subparagraph (e) be retained. It was a customary provision in conventions constituting international bodies.

3102. The CHAIRMAN put to the vote the Soviet Union's proposal to delete Article 13*quater*(4)(e).

3103. *The amendment submitted by the Delegation of the Soviet Union was rejected by 25 votes to 11 with 4 abstentions.*

3104. The CHAIRMAN invited comments on the proposal by the Delegation of Austria to add to Article 13*quarter*(4) a new subparagraph providing for special measures if it should prove impossible to adopt the budget in time (S/30).

3105. Mr. BODENHAUSEN (Director of BIRPI) recalled that on the previous day it had been decided to adopt a qualified majority of two-thirds for votes in the Assembly, provided that, if no decision was reached on the budget, it should be renewed.

3106. The CHAIRMAN noted that the Committee was in unanimous agreement with the statement by the Director of BIRPI.

FINANCES: CHARGES FOR SERVICES RENDERED BY SECRETARIAT

*Article 13*quater*(5) (S/3) and Article 22(5) (S/9)*

3107. The CHAIRMAN invited comments on Article 13*quater*(5).

3108. *Article 13*quater*(5) was adopted unanimously.*

FINANCES: WORKING CAPITAL FUND

*Article 13*quater*(6) (S/3) and Article 22(6) (S/9)*

3109. The CHAIRMAN invited comments on Article 13*quater*(6)(a).

3110. *Article 13*quater*(6)(a) was adopted unanimously.*

3111. The CHAIRMAN invited comments on Article 13*quater*(6)(b).

3112. Mr. EKANI (African and Malagasy Industrial Property Office (OAMPI)) stated that the financial provisions were of particular interest to OAMPI and he would like to have further information on one point. Would the amount of the contributions to the working capital fund be less than the amount of the annual contribution based on the class selected?

3113. Mr. BOGSCH (Deputy Director, BIRPI) explained that the BIRPI financial documents showed that the objectives were precisely the same as in other organizations. The countries concerned would only have to pay a part—perhaps one-third—of the annual contribution.

3114. Mr. THALER (Austria) asked what was the proportion of the fixed amount.

3115. The CHAIRMAN stated that it was a percentage of the annual contribution.

3116. Mr. BOGSCH (Deputy Director, BIRPI) explained that "proportionate" simply meant a percentage which would be determined by the Assembly.

3117. The CHAIRMAN stated that *Article 13*quater*(6)*(b) *was adopted unanimously.*

3118. The CHAIRMAN invited comments on Article 13*quater*(6)(c).

3119. *Article 13*quater*(6)*(c) *was adopted unanimously.*

FINANCES: ADVANCES FROM HEADQUARTERS GOVERNMENT

*Article 13*quater*(7) (S/3) and Article 22(7) (S/9)*

3120. The CHAIRMAN invited comments on Article 13*quater*(7)(a).

3121. Mr. MORF (Switzerland) stated that the Delegation of Switzerland would approve the obligation for Switzerland, as the country in which the Organization had its headquarters, to grant treasury advances when the working capital fund was insufficient, provided that, in accordance with the draft Convention, such an obligation could be denounced and that an ex officio seat was assigned to Switzerland on the Executive Committee of the Unions concerned, on the Coordination Committee of the Organization, and on all other organs responsible for the financial administration of the institutions concerned.

3122. Mr. ABI-SAD (Brazil) asked whether the country which had an ex officio seat would be counted among the European countries or placed in a separate category.

3123. The CHAIRMAN thought it was for the Assembly to determine the geographical group to which the headquarters country belonged.

3124. Mr. EKANI (African and Malagasy Industrial Property Office (OAMPI)) considered that the member countries of OAMPI would not have any objection to the country where the headquarters of the Organization was situated and which granted advances, having an ex officio seat. But was this the right place to mention it? Such a provision should appear elsewhere.

3125. The CHAIRMAN pointed out that the OAMPI proposal was a matter for drafting. If necessary, the final Drafting Committee could take note of his remark.

3126. *Article 13*quater*(7)*(a) *was adopted.*

3127. The CHAIRMAN invited comments on paragraph (7)(b).

3128. *Article 13*quater*(7)(b) was adopted unanimously.*

FINANCES: AUDITING OF ACCOUNTS

*Article 13*quater*(8) (S/3) and Article 22(8) (S/9)*

3129. The CHAIRMAN invited comments on Article 13*quater*(8).

3130. Mr. MORF (Switzerland) referred to the drafting proposal that had been made previously: the appointment of auditors should also be mentioned among the powers of the Assembly.

3131. Mr. SCHURMANS (Belgium) asked whether all the countries of the Union were involved or only those which had subscribed to the new Convention.

3132. The CHAIRMAN said it was his opinion that the text applied to all the countries of the Union without restriction.

3133. Mr. BODENHAUSEN (Director of BIRPI) observed that Mr. Morf's proposal was a matter of drafting.

3134. The CHAIRMAN was reluctant to burden the Drafting Committee with too many problems, and particularly with such problems as the present one.

3135. Mr. BODENHAUSEN (Director of BIRPI) said he would be happy if the provision could be left where it was at present, but that was only his personal preference.

3136. Mr. MORF (Switzerland) shared the opinion of the Director of BIRPI.

3137. The CHAIRMAN announced that the provision concerned would, therefore, be left where it was.

3138. The CHAIRMAN stated that *Article 13*quater*(8) was adopted unanimously.*

AMENDMENTS TO THE ADMINISTRATIVE PROVISIONS:

*Article 13*quinquies *(S/3) and Article 23 (S/9) (S/35, S/36, S/54, S/55, S/59, S/61 and S/64)*

3139. The CHAIRMAN invited comments on Article 13*quinquies.*

3140. Mr. PFANNER (BIRPI) read out a list of the documents which had been circulated concerning Article 13*quinquies*: S/35 (Federal Republic of Germany), S/55 (Netherlands), S/59 (United States), S/61 (Czechoslovakia), and S/64 (Hungary).

3141.1 Mr. BOGSCH (Deputy Director, BIRPI) explained that Article 13*quinquies* dealt only with the amendment of the administrative provisions. The amendment of other provisions of the Paris Convention remained under the regulation of Article 14.

3141.2 Prior to the Conference, BIRPI had received written observations from several Governments. Some favored the rule of unanimity in all cases, while others considered that even Article 13 should be subject to modification by a qualified majority. There was no provision in the Article as to who was to initiate amendments, and the Delegation of the United States had a proposal on this point. Lastly, several Governments had observed that paragraph (4) was superfluous.

3142. Mr. LORENZ (Austria) asked whether diplomatic conferences would have the right to revise the administrative articles. He also wished to know what the situation would be if some countries were of the opinion that certain amendments involved financial obligations, whereas other countries held a contrary opinion.

3143. Mr. BOGSCH (Deputy Director, BIRPI) replied that if a certain procedure was laid down for the amendment of the administrative clauses, that procedure should always be followed and no exceptions should be made. As regards the hypothetical case of a possible disagreement, an interpretation by the Assembly of the Union would have to be sought.

AMENDMENTS TO THE ADMINISTRATIVE PROVISIONS: PROPOSALS FOR AMENDMENTS

*Article 13*quinquies*(1) (S/3) and Article 23(1) (S/9) (S/59 and S/64)*

3144. The CHAIRMAN stated that there were two amendments concerning Article 13*quinquies*(1): one proposed by the Delegation of the United States (S/59) to the effect that proposals for the amendment of Articles 13 to 13*quinquies* could be initiated by any country of the Union, by the Executive Committee or by the Director General and should be communicated by the Director General; the other, proposed by the Delegation of Hungary (S/64), the first paragraph of which had a similar purpose. The two amendments concerned could, therefore, be discussed together.

3145. Miss NILSEN (United States of America) said that the purpose of the amendment to paragraph (1) proposed by the Delegation of the United States (S/59) was to specify who might initiate amendments. It would be appropriate for either a country member of the Union, or the Executive Committee, or the Director General, to do so.

3146. Mr. PÁLOS (Hungary) considered that his Delegation's proposal was largely a drafting matter. The wording of Article 13*quinquies*(1) appeared to be somewhat ambiguous. In principle, he agreed with the purpose of the proposed text, but would prefer a clearer and less ambiguous wording.

3147. Mr. MORF (Switzerland) said he had a question to ask. The draft stated that proposals for amendment should be communicated by the Director General to the member countries of the Assembly "at least six months in advance of their consideration by the Assembly." Why could not provision be made for them to be submitted to the Executive Committee as well?

3148. Mr. BOGSCH (Deputy Director, BIRPI) said the reason was that the Executive Committee had overall responsibility for preparing the work of the Assembly. Hence, the Executive Committee would be involved in any case.

3149. The CHAIRMAN considered that it was a question of drafting. In the proposal by the United States, however, the initiative could also be taken by the Executive Committee.

3150. *The proposals of the Delegations of the United States and Hungary and the oral proposal of the Delegation of Switzerland were referred to the Drafting Committee with the recommendation that the Committee should take them into consideration in the final drafting of Article 13*quinquies*(1).*

AMENDMENTS TO THE ADMINISTRATIVE PROVISIONS: ADOPTION OF AMENDMENTS

*Article 13*quinquies*(2) (S/3) and Article 23(2) (S/9) (S/35, S/36 and S/61)*

3151. The CHAIRMAN remarked that the proposal of the Delegation of the Federal Republic of Germany (S/35, paragraph 2) was concerned with Article 13*quinquies* (2); it provided for the replacement of unanimity by a majority of four fifths.

3152. Mr. KRIEGER (Federal Republic of Germany) stated that the Delegation of the Federal Republic of Germany, in principle, agreed with the solution expressed in paragraph (2) of Article 13*quinquies* regarding its amendment and that of Article 13. However, he concurred with the opinion of BIRPI expressed in paragraph 119 of the Commentary to document S/3 and took the view that it was neither customary nor necessary that the provisions of Article 13 and of Article 13*quinquies* should be subject to the rule of unanimity. He appreciated that the requirements for modifying the rules governing the Assembly of the Union should be strict but it was unsatisfactory to subject the whole of Article 13 to the possibility of a veto. Article 13 contained much detail as regards the functions of the Assembly which might require amendment or supplementation; the rule of unanimity would be too great an impediment to such modification and would restrict progress. For these reasons, the Delegation of the Federal Republic of Germany proposed in paragraph 2 of document S/35 that in Article 13*quinquies*, paragraph (2), second sentence, the words "the unanimity" should be replaced by the words "four-fifths."

3153. The CHAIRMAN noted that there was also a proposal by the Delegation of Czechoslovakia that all amendments should be adopted unanimously (S/61).

3154. Mr. PISK (Czechoslovakia) commented that the traditional practice of modifying administrative provisions at conferences of revision was too rigid; the draft text of Article 13*quinquies*(2) provided for amendments to be adopted by the Assembly, so that it would no longer be necessary to wait for a conference of revision. He was in favor of rendering the system of amendment more flexible but he strongly felt that the principle of unanimity should be applied in the Assembly in respect of all administrative provisions. The greater flexibility required would be met by enabling the Assembly to amend the Convention instead of leaving this to conferences of revision.

3155. Miss NILSEN (United States of America) supported the proposal of the Federal Republic of Germany. She considered that the present draft, in so far as a three-fourths majority was required for the amendment of the Articles listed in paragraph (1), was satisfactory. However, with respect to the exceptions requiring unanimity for the amendment of Article 13 and Article 13*quinquies*(2), she considered that a majority of four-fifths would be sufficient. She pointed out that the modern standard, as reflected in the rules for the amendment of the conventions governing the International Civil Aviation Organization, UNESCO, the World Health Organization and other intergovernmental bodies, was for amendment by a majority of two-thirds.

3156. Mr. DALEWSKI (Poland) stated that the Polish Delegation considered it essential to modernize the Convention. However, he took the view that if the administrative provisions could be amended by the Assembly, this would be a great step forward. He therefore supported the proposal of the Delegate of Czechoslovakia.

3157. Mr. PHAF (Netherlands) said he was not very much in favor of the system of unanimity, which he considered conservative, and he preferred the more democratic system of a simple majority. A system of qualified majorities could be justified only in certain cases where there were very cogent reasons and the system of unanimity was a fortiori still less acceptable. It was necessary to have, if not a simple majority system, at least a system involving a qualified majority which was not excessively high. He therefore supported the amendment proposed by the Delegation of the Federal Republic of Germany.

3158. The CHAIRMAN put to the vote the amendment submitted by the Delegation of Czechoslovakia (S/61) proposing that Article 13*quinquies*(2) should read as follows: "Amendments to the Articles referred to in the preceding paragraph shall be adopted by the Assembly. Adoption shall require the unanimity of votes cast."

3159. *The amendment submitted by the Delegation of Czechoslovakia was rejected by 22 votes to 11, with 6 abstentions.*

3160. The CHAIRMAN put to the vote the amendment submitted by the Delegation of the Federal Republic of Germany (S/35) which proposed the replacement in paragraph (2) of the words "the unanimity" by the words "four-fifths.

3161. *The amendment submitted by the Delegation of the Federal Republic of Germany was adopted unanimously.*

AMENDMENTS TO THE ADMINISTRATIVE PROVISIONS: ENTRY INTO FORCE OF AMENDMENTS

*Article 13*quinquies*(3) (S/3) and Article 23(3) (S/9)*

3162. The CHAIRMAN invited comments on Article 13*quinquies*(3). He noted that no Delegation wished to speak.

3163. *Article 13*quinquies*(3) was adopted unanimously.*

AMENDMENTS TO THE ADMINISTRATIVE PROVISIONS: REVISION OF OTHER ARTICLES

*Article 13*quinquies*(4) (S/3) and Article 23(4) (S/9) (S/54 and S/55)*

3164. The CHAIRMAN put into discussion Article 13*quinquies*(4). He remarked that document S/55 was a proposal by the Delegation of the Netherlands to delete Article 13*quinquies*(4) and that BIRPI had no objection to such deletion.

3165. *The Netherlands amendment was adopted unanimously: Article 13*quinquies*(4) was deleted.*

REVISION OF THE PROVISIONS OF THE PARIS AND BERNE CONVENTIONS OTHER THAN THE ADMINISTRATIVE PROVISIONS

Article 14 (S/3) and Article 24 (S/9)

REVISION: PRINCIPLE OF REVISION

Article 14(1) (S/3) and Article 24(1) (S/9) (S/29)

3166. The CHAIRMAN invited comments on Article 14(1).

3167. Mr. LABRY (France) said he had submitted a proposal in document S/29 seeking to amend the end of that paragraph to read as follows: "... amendments designed to improve the system of protection established by the Union." He considered that it was necessary to separate the legal substance from the administrative and financial clauses.

3168. Mr. PHAF (Netherlands) expressed some doubts concerning the proposal submitted by the Delegation of France. It was not the purpose of the Paris Convention to keep on increasing its protection.

3169. Mr. LABRY (France) replied that, as far as he was aware, the level of protection had always been improved ever since March 1, 1883 (Paris Convention). The tendency should be towards an improvement of the protection of industrial property. No diminution of protection had ever been contemplated. It would be difficult to regard as an improvement anything which tended to reduce the level of protection.

3170. Mr. BOWEN (United Kingdom) asked for clarification on two points. Was the Main Committee dealing with Article 24 of the Berne Convention or Article 14 of the Paris Convention? Secondly, what was the correct translation into English of the proposal of the Delegation of France under Article 24, paragraph (1) of the Berne Convention set out in document S/29?

3171. Mr. BOGSCH (Deputy Director, BIRPI) said that the only difference between the text of Article 14, paragraph (1) proposed in document S/3 and that of the French proposal (S/29) was that the French proposal used the phrase "*le régime de protection*" instead of the word "*système.*"

3172. Mr. STANESCU (Rumania) proposed that revisions should be in keeping with the legislations of all the member countries of the Union.

3173. Mr. EKANI (African and Malagasy Industrial Property Office (OAMPI)) observed that such a proposal could give rise to discussions. There was an essential distinction between a provision of a structural or administrative nature and amendments affecting the substance of the Conventions.

3174. The CHAIRMAN asked whether the Delegation of Rumania would submit a written text, as the proposal involved more than mere drafting changes.

3175. Mr. STANESCU (Rumania) replied that he would submit a draft amendment.

3176. The CHAIRMAN stated that no decision would be taken on Article 14(1) pending the submission of the Rumanian amendment.

REVISION: CONFERENCES OF REVISION

Article 14(2) (S/3) and Article 24(2) (S/9)

3177. Mr. LAURELLI (Argentina) asked for BIRPI's advice on two questions: Did the Paris Union have the necessary facilities to resolve the problems of organizing intergovernmental meetings of the kind referred to in paragraph (2)? If the Union did not have the means of arranging such conferences, would it be possible for these meetings to be held at BIRPI's headquarters in Geneva? The position of the Delegation of Argentina as to paragraph (2) would depend on BIRPI's reply. He stated that within the international intergovernmental organizations, the Latin American group was represented by 26 countries who were all agreed to oppose itinerant conferences. Already, during the discussion on Article 13, paragraph (4)(a) relating to the Assembly, he had expressed the Latin American position on this point. He was in favor of centralizing conferences at the BIRPI headquarters in order to enable mass representation of the developing countries. It was not possible for developing countries to be represented at the required level at itinerant conferences.

3178. Mr. BOGSCH (Deputy Director, BIRPI) said he would like to make a general remark which also concerned other articles. Article 14 had not been changed and was in the same form as in the Lisbon text. The reply to the question put by the Delegation of Argentina was that there had been no difficulty at all so far in finding a host country. If that should cease to be the case, BIRPI would be in a position to convene a revision conference, provided that sufficient funds were available.

3179. Mr. RIBEIRO (Brazil) was in agreement with the Delegation of Argentina. He was not in favor of itinerant conferences. Previously, the BIRPI Secretariat had not been sufficiently large; now, however, it was necessary to be independent, and revision conferences should be held at the headquarters of the Organization, if effective discussion was to be possible.

3180.1 The CHAIRMAN suggested that the Delegations of Argentina and Brazil should submit a proposal on the following day.

3180.2 Consideration of Article 14(2) was postponed pending discussion of the joint proposals of the Delegations of Argentina and Brazil.

REVISION: AMENDMENTS TO OTHER ARTICLES

Article 14(3) (S/3) and Article 24(3) (S/9)

3181. The CHAIRMAN invited comments on Article 14(3).

3182. Mr. KRUGER (South Africa) wondered if the Committee was still discussing the texts of the Paris and Berne Conventions concurrently. He saw that in Article 24 of the proposed text of the Berne Convention (S/9), which corresponded to Article 14 of the Paris Convention, paragraph (3) was entirely different.

3183. The CHAIRMAN drew attention to the procedure to be followed as regards the Berne Convention. He would review the corresponding provisions of the Berne Convention: where the texts of the two Conventions were identical, the same solutions would be applied unless the members of the Berne Union called for a debate or a new vote.

3184. *Article 14(3) was adopted unanimously.*

SPECIAL AGREEMENTS

Article 15 (S/3)

3185. The CHAIRMAN invited comments on Article 15.

3186. *Article 15 was adopted unanimously.*

The meeting rose at 4:40 p.m.

SEVENTH MEETING

Friday, June 16, 1967, at 10 a.m.

ASSEMBLY: VOTING BY REGIONAL GROUPS (continued) *(S/37)*

3187. The CHAIRMAN proposed that the meeting should hear the report on the Malagasy proposal (S/37) of the ad hoc Group which had met that morning at 9 a.m.

3188. Mr. BODENHAUSEN (Director of BIRPI) announced that the Committee would shortly receive a written report and summarized the situation as follows: on the one hand, the question of the representation of the member countries of OAMPI in the organs of the Paris Union would form the subject of a draft recommendation proposing that those countries could be represented either by another country or by the Director-General of OAMPI (that alternative would have to be decided by the Committee); on the other hand, unanimity had not been reached on the question of voting in the organs of the Paris Union: the majority thought that it would be possible to adopt the rule employed in the International Telecommunication Union, which permitted one country to be represented by another; a minority of the members of the Working Group had reserved the right to ask the opinion of their delegations.

FINANCES: PROPOSAL REGARDING PRIORITY FEES (continued) *(S/163)*

3189.1 The CHAIRMAN proposed that examination of the second formulation of the proposal of the Delegation of Spain to add a new item to paragraph (3) of Article 13*quater* on finances should be postponed to the following week.

3189.2 *It was so agreed.*

PROPOSAL CONCERNING LOCATION OF REVISION CONFERENCES *(S/94)*

3190.1 The CHAIRMAN also proposed to postpone to the following week examination of a proposal from the Delegations of Argentina and Brazil, supported by the Delegations of Madagascar, Senegal and Uruguay, concerning the location of revision conferences (S/94).

3190.2 *It was so agreed.*

ORGANIZATION OF WORK (continued)

Berne Convention (S/114)

3191. The CHAIRMAN proposed that the Committee should examine a Secretariat document (S/114) which collated, for the Berne Convention, the decisions of the Assembly concerning the revision of the administrative provisions.

ASSEMBLY (continued)

Article 21 (S/114)

3192. The CHAIRMAN invited comments on Article 21, Assembly, corresponding to Article 13 of the Paris Convention.

3193. Mr. NORDENSON (Sweden), referring to paragraph (2)(a)(xii), pointed out that the proposed text reflected the original proposal of his Delegation, but that the Committee had agreed to replace the word "approval" by the word "acceptance."

3194. The CHAIRMAN said that that drafting point would be referred to the Drafting Committee.

3195. Mr. PISK (Czechoslovakia) asked when the discussion on Article 20*bis* would take place.

3196. Mr. BODENHAUSEN (Director of BIRPI) said that that question concerned the final clauses but was linked with the Protocol Regarding Developing Countries. He proposed to invite the Committee to consider it after Main Committee II had examined the Protocol.

3197. *Article 21 was adopted unanimously.*

EXECUTIVE COMMITTEE (continued)

*Article 21*bis *(S/114)*

3198. The CHAIRMAN invited comments on Article 21*bis*: Executive Committee, corresponding to Article 13*bis* of the Paris Convention.

3199. Mr. CIPPICO (Italy) drew the attention of the Committee to the fact that Article 21 (Assembly) provided in paragraph (2), item (vi) that the Assembly would "review and approve reports and activities of the Director General concerning the Union and give instructions to him on such matters." He asked whether it might be appropriate to reproduce in Article 21*bis* (Executive Committee) a similar clause. This suggestion was prompted by the fact that the Assembly only met every three years and this might leave a gap in the execution of functions to be carried out.

3200. Mr. BODENHAUSEN (Director of BIRPI) thought it was pointless to insert such a clause in Article 21*bis*, as control over the execution of the program was mentioned in Article 21*bis*(6)(v).

3201. Mr. KRIEGER (Federal Republic of Germany) stated that he fully understood the explanations given by the Director of BIRPI, though he also appreciated the reasons for the proposal put forward by the Delegate of Italy. His Delegation was of the opinion that if such a provision was provided for in the Article on the Assembly, it would be useful to insert a similar clause expressis verbis in the Article on the Executive Committee and he therefore supported the suggestion made by the Delegate of Italy.

3202. Mr. BRADERMAN (United States of America) believed that the Delegate of Italy had raised a valid point. He added that the Director of BIRPI had equally made very valid comments on this proposal. Since there was no disagreement on the substance of the matter, the matter could be examined by the Drafting Committee to determine whether it would be appropriate or not to insert in the Article on the Executive Committee a similar clause as contained in the Article on the Assembly.

3203. The CHAIRMAN wondered whether it might not be appropriate to apply Rule 35 of the Rules of Procedure, which provided for a preliminary vote with a two-thirds majority for the reconsideration of a proposal that had already been discussed and adopted.

3204. Mr. LABRY (France) said that, in view of the speed of the debate, some confusion might have occurred between the texts relating to the Paris Union and the texts relating to the Berne Union. He was of the opinion that Rule 35 of the Rules of Procedure was not applicable. It could be applied only if the Committee had examined all the proposals relating to the Paris Convention and all the proposals relating to the Berne Convention.

3205. Mr. KRIEGER (Federal Republic of Germany) stated that he fully agreed with the declaration made by the Delegate of France.

3206. Mr. CIPPICO (Italy) agreed with the suggestion made by the Delegate of the United States. His only concern was to fill the gap due to the fact that the Assembly only met once every three years. If the principle of this suggestion was accepted, he believed that it should apply both to the Paris and Berne Conventions.

3207. Mr. LORENZ (Austria) suggested that the proposal of the Delegation of Italy should be referred to the Drafting Committee for the Berne Convention as well as for the Paris Convention.

3208. Mr. CIPPICO (Italy) agreed with Mr. Lorenz.

3209. The CHAIRMAN said that the question would be referred to the Drafting Committee.

3210. *Article 21*bis *was approved unanimously.*

INTERNATIONAL BUREAU (continued)

*Article 21*ter *(S/114)*

3211. The CHAIRMAN invited comments on Article 21*ter*, International Bureau, corresponding to Article 13*ter* of the Paris Convention.

3212. *Article 21*ter *was adopted unanimously.*

FINANCES (continued)

Article 22 (S/114)

3213. The CHAIRMAN invited comments on Article 22: Finances, corresponding to Article 13*quater* of the Paris Convention.

3214. Mr. BOULBINA (Algeria) proposed a drafting amendment to paragraph (2), to replace the words "with due regard to the requirements of coordination with" by the words "with due regard to the necessary coordination with."

3215. The CHAIRMAN said that that proposal, like all proposed drafting amendments, would be referred to the Drafting Committee.

3216. Mr. CONK (Czechoslovakia) pointed out that the text of subparagraph (b) of paragraph (1) referred to the Conference of the Organization. He recalled the reservations of several delegations on that subject.

3217. With that reservation, Article 22 was adopted.

AMENDMENTS TO THE ADMINISTRATIVE PROVISIONS AND REVISION OF THE PROVISIONS OF THE CONVENTION OTHER THAN THE ADMINISTRATIVE PROVISIONS (continued)

Articles 23 and 24 (S/114)

3218. The CHAIRMAN invited comments on Article 23: Amendments to Articles 21 to 23 (corresponding to Article 13*quinquies* of the Paris Convention) and on Article 24: Revision of the Provisions of the Convention other than Articles 21 to 23 (corresponding to Article 14 of the Paris Convention).

3219. Mr. KRUGER (South Africa) pointed out that in the text of the Paris Convention, the rule of unanimity was not mentioned once, although it had been applied tacitly as a traditional rule for over 80 years. The rule of unanimity was however mentioned expressis verbis in the Brussels Act of the Berne Convention (Article 24(3)). If the Committee were to accept a four-fifths majority, as had been suggested yesterday for the acceptance of administrative clauses, this would certainly affect the unanimity rule relating to the substantive clauses of the Berne Convention, thus departing from the traditional rule. His Delegation therefore urged that, in the interest of all concerned, this rule of unanimity should be retained as in the draft.

3220. Mr. BODENHAUSEN (Director of BIRPI) said that no change in the rule of unanimity was proposed as regards the Berne Convention. This rule would certainly be preserved with respect to substantive clauses.

3221. Mr. KRIEGER (Federal Republic of Germany) stated that though the rule of unanimity had been traditionally applied for many years, he wondered whether this rule had not the effect of being an impediment in preventing the reasonable progress in the drafting of new texts. This rule could be useful and practical, particularly for bodies grouping a limited number of member States. However, the Berne Union now grouped more than 50 member States and the Paris Union more than 70 member States. The application of the rule of

unanimity would raise more and more problems in these Unions and would constitute an anachronism, particularly with regard to future developments. His Delegation therefore wished to consult the views of other delegations as to whether it would be appropriate or not to depart from this traditional rule and to adopt, for example, a nine-tenths majority rule for amendments.

3222. Mr. PHAF (Netherlands) agreed with the idea of departing from the rule of unanimity.

3223. Mr. MORF (Switzerland) also agreed with that idea. He recalled that during the Lisbon Conference of 1958 it had been impossible to increase the resources of the International Bureau because of the vote of a single State.

3224. The CHAIRMAN proposed that delegations that shared the opinion of the Delegation of the Federal Republic of Germany should get together with a view to submitting a specific proposal. The decision on this point would be postponed to enable a draft amendment to be prepared in writing.

ORGANIZATION OF WORK (continued)

3225. The CHAIRMAN proposed that the final clauses should be dealt with in the same way as the administrative provisions: the Committee would proceed on the basis of the proposals concerning the Paris Convention (S/3), and the Secretariat would then prepare an up-to-date text for the Berne Convention (S/9).

RATIFICATION AND ACCESSION BY COUNTRIES OF THE UNION; ENTRY INTO FORCE

Article 16 (S/3) and Article 25 (S/9)

RATIFICATION AND ACCESSION BY COUNTRIES OF THE UNION:

Article 16(1) (S/3) and Article 25(1) (S/9) (S/54 and S/55)

3226. The CHAIRMAN invited comments on Article 16 of document S/3 including document S/55, which contained the proposal of the Delegation of the Netherlands to delete item (ii) of paragraph (1)(b).

3227. Mr. LORENZ (Austria) said that paragraph (1) of Article 16, and especially paragraph (1) of Article 25 of the Berne Convention, would have to be revised if allowance were to be made for the proposals that the Delegations of the Federal Republic of Germany, the Netherlands and Switzerland expected to submit on the subject of the revision of the substantive clauses of the Conventions. In his opinion, any decision of a Conference was subject to signature and then to ratification or accession by the States. The proposals of the abovementioned Delegations might therefore necessitate amendment of Article 16.

3228. The CHAIRMAN said that he would take the remarks of Mr. Lorenz into consideration if necessary.

3229. Mr. KRIEGER (Federal Republic of Germany) stated that his Delegation was of the opinion that it was desirable that not only those countries not members of the Union, but also States members of the Union, should not be allowed to accede to the new Stockholm Act unless they accepted it in its entirety. There were already a number of different Acts to which different countries were bound and to split the Stockholm Act in two parts binding different countries would lead to difficulties in the relations among States. His Delegation did not consider it expedient to allow accession to the administrative provisions without accession, at the same time, to the IPO Convention. The administrative reform will be a significant step with the establishment of the IPO Convention and he hoped that this whole matter of accession would be re-examined in the light of the views expressed by other delegations.

3230. Mr. MAAS GEESTERANUS (Netherlands) also expressed his reluctance for splitting up the new Stockholm Acts. There would be considerable difficulties in determining which countries were bound by different Acts in their relationships. His Delegation could well understand that some countries would not be prepared for ten or possibly twenty years to accept the substantive provisions although they would be probably in a position to accede within one or two years to the clauses on the structural and administrative reform of the Unions, but that the contrary would not seem to serve any useful purpose and therefore his Delegation saw no practical use in allowing States to accede to the substantive clauses without also acceding to the structural clauses. His Delegation had presented a written proposal (S/55) to this effect.

3231. Mr. DE SANCTIS (Italy) was in favor of the proposed text for subparagraphs (a) and (b) of paragraph (1). It was advisable that the constitutional organs of States should be able to choose between the various possibilities of accession.

3232. Mr. DA CRUZ (Portugal) was also in favor of maintaining the wording proposed in document S/3 for subparagraphs (a) and (b).

3233. Mr. BOWEN (United Kingdom) stated that his Delegation was very much in favor of simplifying these clauses, and therefore supported the proposal made by the Delegate of the Netherlands.

3234. Mr. PETERSSON (Australia) also declared that his Delegation was in favour of simplifying these clauses. However, he pointed out that Articles 1 to 12 in the new Stockholm Act of the Paris Convention would also presumably include inventors' certificates and that some States may wish to accept these articles more readily than some of the administrative clauses.

3235. Mrs. RATUSZNIAK (Poland) stated that her Delegation was in favor of maintaining the existing text of Article 16 as contained in BIRPI document S/3.

3236. Mr. KRIEGER (Federal Republic of Germany) said that there existed a close connection between his Delegation's view and that of the Delegate of the Netherlands and therefore he was prepared to support the proposal of the Delegation of the Netherlands.

3237. The CHAIRMAN wondered whether it would not be appropriate to vote on the Netherlands proposal (S/55) to delete item (ii) of paragraph (1)(b).

3238. Mr. DE SANCTIS (Italy) would have preferred the vote to be postponed, since the question was linked with the proposed IPO Convention and some of the substantive clauses.

3239. Mr. LABRY (France) supported the proposal of Mr. de Sanctis.

3240. The CHAIRMAN observed that there was no objection to the proposal of Mr. de Sanctis and decided to postpone the vote on the proposal of the Delegation of the Netherlands (S/55).

3241. The CHAIRMAN invited comments on subparagraph (c) of paragraph (1). He pointed out that any decision that the Committee might take on that subject would depend in the last analysis on the decision that was taken on subparagraph (b).

3242. *Article 16(1)(c) was adopted with that reservation.*

RATIFICATION AND ACCESSION BY COUNTRIES OF THE UNION: INITIAL ENTRY INTO FORCE

Article 16(2) (S/3) and Article 25(2) (S/9)

3243. The CHAIRMAN invited comments on paragraph (2).

3244. Mr. ARTEMIEV (Soviet Union) declared that his Delegation considered that these provisions were of the utmost importance. Although there was a distinction between the administrative and substantive provisions, he was hopeful that, in time, most countries would accede to the Stockholm Act in its entirety. Although he recognized that the draft text as proposed in document S/3 was sufficiently flexible to allow countries to accede to certain provisions only, he considered that there should be no distinction made in the number of instruments of ratification required for accession to the substantive clauses (Articles 1 to 12) and to the administrative clauses (Articles 13 to 13*quinquies*). He proposed that for both groups of articles, ten instruments of ratification should be required for the new Act to enter into force. This would give more weight to the new instrument. He was not in favor of establishing any discrimination between these two groups of clauses.

3245. The CHAIRMAN noted that Mr. Artemiev proposed to replace the word "fifth" at the end of subparagraph (a) by the word "tenth," and that accordingly he proposed to refer to ten instruments of ratification or acceptance.

3246. Mr. BOGSCH (Deputy Director, BIRPI) said that the drafters of the proposals had not provided for five ratifications because they thought that Article 4 of the Paris Convention was less important than the administrative reform. In fact, Article 4 was operative even between two countries (country of first filing and country where such filing was invoked); it could therefore enter into force for each country from the time of its ratification by that country. The entry into force of the administrative provisions, on the other hand, called for ratification by a *group* of countries.

3247. Mr. MARINETE (Rumania) recalled that during the exchange of views on the question of inserting a provision on inventors' certificates in the Paris Convention, there had been two distinct tendencies expressed. One tendency seemed to accept the fact that the inventors' certificates were already contained in the broad provisions of the Paris Convention. The other tendency was that, as no specific reference was included in the Paris Convention on inventors' certificates, these were not included. Now, however, inventors' certificates have been explicitly and expressly included in the new Act of the Paris Convention. In order to give more weight to the new Act, he considered that it would be preferable to require a greater number of ratifications for the entry into force of the substantive Articles 1 to 12. He saw no reason why there should be any distinction made in Article 16 between the two groups of clauses (substantive and administrative). His Delegation therefore supported the proposal made by the Delegation of the Soviet Union.

3248.1 Mr. BOWEN (United Kingdom) declared that there was certainly an argument in favor of requiring ten ratifications for entry into force of the new Stockholm Act. The number of ratifications required appeared to depend on the number of countries members of the Union. He recalled that the number of ratifications required for the entry into force of the Lisbon Act was six which corresponded approximately to one-eighth of the member States at that time. He therefore regarded ten instruments of ratification required for the entry into force of the Stockholm Act as a reasonable figure.

3248.2 His Delegation had, moreover, also proposed that the period of one month, now provided for the entry into force after the deposit of instruments of ratification or accession, be raised to *three* months. This proposal was prompted by administrative reasons in connection with the passing of Orders in Council in the United Kingdom.

3249. The CHAIRMAN said that Mr. Bowen's proposal would be discussed during the afternoon. He noted that there was no objection to the proposal of the Delegation of the Soviet Union supported by the Delegation of Rumania.

3250. *Accordingly, the proposal of the Delegation of the Soviet Union to replace the word "fifth" by the word* "tenth" in Article 16(2)(a) was unanimously approved.

The meeting rose at 12:45 p.m.

EIGHTH MEETING

Friday, June 16, 1967, at 2:30 p.m.

RATIFICATION AND ACCESSION BY COUNTRIES OF THE UNION: INITIAL ENTRY INTO FORCE (continued)

Article 16 (S/3) and Article 25 (S/9) (S/95 and S/97)

3251.1 The CHAIRMAN said that two documents had just been distributed, namely, document S/95 from the Delegation of the United Kingdom proposing to substitute "three months" for "one month" in paragraphs (2) and (3) of Article 16; and document S/97 containing the proposal of the Delegations of the Federal Republic of Germany, the Netherlands and Switzerland to substitute the majority of nine-tenths for the unanimity rule in Article 24(3) of the Berne Convention (S/9).

3251.2 The proposal of the Delegations of the Federal Republic of Germany, the Netherlands and Switzerland (S/97) would be studied later, in view of the request of the Delegations of France and Italy (presented at the seventh meeting) that any decision on this point should be postponed for the moment.

3251.3 The CHAIRMAN proposed to continue the examination of Article 16, including the proposal of the Delegation of the United Kingdom (S/95) to substitute a period of three months for the period of one month referred to in paragraphs (2) and (3).

3252. Mr. LABRY (France) supported the United Kingdom proposal.

3253. The CHAIRMAN observed that no delegation objected to the proposal of the Delegation of the United Kingdom (S/95).

3254. *Accordingly, Article 16(2) was adopted with the Soviet Union's amendment to substitute the word "tenth" for the word "fifth" in subparagraph (a) adopted at the end of the seventh meeting, and with the United Kingdom amendment to substitute "three months" for "one month" in subparagraphs (a), (b) and (c).*

RATIFICATION AND ACCESSION BY COUNTRIES OF THE UNION: POSTERIOR ENTRY INTO FORCE

Article 16(3) (S/3) and Article 25(3) (S/9) (S/95)

3255. The CHAIRMAN invited comments on paragraph (3) of Article 16, including the amendment proposed by the United Kingdom (S/95) to substitute "three months" for "one month."

3256. *Article 16(3) was adopted with the amendment submitted by the Delegation of the United Kingdom.*

ACCESSION BY COUNTRIES OUTSIDE THE UNION; ENTRY INTO FORCE

*Article 16*bis *(S/3) and Article 25*bis *(S/9)*

ACCESSION BY COUNTRIES OUTSIDE THE UNION

*Article 16*bis*(1) (S/3) and Article 25*bis*(1) (S/9)*

3257. The CHAIRMAN opened the discussion on Article 16*bis* and invited comments on that Article.

3258. Mr. KRIEGER (Federal Republic of Germany) said that there was a close connection between Article 16*bis* of the Paris Convention and Article 4 of the IPO Convention. He thought it would be useful to defer discussion about Article 16*bis* until such time as the Committee would have the benefit of the result of the discussion of Main Commitee V on Article 4 of the IPO draft.

3259. Mr. CIPPICO (Italy) was of the opinion that all these administrative provisions were closely bound up with the IPO Convention. For this reason, he would support any delegation who wished to reserve certain questions for discussion after they had been the subject of debate in Main Committee V.

3260. Mr. PHAF (Netherlands) also supported Mr. Krieger's proposal.

3261. The CHAIRMAN considered that there was a choice between two procedures: on the one hand, a delegation might make reservations pending a decision by another Main Committee; on the other hand, the discussion might be adjourned, but in that case it would be necessary to specify which texts were linked, in order to establish a timetable.

3262. Mr. KUNZMANN (Federal Republic of Germany) thought that the discussion on Article 16*bis*(1) (S/3) and Article 25*bis*(1) (S/9) should be postponed until Article 4 of the proposed IPO Convention (S/10) had been studied. The Delegation of the Federal Republic of Germany would make reservations as indicated by the Chairman if the Committee wished to continue the discussion, but it would prefer an adjournment.

3263. Mr. LABRY (France) supported the proposal made by the Delegation of the Federal Republic of Germany.

3264. Mr. STANESCU (Rumania) did not see what link could exist between Article 16*bis* (S/3) or 25*bis* (S/9) and Article 4 of the proposed IPO Convention. He was therefore opposed to the adjournment of the discussion.

3265. Mr. VILKOV (Soviet Union) commented that Article 16*bis*, paragraph (1), contained nothing new as compared with the Lisbon text of the Paris Convention. He failed to see any link between that point and any provision in a mere draft convention which did not yet exist. He therefore was opposed to the proposal of the Delegation of the Federal Republic of Germany.

3266. The CHAIRMAN accordingly proposed to consider paragraph (1), on the understanding that the Delegation of the Federal Republic of Germany made a reservation in order to revert to this paragraph if it thought fit.

3267. Mr. KUNZMANN (Federal Republic of Germany) thought it was understood that the Committee would revert to paragraph (1). If such were not the case, he would formally move an adjournment in accordance with Rule 28 of the Rules of Procedure.

3268. The CHAIRMAN, noting that the reservation made by the Delegation of the Federal Republic of Germany related to the actual substance of paragraph (1), decided to apply Rule 28 of the Rules of Procedure. He accordingly asked whether a second delegation wished to support the adjournment of the discussion on paragraph (1) and whether at least two delegations were opposed to it.

3269. Mr. WINTER (United States of America) supported the proposal of the Delegation of the Federal Republic of Germany.

3270. Mr. PISK (Czechoslovakia) and Mr. STANESCU (Rumania) opposed this proposal.

3271. The CHAIRMAN therefore put to the vote the motion for adjournment proposed by the Delegation of the Federal Republic of Germany.

3272. *The motion was carried by 21 votes to 10, with 10 abstentions.*

3273. Accordingly, *consideration of paragraph (1) was adjourned.*

ACCESION BY COUNTRIES OUTSIDE THE UNION: INITIAL ENTRY INTO FORCE

*Article 16*bis*(2) (S/3) and Article 25*bis*(2) (S/9)*

3274. The CHAIRMAN invited comments on paragraph (2)(a).

3275. Mr. MORF (Switzerland) said that the text of Article 25*bis*(2)(a) of the Berne text (S/9) contained the words "unless a subsequent date has been indicated in the instrument of accession," and that these words did not appear in the text of Article 16*bis* of the Paris Convention (S/3). He asked the reason for this difference.

3276. Mr. BOGSCH (Deputy Director, BIRPI) said that in the present text of the Paris Convention, there did exist a possibility for a country to indicate a later date for the Act to enter into force, in its instrument of accession. There was no logical basis for omitting this provision. The point must have been overlooked at the time of the preparation of document S/9 (Article 25*bis*(2)(a)).

3277. The CHAIRMAN asked whether any delegations wished to insert in the Paris Convention the words "unless a subsequent date has been indicated in the instrument of accession."

3278. Mr. BOWEN (United Kingdom), Mr. SANSO (speaking for the Delegation of Venezuela), Mr. BENÁRD (Hungary) and Mr. WINTER (United States of America) supported this proposal.

3279.1 The CHAIRMAN, noting that no delegation objected, stated that *the words in question would accordingly be inserted in Article 16*bis*(2) of the Paris Convention.*

3279.2 Moreover, he observed that the *Main Committee was also in agreement to insert at the end of subparagraph* (a) *the words "if a country indicates a subsequent date in its instrument of accession, the present Act shall enter into force with respect to that country on the date thus indicated"* which appeared at the end of Article 25*bis*(2)*(a)* of document S/9.

3280. *Article 16*bis*(2)(a), as amended, was adopted unanimously.*

3281. The CHAIRMAN called for comments on paragraph (2)(b) to which the Main Committee's previous decisions regarding the United Kingdom's proposal (S/95) and Mr. Morf's observations regarding the "subsequent date" would also apply.

3282. *Article 16*bis*(2)(b), as amended, was adopted unanimously.*

ACCESSION BY COUNTRIES OUTSIDE THE UNION: POSTERIOR ENTRY INTO FORCE

*Article 16*bis*(3) (S/3) and Article 25*bis*(3) (S/9) (S/95)*

3283. The CHAIRMAN invited comments on paragraph (3), including the United Kingdom's proposal (S/95) to substitute "three months" for "one month."

3284. *Article 16*bis*(3), as amended, was adopted unanimously.*

NO RESERVATIONS

*Article 16*ter *(S/3) (S/61)*

3285. The CHAIRMAN invited comments on Article 16*ter*, including the proposal of the Delegation of Czechoslovakia to omit this Article (S/61).

3286. Mrs. RATUSZNIAK (Poland) was doubtful whether Article 16*ter* was necessary. It only reflected the obvious consequences of Article 16(1)(b). She therefore suggested that it should be deleted. In addition, it limited the sovereign powers of a State.

3287. Mr. PISK (Czechoslovakia) said that the Delegation of Czechoslovakia would prefer that the Stockholm text of the Paris Convention remain silent concerning the possibility of making reservations. However, he would not press the proposal if other delegations were not in agreement.

3288. Mr. KRIEGER (Federal Republic of Germany) remarked that the Delegation of the Federal Republic of Germany was in favor of maintaining Article 16*ter*.

3289. Mr. LABRY (France) said that the French Government did not agree that any reservations should be made other than those explicitly contained in a convention. He was therefore in favor of maintaining Article 16*ter*.

3290. Mr. MAAS GEESTERANUS (Netherlands) pointed out that in the past many international conventions had been concluded without any express provisions on the question of reservations. This has led to great difficulties in certain cases. Furthermore, the International Law Commission of the United Nations and the International Court of Justice had advised States creating conventions to include a provision expressly allowing or disallowing reservations. He therefore urged the inclusion of the proposed provision.

3291. Mr. VILKOV (Soviet Union) supported the proposal of the Delegation of Czechoslovakia.

3292. Mr. EVENSEN (Norway) supported the proposal of the Delegation of the Netherlands. He drew the attention of the Committee to the fact that voting on Article 16(1)(b) had been postponed and suggested that discussion of Article 16*ter* should be postponed until the result of that vote was available.

3293. Mr. BOGSCH (Deputy Director, BIRPI) said that, as the Delegate of Czechoslovakia had said that he would not insist on his proposal, he hoped that he would withdraw it. One of the reasons for the provision in Article 16*ter* was that in recent years BIRPI had frequently been asked by countries on the point of acceding to the Paris Union whether reservations were possible. Of course, a negative reply had always been given but an express provision in the text would help.

3294. Mr. PISK (Czechoslovakia) said that his Delegation did not intend to press their proposal, but suggested that Article 16*ter* be referred to the Drafting Committee for them to consider the question of "split" ratification.

3295. Mr. VILKOV (Soviet Union) said that the Delegation of the Soviet Union did not object to there being a provision excluding the possibility of reservation in the Paris Convention. However, his Delegation may wish to propose the opposite solution in respect of other treaties.

3296. The CHAIRMAN took note of this statement, which would be recorded in the minutes.

3297. *Article 16*ter *was adopted unanimously.*

TERRITORIES

*Article 16*quinquies *(S/3) and Article 26 (S/9) (S/34 and S/61)*

3298. The CHAIRMAN invited comments on Article 16*quinquies*, including the proposal of the Delegations of Poland (S/34) and Czechoslovakia (S/61) to omit this Article.

3299. Mrs. RATUSZNIAK (Poland) said that her country was opposed to the adoption of Article 16*quinquies*, which enabled a country to extend the application of the Convention to its dependent territories. This provision conflicted with the progressive character of international law and endorsed colonialism; it was accordingly contrary to Resolution 1514 adopted by the XVth Session of the United Nations Assembly providing for the grant of independence to colonies. Moreover, it was important to know what territories were subject to the Convention; the fact of permitting unilateral and subsequent decisions led to great uncertainty. In addition, such a clause was an anachronism; modern conventions did not include it. Lastly, account should be taken of the work of the International Law Commission of the United Nations, according to which conventions were extended to the whole territory of contracting States, thus placing the mother country and its dependent territories on an equal footing. Accordingly, Article 16*quinquies* should be deleted.

3300. Mr. AZABOU (Tunisia) supported the proposal of the Delegations of Poland and Czechoslovakia.

3301. Mr. STANESCU (Rumania) thought that this Article raised two problems: politically, it endorsed a de facto situation which was now out of date; for this reason, in view of the United Nations resolutions and the present trend of international law, Article 16*quinquies* should be deleted; legally, such an article had no place in the Paris Convention, for it conflicted with international law.

3302. Mr. GRANT (United Kingdom) considered that a technical conference of this kind was not the place to discuss territorial problems or colonialism. Article 16*quinquies* in both the Paris and Berne texts was designed to enable countries, which still had dependent territories, to discuss with such territories whether or not the Convention should be applied to them. Thus the provision was one which is in the interest of non self-governing territories. He took the view that the provision should be left in; it could always be deleted when there were no longer any dependent territories.

3303. Mr. BOULBINA (Algeria) supported the view of the Delegations of Poland and Czechoslovakia. If it were desired to modernize the Paris Convention, the problems should be reviewed in the light of present-day circumstances.

3304. Mr. OSSIKOWSKI (Bulgaria) said that Article 16*quinquies* should be deleted. It was contrary to the principle expressed in the United Nations Resolution of December 14, 1960, which laid down that independence should be granted to all dependent territories and peoples.

3305. Mr. SAVIĆ (Yugoslavia) also supported the proposal of the Delegations of Poland and Czechoslovakia.

3306. Mr. LABRY (France) wished to avoid a political discussion. It was true that the situation had changed greatly in recent years, but there were facts which must be taken care of in the Convention. As Mr. Grant had rightly pointed out, such a provision enabled dependent territories to be consulted and avoided the unilateral application of a Convention to them.

3307. Mr. PHAF (Netherlands) said that such an article was useful for reasons which had nothing to do with colonialism. For instance, the Netherlands was divided into three practically independent parts. It would not be possible to compel any one of those parts to accept a Convention against its will.

3308. Mr. PETERSSON (Australia) supported the statements of the Delegates of the United Kingdom and the Netherlands. Irrespective of views as to the desirability of Article 16*quinquies*, the fact remained that certain countries were responsible for the external relations of other countries. If this provision were removed, it would not be in the best interest of the protected territories.

3309. Mr. MWENDWA (Kenya) said that the question of decolonization had nothing to do with Article 16*quinquies*. That was quite another matter. It was essential, in the interests of dependent territories, to retain this Article.

3310. Mr. KRIEGER (Federal Republic of Germany) agreed with the observations of the Delegates of the United Kingdom and of Kenya. He said that Article 16*quinquies* could only be an advantage for dependent territories.

3311. Mr. VILKOV (Soviet Union) drew attention to the fact that when the Soviet Union joined the Paris Union in 1965, they had declared, in their instrument of accession, that this Article was out of date, contrary to the Resolution of the United Nations of December 14, 1960, and against the spirit of international life today. Dependent territories should represent themselves independently at international conferences and should themselves participate in conventions. Precedents existed for conventions to be signed without such a provision; Poland had already referred to several such conventions. For these reasons, Article 16*quinquies* should be deleted.

3312. Mr. ABDERRAZIK (Morocco) supported the proposal of the Delegations of Poland and Czechoslovakia since Article 16*quinquies* was not consistent with the spirit of modern international law.

3313. Mr. TORRES SANTIESTEBAN (Cuba) supported the proposal for the deletion of Article 16*quinquies*.

3314. Mr. BOULBINA (Algeria) thought that Article 16*quinquies* did not refer to the case mentioned by Mr. Phaf. It was apparent from the minutes of the 1966 Committee of Experts that this Article did indeed refer to colonies.

3315. Mr. PÁLOS (Hungary) supported the proposal of the Delegations of Poland and Czechoslovakia.

3316. The CHAIRMAN called for a vote on the proposal of the Delegations of Poland (S/34) and Czechoslovakia (S/61) to delete Article 16*quinquies*.

3317. *This proposal was rejected by 18 votes to 13, with 11 abstentions. Article 16*quinquies *was accordingly maintained.*

3318. The CHAIRMAN invited comments on paragraph (1).

3319. *Article 16*quinquies*(1) was adopted without discussion.*

3320. The CHAIRMAN invited comments on paragraph (2).

3321. *Article 16*quinquies*(2) was adopted without discussion.*

3322. The CHAIRMAN invited comments on paragraph (3)(a).

3323. *Article 16*quinquies*(3)(a) was adopted without discussion.*

3324. The CHAIRMAN invited comments on paragraph (3)(b).

3325. *Article 16*quinquies*(3)(b) was adopted without discussion.*

IMPLEMENTATION BY DOMESTIC LAW

Article 17 (S/3) and Article 30 (S/9)

3326. The CHAIRMAN went on to Article 17 (S/3).

3327. The CHAIRMAN invited comments on paragraph (1).

3328. Mr. SCHURMANS (Belgium) wished to raise a drafting point: did the expression "every country party to this Convention" refer to every country which had signed the Convention?

3329. Mr. BOGSCH (Deputy Director, BIRPI) thought that the expression meant every country which had signed the Convention.

3330. *Article 17(1) was adopted unanimously.*

3331. The CHAIRMAN invited comments on paragraph (2).

3332. *Article 17(2) was adopted unanimously.*

DENUNCIATION

*Article 17*bis *(S/3) and Article 29 (S/9)*

3333. The CHAIRMAN invited comments on Article 17*bis*.

3334. *Article 17*bis *was adopted unanimously.*

APPLICATION OF EARLIER ACTS

Article 18 (S/3) and Article 27 (S/9)

3334*bis*. See paragraph 3550 below.

SIGNATURE, ETC.

Article 19 (S/3) and Article 31 (S/9)

3335. The CHAIRMAN opened the discussion on Article 19: Signature, etc., and invited comments on paragraph (1)(a).

3336. Mr. MAAS GEESTERANUS (Netherlands) suggested adding a provision on the settlement of disputes, between Articles 18 and 19. He suggested that discussion of this

matter could take place at the same time as consideration of a similar provision for the text of the Berne Convention.

3337. Mr. LABRY (France) said that the attitude of the Delegation of France was exactly the same as that defined by the Delegate for the Netherlands.

3338. The CHAIRMAN thought that the advisability of inserting the Netherlands' proposal in the Paris Convention might be considered.

3339. *Article 19(1)(a) was adopted unanimously.*

3340. The CHAIRMAN went on to paragraph 1(b).

3341. Mr. CHAMBERLAIN (United Kingdom) said that the Delegation of the United Kingdom preferred the word "official" to the word "authoritative" in Article 19(1)(b).

3342. The CHAIRMAN said that the proposal would be referred to the Drafting Committee.

3343. *Article 19(1)(c) was adopted unanimously.*

3344. *Article 19(2) was adopted unanimously.*

3345. *Article 19(3) was adopted unanimously.*

3346. The CHAIRMAN invited comments on paragraph (4).

3347. Mr. MORF (Swistzerland) asked for information on paragraph (4): at the end of the paragraph the words "as soon as possible" occurred but in the previous paragraph these words did not appear.

3348. Mr. BOGSCH (Deputy Director, BIRPI) thought that this meant that the Act could not be registered with the United Nations Secretariat before the Convention came into force. In order to remove any apparent discrepancy, he proposed deleting the words "as soon as possible" in this paragraph.

3349. The CHAIRMAN asked the Delegate for Switzerland whether he preferred to delete the words "as soon as possible" in paragraph (4) or to add these words to paragraph (3).

3350. Mr. MORF (Switzerland) said that he would prefer to delete the words "as soon as possible" in paragraph (4).

3351. *Article 19(4), as amended, was adopted unanimously.*

3352. The CHAIRMAN invited comments on paragraph (5) of Article 19.

3353. Mr. BOWEN (United Kingdom) said that there was an omission in paragraph (5) of Article 19. It was not provided that the Director General was obliged to notify the Governments of countries of the Union of the class of contribution to which a country acceding to the Union would belong; nor did it provide for him to inform States of any change in class.

3354. Mr. BOGSCH (Deputy Director, BIRPI) pointed out that the reason for these matters not being set out in Article 19(5) was that, according to Article 13*quater*, if a country did not announce its class of contribution in its instrument of accession, it had to announce it in the next Assembly. Since accessions and Assembly resolutions are communicated to member States, no special provision seemed to be required.

3355. Mr. BOWEN (United Kingdom) said that he withdrew his proposal in the light of the explanation of Mr. Bogsch.

3356. Mr. NORDENSON (Sweden) said that there was an inconsistency in the text. In paragraph (5), reference was made to the obligation of the Director General to notify Governments of any "declarations included in such instruments." There were provisions in previous articles where other declarations were foreseen. For example, in Article 16(1)(c) a member of the Union had the possibility of making a declaration, subsequent to its accession or ratification, to the effect that it extended the effects of its ratification or accession to a certain group of articles. He assumed that the Director General should notify Governments of all such declarations.

3357. The CHAIRMAN said that the comment of the Swedish Delegation could be referred to the Drafting Committee.

3358. *With this reservation, Article 19(5) was adopted unanimously.*

TRANSITIONAL PROVISIONS

Article 20 (S/3) and Article 32 (S/9)

3359. The CHAIRMAN invited comments on Article 20: Transitional Provisions.

3360. Mr. TROTTA (Italy) asked whether there had not been some question of adjourning this Article together with Article 16*quater*.

3361. The CHAIRMAN said that in the first part of the meeting there had been no question of adjourning Article 20. He asked whether any delegation requested the adjournment of the discussion on this Article.

3362. Mr. TROTTA (Italy) said he would not insist.

3363. The CHAIRMAN invited comments on paragraph (1).

3364. *Article 20(1) was adopted unanimously.*

3365. The CHAIRMAN invited comments on paragraph (2).

3366. Mr. LABRY (France) asked why there was a reference to IPO in that paragraph.

3367. Mr. BOGSCH (Deputy Director, BIRPI) explained that the reason was to lengthen the period during which States which had not yet accepted the administrative clauses could take part in the work of the various organs.

3368. Mr. LABRY (France) was satisfied with that explanation.

3369. *Article 20(2) was adopted unanimously.*

3370. The CHAIRMAN invited comments on paragraph (3).

3371. *Article 20(3) was adopted unanimously.*

3372. The CHAIRMAN invited comments on paragraph (4).

3373. Mr. KRIEGER (Federal Republic of Germany) had a question concerning Article 20(4). It contained provisions which would only become applicable when the transitory period referred to in paragraph (3) had ended,

and all countries of the Union had ratified the IPO Convention. However, Article 15 of the Draft IPO Convention provided for the possibility for a State to denounce the IPO Convention, without at the same time denouncing the Paris Convention. Was it possible, in these circumstances, to retain paragraph (4) of Article 20?

3374. Mr. BOWEN (United Kingdom) asked for clarification of the provision in paragraph (4). He pointed out that there were three different draft provisions dealing with this point: Article 20(4) of the proposed text of the Paris Convention (S/3), Article 32(4) of the proposed text of the Berne Convention (S/9) and Article 19(3) of the Draft IPO Convention (S/10). In each case, the rights and obligations of the Bureau of the Union devolved on a different organ. Further, Article 19(3)(a) of the proposed text of the IPO Convention referred to rights, obligations and property. The text in documents S/3 and S/9 only referred to rights and obligations; the same provision should appear in each of the documents.

3375. Mr. BOGSCH (Deputy Director, BIRPI) said that the reason for this difference was that documents S/3, S/9 and S/10 had been drafted at intervals of several months; the thoughts of BIRPI have developed during this period. However, the documents had already been printed and it was not possible to revise them. The texts of these three provisions should be harmonized. He suggested that the matter be referred to the Drafting Committee.

3376. The CHAIRMAN asked whether the proposal made by Mr. Bogsch, that the matter be referred to the Drafting Committee, satisfied the two delegations.

3377. Mr. KRIEGER (Federal Republic of Germany) and Mr. Bowen (United Kingdom) expressed their thanks to Mr. Bogsch for this explanation.

3378. The CHAIRMAN said that the matter was agreed.

3379. *Article 20(4) was adopted unanimously.*

3380. The CHAIRMAN recalled that there would be no plenary meetings on Monday and Tuesday. Work would be resumed in the same room on June 21 at 9.30 a.m.

The meeting rose at 5:45 p.m.

NINTH MEETING

Wednesday, June 21, 1967, at 9:30 a.m.

ASSEMBLY:
VOTING BY REGIONAL GROUPS (continued) *(S/137, S/170 and S/179)*

3381. The CHAIRMAN stated that the Committee would consider a proposal by the Delegation of Madagascar and Senegal to allow Member States grouped together in a common Industrial Property Office to be represented by one of them or by that Office. The documents before the Committee were: document S/137, prepared by the Secretariat, which summarized the deliberations of the Working Group on that subject; document S/170, which contained a memorandum by the Delegations of Madagascar and Senegal; and document S/179, containing the text of the amendment submitted by those two Delegations.

3382. Mr. RAZAFINDRATANDRA (Madagascar) reminded the Committee that he had submitted the amendment appearing in document S/37. As a result of the apprehensions expressed by some delegations, a Working Group had met; the Group had noted that one international organization—the International Telecommunication Union (ITU)—provided a precedent; the new proposal put forward by his Delegation and the Delegation of Senegal (S/179) followed that precedent very closely. The ITU texts were reproduced in document S/170.

3383. Mr. LEDOUX (Senegal) said that the proposal was to insert a new subparagraph (h) in Article 13(3) of the Paris Convention. That subparagraph would consist of four items: item (i) was based on a proposal by the Delegation of the United States; items (ii), (iii) and (iv) dealt with voting and were based on the ITU text. He stressed the fact that the new proposal (S/179) represented a compromise between the original draft amendment (S/37) and the objections which had previously been raised in the Committee.

3384. Mr. EKANI (African and Malagasy Industrial Property Office, OAMPI)) drew attention to the concessions which had been offered by the States grouped together in OAMPI, the extent of which could clearly be seen from a comparison between documents S/37 and S/179. He hoped that the new proposals would receive unanimous approval.

3385. Mr. DE SANCTIS (Italy) asked whether the proposal put forward by the Delegations of Madagascar and Senegal applied only to the Paris Union.

3386. The CHAIRMAN replied that the proposal affected only the Paris Union; the question of its application to the Berne Union would be considered separately if the occasion arose.

3387. Miss NILSEN (United States of America) wished to clarify two points for the records of the Working Group: (a) in the United States proposal, the possibility of according the same rights to the official of an Office was *not* included: (b) the Delegation of the United States had proposed that the word "Office" be defined as meaning an Office for the protection of industrial property.

3388. Mr. LABRY (France) said that his Delegation accepted the proposal in document S/179. It appeared to provide an answer to the legitimate anxieties of the African States and Madagascar, and the fears which had been expressed earlier.

3389. Mr. LAURELLI (Argentina) stated that, although he had listened with great sympathy to the arguments in favor of adopting similar clauses as contained in the General Regulations of the International Telecommunication Convention, this would lead to an undesirable precedent. The example of the International Telecommunication Convention was not applicable to the situation now under consideration. He reserved therefore his position on this matter until further discussion had taken place.

3390. Mr. LEDOUX (Senegal), replying to Miss Nilsen's comments, said that there was an omission in Article 13(3)(h)(i) of the proposal under consideration (S/179); it should read "in a common industrial property office..."

3391. Mr. AZABOU (Tunisia) said that his Delegation supported the proposal.

3392. Mr. CONK (Czechoslovakia) said his Delegation would be prepared to support the proposal if it had the clear approval of the developing countries. His Delegation had even suggested the deletion of Article 13(3)(g) which stated that "each delegate may represent, and vote in the name of, one country only." He would be glad to know the views of the developing countries; if they approved the proposal, his Delegation would vote for it; if they did not, it would abstain.

3393. Mr. PHAF (Netherlands) said his Delegation tended to favor the text submitted. There were, however, some corrections which might be made: (a) item (i) referred to the member States of one or more Unions; the reference should be to member States of the Paris Union only; (b) again under item (i), it was provided that the States could be represented by their common office; was it necessary to say so? (c) item (ii) referred to the conferences of the Union, whereas Article 13 dealt only with the Assembly of the Paris Union; (d) still under item (ii), there was a reference to the power to sign; but in the Assembly there was no signing, only voting; (e) item (iii) should contain a reference to item (i); if that were not done, item (iii) would appear to apply also to countries which were not grouped together in a common office; (f) finally, the drafting of item (iv) could be improved; the point was that a delegation could not exercise more than two votes.

3394. Mr. MIHINDOU (Gabon), referring to the apprehensions expressed by the Delegation of Czechoslovakia, said that the reason why a larger number of developing countries had not supported the proposal of Madagascar and Senegal was not that they were opposed to it, but that they had few delegates. That fact was sufficient justification for the apprehensions expressed by the Delegations of Madagascar and Senegal.

3395. Mr. LAHLOU (Morocco) said his Delegation supported the proposal under consideration.

3396. Mr. ROGGE (Federal Republic of Germany) fully understood the reasons which had led the Delegation of Madagascar to make his proposal and his Delegation was prepared to accept the text of item (i) contained in document S/179. His Delegation was, however, generally opposed to double voting as this system, if adopted, could well lead to unpredictable developments. He suggested that a possible solution might be found in adopting a similar clause as that contained in Article 13*quater*(4)(e) (S/3). He proposed that the transfer of voting powers should generally not be allowed but permissible only when approved by the General Assembly in exceptional circumstances.

3397. Mr. RIBEIRO (Brazil) pointed out that a delegate in another Committee had referred to the Vienna Convention of 1961. He would therefore like to remind delegates that Article 6 of that Convention authorized multiple representation. The Delegation of Brazil therefore associated itself with the proposal of Madagascar and Senegal.

3398. Mr. LEDOUX (Senegal) thanked the Delegation of the Netherlands for its pertinent comments. The draft text reproduced the provisions employed by ITU and those provisions could not be adopted without some adjustment. The Delegations of Madagascar and Senegal, with the assistance of the Delegation of the Netherlands, were in the process of preparing a revised proposal, which he hoped they would be able to submit in the very near future.

3399. Mr. MAEDA (Japan) asked for some clarification as to the interpretation to be given to items (ii) and (iii) as contained in document S/179. It was his understanding that, in item (ii), one country received full powers from another country to vote on its behalf. On the other hand, his understanding of item (iii) was that the power to vote was delegated by one country to another country for meetings taking place at the same conference. He questioned whether a delegation could have the right to vote on behalf of another delegation at different meetings in the same conference without having full powers to do so. His Delegation was prepared to accept item (ii); however, item (iii) did not seem to be in accordance with international procedure.

3400. The CHAIRMAN, replying to the Delegate of Japan, said that the text under consideration would not apply at diplomatic conferences if the drafting amendments proposed by the Delegation of the Netherlands were accepted. He would ask one of the delegations sponsoring the proposal to reply to the other questions put by the Delegate of Japan.

3401. Mr. LEDOUX (Senegal) said that item (ii) dealt with cases where a State might not be in a position to send a delegation to the Assembly, and item (iii) covered cases in which a delegation which was present might not be able to vote at that particular moment and would then empower another delegation to vote in its name.

3402. Mr. MAEDA (Japan) agreed with the interpretation given by the Delegate of Senegal.

3403. Miss NILSEN (United States of America) believed that the inclusion of item (iii) would lead to complications and suggested that it should be deleted, particularly as this provision was not related to item (i). The procedure as described in item (iii) was more a technical and practical matter and could be dealt with in the framework of Conference Rules.

3404. Mr. SAID-VAZIRI (Iran) said his Delegation had already given its support to the proposal in document S/37, and was therefore in favor of the proposal in document S/179, provided due account was taken of the comments of the Delegation of the Netherlands.

3405. Mr. DE SANCTIS (Italy) noted that the proposal under consideration applied only to the Paris Union. The Delegation of Italy would oppose any extension of the proposal to the Berne Union.

3406. Mr. BOULBINA (Algeria) feared that the combination of items (ii) and (iii) might lead to a succession of proxy votes.

3407. Mr. MWENDWA (Kenya) said that the proposal made by the Delegations of Madagascar and Senegal was of vital importance to developing countries, particularly in Africa. East African countries had recently established the East African Common Service Organization, one of the aims of which was to cooperate in the field of commerce and industry. He therefore urged the members of Main Committee IV to consider the acceptance of the general principle contained in document S/179.

3408. Mr. LUCAS (Niger) fully agreed with the opinion expressed by the Delegate of Kenya.

3409. The CHAIRMAN asked the Delegations of Madagascar and Senegal, in cooperation with those delegations which had taken part in the discussion, to prepare a draft for submission to the Committee at the earliest possible moment.

3410. Mr. DE SANCTIS (Italy) recommended that the draft should indicate clearly that only the Paris Convention was involved.

3411. Mr. ROGGE (Federal Republic of Germany) proposed that item (iv) of document S/179 should read as follows: "The proxy can only be exercised with the approval of the Assembly."

3412. The CHAIRMAN confirmed to the Delegation of Italy that the discussion was concerned solely with the Paris Convention.

3413. Mr. LEDOUX (Senegal), after an interval during which various delegations worked on the draft requested by the Chairman, read out the following text: "(i) the member States of the Union grouped together under the

terms of an international agreement in a common Office, possessing for each of them the character of a special national service of industrial property referred to in Article 12 of the present Convention, may, notwithstanding Article 13(3)(g), be jointly represented during discussions by one of them; (ii) in general, the members of the Union referred to in item (i) must endeavor to send their own delegation to the conferences of the Union. If, however, for exceptional reasons, a member cannot send its own delegation, it may give to the delegation of another member the power to vote and sign in its name. This delegation of powers must be set out in a document signed by the Head of State or the competent Minister."

3414. The CHAIRMAN opening the discussion on this draft, stated that it would be referred to the Drafting Committee.

3415. Mr. DE SANCTIS (Italy) proposed the insertion in item (ii), after the words "for exceptional reasons," the words "accepted by the Assembly."

3416. Mr. LABRY (France) stated that the Italian proposal would considerably restrict the compromise which had been worked out. Moreover, ITU had no such system of acceptance by an Assembly. Finally, a wording of this kind would derogate from national sovereignty, since an Assembly might pass judgment on the motives of a State which invoked item (ii). For those reasons, the Delegation of France disagreed with the Italian proposal.

3417. Mr. KRIEGER (Federal Republic of Germany) fully supported the views of the Delegate of Italy that the words "accepted by the Assembly" should be inserted in the text of item (ii).

3418. Mr. LAURELLI (Argentina) again emphasized that the legal contents of the General Regulations annexed to the International Telecommunication Convention was not applicable to the situation now under consideration. He was prepared, however, to support the amended text subject to the Italian proposal being inserted in item (ii).

3419. Mr. MIHINDOU (Gabon) also disagreed with the Italian proposal. If a developing country was unable to take part in the work of an Assembly for financial reasons, it would be difficult to make the Assembly appreciate those reasons.

3420. Mr. MWENDA (Kenya) said that, when the developing countries in Africa had asked for this concession to be made, they had done so primarily because they wished to participate in meetings and they would only invoke the double voting procedure in exceptional cases. He therefore urged the Delegates of Italy and the Federal Republic of Germany not to press for this restriction and asked that the proposal under consideration should be accepted without amendment.

3421. Mr. THALER (Austria) said the Delegation of Austria supported the text in document S/179.

3422. Mr. LAURELLI (Argentina) asked the Chairman to give an interpretation of the provision contained in item (i). He recalled that there were other geographical regions grouping several countries which were faced with the same kind of problems but which had no common patent office, for instance, Central American countries. If the text now proposed was accepted it might be interpreted as a discriminating restriction limiting it exclusively to countries having a common office. He believed that the clause should be extended to include other groups of countries.

3423. The CHAIRMAN, while recognizing the importance of the proposal by the Delegation of Argentina, feared that there was not sufficient time left to discuss it. He therefore asked the Delegate of Argentina to submit a draft amendment in writing.

3424. Mr. LAURELLI (Argentina) agreed.

3425. Mr. GAMBA (Central African Republic), reverting to the Italian proposal, said that the decision of a State could not be subjected to the control of an Assembly, which would not be in a position to assess the reasons for that decision.

3426. Mr. AMON D'ABY (Ivory Coast) expressed approval of the comments made by the Delegations of France, Gabon, Kenya and the Central African Republic. He went on to point out that the African countries suffered from a shortage of qualified personnel, with the result that one person might be required to follow the work of several meetings at once. For that reason, the Delegation of the Ivory Coast supported the proposal in document S/179.

3427. Mr. MAEDA (Japan) supported the text as contained in document S/179 subject to drafting amendments.

3428. The CHAIRMAN put to the vote the proposal of the Delegations of Madagascar and Senegal, as set out in document S/179, without the amendment proposed by the Delegation of Italy.

3429. *The proposal in document S/179 was approved unanimously, with 8 abstentions.*

3430. The CHAIRMAN asked the Delegation of Italy if it wished to press its amendment.

3431. Mr. DE SANCTIS (Italy) replied that it did not.

3432. Mr. KRIEGER (Federal Republic of Germany) said that his Delegation would not take over the Italian amendment, which it had supported.

3433. Mr. LAURELLI (Argentina), with a view to solving the problem, suggested that the words "referred to in item (i)" be deleted in the text of item (ii). This would have the effect of broadening the provision.

3434. The CHAIRMAN asked the Delegation of Argentina to submit an amendment in writing to a later meeting of the Committee.

The meeting rose at 1:15 p.m.

TENTH MEETING

Thursday, June 22, 1967, at 9:45 a.m.

ORGANIZATION OF WORK (continued)

3435. The CHAIRMAN proposed that the meeting should consider the items previously deferred, in the light of the work of the Drafting Committee.

ASSEMBLY: OBSERVERS (S/184)

3436. He first invited comment on the amendment proposed by the Delegation of Sweden in document S/184.

3437. Mr. NORDENSON (Sweden) pointed out that the slight amendments proposed in document S/184 were mainly aimed at adjusting the drafting of Article 13 on the Assembly. These amendments provided that all member countries of the Paris Union not yet bound by the Stockholm Act, could automatically attend meetings of the Assembly as observers. This same right to attend meetings of the Assembly corresponded to a right to attend meetings of the Executive Committee, already provided for in Article 13*bis*(9).

3438. Mr. DE SANCTIS (Italy) supported the proposed amendment. It was logical, having regard to the terms of Article 13*bis*(9).

3439. The CHAIRMAN asked whether any delegations were opposed to that amendment. There were no objections.

3440. *The amendment contained in document S/184 was adopted unanimously.*

3441. Mr. PFANNER (BIRPI) stated that, when examining Article 13(4)(b), the Drafting Committee had wondered whether countries not bound by the Stockholm Convention which had availed themselves of the right offered by Article 20 to take part in the proceedings of the Union, were or were not members of the Assembly. The Drafting Committee had considered that they were members of the Assembly and had proposed to state in Article 20 that *such countries were considered to be members of the Assembly.*

3442. The CHAIRMAN asked whether there were any objections to the proposal that the Drafting Committee should prepare a text on these lines.

3443. *The proposal was unanimously accepted.*

PROPOSAL CONCERNING LOCATION OF REVISION CONFERENCES (continued) *(S/94)*

3444. The CHAIRMAN invited the meeting to consider a proposal of the Delegations of Argentina, Brazil, Madagascar, Senegal and Uruguay (S/94) to insert in Article 14(2) a phrase stating that, except under special circumstances, revision conferences would take place at the headquarters of the Union.

3445. Mr. RIBEIRO (Brazil) said that the object of that proposal was to hold revision conferences in Geneva so as to facilitate the participation of the developing countries; those countries could provide delegates in Geneva, where they had permanent delegations, whereas they often could not do so in other towns.

3446. Mr. PHAF (Netherlands) asked who would convene the conferences, BIRPI or the Swiss Government?

3447. Mr. RIBEIRO (Brazil) replied that it would be BIRPI. Conferences should not in future be convened by a State.

3448. Mr. RAZAFINDRATANDRA (Madagascar) supported the proposal contained in document S/94.

3449. Mr. ARTEMIEV (Soviet Union) supported the proposal contained in document S/94, but hoped that the application of this provision would not be applied too rigidly.

3450. Mr. KRIEGER (Federal Republic of Germany) said that the proposed drafting for Article 14(2) in document S/94 did not clearly indicate who was the inviting power. In the past, one of the Governments of the member States of the Union had always acted as inviting power and he was not clear as to who would be the inviting power in the future.

3451. Mr. LAURELLI (Argentina), while appreciating the traditional rules of the Paris Union, said that the developing countries had made considerable efforts to maintain representatives abroad and that their attendance at conferences of international organizations, such as those of the Paris Union, was desirable and should be facilitated in every way. This Conference should therefore try to adapt the present mechanism to the necessities of full representation rather than to maintain traditions.

3452. Mr. MAZARAMBROZ (Spain) supported the joint proposal contained in document S/94 which would no doubt facilitate the participation of distant countries.

3453. Mr. DE SANCTIS (Italy) wondered whether a more detailed drafting should be adopted to reduce the difficulties. The object of revision conferences was to amend the substantive provisions of the Conventions. Those provisions concerned private international law. The conferences that would have to revise them were therefore very important and the draft of Article 14 that originated from the Committee of Experts had had regard to that fact. Nevertheless, he would not say that he was opposed to the draft contained in document S/94, but he would like the Main Committee to reflect and to maintain the possibility of holding conferences in other countries.

3454. Miss NILSEN (United States of America) declared that her Delegation was basically in favor of the proposal contained in document S/94 for amending Article 14(2), subject to certain drafting amendments.

3455. Mr. PHAF (Netherlands) feared that a change in the system might give rise to difficulties. Moreover, the next revision conference was in any case to be held in Vienna, in view of the invitation of the Austrian Government. He wondered whether it might not be possible to include the matter in the agenda of the Vienna Conference.

3456. Mr. LABRY (France) was in agreement with the remarks of the Delegation of the United States. Nevertheless, he noted that reference was made in document S/94 to "special circumstances," without specifying who would assess each case.

3457. Mr. BOERO-BRIAN (Uruguay) wished to draw the attention of the delegates to the basic reasons for the proposed amendments to Article 14(2). A number of developing countries, members of international organizations, had considerable difficulties in participating at conferences. If a general rule were adopted for revision conferences of the Paris Convention to be held in Geneva, the participation of these countries would be greatly facilitated. He fully supported the statement made by the Delegate of Brazil.

3458. Mr. KRIEGER (Federal Republic of Germany), with reference to the remarks made by the Delegate of the Netherlands, recalled that the Austrian Government had already extended an invitation for the next Conference of Revision of the Paris Convention which was to be held in Vienna. He suggested that a decision on this matter might be deferred until the Vienna Conference took place.

3459. Mr. MORF (Switzerland) recalled that a decision would have to be taken on the financing of revision conferences if the latter were to be convened by BIRPI; in that case the contributions of the States would have to be increased.

3460. The CHAIRMAN noted that the proposal under consideration was in general favorably received, but that it had come up against the following objections: (i) the question of cost, (ii) the conditions under which the Conferences would be held, (iii) the fact that the next Conference would be held in Vienna.

3461. Mr. RAZAFINDRATANDRA (Madagascar) considered that the Austrian invitation constituted one of the special circumstances for which provision was made in the draft under consideration.

3462. Mr. STANESCU (Rumania) recalled that his Delegation had suggested introducing into Article 14(1) the idea that revision conferences should take into consideration the various systems of protection existing in the Member States. Following discussions with Mr. Bogsch, Deputy Director of BIRPI, it had become apparent to the Delegation of Rumania that it would be difficult to find a wording that would render that idea. His Delegation would not, therefore, submit a specific proposal on that subject.

REVISION: PROPOSAL FOR LESS THAN UNANIMOUS VOTE (S/106 and S/97)

3463. The CHAIRMAN, having taken careful note of the statements of the Delegation of Rumania, invited comments on document S/106 contained in the proposal of the Delegations of the Federal Republic of Germany, the Netherlands and Switzerland to replace the rule of unanimity provided for in Article 14(3) of the Paris Convention by a majority of nine-tenths.

3464. Mr. KRIEGER (Federal Republic of Germany) recalled that, although the rule of unanimity was contained expressis verbis in the Berne Convention, there was no corresponding rule for amending substantive provisions in the Paris Convention. The rule of unanimity had, however, been applied traditionally but, as experience had shown in the past, this rule had led to certain difficulties. He considered that the joint proposal as contained in document S/106 would be a useful improvement and only represented a slight deviation from the rule of unanimity. The proposal, as formulated in S/106, followed the lines of Article 27 of the Rome Convention for Performing Artists, Phonogram Producers and Broadcasting Organizations. He believed that this proposal would avoid certain practical difficulties in the future.

3465. Mr. LABRY (France), while acknowledging the relevance of the remarks made by the Delegate of the Federal Republic of Germany, stated that, in view of the express instructions that the Delegation of France had received from its Government, that Delegation could not accept any departure from the rule of unanimity.

3466. Mr. ARTEMIEV (Soviet Union) said that, when discussing the principle of the rule of unanimity, it should be taken into account that this traditional rule had been applied for many decades and had not appeared to give rise to many difficulties. He was, therefore, of the opinion that this rule should be maintained.

3467. Mr. CONK (Czechoslovakia), Mr. DE SANCTIS (Italy), Mrs. RATUSZNIAK (Poland), Mr. LAURELLI (Argentina), Mr. VASSILEV (Bulgaria), Mr. RIBEIRO (Brazil), Mr. LEDOUX (Senegal), and Mr. PÁLOS (Hungary), declared themselves in favor of maintaining the rule of unanimity, which had had excellent results so far, and which was also justified by the need to obtain the largest possible number of ratifications.

3468. Mr. PETERSSON (Australia) recognized that the traditional application of the rule of unanimity had resulted in texts containing clauses of the lowest common denominator and he therefore had sympathy for the views expressed by the Delegate of the Federal Republic of Germany. However, in some countries, the procedure for amending domestic legislation was very slow and sometimes difficult, and therefore he was loath to depart from the unanimity rule.

3469. The CHAIRMAN, noting the large amount of opposition to the proposal contained in document S/106, asked the authors of that proposal whether they wished to maintain it.

3470. Mr. KRIEGER (Federal Republic of Germany) believed that it would be useful for the record and for future conferences of revision that a vote be taken, although he realized that there was considerable opposition to the proposal under consideration.

3471. The CHAIRMAN therefore put the proposal contained in document S/106 to the vote.

3472. *The proposal was rejected by 24 votes to 11, with 9 abstentions.*

3473.1 The CHAIRMAN asked whether the decision taken on document S/106, which dealt with the Paris Convention, was also applicable to document S/97, which dealt with the Berne Convention. He asked whether any delegation wished to have a separate vote on document S/97. As that was not the case, he considered that the decision that had just been taken was also applicable to the Berne Convention and to document S/97.

3473.2 *It was so agreed.*

PROPOSAL CONCERNING LOCATION OF REVISION CONFERENCES (continued) *(S/94)*

3474. The CHAIRMAN read the text that the Delegation of Brazil proposed to substitute for that contained in document S/94: "To this effect, conferences will take place, if requested by at least (one-half) of the members of the Union, in principle at its headquarters."

3475. Mr. RAZAFINDRATANDRA (Madagascar) pointed out that the word "*formée*" in the text read out by the Chairman should be "*formulée.*"

3476. The CHAIRMAN recalled that the wording would be reviewed by the Drafting Committee.

3477. Mr. PHAF (Netherlands) thought that it was pointless to take a decision on the subject at Stockholm. Even if the Vienna Conference was a special case, why could the matter not be discussed at Vienna?

3478. Mr. BOULBINA (Algeria) submitted a wording closer to that contained in document S/94: "to this effect, conferences will, *in principle*, take place at the headquarters of the Unions, except under special circumstances *accepted by the decision of a majority of three-fourths of the Assembly.*" That procedure was in agreement with that provided by Article 13(2)(a)(ii). Moreover, the majority envisaged would enable unrealistic proposals concerning revision conferences to be eliminated.

3479. Mr. DA CRUZ (Portugal), Mr. PÁLOS (Hungary) and Mr. VASSILIEV (Bulgaria) also preferred to await the Vienna Conference.

3480. Mr. STANESCU (Rumania) thought it desirable first to answer the question whether or not they should await Vienna before deciding. If they had to take a decision at this stage, he would prefer the text submitted by the Delegate of Algeria.

3481. Mr. BOERO-BRIAN (Uruguay) raised a point of order and requested that a vote be taken on the two amendments under discussion in accordance with the

Rules of Procedure of the Conference, the furthest removed being put to a vote first.

3482. The CHAIRMAN noted that the two texts submitted were both equally far removed from the wording contained in document S/3 and said that he hesitated to ask the Main Committee to decide on one rather than on the other. He therefore suggested that the Main Committee should first decide on the principle of taking a decision at Stockholm or of referring it to the Vienna Conference. Thereafter the Committee could decide on the two texts, on the clear understanding that in either case the Vienna Conference would be an exceptional case.

3483. Mr. KRUGER (South Africa) said that if the Conference of Revision to be held in Vienna was to be regarded as an exceptional case, then his Delegation was not opposed to modifying Article 14(2) and would support the proposal contained in document S/94.

3484. Mr. RIBEIRO (Brazil) recalled that it was clearly understood that the next Revision Conference should be held in Vienna.

3485. The CHAIRMAN proposed to vote on the principle of taking an immediate decision or of referring the matter to Vienna.

3486. Mr. LABRY (France) raised a point of order: he would like some clarification as to the precise question on which a vote was to be taken. He considered that three problems had to be dealt with: (i) the principle that revision conferences might under special circumstances be held elsewhere than at BIRPI, (ii) the conditions under which the conferences should be held (which organ would decide, by what majority, etc.), (iii) who would invite (BIRPI or the Swiss Government)?

3487. The CHAIRMAN recalled that some delegations considered that the matter was not yet ripe for decision and that they would prefer it to be referred to Vienna. He would therefore put to the vote the question whether the discussion should be continued or whether it should be included in the agenda of the Vienna Conference.

3488. *It was decided by 23 votes to 8, with 10 abstentions to refer the question to the Vienna Conference.*

3489. Mr. NORDENSON (Sweden) asked what consequences followed the vote as he was not sure which texts would now appear in the Stockholm Act for Article 14(2).

3490. The CHAIRMAN was of the opinion that, if the proposed amendment were to be referred to the Vienna Conference, the wording contained in document S/3 would be maintained unless another amendment were to be proposed and adopted.

FINANCES:
PROPOSAL REGARDING PRIORITY FEES
(continued) *(S/163)*

3491. The CHAIRMAN invited comments on document S/163 which contained a new formulation of the amendment to Article 13*quater* proposed by Spain.

3492. Mr. MAZARAMBROZ (Spain) in commenting on the new proposed amendment to Article 13*quater*(3)(*ibis*) as contained in document S/163, considered that when the financial provisions of the Paris Convention were being revised, the opportunity of mentioning priority fees as one of the possible future sources of revenue for the International Bureau should be taken advantage of. The fee proposed was relatively low and could be collected by the sale of BIRPI stamps by national Industrial Property Offices. He recommended that the application of this system should be carried out as soon as possible, as it was in the direct interest of all the member States of the Union who wished to assist BIRPI in fulfilling its tasks and in overcoming its present financial burdens. The system proposed was in no way in contradiction with the principle of assimilation.

3493. Mr. BOGSCH (Deputy Director, BIRPI) declared, on behalf of the Director of BIRPI, that the proposal of the Delegation of Spain as it was now drafted in document S/163, met with his entire approval. He emphasized that these fees represented only a possibility to increase BIRPI's sources of revenue. He stressed that the text proposed referred merely to the "possibility" of such fees being collected and therefore there seemed to be no real need to discuss in detail the principle of acceptance of this text. Should the text require subsequent amendments, this could be done at the Vienna Conference.

3494. Mr. PHAF (Netherlands) thought that the proposal of the Delegation of Spain was interesting. Nevertheless, he feared that the text of the proposal was incomplete. If the payment of a fee were to be stipulated, provision should be made for a penalty in the case of non-payment. That penalty could only be loss of the right of priority. Hence it would undoubtedly be necessary also to amend Article 4 of the Paris Convention. That proposal therefore also affected the substantive provisions of the Convention. Accordingly, he proposed that the matter should be referred to the Vienna Conference.

3495. Mr. ARTEMIEV (Soviet Union) declared that the Spanish proposal deserved careful consideration and its final examination should be deferred until the Conference of Vienna. In any event, his Delegation was not empowered to vote on this matter now.

3496. Mr. MARINETE (Rumania) once more expressed his gratitude to the Delegate of Spain for having made his proposal which was undoubtedly a possible further source of income to BIRPI. However, his Delegation could not, at this stage, give support to the proposal. The principle of collecting fees had not yet been fully examined. Although the Delegate of Spain had given a very complete description of the system envisaged, only part of the consequences had been examined. In this connection he pointed out that in many of the Socialist countries the direct beneficiaries of priority rights are State-owned firms and the burden of such fees would involve decisions taken on a governmental level. He therefore recommended that a detailed study of this matter be made with a view to its examination at the Vienna Conference.

3497. The CHAIRMAN suggested that the discussion should be continued in the following meeting.

The meeting rose at 12:30 p.m.

ELEVENTH MEETING

Thursday, June 22, 1967, at 2:40 p.m.

FINANCES:
PROPOSAL REGARDING PRIORITY FEES
(continued) *(S/163)*

3498.1 Mr. MORF (Switzerland) duly appreciated the reasons why the Delegation of Spain had submitted a proposal (S/163) which would enable the Union to benefit from a new source of revenue.

3498.2 The Delegation of Switzerland nevertheless shared the opinion of all the delegations who had suggested that no decision be taken on the subject at the Stockholm Conference for the reasons stated by the Delegate of the Netherlands at the previous meeting. The Delegation of Switzerland would prefer that the procedure proposed by BIRPI (S/12) be adopted, namely that the member States should be requested to study the question for the Vienna Conference. It would still be possible to amplify Article 13*quater* at the Vienna Conference if a decision endorsing the proposal of the Delegation of Spain (S/163) had to be taken at that date.

3498.3 Furthermore, it was to be anticipated that the texts to be adopted at Vienna would come into force at approximately the same time as the Acts adopted at Stockholm took effect. The delay in settling the problem would not, therefore, have any perceptible effect.

3499.1 Mr. GAJAC (France) stated that his Delegation, unlike the Delegation of Switzerland, has prepared to support the Spanish proposal (S/163) at the present stage.

3499.2 While he did not question the relevance of the arguments submitted by the Delegate of the Netherlands at the preceding meeting, he felt it advisable to include in the Convention forthwith the principle of the collection of fees for claiming the right of priority, even though they had to specify that the methods of collection should be established through the regular channels, and to make certain drafting amendments in the Spanish proposal so as to remove the apprehensions of several delegations.

3500.1 Mr. DE SANCTIS (Italy) also paid tribute to the spirit which had inspired the Spanish proposal (S/163), but he was also of the opinion that the study of the question should be deferred until the Vienna Conference and that the text proposed in the Program of the Conference should be accepted in Stockholm.

3500.2 As regards the substance of the question, the Delegate of Italy pointed out that, as the right of priority was governed by specific provisions in Article 4 of the Paris Convention, there could be no question of introducing new fees.

3500.3 Furthermore, the provision contained in item (ii) of Article 13*quater*(3) appeared to refer to all charges to be collected in any field in return for services performed by the International Bureau. Any other service of a general character which the Union might render the States was, by definition, covered by the contributions of the member countries of the Union. The Spanish proposal could only refer, therefore, to services rendered by the International Bureau to private persons in connection with private matters. The Delegate of Italy would like the Secretariat to confirm that interpretation.

3501. Mr. BOGSCH (Deputy Director, BIRPI) was convinced that a provision of the kind contemplated by the Delegation of Spain would be useful even at the present stage.

3502.1 Mr. UGGLA (Sweden) said that he doubted whether the collection of fees for priority rights was in harmony with Articles 2 and 4 or with the spirit of the Paris Convention. He shared the view of the Delegate of the Netherlands that if the clause proposed by the Delegate of Spain were approved, Article 4 would have to be amended. Further study of the proposal was necessary.

3502.2 As far as Sweden was concerned, the concept of a priority fee did not correspond with the principles of the Administration. In Sweden, the patents and trademarks system was self-supporting; all costs including the contribution to the International Bureau were covered by the fees paid by applicants for and holders of patents and trade marks. To make an additional charge on foreign applicants claiming priority under Article 4 would hardly be fair.

3502.3 Furthermore, Swedish experience had shown that the cost of collecting small fees such as the proposed tax was disproportionately high, to the point of making any such scheme unprofitable.

3503. Mr. GRANT (United Kingdom) said that the Spanish proposal was interesting but required further study. It would have to be decided whether it was compatible with other provisions of the Convention. The example of the procedure followed in the case of the question of inventors' certificates might be usefully followed. That question had been first raised at Lisbon where it had been deferred for discussion and examination, as a result of which it would almost certainly be disposed of without difficulty by the current Conference. He hoped that the Delegate of Sweden would not press his amendment and would agree to have consideration of it deferred until the Vienna Revision Conference.

3504. Mr. LORENZ (Austria) considered that the Spanish proposal (S/163) was highly ingenious. Nevertheless, it called for careful prior study and the Delegation of Austria, in supporting the observations of the Delegate of the Netherlands, considered that it would be advisable to refrain from taking any immediate decision on the subject.

3505. Mr. DA CRUZ (Portugal) unreservedly supported the Spanish proposal (S/163). A fee levied for claiming the right of priority would constitute an appreciable source of revenue, even if it were to amount to only about four Swiss francs. Delegations which were in favor of postponing any decision on the subject until the Vienna Conference might well cause the Union to lose the benefit of this additional revenue during the interval up to the date of that Conference.

3506.1 Mr. MAZARAMBROZ (Spain) thanked the delegates and the Secretariat who had supported the amendment. In view of the opinion that appeared to prevail in the meeting, he doubted whether it was necessary to defer consideration of his proposal until the Vienna Revision Conference.

3506.2 Some of the objections made to his amendment could be easily refuted. With regard to the question raised by the Delegate of the Netherlands about sanctions in the event of an applicant's failure to pay the proposed tax, if priority were not lost, it would at least not be recognized pending payment of the tax.

3506.3 Some delegates had objected on the grounds that in countries with centrally-planned economies the State or a State-run body would have to pay the tax. The position in those countries, however, was not really different from that in countries where the economic system was based on private enterprise, where patents were often held by State-run entities or the Government.

3506.4 The Delegate of Sweden had feared that the proposal would be incompatible with Articles 2 and 4 of the Paris Convention. Article 2 of the Paris Convention referred, however, to the principle of the assimilation of foreigners to nationals which had nothing to do with the Spanish proposal. Citizens of every country were foreigners in other countries and foreigners were foreigners in third countries; there was therefore no question of differentiation and no connection between his Delegation's proposal and the principle of equality referred to in Article 2. Article 4 dealt with the limitation of requirements in countries where priority was sought and with difficulties in obtaining recognition of priority in countries where patents were being registered, whereas the Spanish proposal did not refer to any question of difficulties, limitations or requirements

established unilaterally, but to a multilateral requirement established by all countries on a reciprocal basis.

3506.5 The Delegate of Sweden had also spoken of the self-supporting nature of the Swedish services. The proposed BIRPI tax would be wholly apart from such services and would not have to be collected. It was a charge for the recognition of priority and could be made in the form of a stamp duty; the stamps could be sold by BIRPI direct or through the intermediary of State offices, but only if the Administration concerned so wished. Thus, no additional expense or administrative work need fall on national Administrations.

3506.6 He had no objection to deferring further consideration of his proposal until the Vienna Revision Conference. He had only wished to have his proposal discussed as early as possible in the hope of avoiding the need for any increase in the resources required by BIRPI, bearing in mind the difficulties many countries had in making their contributions even for the Reserve Fund.

3507. The CHAIRMAN suggested that the Committee, in view of the observations of the Delegate of Spain, should continue its business without taking any formal decision concerning the Spanish proposal.

3508. *It was so agreed.*

FIRST MEMORANDUM OF THE DRAFTING COMMITTEE: ADMINISTRATIVE AND FINAL CLAUSES OF THE PARIS CONVENTION *(Articles 13 to 20)* AND OF THE BERNE CONVENTION

(Articles 21 to 32) (S/180)

3509. The CHAIRMAN invited members of the Committee to comment on the text of the Articles redrafted by the Drafting Committee (S/180) so that the Secretariat might receive as soon as possible the definitive text of the Articles concerned, namely, Articles 13 to 20 of the Paris Convention and Articles 21 to 32 of the Berne Convention.

FINANCES: PROVISIONAL BUDGET

*Article 13*quater*(4)(f) (S/30 and S/180)*

3510. Mr. LORENZ (Austria) recalled that he had made a proposal in accordance with which a provisional budget might be adopted if the budget for the new financial period could not be adopted in time (S/30). The Committee had referred that proposal to the Drafting Committee which did not appear to have taken it into account in paragraph (4)(f) of Article 13*quater*. Mr. Lorenz would like this point to be clarified.

3511.1 Mr. LABRY (France), speaking in his capacity as Chairman of the Drafting Committee, replied that the Austrian proposal had given rise to a very lengthy exchange of views in the Drafting Committee.

3511.2 The Committee had had to deal with several difficulties at the same time, some concerned with drafting, and arising from the fact that this paragraph of the Article on finances concerned both the General Assembly and the Executive Committee, and due to the fact that the budget was voted by the Assembly for triennial periods, while the Executive Committee expressed its opinion only within the limits of the general instructions of the Assembly. Wishing to take into account all possible hypotheses, the Drafting Committee had prepared several very complicated versions of the paragraph referring to the lack of a quorum, the lack of a majority, etc., and all contingencies of an exceptional character which might prevent the budget from being adopted at the beginning of the new financial year. It was then that the members of the Drafting Committee unanimously agreed to adopt a simple formula ("if the budget is not adopted before the beginning of a new financial period..." which covered all hypothetical cases.

3511.3 It was also important to take into account in the subparagraph concerned the necessity for carrying over the budget of the previous year if the budget of the new financial period could not be adopted, so as to enable the International Bureau to continue to function without exceeding the amount of the last budget duly adopted.

3511.4 In view of the fact that provision was made for "Financial Regulations" and that such regulations should by definition specify all relevant details, the members of the Drafting Committee had unanimously agreed to the adoption of a simple formula ("it shall be carried over as provided in the Financial Regulations") as proposed in their memorandum (S/180).

3512. Mr. LORENZ (Austria) appreciated that it was impossible to recommence in the Main Committee the thorough study which the Drafting Committee had made of the problem, but he was not sure what was implied in the concept of carrying over the budget.

3513. The CHAIRMAN considered that it was for the Main Committee, if some of its members entertained doubts regarding the text proposed by the Drafting Committee, to decide in a plenary meeting, whether it was advisable to specify in the text of the Convention the conditions governing a possible carrying over of the budget instead of accepting the vague formula recommended by the Drafting Committee.

3514. Mr. BOWEN (United Kingdom) observed that difficulty in interpreting the text in document S/180 was perhaps due to a drafting error. If, in Article 13*quater* (4)(f), the word "it" following the words "financial period" was replaced by the words "the budget for the previous year," the meaning of the sentence became clear. The intention of the Article was that, if a budget for a given year were adopted in a given amount and, at the beginning of the next financial year, approval were *unsuccessfully* sought for a higher amount for the budget for that second year, then the amount of the budget for the first year would be carried over to the second.

3515.1 Mr. LORENZ (Austria) said that, as the Delegate of the United Kingdom had indicated, his difficulty lay in the fact that in the French version the words: "*où le budget n'est pas adopté*" referred to the new budget, whereas the words: "*il est reconduit*" referred to the old budget. It seemed to him, however, that the main idea was to carry over the budget immediately preceding the budget that could not be adopted in normal conditions.

3515.2 In that connection, the Delegate of Austria pointed out that a budget did not only establish a specific amount but also made provision for specific tasks. The automatic carrying-over of the previous budget might well lead to the carrying-over of credits relating, for example, to the organization of a conference, the cost of which would not recur. It was for that reason that the Delegate of Austria in his initial proposal (S/30) suggested that the International Bureau should be authorized in carrying over the budget for a new financial period only within the limits of the expenditure necessary for the functioning of the Union and its administrative services, that is to say, within the limits of ordinary administrative expenses, and disregarding extraordinary expenses. That was also the reason why the Delegate of Austria considered it justified to envisage carrying-over the budget of the preceding financial period, in the case where the budget could not be voted at the beginning of the normal financial period, only on a provisional basis until an extraordinary session of the Assembly could be convened, for example within the next three months.

3515.3 The Delegate of Austria considered that there was too great a discrepancy between his proposal (S/30), in the form which the Committee had agreed to refer to the Drafting Committee, and the effects of that proposal in the form deriving from the text of the Drafting Committee.

3516.1 The CHAIRMAN considered that, in the first place, a drafting amendment seemed justified as a result of the observations made by the Delegate of the United Kingdom and the Delegate of Austria.

3516.2 He remarked that, secondly, the reference to the Financial Regulations in the text proposed by the Drafting Committee did not by any means exclude the possibility of providing for the detailed procedure for the carrying-over of the budget which the Delegate of Austria had wished to cover in his original proposal (S/30).

3517. Mr. BOGSCH (Deputy Director, BIRPI) suggested that if the statement of principle were included in the Article, the details of its application could be covered by the Financial Regulations, in the drafting of which the wishes of the Delegation of Austria would be taken into account.

3518. Miss NILSEN (United States of America) said that the Drafting Committee, of which she was a member, had wished to simplify the text. The French version appeared to be satisfactory; the English perhaps needed revision. She suggested it might be amended to read "it may be continued at the same level under the conditions provided in the Financial Regulations."

3519. The CHAIRMAN, following the observations by the Delegate of the United States, said that, as the new versions proposed by certain members of the Main Committee did not in any way alter the general meaning of paragraph (4)(f), it was advisable to send the text back to the Drafting Committee to be put into final form.

3520.1 Mr. LABRY (France), speaking in his capacity as Chairman of the Drafting Committee, stated in reply to the Delegate of the United Kingdom and the Delegate of Austria that the redrafting they suggested was entirely justified, and that the Drafting Committee by a simple oversight had omitted to specify in its text (S/180, Article 13*quater*, paragraph (4)(f)) that it was a question of carrying-over the budget of the previous financial period.

3520.2 As regards the observations on substance made by the Delegate of Austria, Mr. Labry recalled that the reason why the Drafting Committee had not taken some of the initial Austrian proposals (S/30) specifically into account was that it considered that the desired particulars could be inserted in the Financial Regulations, where they would be more appropriately situated than in the text of the Convention proper.

3520.3 The Delegate of Austria had, however, put forward several new arguments which were not contained in those initial proposals (S/30). Among other things, he had asked what would happen in the event of carrying-over a budget, the amount of which was abnormally high owing to extraordinary expenditure incurred during the previous financial period. The Drafting Committee had certainly not intended, any more than the Main Committee itself, to refer to anything other than the carrying-over of an ordinary budget. In any event, that point could also perhaps be made clear in the Financial Regulations.

3520.4 The Delegate of Austria had also emphasized the fact that the carrying-over of the budget of the previous financial period should be only provisional. That qualification too was not contained in the initial Austrian proposals (S/30), but, in any event, the Drafting Committee was certainly of the same opinion. It appeared obvious, as the Deputy Director of BIRPI himself had stated, that in the event that the budget could not be adopted in normal conditions, the International Bureau would do everything possible, within the limits of the provisions of the Convention, to remedy that state of affairs as soon as possible. That was so evident that the members of the Drafting Committee had not thought it essential to specify it in the text that they had proposed.

3521. Mr. PHAF (Netherlands) observed that the discussion had demonstrated the complexity of the problem which was such that it was impossible to take account of all possible contingencies in a single provision of the Convention. In such circumstances, it appeared justified to refer the question specifically to the future drafters of the Financial Regulations and to keep to the text proposed by the Drafting Committee. The authors of the Financial Regulations would certainly take into account all points raised during the discussion.

3522. The CHAIRMAN considered that the Delegate of the Netherlands had drawn the necessary conclusion from the discussion. He, therefore, suggested that the Main Committee should adopt the text proposed by the Drafting Committee, subject to the slight adjustment desired by the Delegations of the United Kingdom and of Austria.

3523. *It was so agreed.*

EXECUTIVE COMMITTEE: TASKS (continued)

*Article 21*bis*(6)(a)(iii) (S/180)*

3524. Mr. LORENZ (Austria) recalled that, as was confirmed in the decisions recorded in document S/114, the Austrian proposals (S/31) referring to Article 21bis(6)(a)(iii) of the Berne Convention and the corresponding provisions of the Paris Convention had been referred to the Drafting Committee. The latter Committee proposed (S/180), however, not to change the text of the Program of the Conference. Was that due to an oversight or to a deliberate intention?

3525. The CHAIRMAN explained that, after having examined at length the amendment proposed by the Delegation of Austria (S/31) and after having considered the various versions, the Drafting Committee had finally returned to the text proposed in the Program of the Conference (S/9 and S/3).

3526. Mr. NORDENSON (Sweden), a member of the Drafting Committee, confirmed that that had been the case.

3527. Mr. LORENZ (Austria) did not wish to press the point.

INTERNATIONAL BUREAU: TASKS (continued)

*Article 13*ter*(a) (S/180)*

3528. Mr. MORF (Switzerland) recalled that the Delegation of Switzerland had submitted an amendment (S/46) to Article 13*ter*(2) of the Paris Convention (S/3) completing the enumeration of the tasks allocated to BIRPI. The Delegation of Switzerland had been led to understand that the amendment concerned had been accepted, subject to being put into final form by the Drafting Committee. The latter did not propose (S/180), however, to amend the text of Article 13*ter*(2) as suggested in the Program of the Conference (S/3).

3529. Mr. BOGSCH (Deputy Director, BIRPI) recalled that the Main Committee, in examining the Swiss amendment, had acknowledged its justification; it was certainly the duty of the International Bureau to prepare periodical reports, programs, and triennial and annual budgets, etc. But since it had already been specified in the pertinent articles concerning the duties of the Assembly that the Assembly should review the reports of the Director General, it could be deduced that there was an implicit obligation on the Bureau to prepare such reports. After considering the Swiss proposal, the Drafting Committee had, therefore, come to the conclusion that there was no necessity to make specific mention in Article 13*ter* of that task of the International Bureau.

3530. Mr. LABRY (France), speaking in his capacity as Chairman of the Drafting Committee, confirmed the explanation given by the Deputy Director of BIRPI.

3531. Mr. MORF (Switzerland) did not press consideration of his proposal.

RATIFICATION AND ACCESSION (continued)

*Articles 16 and 16*bis *of the Paris Convention (S/55 and S/180)*

3532. Mr. NORDENSON (Sweden) said that in Article 16 and 16*bis* of the Paris Convention he had observed various inconsistencies in connection with ratification and accession by countries to the Union: first, with regard to the entry into force of the Convention there was a difference between the provisions governing the case of countries of, and that of those outside, the Union; secondly, time limits for the entry into force of the Convention differed in a way that did not appear to be logical; and thirdly, according to the text as it stood, countries could for a certain period be bound exclusively by the new final clauses of the Stockholm Act without being bound by the substantive and administrative clauses. He had not had sufficient time to submit amendments in writing and suggested that consideration of the Article be deferred until the following week.

3533.1 Mr. BOGSCH (Deputy Director, BIRPI) pointed out that in its memorandum (S/180) the Drafting Committee could propose only amendments of detail concerning Articles 16 and 16*bis* of the Paris Convention as the question of principle had not yet been settled.

3533.2 The Committee should therefore take a decision immediately on the proposal submitted by the Netherlands with reference to Article 16 (S/55) so that the Secretariat could prepare the final wording of Articles 16 and 16*bis*, and, at the same time, remove any inconsistencies such as those to which the Delegate of Sweden had referred.

3534. The CHAIRMAN invited the Committee, in accordance with the wishes of BIRPI, to study the Netherlands proposal (S/55) concerning Article 16 of the Paris Convention.

3535.1 Mr. PHAF (Netherlands) submitted the proposal of his Delegation (S/55) concerning Article 16 of the Paris Convention.

3535.2 The Program of the Conference offered countries three possibilities: either they accepted the text of the Stockholm Conference as a whole, or they accepted only Articles 1 to 12, or, again, they accepted only Articles 13 to 13*quinquies*. The Delegation of the Netherlands, considering that it was advisable to limit, as far as possible, the possibility of disassociating the articles of one and the same Act, proposed the deletion of Article 16(1)(b)(ii), particularly since it felt that if Articles 1 to 12 were ratified, it would hardly be possible not to ratify Articles 13 to 13*quinquies*.

3536. Mr. LORENZ (Austria) asked whether the Netherlands proposal also referred to the Berne Convention, as every effort was being made to maintain parallelism between the two Conventions. In such a case, the Berne Convention would call for more substantial amendments.

3537. The CHAIRMAN replied that the Committee had not yet expressed any opinion on the corresponding final clauses of the Berne Convention and that the Netherlands proposal was for the moment exclusively concerned with the Paris Convention.

3538. Mr. DE SANCTIS (Italy) unreservedly approved the draft of Article 16 of the Paris Convention as proposed in the Program of the Conference (S/3), and found the Netherlands proposal unacceptable. The Delegation of Italy was anxious that the Italian constitutional bodies should have full discretion to accede, if they so wished, to the substantive clauses of the Paris Convention without acceding to the administrative clauses which were closely associated with the IPO Convention. Only in the case where several administrative provisions had been amended in such a manner that the close relation between these provisions and the IPO Convention had ceased to exist, would the Delegation of Italy be able to accept the Netherlands proposal. If the close relation were maintained, a question of structure would be involved which would make it imperative to adapt the text proposed by the Program of the Conference.

3539. Mr. KRIEGER (Federal Republic of Germany) supported the Netherlands proposal.

3540. *By 17 votes to 3, with 16 abstentions, the proposal of the Netherlands (S/55) was rejected.*

*Articles 25 and 25*bis *of the Berne Convention (S/180)*

3541. The CHAIRMAN invited the members of the Committee to consider the final clauses of the Berne Convention corresponding to the final clauses of the Paris Convention, concerning which the Committee had just approved the proposals of the Drafting Committee (S/180).

3542. *The amendments adopted for Article 16 of the Paris Convention (S/180) were extended to Article 25 of the Berne Convention.*

3543. *The amendments adopted for Article 16*bis *of the Paris Convention (S/180) were extended to Article 25*bis *of the Berne Convention.*

RESERVATIONS

*Article 25*ter*(2) of the Berne Convention*

3544. Mr. MAEDA (Japan), referring to paragraph (2) of Article 25*ter*, recalled that Main Committee I had reached a provisional decision with regard to the retention of the reservations formulated for translation rights. In view of that decision, he hoped that Main Committee IV would also approve the maintenance of the existing provisions of the Brussels Act on the retention of the benefits of the reservations with regard to translation rights and of the previous reservations under Article 25, paragraph (3) and Article 27, paragraph (2).

3545. Mr. BOGSCH (Deputy Director, BIRPI) pointed out that other matters covered by Article 25*ter*, notably the Protocol Regarding Developing Countries, still had to be considered by other Main Committees more directly concerned with them than Main Committee IV and suggested that consideration of the Article be deferred for some days until those Main Committees had reached their decisions on the matters in question.

3546. The CHAIRMAN recalled that it had in fact been decided to postpone the study of Article 25*ter* which was within the competence of Committees I and II. For the same reason, study of Article 25*quater* should also be deferred.

3547. *It was so agreed.*

TERRITORIES

Article 26 of the Berne Convention

3548. Mr. BOGSCH (Deputy Director, BIRPI) wished that it be mentioned that the objections raised and the reservations formulated by certain delegations when considering Article 16*quinquies* of the Paris Convention also applied to Article 26 of the Berne Convention.

3549. *With this reservation, the amendments adopted for Article 16*quinquies *of the Paris Convention (S/180) were extended to Article 26 of the Berne Convention.*

APPLICATION OF EARLIER ACTS

Article 18 of the Paris Convention and Article 27 of the Berne Convention

3550. *Consideration of Article 18 of the Paris Convention having been deferred, it was also decided to defer consideration of Article 27 of the Berne Convention.*

SETTLEMENT OF DISPUTES

*Articles 27*bis *and 28 of the Berne Convention*

3551. *Consideration of Article 27 having been deferred, it was also decided to defer consideration of Article 27*bis *and Article 28 of the Berne Convention.*

DENUNCIATION

Article 29 of the Berne Convention

3552. *Article 17*bis *of the Paris Convention having been approved without amendment, Article 29 of the Berne Convention was also approved without amendment.*

IMPLEMENTATION BY DOMESTIC LAW

Article 30 of the Berne Convention

3553. *The amendment in the title of Article 17 of the Paris Convention (S/180) was also made in the title of Article 30 of the Berne Convention.*

SIGNATURE, etc.

Article 31(1) of the Berne Convention

3554.1 Mr. LABRY (France) submitted an observation concerning subparagraphs (a), (b) and (c) of Article 31(1) of the Berne Convention (S/9), which were not identical with the corresponding subparagraphs of Article 19 of the Paris Convention (S/3).

3554.2 Even at the Lisbon Conference in October 1958, the Delegate of France had stated the reasons why the French Government considered that a text which, as in the case of the Paris Convention, had been in force for so many years and which was of special importance in private international law should remain in French as it originally had been. It would, in fact, be unwise that several texts should henceforth prevail. Without involving any question of prestige for one language to the detriment of another, the French Government considered that an Act which had given rise to numerous private agreements and which had always prevailed in the event of disputes before the Courts should remain in the language in which it had originally been established. In adopting this attitude the French Government had, moreover, followed a precedent, for on the occasion of the revision of the Warsaw Convention it had been considered advisable to prepare the final Act in one language only and not to have several texts which prevailed.

3554.3 The Delegate of France wished to emphasize that the attitude of his Government was based solely on legal considerations. Where it was a question of choosing official languages or working languages, the Delegation of France saw no objection to several languages being used at the same time.

3554.4 Furthermore, in the preparation of new Conventions, such as the future IPO Convention, the French Government had no objection to a provision that several texts should prevail, provided that special care was taken in the drafting of parallel texts so as to avoid any difference of interpretation in the event of dispute.

3555. Mr. DE SANCTIS (Italy) was convinced that, for reasons of a purely legal nature, a single text should prevail even if the Convention was signed in several languages. It was, therefore, necessary to amend Article 31(1)(c) as proposed in the Program of the Conference. It was, of course, possible to contemplate following different rules when preparing new conventions; but the precedent of the Berne Convention itself should, in the case in point, dictate what procedure to follow: it had been specified at the Brussels Conference that, despite the publication of a text in both French and English, only the French text would prevail in the event of dispute. The same procedure should be followed at the Stockholm Conference.

3556. Mr. RAZAFINDRATANDRA (Madagascar) and Mrs. RATUSZNIAK (Poland) subscribed unreservedly to the views of the Delegation of France.

3557. Mr. BOWEN (United Kingdom) said he preferred the version of Article 31, paragraph (1), given in document S/9. English-speaking people would find it useful to have an English text of the Convention, not only for purposes of interpretation but also because it would help to promote the development of copyright throughout the world. It was not unusual to have two authoritative texts; he believed that was the practice, for example, in the Council of Europe.

3558. Mr. MCDONALD (Canada) said he agreed with the Delegate of the United Kingdom. His country had considerable experience in the use of two authoritative languages in official documents. The whole of Canadian Federal Law was drafted in two languages, the text in each being authoritative. Where difficulties arose, one text was used as an aid in the interpretation of the other.

3559.1 Mr. KING (Australia) also agreed with the Delegate of the United Kingdom. The question had presumably been discussed at Brussels where the Conference must have been fully aware of what it was doing when it reached its decision.

3559.2 The Brussels Text was, moreover, a single document in two languages; the adoption of a French text alone would constitute a change in the nature of the document.

3559.3 During the current Conference, English-speaking delegates had been making use of the English text, and it would be only right and proper for that text to continue to be accepted as it had been accepted at Brussels.

3560. Mr. MAEDA (Japan) agreed with the Delegate of Australia.

3561. Mr. BOGSCH (Deputy Director, BIRPI) said that two alternatives were given in the official BIRPI draft, one contained in the main text and the other in the

footnote to Article 31(1)(c) (S/9). The reasons for putting forward alternative versions were given in the Commentary in paragraph 193 (S/9). Adoption of the wording in the main text had been an innovation introduced at the last Committee of Copyright Experts. If the alternative given in the footnote were adopted, the English and French texts would no longer be considered equally authoritative; the French text would prevail in the case of differences of opinion on the interpretation of the various texts.

3562. Mr. KRIEGER (Federal Republic of Germany) said he was in favor of the alternative contained in the footnote, which appeared to provide a reasonable compromise solution.

3563. Mr. LABRY (France) felt it necessary to state, following the various interventions, that the Delegation of France did not intend to go back on the principle of drafting the Act in two languages, English and French, which had been applied in Brussels. It would merely be expedient to provide that: "The French text shall prevail" in accordance with the alternative proposed in the footnote in the Program of the Conference.

3564. The CHAIRMAN invited comments by members of the Main Committee to decide between the text proposed in the Program of the Conference and the alternative proposed in the footnote (S/9, Article 31(1)(c)). Only the member countries of the Berne Convention were entitled to participate in the vote.

3565. *By 16 votes to 10, with 4 abstentions, the alternative was adopted.*

TRANSITIONAL PROVISIONS

Article 32 of the Berne Convention

3566. *The amendment adopted for Article 20 of the Paris Convention (S/180) was extended to Article 32 of the Berne Convention.*

The meeting rose at 5:20 p.m.

TWELFTH MEETING

Monday, June 26, 1967, at 2:30 p.m.

MADRID AGREEMENT (TRADEMARKS) (S/200)

(S/206, S/207, S/208 and S/189)

3567. The CHAIRMAN invited the Committee to proceed to an article by article examination of document S/200 containing the amendments to the provisions of the Madrid Agreement (Trademarks). He recalled that only countries parties to the Madrid Agreement could speak and vote, as was the case for each of the Agreements examined, although without prejudice to the right of observers to ask for the floor under the conditions laid down in the Rules of Procedure. He invited comments on each Article in turn.

3568. *Articles 1, 2 and 3 were unanimously approved.*

3569. The CHAIRMAN invited the Committee to consider Article 3*bis*.

3570. Mr. LORENZ (Austria) pointed out that the amendment made to that Article referred to the Director General of the International Intellectual Property Organization. Would it not be better to speak of the Director General of the International Bureaux? Moreover, was that title the one that had been adopted for the other Agreements?

3571. Mr. DE SANCTIS (Italy) associated himself with the remarks of the Delegate of Austria and urged the need, whenever it was not expressly a matter of IPO, to avoid adding the words "of the International Organization" after reference to the Director General, since he was also the Director General of the various Unions, which were autonomous.

3572. Mr. BOGSCH (Deputy Director, BIRPI) said that the provision was in harmony with the proposal adopted by the Main Committee to the effect that the Director General of IPO would be the chief administrative officer of the Paris and Berne Unions as well.

3573. Mr. RAZAFINDRATANDRA (Madagascar) preferred the proposed wording to be maintained.

3574. Mr. DE SANCTIS (Italy) pointed out that the comment of the Italian Delegation applied both to the Madrid Agreement and to the Paris and Berne Conventions.

3575. *Article 3*bis *as in document S/200 was adopted unanimously.*

3576. *Articles 4, 4*bis*, 5, 5*bis*, 5*ter*, and 6 and 7 were adopted unanimously.*

3577. The CHAIRMAN invited the Committee to consider Article 8, including a proposal of the Delegation of Austria to maintain the possibility of paying a basic fee in two instalments (S/206).

3578. Mr. LORENZ (Austria) explained that the amendment proposed by his Delegation (S/206) maintained paragraphs (7), (8) and (9) as they appeared in the Nice Act. The Delegation of Austria preferred to maintain the possibility of paying the basic fee in two instalments over ten years. Furthermore, the total deletion of those provisions would amount to a structural modification that went beyond the Program of the Conference.

3579. Mr. BOGSCH (Deputy Director, BIRPI) observed that it was precisely the duty of the Conference to deal with the administrative and financial reform of the various Agreements, in particular with that of the Madrid Agreement which, more than any other, concerned administrative and financial matters. The reason why BIRPI had proposed the deletion of all reference to the said method of payment was that that was a question to be settled by the Financial Regulations which would be adopted by the Assembly of the Union.

3580. Mr. LORENZ (Austria) referring to paragraph 61 of document S/4, observed that the Commentary on paragraphs (7), (8) and (9) of Article 8 provided that the possibility of paying a basic fee in two instalments would be dealt with in the regulations and not that the provision would be deleted. He therefore asked that the amendment proposed by his Delegation (S/206) should be put to the vote.

3581. *As no delegation supported the proposal, the Delegation of Austria announced its withdrawal.*

3582. Mr. PIETERS (Netherlands) emphasized the connection between the provisions of paragraphs (5) and (6) and those of paragraph (4), which drew a distinction in respect of the distribution of fees between countries parties to the Stockholm Act and countries parties to a previous Act. He considered that that distinction should also appear in paragraphs (5) and (6). According to the Commentary on Article 8 (paragraph 59 of S/4), paragraph (4) implied that the sums collected under the régime of the proposed Stockholm Act might be different from the sums collected in accordance with the rules of the Nice Act or previous Acts. The same applied to the amounts referred to in paragraphs (5) and (6). It was

therefore advisable to establish a similar distinction in those paragraphs, since otherwise countries that had acceded to the previous Acts might be favored at the expense of countries parties to the Stockholm Act.

3583. Mr. BOGSCH (Deputy Director, BIRPI) said that he was prepared to confer with the Delegation of the Netherlands to see whether the proposed addition was necessary.

3584. *It was so agreed.*

3585. *Article* 8bis, *9,* 9bis *and* 9ter *were adopted unanimously.*

3586. The CHAIRMAN invited the Committee to consider Article 9 *quater.*

3587. Mr. MAAS GEESTERANUS (Netherlands) proposed that the words "of all or part of this Agreement" in paragraph (1)(b) should be replaced by the words "of all or part of the preceding Articles." That amendment would obviate any possibility of confusion with the provisions of Articles 10 et seq.

3588. Mr. BOGSCH (Deputy Director, BIRPI) agreed with the amendment proposed by the Delegation of the Netherlands.

3589. *Article* 9quater, *as amended, was adopted unanimously.*

3590. The CHAIRMAN invited comments on Article 10, including the proposal of the Delegation of Austria contained in document S/207 to permit the Assembly of the Madrid Union (Trademarks) also to fix the amounts of the fees referred to in Article 8(7) and (8) and to adopt the financial regulations of the Union.

3591. Mr. LORENZ (Austria) pointed out that the proposal of his Delegation relating to Article 10 (S/207) should be considered jointly with the proposal contained in document S/208 concerning Article 10*ter* (not 10*bis* as incorrectly stated). Two amendments were proposed. The first consisted of introducing a reference to paragraphs (7) and (8) of Article 8. The second was to delete paragraph (5) of Article 10*ter*, the wording of which would be incorporated in paragraph (2)(a) of Article 10. It would therefore no longer be the Director General but the Assembly that would be competent to fix the other charges relating to international registration and the sums due for services rendered by the International Bureau concerning the particular Union. As it had been agreed that the Assembly was competent to decide all matters relating to fees, the provisions of Article 10*ter* should be coordinated with the other provisions adopted in that regard.

3592. Mr. BOGSCH (Deputy Director, BIRPI) pointed out that if the amounts of the other fees referred to in Article 10*ter* could be fixed by the Director General and not by the Assembly, that was because they were quite secondary fees, such as the amounts due for extracts, photocopies, and searches undertaken by the services of the Bureaux, and that it was impossible to wait until the end of a triennial period to adjust them to current prices. Nevertheless, it was for the Main Committee to determine the question of competence.

3593. Mr. LORENZ (Austria) thought that the amounts due for the services rendered by BIRPI could be fixed as Mr. Bogsch had indicated, but should the same apply to more important charges such as "other fees" relating to international registration, to which reference was also made in Article 10*ter* (5)? Was not the classification fee provided for in the regulations one of the other fees relating to registration?

3594. Mr. BOGSCH (Deputy Director, BIRPI) answered that the classification fee was indeed one of those fees, but that it was not very large, so that a posteriori control by the Assembly could suffice.

3595. Mr. DE SANCTIS (Italy) was in favor of the proposed Austrian draft amendment. The Delegation of Italy thought that a matter of principle was involved. The Assembly alone was competent to fix the total amount of all fees and charges due for services rendered, on the understanding, however, that it could authorize the Director General to fix certain fees of lesser importance.

3596. Mr. LORENZ (Austria) asked that the amendment proposed by his Delegation should be put to the vote. Nevertheless, following the explanations given by Mr. Bogsch, the Delegation of Austria was prepared to alter its amendment—provided that the Delegation of Italy agreed—by deleting the words "and sums due for services rendered by the International Bureau concerning the particular Union" in subparagraph (2)(iii) (S/207).

3597. Mr. DE SANCTIS (Italy) supported the amendment submitted by the Delegation of Austria as thus modified, although the Delegation of Italy would, for reasons of principle, have preferred it to be maintained in its original form.

3598. *The amendment thus modified was put to the vote and adopted by 14 votes in favor and with one abstention.*

3599. The CHAIRMAN invited the Committee to consider Article 10 paragraph by paragraph.

3600. *Paragraphs (1), (2)*(a), *(2)*(b), *(3)*(a), *(3)*(b), *(3)*(c), *(3)*(d) *and (3)*(e) *were adopted unanimously.*

3601. The CHAIRMAN then invited the Committee to consider paragraph (3), subparagraph (f), which would insert in the text of the Madrid Agreement the provisions concerning the representation of States accepted for the Paris Convention.

3602. Mr. RAZAFINDRATANDRA (Madagascar), speaking as an observer, said that although his country was not yet a member of any Special Agreement, he approved of the insertion in the various Agreements of the provisions adopted for Article 10(3)(f) of the Paris Convention.

3603. Mr. SHER (Israel) asked for clarification of what seemed to be a contradiction between two of the Articles under consideration. Article 9*quater* provided that countries of the Special Union could agree to be regarded as a single country and substitute a common Administration for their national Administrations; but Article 10, in subparagraph (f) of paragraph (3), stipulated that each delegation could represent, and vote for, one country only.

3604.1 Mr. BOGSCH (Deputy Director, BIRPI) said that at the last meeting of the Committee of Directors of the Madrid Union the provision in Article 9*quarter*—which was in substance the same as the corresponding provision in the Nice Act of the Madrid Agreement—had been interpreted with respect to the countries members of the African and Malagasy Industrial Property Office (OAMPI). It had been pointed out that the Article in question allowed each group of States to use the provisions of the Article for parts only, or the totality of the Nice Act. For example, it was conceivable that the twelve OAMPI States might want to be regarded as one State only to the extent that notification of the international registrations need not be communicated to all the twelve but could be communicated merely to the OAMPI office. At the same time, each of the twelve countries members of OAMPI could have a vote and a share in the benefits of the Union.

3604.2 A redraft of paragraph (3), subparagraph (f) of Article 10 would shortly be circulated in a revised form so as to make it conform with the text in the Paris Convention, which the Drafting Committee had improved without changing the substance.

3604.3 The main question of principle to be decided was whether the facilities contemplated in the case of the Paris Union, and adopted by the Committee for OAMPI and similar groups, should be included in the Special Agreements—in particular the Madrid Agreement—at a time when the question was still academic, because the OAMPI countries were not yet members of the Madrid or any other Special Agreement.

3605. Mr. DE SANCTIS (Italy) emphasized the quite exceptional nature of the provision and particularly drew the attention of the Drafting Committee to certain points relating to the quorum. Under the terms of Article 10(3)(b) of the Paris Convention, the quorum was constituted by one-third of the countries members of the Assembly; now a single country would have the right to represent twelve countries, although it could vote only in its own name. In that case, a group represented by a single State could have an effect upon the quorum. It was therefore for the Drafting Committee to forestall such an eventuality.

3606. Mr. LAURELLI (Argentina) suggested that the Committee should defer consideration of the provision until it had considered the amendment to Article 13 of the Paris Convention submitted by the Delegations of Brazil and Argentina (S/189). The amendment was related to the point under discussion.

3607.1 The CHAIRMAN pointed out to the Delegate of Italy that, as far as the Assembly was concerned, the quorum had been raised from one-third to one-half, and that the same provision had been inserted in the other Conventions or Agreements. That decision would prevent a quorum from being constituted solely by States exercising several votes as a consequence of the application of Article 10(3)(f).

3607.2 Replying to the Delegate of Argentina, the Chairman said that the Committee would proceed to a general discussion on representation when it had access to the text of the Paris Convention relating to that point, and that the amendment submitted by the Delegations of Argentina, Brazil and Uruguay (S/189) would be taken into consideration at that time. Nevertheless, he suggested that the Committee should continue with its examination of the special provisions that applied in that respect to the Madrid Agreement (Trademarks).

3608. Mr. KRIEGER (Federal Republic of Germany) suggested that it might nevertheless be useful to have a preliminary exchange of views at the present stage on the question of principle, namely, whether to include the provision despite the fact that the countries concerned were not members of the Special Agreement.

3609. The CHAIRMAN said that, for the time being, none of the countries parties to the Madrid Agreement could benefit from the provisions of Article 10(3)(f). BIRPI had thought fit to insert that clause in the Madrid Agreement in order that those countries might benefit from the representation facilities, but for the time being that clause did not apply to any of them.

3610. Mr. MAZARAMBROZ (Spain) said that it would be better not to include the provisions in the Madrid Agreement until it was quite certain that the principles would be extended to other groups of States, in accordance with paragraph (3), subparagraph (f) of Article 10.

3611. The CHAIRMAN, replying to the Delegate of Spain, thought that the Committee could postpone decision on that point. He proposed that consideration of the question of principle concerning the applicability of the Special Agreements should be postponed until after the discussion to be held on the amendment submitted by Argentina, Brazil and Uruguay in the light of the provisions adopted for the Paris Convention.

3612. Mr. MAAS GEESTERANUS (Netherlands) supported the proposal of the Chairman.

3613. *The decision relating to Article 10(3)*(f) *was reserved.*

3614. *Paragraphs (3)*(g), *(4)*(a), *(4)*(b), *(4)*(c) *and (5) were adopted unanimously.*

3615. *Article 10*bis *was adopted unanimously.*

3616. The CHAIRMAN opened the discussion on Article 10*ter*.

3617. Mr. LORENZ (Austria) wished to have some clarification on the relations of a budgetary nature between the Madrid Agreement and the Paris Union—the latter had both a triennial budget and an annual budget—particularly with regard to incorporation of the accounts of the Madrid Special Union in the overall budget.

3618. Mr. BOGSCH (Deputy Director, BIRPI) said that, in the opinion of BIRPI, a triennial budget seemed sufficient for the Special Unions, whose program was not subject to significant fluctuations, whereas for the Berne and Paris Unions the amplitude of those fluctuations during the triennial period necessitated annual adjustments. In the special case of the Madrid Agreement there was scarcely any "program" as operations were limited to registration. There would therefore be no disadvantage in drawing up a triennial budget, and if the need for intermediate adjustments were to be felt, it would always be possible to convene the Assembly in extraordinary session to attend to the matter.

3619. Mr. PIETERS (Netherlands) pointed out that, as Mr. Bogsch had confirmed to him, the fees referred to in paragraphs (2)(b) and (c) of Article 8 (supplementary fees and complementary fees) were divided in their entirety among the States that had acceded to the Act. Those fees could not therefore serve to cover the expenses of the International Bureau, as paragraph (4)(b) of Article 10*ter* seemed to indicate, and that paragraph should be modified accordingly.

3620. Mr. BOGSCH (Deputy Director, BIRPI) acknowledged that this comment was justified. It would in fact be necessary to stipulate that the fees referred to in that paragraph were other than the supplementary fees or complementary fees.

3621. Mr. KRIEGER (Federal Republic of Germany) supported the Netherlands proposal. He also supported the suggestion that the paragraph should be referred to the Drafting Committee.

3622. On the proposal of the Delegation of the Netherlands, *it was decided to refer Article 10*ter*(4)*(b) *to the Drafting Committee for examination.*

3623. The CHAIRMAN invited comments on paragraph (5) of Article 10*ter* and called the attention of the Committee to the fact that the Austrian amendment concerning Article 10 (S/207) was related to the other Austrian amendment regarding paragraph (5) of Article 10*ter* (S/208). The adoption of the amendment in document S/207, modified in Committee, ipso facto entailed a modification of paragraph (5).

3624. Mr. LORENZ (Austria) pointed out that the adoption of that amendment also entailed a modification of paragraph (4)(a) which should be completed.

3625. Mr. BOGSCH (Deputy Director, BIRPI) recognized that the remark by the Delegate of Austria was justified. The Drafting Committee would have to find the most appropriate formula for those provisions.

3626. *Paragraph (5) of Article 10*ter *was adopted unanimously with the deletion of the words "and other fees." It was decided in addition to refer paragraph (4)*(a) *of Article 10*ter *to the Drafting Committee for examination.*

3627. *Article 10*quater, *11, 11*bis, *12 and 13 were adopted unanimously.*

3628. Mr. MAAS GEESTERANUS (Netherlands) said with reference to paragraph 143 of the Commentary (S/4) that he was not convinced that the explanations in paragraph 175 of the Commentary on the corresponding provisions of the Paris Convention (S/3) were applicable to the Madrid Agreement. Since the countries of the Special Union would not have direct representation in the Organization, was it necessary to include the same provisions as in the Paris Convention? In his opinion, the Assembly could operate perfectly well with the membership resulting from ratifications of the Stockholm Act, and there was no need to grant voting rights in the Assembly to members of the Special Union which were not Member States of the Organization.

3629. Mr. BOGSCH (Deputy Director, BIRPI) explained that BIRPI's aim in paragraph (2) was to enable other countries to participate in the Assembly and to be heard there for five years.

3630. *Article 14 was adopted unanimously.*

3631. *Document S/200 was adopted unanimously, subject to drafting amendments to be made to Articles 8, and 10*ter*(4)*(a) *and* (b) *and to the re-examination of Article 10(3)*(f) *in relation to the amendment of the Delegations of Argentina, Brazil and Uruguay (S/189).*

ASSEMBLY: VOTING (continued)

*Article 13(2-*bis*) and 13(3-*bis*) (S/214)*

3632. Mr. DE SANCTIS (Italy) asked in connection with paragraph (3-*bis*)(b) of Article 13 whether the power accorded to a delegation to vote by proxy for another country should be considered as a general provision.

3633. The CHAIRMAN replied that that provision applied solely to the countries referred to in paragraph (3-*bis*)(b).

3634. Mr. DE SANCTIS (Italy) was in agreement under those conditions with the wording of paragraph (3-*bis*)(b).

3635.1 Mr. STANESCU (Rumania) said that the Delegation of Rumania felt the same misgivings as those expressed by the Delegation of Italy at an earlier stage in the discussions in connection with the quorum. The system of representation as provided for in paragraph (2-*bis*)(b) was not acceptable within the framework of the Madrid Agreement.

3635.2 In relation to paragraph (3)(b), on the other hand, the situation was very clear. The quorum was constituted solely by countries with the right to vote, each of which could be represented by a single delegation only; but perhaps it would be advisable to clarify the sense of that paragraph as follows: "one-half of the countries members of the Assembly represented and having the right to vote."

3636. The CHAIRMAN thought that the remarks of the Delegates of Italy and Rumania concerned points of substance that might usefully be discussed when the amendment in document S/189 was considered, as delegations would then be better informed as to the consequences of representation for the constitution of the quorum.

3637.1 Mr. NORDENSON (Sweden) proposed that in the second line of paragraph (3) subparagraph (a) of Article 13 the word "a" should be replaced by the word "one."

3637.2 He also proposed that the drafting of subparagraphs (a) and (b) of paragraphs (2-*bis*) and (3-*bis*) should be brought into line. He had made the same proposal in the Drafting Committee, but had withdrawn it in response to arguments which he no longer considered valid.

3638. Mr. MWENDWA (Kenya) supported the proposal of the Delegate of Sweden.

3639. Mr. BOGSCH (Deputy Director, BIRPI) was of the opinion that the Committee ought to decide immediately on the two amendments proposed by the Delegation of Sweden and that it was not necessary to refer the matter to the Drafting Committee. The first amendment concerned only the English text. The purpose of the second amendment was to delete in paragraph (2-*bis*)(b) the word "However," and to add at the beginning of paragraph (2-*bis*)(a) the words "subject to the provisions of subparagraph (b)."

3640. Mr. STANESCU (Rumania) supported the Swedish proposal, which was consistent with good convention procedure.

3641. *Document S/214 was adopted unanimously.*

MADRID AGREEMENT FOR THE REPRESSION OF FALSE OR DECEPTIVE INDICATIONS OF SOURCE (S/201)

3642. *Document S/201 was adopted unanimously.*

THE HAGUE AGREEMENT CONCERNING THE INTERNATIONAL DEPOSIT OF INDUSTRIAL DESIGNS (S/202)

3643. *Document S/202 was adopted unanimously.*

NICE AGREEMENT CONCERNING THE INTERNATIONAL CLASSIFICATION OF GOODS AND SERVICES TO WHICH TRADEMARKS ARE APPLIED: ADMINISTRATIVE AND FINAL CLAUSES (S/203)

3644. *Subject to the examination of Article 8*bis, *which was to be undertaken after the adoption of Article 18 of the Paris Convention, this document was adopted unanimously.*

LISBON AGREEMENT FOR THE PROTECTION OF APPELLATIONS OF ORIGIN AND THEIR INTERNATIONAL REGISTRATION: ADMINISTRATIVE AND FINAL CLAUSES (S/204)

3645. *Subject to the examination of Article 13, which was to be undertaken after the adoption of Article 18 of the Paris Convention, document S/204 was adopted unanimously.*

The meeting rose at 6 p.m.

THIRTEENTH MEETING

Tuesday, June 27, 1967, at 9:30 a.m.

ASSEMBLY: VOTING (continued)

3646. The CHAIRMAN proposed to continue discussion of the problem of the effect that the new provisions concerning the representation of States would have on the quorum. In that connection it was possible either to regard as present States capable of expressing an opinion (including those having a single representative) or to consider only States having their own representation.

3647. Mr. RAZAFINDRATANDRA (Madagascar) declared himself in favor of the first of the above interpretations. The quorum should correspond to the countries represented, irrespective of the form of that representation.

3648. Mr. DE SANCTIS (Italy), on the other hand, thought that only members present and voting should be taken into consideration for the quorum. A country that was not directly represented ought not, therefore, to be regarded as present.

3649. Mr. ROGGE (Federal Republic of Germany) said that it seemed logical that those countries represented by another country should be counted for constituting a quorum. For instance, if 40 States were to come to a conference and only 18 came, four of these having votes for other countries, the quorum would be obtained.

3650. Mr. RIBEIRO (Brazil) thought that if a State represented another, the latter was present.

3651. Mr. MAAS GEESTERANUS (Netherlands) believed that the proposal made by the Delegate of Italy would be difficult to put into practice. For practical purposes, he favored the proposal requiring that the quorum should be obtained by including those States which possessed a vote for another State.

3652. Mr. MAZARAMBROZ (Spain) though not prepared at this stage to express a final opinion, felt that the quorum should be obtained by including all member countries having a right to vote, that is, that a country in possession of another State's vote should be counted as two votes. It was not necessary for a State to be physically present because of the existence of the procedure which provided that provisional decisions of the Assembly would be communicated in writing to each country member of the Assembly which was not represented in the session.

3653. The CHAIRMAN noted that no delegation had spoken in favor of the system recommended by the Delegation of Italy, that was to say the most restrictive system. He noted, moreover, that no request for a vote had been made. It was therefore understood that the majority interpretation would appear in the report and also in the Rules of Procedure of the Assembly.

VOTING BY PROXY *(S/189)*

3654. The CHAIRMAN invited comments on document S/189 which contained a proposal of the Delegations of Argentina, Brazil and Uruguay to enable all States, even if not grouped in an industrial property office, to be represented by other States.

3655.1 Mr. LAURELLI (Argentina) regretted to have to say that, in his view, the proposed amendment was designed purely to fill a gap or overcome a barrier. It seemed to him that to separate similar solutions in respect of developing countries would immediately give rise to the undesirable principle of discrimination and imply a preference for a single region for reasons which could not be justified. What was involved was a right granted to countries and his Delegation could not understand why the existence of a common office should be a prerequisite condition for voting by proxy. This condition would result in preventing those countries which had not considered establishing such an office from exercising a vote by proxy. Moreover, there was an element of coerciveness in requiring those countries having no offices to set up a new international bureaucratic entity in order to acquire the right of delegation of powers. The countries of the Near East, of Asia and of America have characteristics and needs similar to those of the African nations, and he wondered what their situation would be as a result of this discrimination if those countries were deprived of the right which was now being granted to certain member States.

3655.2 The present wording of the Article obliged him to draw attention to the existence of a marked tendency to a denial of rights and to discrimination in respect of them—an attitude which was inappropriate to international instruments and not in harmony with the principles of international law. Argentina and Uruguay had been opposed from the beginning to a delegation of powers. However, they were now faced with a fait accompli and, in accordance with the spirit of conciliation characteristic to this Conference, they had endeavored to improve what had already been laid down. He now believed that, in accordance with the proposed amendment, the privilege granted to the African countries should be extended to all the developing countries.

3655.3 For the above reasons, he put forward a formal proposal that a vote be taken on the joint draft prepared by roll-call, in accordance with the Rules of Procedure of the Conference.

3656. Mr. MAZARAMBROZ (Spain) fully supported the joint proposal contained in document S/189 which had the effect of putting on an equal footing all countries sending representatives to meetings. He was not in favor of limiting the advantages of proxy voting to a group of countries having a common office. Many other countries in Latin America and in Asia had the same difficulties in sending representatives to meetings.

3657. Mr. DE SANCTIS (Italy) said that the Delegation of Italy was resolutely opposed to broadening the provision relating to countries having a common patent office, as proposed by document S/189. Such an extension would completely distort all the rules of representation and voting. If that extension were to be accepted by the majority, the Delegation of Italy would vote against the new provisions concerning representation in their entirety.

3658. Miss NILSEN (United States of America), while fully appreciating the reasons for the proposal in document S/189, reiterated the point already made by her Delegation which had serious doubts as to the advisability of adopting proxy voting in international organizations. Her Delegation had voted in favor of the Malagasy proposal subject to this proposal being limited to a group of States possessing a common office. Other groups of States were free to constitute similar common offices. Her Delegation could not therefore support the joint proposal (S/189) because this broadened the scope of the original proposal.

3659. Mr. CHAMBERLAIN (United Kingdom) agreed with the views expressed by the Delegates of Italy and the United States of America. His Delegation was strongly opposed to the joint proposal contained in S/189 and sincerely hoped that the delegations which had moved this proposal would not press for a vote. He recalled that his Delegation had been opposed to the principle

of proxy voting but that in a spirit of compromise, the Malagasy proposal had been accepted. The solution now reached constituted a delicate balance between two opposing views. If further concessions were made, the original proposal would go too far and he shared the concern of the Delegate of Italy that there might be a danger of jeopardizing the compromise reached after long discussions. His Delegation could not therefore accept the proposal in document S/214 with the joint proposal contained in S/189. He could not agree with the Delegate of Argentina that there was a form of discrimination, because any group of States in the world was free to establish a common office and thus have the same rights.

3660.1 Mr. LAURELLI (Argentina) asked whether or not the principle of discrimination was involved, in granting a right to one group and denying it to others. The discussions were based on the universality of rights. This was a diplomatic conference, where public and private international law should be taken into consideration.

3660.2 He recalled that his Delegation had been strongly opposed to the proposal put forward by the Delegations of Senegal and Madagascar, but considered that if that proposal were approved, conflicting views in it should be removed. His Delegation was opposed to restricting a right to one regional grouping of countries.

3660.3 In answer to the Delegate of the United Kingdom, he said that his Delegation maintained its position, because it knew of no legislation which provided for the maintenance of a right solely in favor of one group of countries. He asked what was the legal argument behind the transaction of one part of the right and the partial concession of a privilege. Discrimination involved granting a right to one group of countries and denying that same right to others.

3661. Mr. KRIEGER (Federal Republic of Germany) declared that his Delegation fully understood the motives and considerations pointed out by the Delegate of Argentina in respect of the joint proposal in document S/189. He recalled that his Delegation had expressed weighted opposition to the first proposal made by the Malagasy Delegate but in a spirit of compromise, his Delegation had not opposed it. Any enlargement of the proposal as contained in document S/214 would, however, give rise to difficulties of a legal nature and would create a dangerous precedent. He fully shared the views expressed by the Delegates of Italy, the United States of America and the United Kingdom. His Delegation could not accept the proposal as amended by document S/189.

3662. Mr. PETERSSON (Australia) asked the Chairman if he would give an interpretation of Article 13(3-*bis*)(b). He asked whether a common office sending three delegates could exercise six votes at a meeting.

3663. The CHAIRMAN replied that it was not the common office that represented the States, but the latter who were represented by other States.

3664. Mr. MAZARAMBROZ (Spain), having heard the arguments presented by the various delegations, confirmed his Delegation's point of view. The right given to regional groups could not be refused to other groups whether possessing a common office or not. His Delegation was therefore prepared to support the amendment proposed in document S/189.

3665. Mr. DE SANCTIS (Italy) declared himself in complete agreement with the Delegation of the United Kingdom: there was no discrimination since all countries grouped in the same industrial property office, at present or in the future, could benefit from the new provisions. Moreover, the reference in document S/214 was not to the representation of the common office, but to the representation of the States. On the other hand, the proposal contained in document S/189 went too far, since it would not be limited solely to the Paris Convention, but would also apply to the Berne Convention and the IPO Convention.

3666. Mr. CONK (Czechoslovakia) feared that the proposed extension of the provisions previously adopted would be prejudicial to the proper functioning of the Assembly.

3667.1 Mr. LAURELLI (Argentina) said that, although the Delegate of Italy did not think of discrimination, it was nevertheless brought into operation by the restricted nature of the wording contained in document S/214.

3667.2 He fully appreciated the spirit of cooperation shown by the Delegation of the Federal Republic of Germany, though it nevertheless maintained that the extension of the proposal as contained in document S/189 would entail risks and was said to be a dangerous precedent. However, he considered that a dangerous precedent had already been created as it contains the principle of horizontal discrimination. If the wording in document S/214 was maintained without the amendment proposed in S/189, thus restricting the right to a single group of countries, his Delegation could not vote its adoption.

3668. Mr. LABRY (France) stated that the Delegation of France had supported the proposal made by the African and Malagasy Delegations by virtue of the provisions of the Paris Convention, and principally of Article 12 thereof, which required States to have an industrial property office. The essential element was the existence of such an office. If, in the future, other States, in Central America, for example, were to establish a common industrial property office, they would also benefit from the provisions concerning representation. It would, however, be difficult to extend those provisions outside the framework of the Paris Convention.

3669. The CHAIRMAN proceeded to take a vote by roll-call on the proposal contained in document S/189.

3670.1 *The proposal was defeated by 18 votes to 6, with 14 abstentions.*

3670.2 The Delegations of the following countries voted against the proposal:

Austria
Belgium
Canada
Czechoslovakia
Denmark
Finland
Germany (Federal Republic)
Hungary
Italy
Japan
Netherlands
Norway
Poland
Sweden
Switzerland
United Kingdom
United States
Yugoslavia

3670.3 The Delegations of the following countries voted for the proposal:

Argentina
Brazil
Portugal
Rumania
Spain
Uruguay

3670.4 The Delegations of the following countries abstained:

Algeria
Australia
Cuba
France
Greece
Indonesia
Iran
Madagascar
Monaco
Morocco
South Africa
Tunisia
Turkey
Union of Soviet Socialist Republics

SPECIAL AGREEMENTS: VOTING (S/214)

3671. The CHAIRMAN opened the discussion on the question of the possible application to the various Special Agreements of the Malagasy amendment adopted on the previous day, as drafted in document S/214. He recalled that the Delegate of Madagascar had expressed a preference for the application of his amendment to the Madrid Agreement on Trademarks (S/200), the Nice Agreement (S/203), the Hague Agreement (S/202) and the Lisbon Agreement (S/204). The matter had been left in abeyance at the previous meeting to await the result of the Main Committee's vote on the proposed amendment by Argentina contained in document S/109.

3672. Mr. RAZAFINDRATANDRA (Madagascar) said that, in view of the possibility that his country might in the future accede to one or more of the Special Agreements, he would like to see the amendment in question inserted in those Agreements. He stipulated that that proposal did not concern the Berne Convention.

3673. The CHAIRMAN opened the discussion on the insertion of the amendment in the Madrid Agreement on Trademarks. He would have liked one of the member countries of the Madrid Agreement to make it known whether or not it was in favor of the proposal of the Delegate of Madagascar. As no declaration to that effect had been made, he asked whether any delegates were opposed to the proposal.

3674. Mr. MAZARAMBROZ (Spain) said that, in view of the restricted nature of the clause as revised in document S/214, he did not think that it should be inserted in the text of the Madrid Agreement on Trademarks.

3675. Mr. DA CRUZ (Portugal) said that he shared the opinion of the Delegate of Spain.

3676.1 The CHAIRMAN noted that no delegation supported the proposal of Madagascar, and that with regard to the Madrid Agreement on Trademarks, that proposal could not be taken into consideration.

3676.2 The Chairman asked whether any delegate wished to move the proposal of Madagascar in relation to the Hague Agreement concerning the International Deposit of Industrial Designs (S/202). He noted that that was not the case; the Malagasy proposal would not therefore be taken into consideration in relation to the Hague Agreement.

3676.3 The Chairman asked whether any delegate wished to move the proposal of Madagascar in relation to the Nice Agreement concerning the International Classification of Goods and Services (S/203). He noted that that was not the case; the proposal would not be inserted in the text of the Nice Agreement.

3676.4 The Chairman asked whether any delegate wished to move the proposal of Madagascar in relation to the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration (S/204). He noted that that was not the case; the proposal would not be inserted in the text of the Lisbon Agreement.

TRANSITIONAL PROVISIONS (continued)
(S/220)

3677. The CHAIRMAN went on to Article 20, paragraph (2) of the Paris Convention. It had become apparent in the Drafting Committee of Main Committee IV that the drafting of that paragraph needed to be revised.

3678. Mr. PFANNER (BIRPI) explained that during the discussions at the previous meeting of the Drafting Committee a new question had arisen concerning Article 20, paragraph (2), which had already been adopted by the Main Committee. The problem concerned the last sentence: "Such countries shall be considered to be members of the Assembly." The countries in question were those that were not bound by the administrative clauses of the Stockholm Act but that desired to benefit from the rights provided under that Act during the transitional period of five years. It had become apparent that under the existing text it was not known whether a country wished to exercise those rights or not. Provision would have to be made for any country desiring to exercise the aforesaid rights to deposit a written notification to that effect with the Director General. Consideration should also be given to the period within which such notification would become effective.

3679. Mr. MAAS GEESTERANUS (Netherlands) said that this proposal was difficult to discuss without having a written text before the Committee.

3680. Mr. NORDENSON (Sweden) declared that his Delegation believed that it was preferable not to amend the text as it stood now. To further complicate the transitional provisions would give rise to practical difficulties. The procedure of written notifications would moreover lead to difficulties in determining when such notifications should be made, at what date they should become effective and whether they could subsequently be withdrawn. It was preferable therefore to consider all member States of the Union as members of the Assembly. This principle would also apply to the quorum. He considered this to be the only workable system during the transitional period.

3681. Mr. PFANNER (BIRPI), in commenting on the suggestion made by the Delegate of Sweden, said that there were several possible solutions. If the Swedish solution was, however, accepted, it would most probably lead to difficulties in obtaining the required quorum for the Assembly, which was already of one-half. To automatically include those countries which were not interested or which did not wish to participate in the new Organization would have the effect of raising the quorum even higher.

3682. Mr. DE SANCTIS (Italy) shared the preoccupations of the Delegate of Sweden. He did not see any need to go into complicated and detailed questions that, moreover, had a bearing on questions of the quorum.

3683. The CHAIRMAN pointed out that the Committee had before it the proposal of the Delegation of Sweden seconded by the Delegation of Italy. He asked whether any delegates were of the contrary opinion.

3684. Mr. MAAS GEESTERANUS (Netherlands) shared the views expressed by the Secretary of the Committee. It would be difficult to calculate the quorum if those countries not interested in participating in the new Organization were included. He was therefore in favor of taking into consideration for the quorum only those member States present at the meetings.

3685. Mr. LORENZ (Austria) thought that the quorum should be calculated only on the basis of the countries bound by Articles 13 to 13*quinquies* of the Stockholm Act. The countries envisaged in paragraph (2) of Article 20 should not be taken into consideration.

3686. Mr. ROGGE (Federal Republic of Germany) shared the views of the Secretary of the Committee and declared that his Delegation could not support the proposal made by the Delegate of Sweden.

3687. Mr. NORDENSON (Sweden) was now fully aware of the difficulties raised by his Delegation's proposal. In view of the doubts expressed by several delegations

as to the practical difficulties involved, he now wished to propose a compromise solution according to which the following words would be added to the end of paragraph (2) of Article 20 of the Paris Convention "unless they notify the Director General in writing that they do not desire to exercise the said rights" (S/220).

3688. Mr. MAZARAMBROZ (Spain) said that he was in favor of the proposal of the Secretariat. He felt that the effect of Article 20, paragraph (2), should be made entirely clear. He suggested that it would be preferable to require a negative declaration; countries should be obliged to make a declaration only if they did not wish to participate.

3689. Mr. SHER (Israel) was of the opinion that it was preferable to leave the text of Article 20(2) of the Paris Convention as it stood. Any attempt to further clarify the question of which members should be included for obtaining the quorum would necessarily involve a very complex and detailed text.

3690. The CHAIRMAN noted that it was difficult to conclude the debate at that moment. It would be preferable to work on a specific text. Another solution would be to maintain the status quo. At his request, the Delegate of Sweden said that he would be in a position to provide a text at the next meeting.

The meeting rose at 12:40 p.m.

FOURTEENTH MEETING

Tuesday, June 27, 1967, at 2:30 p.m.

TRANSITIONAL PROVISIONS (continued): *(Article 20(2) of the Paris Convention and Article 32(2) of the Berne Convention) (S/220 and S/221)*

3691.1 The CHAIRMAN observed that the Main Committee had before it two proposals: one by the Delegation of Sweden (S/220) and the other by the Delegations of the Federal Republic of Germany and the United States (S/221), relating to Article 32 of the Berne Convention and Article 20 of the Paris Convention, which contained the transitional provisions.

3691.2 The Delegation of Sweden (S/220) proposed a system under which the countries concerned would notify the Director General in writing if they did not desire to exercise the rights in question.

3691.3 On the other hand, the Delegations of the Federal Republic of Germany and the United States (S/221) proposed that the countries concerned should be required to give notification if they wished to exercise such rights.

3691.4 Hence, if a country gave no notification, that would mean in the first case (S/220) that the country concerned wished to exercise its rights, and in the second case (S/221) that it did not wish to do so.

3692. Miss NILSEN (United States of America) said her Delegation considered it important to remove any uncertainty concerning the number of countries needed to constitute a quorum. Their proposal was, consequently, to count only the countries that expressly stated the desire to exercise the rights mentioned in paragraph (2). If all countries of the Union were counted when determining the quorum, the latter might be larger than stipulated by paragraph (2) as originally formulated, and would not correctly reflect prevailing conditions. Her Delegation had therefore a strong preference for the provisions contained in document S/221.

3693. Mr. GAJAC (France) stated that he was in favor of the negative formula contained in document S/220. It would be easier to apply because of the constitutional regulations of certain countries. Moreover, it was essential to institute transitional measures when going over to an entirely new administrative system. Finally, the negative formula was more likely to minimize contraventions of those transitional provisions, and that was an important factor.

3694. Mr. KRIEGER (Federal Republic of Germany) thought that acceptance of the Swedish proposal (S/220) would inevitably entail difficulties. As the meetings in the Main Committees had shown, there were frequent absences. A positive provision should therefore be inserted in respect of a quorum and his Delegation supported document S/221.

3695. Mr. DE SANCTIS (Italy) supported the proposal of the Delegations of the Federal Republic of Germany and the United States. He preferred the positive formula because it would enable certain States that had not adopted the Convention establishing the new International Intellectual Property Organization to signify their intention of exercising the rights in question.

3696. Mr. PETERSSON (Australia) said that his Delegation supported the proposal submitted by the Delegations of the Federal Republic of Germany and the United States of America for the reasons they had given. The initiative should rest with States which should exercise their rights by notifying the International Bureau of their intentions.

3697. Mr. KRISPIS (Greece) said that it was always easier to support a positive measure, and therefore his Delegation was in favor of the proposal in document S/221.

3698. Mr. MAAS GEESTERANUS (Netherlands) said that, while reserving their final position, his Delegation could not accept the Swedish proposal; they might accept the proposal in document S/221, but would prefer that it should be submitted to the Drafting Committee.

3699. Mr. MORF (Switzerland) supported the proposal of the Federal Republic of Germany and the United States for the reasons already stated by other delegates.

3700. Mr. SHER (Israel) said he was in favor of the proposal in document S/221. With regard to the time factor, he wished to know whether notification must be given immediately after the clause came into effect and, if not, when. He thought the proposal should be referred to the Drafting Committee.

3701.1 Mr. MAEDA (Japan) was in favor of the proposal contained in document S/221.

3701.2 He feared that, under the proposal in document S/220, countries which had neglected to notify the Director General that they did not desire to exercise their rights might continue to be counted for the purpose of the quorum; that would be contrary to the situation of fact.

3702. Mr. DA CRUZ (Portugal) observed that in document S/220 the Delegation of Sweden had proposed what was primarily a formal amendment, and that was a matter for the Drafting Committee. Moreover, it seemed to him that the negative solution might create difficult situations. He therefore preferred the proposal contained in document S/221.

3703. Mr. MAZARAMBROZ (Spain) agreed with the proposal made by the Delegations of the United States of America and the Federal Republic of Germany.

3704. Mr. CONK (Czechoslovakia) preferred the positive formula, which was clearer.

3705. The CHAIRMAN noted that a large majority appeared to be in favor of the proposal S/221. The Drafting Committee would take into account the comments made by certain delegates, particularly those made by the Delegate of Israel, as it was impossible to work out all the details of application at the present moment.

3706. *Amendment S/221 was adopted in principle and referred to the Drafting Committee to work out certain details of application if required.*

SETTLEMENT OF DISPUTES: *Article 27*bis *of the Berne Convention (S/222)*

3707. The CHAIRMAN stated that consideration of the question of Article 27*bis* had been deferred at the request of the Delegation of the Netherlands which wished to submit an amendment.

3708.1 Mr. MAAS GEESTERANUS (Netherlands) said his Delegation was about to submit a written proposal for Article 27*bis* in the Berne Convention and for a new article in the Paris Convention, which constituted a compromise between the two views that firstly, an article on dispute should appear in every modern convention and, secondly, an article entailing the obligation to invoke the arbitration of the court was not acceptable to every country.

3708.2 His Delegation's proposal was that the article should be included in the Convention, and also the obligation, but that there should be a second paragraph to the effect that any State becoming a party to the Convention could declare that it did not wish to be bound by that article. The proposal thus constituted a fifth variant of paragraph (1), Article 27*bis* in document S/9, being a formal amendment and paragraphs (2) and (3) being substantive additions. He had discussed the text with delegations of differing views and thought it would be acceptable to most. He asked for permission to submit the proposal.

3709. The CHAIRMAN proposed that, pending distribution of the text of the Netherlands proposal, which comprised not only an amendment of alternative A contained in the BIRPI text, but also two new paragraphs, the Main Committee should consider the alternatives contained in the BIRPI draft (S/9).

3710. Miss NILSEN (United States of America) asked whether the Main Committee was to discuss Article 27*bis* in the Berne Convention only or also the possible inclusion of such a provision in the Paris Convention.

3711. The CHAIRMAN proposed that the discussion should be directed first to the proposals concerning Article 27*bis* of the Berne Convention and then to the question of including identical provisions in the Paris Convention. That method appeared to him to be preferable, although arguments of a general character could be applied to both Conventions.

3712. Mr. MAAS GEESTERANUS (Netherlands) said his Delegation proposed to include in the Berne Convention an article on disputes, with a second paragraph to make it optional. That constituted a step back in the Berne Convention. They also proposed to insert the same clause in the Paris Convention; that constituted a step forward. They wished to combine the two in the one proposal to be included in both Conventions simultaneously.

3713. The CHAIRMAN summarized the proposal of the Delegation of the Netherlands and emphasized the necessity for prior discussion, as some delegations might be opposed to a restriction of the provisions of the Berne Convention and others to the inclusion of those provisions in the Paris Convention.

3714. Mr. DE SANCTIS (Italy) pointed out that only the Berne Convention contained a provision relating to the settlement of disputes. If it were decided in principle to include a similar provision in the Paris Convention, both Conventions could be discussed at the same time.

3715. The CHAIRMAN considered that it would be impossible to vote simultaneously on both Conventions under the Netherlands proposal. For reasons of clarity, he would prefer that the question should be dealt with first from the point of view of the countries of the Berne Convention.

3716. Mr. DE SANCTIS (Italy) said that if the discussion concerned only the member countries of the Berne Union, the Brussels text should not be amended. It was the member countries of the Paris Union which were affected by the question, and the general discussion would afford a precise indication as to whether the majority of those countries wanted a clause on the settlement of disputes to be included in the Paris Convention.

3716*bis*. Mr. LABRY (France) feared that that form of procedure would serve no useful purpose, as the effect of the formula proposed by the Delegation of the Netherlands would be to release those States which so wished from the obligation to apply the provisions of Article 27*bis*. It was, therefore, important to begin by considering the possible content of such a clause before planning to insert it in the Paris Convention.

3717. Mr. STANESCU (Rumania) shared the opinion of the Delegate of France and reminded the Main Committee that his country had not accepted the obligatory jurisdiction of the International Court in regard to disputes relating to the Berne Convention. If it were a question of adopting an article making such jurisdiction optional, the Delegation of Rumania would prefer that the Article concerned should appear in a separate Protocol. On the basis of the proposal of the Delegate of the Netherlands, the Committee should first express its views on the advisability of including in the Paris Convention an article making the jurisdiction of the International Court optional.

3718. The CHAIRMAN proposed that the method suggested by the Delegate of Rumania should be followed.

3719. Mr. DE SANCTIS (Italy) agreed that the Main Committee should first discuss the inclusion of a clause in the Paris Convention, and then return to the Berne Convention.

3720. Mrs. RATUSZNIAK (Poland) said that as a matter of principle her Delegation was opposed to any proposal conferring compulsory jurisdiction on the International Court of Justice. They considered it contradicted the notion of sovereignty if a State was compelled to submit its decisions to international jurisdiction. Many other States also held this view, and Article 36 of the Court Statutes stated that the provision was binding only on States expressing consent. The introduction of such a clause into the Brussels text was one reason why a considerable number of States had not ratified it. She

suggested omitting Article 27*bis* from the Berne Convention and did not wish it to be included in the Paris Convention. If the majority, however, favored a clause on compulsory jurisdiction, her Delegation was prepared to accept alternative D for Article 27*bis* of the Berne Convention, whereby compulsory jurisdiction would be included in a separate Protocol, subject to ratification. Such a compromise had been included in important international conventions, such as the Geneva Convention on Maritime Law and the Vienna Conventions on Diplomatic and Consular Relations, and there had also recently been a separate optional Protocol dealing with implementation procedures adopted in the Human Rights Treaty.

3721. Mr. CONK (Czechoslovakia) said he would prefer that provisions such as those contained in Article 27*bis* should not appear in the Paris Convention. Recourse to the jurisdiction of the International Court should be optional as, according to international law, it was necessary that States should be free to choose the methods of settling their disputes. Acceptance of compulsory jurisdiction might prevent ratification of the Stockholm Act.

3722. Mr. MORF (Switzerland) stated that his country had accepted the Brussels text instituting the obligatory jurisdiction of the International Court. He was, therefore, prepared to accept the inclusion of a similar clause in the Paris Convention, which would neither constitute an interference in the internal affairs of States nor affect their sovereignty, since they would be free to decide whether or not to have recourse to the jurisdiction of the International Court. In a spirit of compromise, the Delegation of Switzerland accepted the optional clause proposed by the Netherlands.

3723. Mr. ARTEMIEV (Soviet Union) thought Article 27*bis* should not be included in the Paris Convention, as his Delegation was also of the opinion that compulsory jurisdiction might infringe the sovereignty of a country. The clause might be included, however, as an optional provision in a special Protocol.

3724.1 Mr. CHAMBERLAIN (United Kingdom) said that, although the Paris Convention was under discussion, his comments applied to both Conventions. His Delegation's view was that a provision should be included in multilateral conventions on the settlement of disputes conferring compulsory jurisdiction on the International Court, and they would prefer alternative A in both cases.

3724.2 He recognized, however, that alternative A was not acceptable to some States. Although his Delegation considered that alternatives B and C were not acceptable because they did not confer compulsory jurisdiction on the International Court, it was prepared to accept the compromise proposal by the Delegation of the Netherlands in preference to alternative D in document S/9, as it gave any State not agreeing to the compulsory jurisdiction of the International Court the option to contract out. As several States might hesitate to show their doubts by so doing, he thought the proposal of the Delegation of the Netherlands likely to result in a greater number of acceptances.

3725. Mr. LABRY (France) remarked that the French Government in its observations on the BIRPI draft had declared itself to be in favor of the settlement of disputes by the International Court. Having ratified the Brussels Act, France accepted the obligatory jurisdiction of the International Court. The French Government therefore had no objection to the inclusion, in the Berne and Paris Conventions, of a clause permitting recourse to compulsory arbitration. That formula would not, however, meet with the approval of those countries which did not wish to accept the jurisdiction of the International Court of Justice. Having regard to the opinion of the majority, the Delegation of France would accept the formula proposed by the Delegate of the Netherlands.

3726. Mr. DE SANCTIS (Italy) said that, Italy, having ratified the Brussels Act, accepted the obligatory jurisdiction of the Hague Court, but it had to be admitted that the clause in question did prevent a certain number of countries from ratifying the Brussels Convention. In a spirit of conciliation he would accept the compromise proposed by the Delegation of the Netherlands. He reserved the right to make a further statement when he was in possession of an exact text and could consider what would be the best solution to adopt.

3727. Mr. PÁLOS (Hungary) said that after listening to the various views which had been expressed he was in agreement with the Delegates of Poland and Czechoslovakia. Apart from the legal arguments that had been cited, it should be remembered that the Paris Convention did not contain any provision for the settlement of disputes and that that fact had not given rise to any difficulties. In disputes involving the application of the Paris Convention, the parties concerned were private persons, so that recourse to the jurisdiction of the International Court was excluded. He did not, therefore, see any need to introduce a provision on the subject in the Paris Convention, and he favored alternative D of the BIRPI draft of the Berne Convention.

3728. Miss NILSEN (United States of America) said that her Delegation favored the inclusion of a clause on the compulsory settlement of disputes, yet, in view of the reservations by several other delegations, it would support the proposal of the Delegation of the Netherlands after studying the text. Her Government was a party only to the Paris Convention.

3729. Mr. MAEDA (Japan) said that, after hearing the various opinions expressed, and in view of the circumstances, his Delegation, which had originally supported and still was in favor of alternative A, was prepared to support the proposal by the Delegation of the Netherlands.

3730. Mr. PETERSSON (Australia) said his Delegation was in favor of the principle of the compulsory jurisdiction of the International Court, but it was ready to agree to a compromise by including an optional clause in the Protocol.

3731. Mr. KRISPIS (Greece) said that a compromise in respect of the compulsory jurisdiction of the International Court had been followed in international practice, for instance in the Geneva Convention on The Law of the Sea in 1958 and in the Protocol to the Refugees Agreement adopted last year. As his Delegation always preferred a positive declaration, he considered there should be a separate Protocol.

3732.1 Mr. SHER (Israel) said it had been his Delegation's policy since the beginning of the discussion on administrative changes in the Berne and Paris Unions to request that recourse to the jurisdiction of the International Court should be optional only. The proposal in document S/222 clearly amounted to compulsory jurisdiction. The fact that it was necessary to denounce the jurisdiction of the Court made it more difficult for Governments to accept. Nevertheless, his Delegation would not object if many delegations were found to be in favor.

3732.2 Paragraph (2) (S/222) raised a difficulty. It suggested that the reservation must be made at once on signing the Convention and he proposed that the words "signature or" at the beginning of the second paragraph be deleted.

3733. Mr. BOERO-BRIAN (Uruguay) said that although the Government of Uruguay had accepted the jurisdiction of the International Court for over 40 years, if the Assembly wished to ensure the largest possible number of ratifications, alternative D in document S/9 constituted a formula that would cover most cases.

3734. Mr. ARTEMIEV (Soviet Union) considered that the inclusion in the Paris Convention of provisions relating to the jurisdiction of the International Court would, even if optional, lead to difficulties as regards ratification of the Stockholm Act. He would prefer that all matters relating to the jurisdiction of the International Court should constitute a separate Protocol.

3735. Mr. CHAMBERLAIN (United Kingdom) said that his Delegation agreed entirely with the proposal of the Delegation of the Netherlands which, for the reasons stated in his Delegation's previous intervention, he would prefer to alternative D. Although there was little substantive difference, many States might not make the effort to sign an optional Protocol; hence his preference for the proposal in document S/222.

3736. Mr. MAAS GEESTERANUS (Netherlands) said his Delegation's compromise proposal was the same as that accepted by the United States of America, the Soviet Union, Poland, Greece, and other States, in Geneva for the Maritime Law Convention and in London, four months ago, at the North Atlantic Fisheries Conference.

3737. Mrs. RATUSZNIAK (Poland) preferred a Convention without such a clause and considered an optional Protocol more acceptable.

3738. Mr. PFANNER (BIRPI) considered that the two proposals before the Committee showed little difference in substance and were both acceptable. After listening to the discussion, he thought that the best solution would be the one which made ratification easiest, namely, an additional Protocol.

3739. The CHAIRMAN noted that delegates had a fairly wide range of options. The opinions that had been expressed, in a spirit of cooperation, appeared to show that the majority of the delegates would agree to accept either the proposal S/222 or alternative D of the BIRPI draft.

3740.1 Mr. MAAS GEESTERANUS (Netherlands) said that there was a marked difference between his proposal and alternative D in document S/9. The effect of alternative D was almost equivalent to deletion. Countries could, if they wished, accept compulsory jurisdiction under Article 36 of the Statutes of the Court; others would surely not declare their acceptance by signing an optional Protocol.

3740.2 He did not think there was any need for a further compromise. His Delegation's proposal was already a compromise between the views of those delegations that thought such an article should be included and those that did not. He emphasized that for some delegations it would be difficult to delete the article 27*bis* from the Berne Convention and those delegations appeared to be ready to add paragraphs (2) and (3) rather than delete the Article.

3741.1 The CHAIRMAN pointed out that the discussion was concerned with the Paris Convention and that it should continue to deal with that subject. The insertion of a new article in the Paris Convention did not in any way involve an amendment of the Berne Convention.

3741.2 The Chairman asked the Delegate of the Netherlands if he would agree that the vote be taken on the Paris Convention only.

3742. Mr. MAAS GEESTERANUS (Netherlands) preferred that no vote should be taken at the present stage of the discussions, so that it would be possible for him to confer again with those delegations which hesitated to accept his compromise solution.

3743.1 Mr. DE SANCTIS (Italy) approved of the attitude adopted by the Delegate of the Netherlands. As the Paris Convention did not contain any clause of this kind, a compromise would have to be found, even if it had to be based on a separate Protocol. The solution proposed by the Delegate of the Soviet Union and others appeared to him to be eminently acceptable.

3743.2 As regards the Berne Convention, the Delegation of Italy could not agree to the deletion of Article 27*bis*. It would be prepared to accept the compromise solution in document S/222 which provided for the inclusion of an identical text in the two Conventions.

3744. The CHAIRMAN suggested deferring the question until the next meeting, so as to enable delegates to examine it more thoroughly. That would be the time to consider a compromise solution for the Paris Convention, if necessary, and to return to the Netherlands proposal for the Berne Convention.

The meeting rose at 5 p.m.

FIFTEENTH MEETING

Tuesday, July 4, 1967, at 11:05 a.m.

DRAFT ADMINISTRATIVE PROVISIONS AND FINAL CLAUSES OF THE PARIS AND BERNE CONVENTIONS (S/251-S/252)

3745. The CHAIRMAN invited members of the Committee to submit their observations on document S/251-S/252 presented by the Drafting Committee and proposed to consider that text article by article and, if necessary, paragraph by paragraph. He asked Mr. Bogsch to point out the important alterations of form proposed by the Drafting Committee.

Article 13(1), (2), (3), (4)(a) and (4)(b) (S/251)

3746. *Paragraphs (1), (2), (3), (4)(a) and (4)(b) of Article 13 were approved unanimously.*

Article 13(4)(c) (S/251)

3747. Mr. BOGSCH (Deputy Director, BIRPI) said that the Drafting Committee had added to paragraph (4)(c) the words "and shall not take effect until they become final." By that the Drafting Committee intended to make it clear that nothing could be done on the basis of a provisional decision until the countries had expressed their vote in writing and the quorum had been attained; the alternative would have been to consider the provisional decision as immediately effective, on the proviso that it would be subsequently annulled if the vote by correspondence were to be negative or if the required quorum were not to be attained.

3748. The CHAIRMAN asked delegations to give their opinion on the interpretation given by the Drafting Committee of the words "provisional decision."

3749. *The interpretation of the Drafting Committee was approved.*

3750. Mr. STANESCU (Rumania) pointed out that the last sentence of the paragraph did not indicate clearly whether the provisional decision was to become final as soon as the quorum was attained or only at the end of the period of four months, which the Delegation of Rumania, for its part, would prefer.

3751. Mr. BOGSCH (Deputy Director, BIRPI) replied that, in his view, the vote could be considered as carried as soon as the quorum had been attained, even before expiry of the period of four months, always provided that the majority still subsisted after counting the votes expressed in writing.

3752. The CHAIRMAN thought that two solutions were possible in the light of the opinions that had just been expressed. By one solution, the decision would be carried as soon as the quorum was attained. By the other, the decision could become final only at the end of the period of four months, even if the quorum had been attained well in advance.

3753. Mr. BOGSCH (Deputy Director, BIRPI) observed that this was a point of substance which the Committee had already had the opportunity to decide on two occasions. The last sentence of the paragraph was completely identical to the wording that the Working Group had proposed some ten days before.

3754. The CHAIRMAN was not sure that the last sentence of the subparagraph had signified to all delegations that the decision would become final as soon as the quorum was attained, since the words "within this period" seemed to give States some time for reflection and the expression of their opinion. Even a late vote sent within that period of four months could not be regarded as less valid than that of countries that reacted more rapidly.

3755. Mr. TORRES SANTIESTEBAN (Cuba) said that the reference to the decisions being provisional only caused confusion. He proposed the deletion of the words "shall be provisional and" in paragraph (c) of Article 13, so that the text would read: "...the decisions of the Assembly shall not take effect until they become final." The first sentence of the paragraph would then explain the circumstances in which a decision of the Assembly was not final, and the last sentence would explain the circumstances in which a decision would become final.

3756.1 Mr. STANESCU (Rumania) supported the proposal of the Delegation of Cuba; in fact it sufficed to say that the decisions of the Assembly would not take effect until they became final, without specifying that they were provisional.

3756.2 Returning to the question of the period of four months, he concurred that in the previous discussions the Delegation of Rumania had understood that the period was to be granted without restriction to States casting their vote in writing. The other solution was also possible, but if it were deemed preferable, it should be clearly indicated in the wording, and the last sentence of the paragraph should be modified accordingly. But why should States be given four months to decide when it might become apparent to them after, for example, a week, that their vote had become pointless? It would be preferable to make the last sentence of the paragraph start: "If, on the expiry of this period..."

3757. Mr. RIBEIRO (Brazil) thought, like the Delegate of Rumania, that States should have the full benefit of the period granted to them for the expression of their opinion.

3758. Mr. MAAS GEESTERANUS (Netherlands) agreed with the Delegate of Rumania. He suggested that the possibility of future difficulties in interpreting the subparagraph might be avoided if the words "within this period" in the last sentence of subparagraph (c) of paragraph (4) were replaced by the words "at the end of this period."

3759. Mr. TROTTA (Italy) considered that a decision became final as soon as the quorum was attained and proposed that it should be clearly indicated in the last sentence of the subparagraph by replacing the words "If, within this period" by the word "When."

3760. Mr. SHER (Israel) agreed with the proposal that the text should be amended to provide that decisions would become final only at the end of four months. If the text were not so amended, member States would not have equal rights in a written vote, since more weight would be placed on the views of countries which submitted their votes quickly than on the views of countries which took time to consider their position.

3761. Mr. RAZAFINDRATANDRA (Madagascar) also thought that the period of four months should be respected, since it seemed unfair that the first replies alone decided the vote. That was a procedure somewhat reminiscent of competitions organized by newspapers. He therefore supported the proposal of the Delegation of the Netherlands to use the words "At the end of this period" and opposed the wording "When" proposed by the Delegation of Italy.

3762. Mr. MAZARAMBROZ (Spain) said that the views just expressed put the question in an entirely different light. In the earlier discussions, he had asked for a clarification of the last sentence and the Director of BIRPI had explained the reasons why it might be better to leave the text as it was. He had accordingly stated his Delegation's view that the result of the written vote was immaterial: the purpose of such a vote was to obtain sufficient votes to enable a decision to be taken. It seemed to him that the interpretation now being placed on the text was different from that placed on it in the previous discussions.

3763. Mr. PETERSSON (Australia) said that he could see the disadvantages of failing to wait the full four months —for example, the Union's work would be held up—but if he correctly understood the situation under the present Article, once the Director of BIRPI had communicated with the countries concerned, it was, by analogy, as if all the Members of the Union had been present at the meeting. In the opinion of his Delegation, a decision could not be taken until all the members had either voted or abstained from voting. In other words, it would be necessary to wait until the end of the four-month period.

3764. Mr. BOULBINA (Algeria) thought that the Committee should not be concerned solely to render decisions effective rapidly, that was to say from the time that they had received the necessary and sufficient number of votes. It should also endeavor to give the maximum weight to the decisions taken by the Assembly, by stating that they would become final after having gained the largest possible number of votes. The Delegation of Algeria was therefore completely in accord with the views of the Delegation of Rumania and proposed that the last sentence of the paragraph should begin: "If, on the expiry of this period..."

3765. Mr. KRUGER (South Africa) said that if the voting period were extended to four months there would be no need for any delegation to go to the Assembly, since delegations that took the trouble and incurred the expense to attend would have perhaps only a day in which to think over matters before being called upon to vote,

whereas those that stayed away would have four months for reflection. If the purpose of the provision was merely to ensure that effective decisions were not taken without a quorum—50 per cent of the members—then the obtaining of a quorum would be equivalent to having a quorum in the Assembly, and late replies would be equivalent to delegates arriving too late to vote. Thus the countries that speeded up their written votes were equivalent to the delegates present in the Assembly, and the moment the quorum and the majority had been obtained, the decision would be final.

3766. Mr. LORENZ (Austria) pointed out that the initial justification for the provision under consideration had been to remedy the situation in default of a quorum by requesting that additional written replies should be sent. Nevertheless, it was also essential to have regard to the size of the majority. It could not be considered that voting was closed as soon as the necessary quorum had been attained by means of replies from the countries that reacted most rapidly. All member States must have the possibility of deciding, and the vote should not become final until the expiry of the period of four months. The Delegation of Austria consequently supported the proposal of the Delegation of the Netherlands that would clarify the meaning of the proposed wording.

3767.1 Mr. KRISPIS (Greece) said he was in favor of the proposed amendment to the last sentence.

3767.2 There was, however, an ambiguity in the text. He assumed that to say that a decision was not final really meant that it was not yet effective. Otherwise it would be possible to interpret the provision as meaning that a decision could come into effect provisionally and that later, if the decision did not become final, it would no longer be applied. He proposed the deletion of the words "shall be provisional and" in the first sentence and the substitution of the words "shall come into effect" for the words "shall be final" at the end of subparagraph (c).

3768.1 Mr. MWENDWA (Kenya) said he shared the view that a decision should not become final until the end of the period of four months, for two reasons.

3768.2 In the first place, if the first written votes were positive and the decision became final as soon as the quorum and the majority had been obtained, there would be a bias in favor of the positive votes. If, however, the first votes, bringing the number to the necessary quorum, were negative, would it mean that the decision had been defeated ? If such a complication were to be avoided, it would be necessary to wait until the end of four months.

3768.3 In the second place, if a decision were regarded as final before the expiry of the full four months, it would mean that although member countries had been told that they had four months in which to vote, only the votes which had been submitted quickly would be taken into account: the rest would be ignored.

3769. Mr. SHER (Israel) said that the comments of the Delegates of Greece and Kenya had made him realize that the provision was far from complete. There was nothing in the paragraph to say whether it applied only to positive decisions of the Assembly or to negative decisions as well. What, for example, would happen in the case of a decision taken by a majority of, say, one vote?

3770. Mr. ROGGE (Federal Republic of Germany) said he entirely agreed with the view that it would be unsatisfactory if the written votes were counted only until the necessary quorum had been obtained. He asked, however, whether it was really necessary to wait four months in every case. A positive vote by two-thirds of the member countries might well be obtained in a shorter period, in which case it would be unnecessary to wait the whole four months since, even if the remaining one-third were negative votes, they would not affect the result.

3771.1 The CHAIRMAN shared the opinion of the Delegate of the Federal Republic of Germany and drew the attention of the Main Committee to paragraph (4)(d) of Article 13. In fact, although the majority of delegations seemed in agreement on the need to wait for the period of four months to expire, cases could be envisaged in which the required majority would be attained before the end of that period, and in conformity with that paragraph, the vote would be carried from that time onward without any subsequent written reply being able to change the result. The Chairman emphasized in that respect that it was always in the interest of the efficient functioning of the Union that the Bureaux should be in a position to apply the decisions of the Assembly as quickly as possible. He therefore suggested that the following wording should be inserted in the last sentence of subparagraph (c): "...unless the majority required by paragraph (4)(d) shall be attained earlier."

3771.2 The Chairman also pointed out that similar provisions appeared in document S/250 in relation to IPO. It would therefore be appropriate to inform Main Committee V of the proposals that Main Committee IV might formulate.

3772. Mr. PETERSSON (Australia) said he could not recall the precise reason for stipulating a period of four months. It seemed an extraordinarily long time to wait, with present day speedy means of communication. Even a country as far away as his own would not need the full four months to make up its mind on any matter.

3773. Mr. BOGSCH (Deputy Director, BIRPI) said that, if the suggestion advocated by a number of delegates was adopted, the shorter the period the better. However, the nature of the problem had become completely changed: what had originally been a question of quorum had now become a matter of voting by mail. There was a lot of truth in what the Delegate of South Africa had pointed out, namely, that there was no reason why any delegation should take the trouble to come to the General Assembly when it could vote equally well by correspondence. There was no question of infringing the rights of a country which did not send its written vote speedily. No country could cast a postal vote as a right, yet the Main Committee seemed to be on the point of establishing such a right.

3774.1 The CHAIRMAN thought that the system recommended by some delegations could be regarded as perfectly applicable provided that the wording was free of ambiguity and specified that countries should communicate their replies very rapidly if they wanted their votes to count.

3774.2 The Chairman nevertheless wondered whether there was not a risk that the majority could be reversed during the period that would be fixed, but that might be merely an hypothesis. In any case, both systems recommended were valid, provided that the wording was clear enough not to give rise to any difficulties in interpretation.

3775.1 Mr. MAAS GEESTERANUS (Netherlands) thought that the solution recommended by BIRPI was acceptable only if the words "and shall invite them at the same time to express ...within a period of four months..." were to be deleted, since it would seem at the least curious to invite countries to express their opinion within a fixed period and not to take some replies into consideration even when they had been communicated within the period prescribed. In that case it should be stipulated that countries were invited to express their opinion until the quorum had been attained.

3775.2 It must nevertheless be considered that if countries had a period of four months, written replies sent after the quorum had been attained might alter the result of the vote. Having regard to those considerations, the Delegation of the Netherlands preferred to support the proposal of the Delegation of Rumania.

3776.1 Mr. STANESCU (Rumania) said that it had never occurred to the Delegation of Rumania that the fact of allowing a country four months to express its opinion could be regarded as a mere formality. On the contrary, the Delegation thought that it was a period of reflection granted to Governments whose opinions would be taken into consideration whenever they were transmitted before the expiry of the period of four months. That period could undoubtedly be reduced to two or three months, for example, but once granted it should be respected. The Delegation of Rumania therefore insisted that the granting of that period should not be regarded as a formality, but as a means for the effective consultation of Governments.

3776.2 The solution proposed by the Chairman, which was to take into consideration only the two-thirds majority of member countries, did not seem satisfactory to the Delegation of Rumania since the possibility that all countries had of stating their opinion on the decision taken within the period granted to them should not be prejudiced in any way.

3776.3 With regard to the problem raised by the Delegation of Israel, which considered that the wording concerning the provisional decision was unclear, the Delegation of Rumania thought that this was in fact a decision because it could become effective. It did not believe that a proposal rejected by the Assembly could subsequently be adopted following written consultation. That would be contrary to all the rules. The Delegation of Rumania would therefore adhere to the proposed wording on that point.

3777. Mr. KRUGER (South Africa) said that, as indicated by the Chairman, the solution really lay in the definition of a majority. As he understood the provision, once the "required quorum and majority" had been obtained, subsequent votes would not matter even if they were negative. He suggested that the text should be amended to make it clear that the majority referred to in the words "the required quorum and majority" was a complete majority, and the full period of four months would then not be necessary.

3778. The CHAIRMAN thought that the discussion had led to a more thorough examination of a matter that the Main Committee had considered rather rapidly at previous meetings. Now, however, that the problem had been elucidated, it would be in the interests of the Main Committee to decide on a precise wording, the final formulation of which could be entrusted to a small Working Group. He proposed that that Group should consist of the Delegates of Australia, the Netherlands and Rumania.

3779. *The Committee decided to entrust to the Working Group proposed by the Chairman the final formulation of paragraph (4)(c) of Article 13.*

Article 13(4)(d) (S/251)

3780. *Paragraph (4)(d) of Article 13 was approved unanimously.*

Article 13(4)(e) (S/251)

3781.1 Mr. MWENDWA (Kenya) said that the provision in subparagraph (e)—that abstentions should not be considered as votes—seemed to contradict the two-thirds majority requirement under subparagraph (d), the purpose of which, he had understood, was to ensure that decisions were not taken too easily. Subparagraph (d) would make it possible, for example, for a resolution to be adopted by one vote, the rest being abstentions.

3781.2 Every Member country had the right at any meeting to cast a positive or a negative vote or to abstain. A provision to the effect that abstentions were not considered as votes would in effect amount to a bias against abstentions. He wished to draw the Committee's attention to the point because it was substantive and therefore important.

3782. The CHAIRMAN pointed out to the Delegate of Kenya that the wording of paragraph (4)(a) of Article 13 was absolutely clear and raised no problem of interpretation. If the Delegation of Kenya wished a discussion to be opened on that matter, its request would give rise to the application of the relevant provisions of the Rules of Procedure, since it would involve the reconsideration of a point of substance.

3783. *Paragraph 4(e) was approved unanimously.*

Article 13(5), (6) and (7)(a) (S/251)

3784. *Paragraphs (5) and (6) and paragraph (7)(a) of Article 13 were approved unanimously.*

Article 13(7)(b) (S/251)

3785. Mr. LORENZ (Austria) thought that the punctuation and the wording of that paragraph should be identical to those of paragraph (7)(b) of Article 14 relating to the Executive Committee, which contained similar provisions. In fact, the existence of a comma after the word "session" suggested that convocation could result from three different decisions. Moreover, there was no reason not to present similar provisions relating to different organs of IPO in the same manner. He therefore proposed that the wording of the existing subparagraph should be coordinated with that of paragraph (7)(b) of Article 14; it would then read: "The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of the Executive Committee or at the request of one-fourth of the countries members of the Assembly."

3786. *Paragraph (7)(b) of Article 13 as thus amended was approved unanimously.*

Article 13(8); Article 14; Article 15(1), (2) and (3) (S/251)

3787. *Paragraph (8) of Article 13, Article 14, and paragraphs (1), (2) and (3) of Article 15, were approved unanimously.*

Article 15(4) (S/251)

3788. Mr. BOGSCH (Deputy Director, BIRPI), referring to the footnote with respect to Article 15(4) of document S/251-S/252, pointed out that the provision in question, which concerned the number of free copies of certain publications of the International Bureau, had been inserted in the present text only because a similar provision appeared in the Paris and Berne Conventions, but the Drafting Committee had considered that there was no longer any reason for its presence in the Article, since it concerned a quite secondary point belonging solely to the competence of the Assembly.

3789. Mr. ELMAN (Israel) pointed out that the deletion of paragraph (4) of Article 15 would deprive countries of their entitlement to free copies of publications, since

the decision whether free copies should be distributed would fall within the Assembly's jurisdiction. A provision should be included to the effect that every country was entitled to a minimum number of free copies.

3790. Mr. MAAS GEESTERANUS (Netherlands) and Mr. GAJAC (France) were both of the opinion that that paragraph should be deleted.

3791. *It was decided to delete paragraph (4) of Article 15.*

Article 15(5) to (9); Articles 16 and 17 (S/251)

3792. *Paragraphs (5) to (9) of Article 15, and Articles 16 and 17 were unanimously approved.*

Article 18 (S/251)

3793. Mr. BOGSCH (Deputy Director, BIRPI) said that Article 18 should, of course, be read in conjunction with paragraph (8), subparagraph (b) of Article 15, to the extent that the Secretariat would consult and convene committees of experts, including representatives and observers from private organizations, when preparing conferences of revision.

3794. *Article 18 was unanimously approved.*

Article 19 and Article 20(1) (S/251)

3795. *Article 19 and paragraph (1) of Article 20 were unanimously approved.*

Article 20(2)(a) and (2)(b) (S/251)

3796. Mr. NORDENSON (Sweden) said that in the Drafting Committee his Delegation had proposed certain amendments to subparagraphs (a) and (b) of paragraph (2) of Article 20 which would limit their scope to the first ten countries of the Union to deposit instruments of ratification or accession. The proposals had been rejected by vote, but had been resubmitted to the Committee, and he had understood that the Committee had agreed to add the necessary wording to those subparagraphs. On that understanding, his Delegation had subsequently submitted amendments to subparagraph (c) of paragraph (2) and to paragraph (3) and the Committee had approved them. Since his Delegation's amendment to subparagraphs (a) and (b) did not appear to have been incorporated, there was now a lack of consistency between those subparagraphs, which should relate only to the first ten countries, and subparagraph (c) which related to all the other countries of the Union. No question of substance was involved, and he suggested, therefore, that the necessary amendments should be made.

3797. The CHAIRMAN invited the Delegate of Sweden to submit a precise wording.

3798. Mr. NORDENSON (Sweden) read the wording proposed by his Delegation. Paragraph (2)(a) would be worded as follows: "Articles 1 to 12 shall enter into force, with respect to the first ten countries of the Union...," the remainder being unchanged, and paragraph (2)(b) would begin: "Articles 13 to 17 shall enter into force, with respect to the first ten countries of the Union..."

3799. Mr. KRISPIS (Greece) supported the proposal.

3800. *Paragraphs (2)*(a) *and (2)*(b) *of Article 20, as amended, were approved unanimously.*

Articles 20, 21, 22, 24, 25, 26, 28, 29 and 30 (S/251)

3801. *These Articles and the corresponding provisions concerning the Berne Convention (S/252) were approved unanimously. (Articles 23 and 27 were reserved.)*

The meeting rose at 12:40 p.m.

MAIN COMMITTEES IV AND V

Chairman: Mr. Eugene M. BRADERMAN (United States of America)
Secretary: Mr. Arpad BOGSCH (Deputy Director, BIRPI)

SIXTEENTH MEETING AND TENTH MEETING OF MAIN COMMITTEE V

(JOINT)

Wednesday, July 5, 1967, at 9:30 a.m.

PROPOSALS FOR RESOLUTIONS ON TRANSITIONAL MEASURES (S/11)

3802. The CHAIRMAN said that Main Committees IV and V had been convened jointly to consider document S/11 which contained three resolutions submitted by BIRPI on transitional measures concerning certain administrative matters. The proposals, which would affect both the Paris and the Berne Unions, had been drafted mainly with the new World Intellectual Property Organization in mind, since the Secretariat felt that some provisional arrangement was needed pending the receipt of the required number of ratifications for the entry into force of the Stockholm Act.

3803.1 Mr. BOGSCH (Deputy Director, BIRPI) said that the Secretariat had proposed the resolutions, first, because it considered that it would be desirable for Governments to have the earliest possible opportunity of exercising some of the rights provided under the new administrative arrangements, albeit only in an advisory capacity; and, secondly, because it wished to make the name of the new Organization known throughout the world as soon as possible.

3803.2 Several delegations, however, entertained serious doubts, mainly of a legal nature, regarding the provisional application of the measures proposed—doubts which, he wished to emphasize, the Secretariat did not share as the powers conferred would be of an advisory nature only and would not involve the countries concerned in any obligations. Further, in view of the optimism engendered by the enthusiastic reception of the proposals submitted to the Conference, it was anticipated that the number of ratifications required for the entry into force of the Stockholm Act, as agreed both by Main Committee IV and Committee V, would be received fairly soon.

3803.3 For those reasons, the Secretariat would not insist upon its proposals which, as the Main Committee was aware, had been presented with the Swedish Government's approval. On behalf of the Director of BIRPI, he thanked all who had supported the proposals.

3804.1 Mr. LABRY (France) recalled that the Delegation of France had wished to draw attention to the legal objections to the provisional application of an international agreement; his Delegation could not approve of this.

3804.2 As the French proposals regarding the number of ratifications required for the entry into force of the Stockholm Act had not been accepted by the Conference, his Delegation would conform to the wishes of the majority on that point.

3804.3 Lastly, since the existing organs would continue to function as advisory bodies, it would be normal for them to take part in preparing the establishment of the new structures.

3805. Mr. LUZZATI (Italy) said he agreed with the previous speaker.

3806. Mr. MAKSAREV (Soviet Union) said that the Delegation of the Soviet Union approved the statement made by Mr. Bogsch.

3807.1 Mr. MORF (Switzerland) said that the Swiss Government entirely approved of the measures proposed by BIRPI.

3807.2 However, in the introduction of document S/11 the wording of paragraph (13)(i) was somewhat ambiguous. It said that the desires expressed by the Assemblies and Committees might be "valuable guidance for the Supervisory Authority," whereas in paragraph (11)(v) the functioning of these advisory bodies would not "curtail in any way the power of decision vested in the Swiss Government as Supervisory Authority." It might perhaps be advisable at this stage to obviate any misinterpretation which might restrict the competence of the Supervisory Authority.

3807.3 As regards the other points concerning the entry into force of the Stockholm Act, the Swiss Government endorsed the views expressed by BIRPI in the corrigenda to documents S/3, S/9 and S/10.

3808. Mr. KELLBERG (Sweden) recalled that a Committee held in 1966 had already considered the question of transitional measures. At that time, several delegations had thought that the BIRPI proposals went too far and the Secretariat had therefore been requested to carry out further studies, on the basis of which the proposals before the Committee had been prepared. As mentioned by Mr. Bogsch, the Swedish Government had approved those proposals, considering that some transitional measures should be adopted to help in setting up the new Organization. In the light of Mr. Bogsch's explanation, however, the Delegation of Sweden would not insist upon further consideration of the matter at the Conference.

3809.1 The CHAIRMAN expressed his appreciation to the Swiss Government for the valuable service it had already rendered as a Supervisory Authority and for its offer to continue to assist in the work of both the Berne and the Paris Unions in that connection. He thanked the Secretariat and the Swedish Government for not pressing their proposals in view of the legal difficulties to which, in the opinion of some delegations, premature action might give rise.

3809.2 It was apparent that most delegations considered that it would not be long before the requisite number of ratifications was received, thus conferring legal status on the various organs that had been created. All Governments would then be able to take part in the activities of those organs.

The meeting rose at 10 a.m.

MAIN COMMITTEE IV

(continued)

SEVENTEENTH MEETING

Wednesday, July 5, 1967, at 11 a.m.

DRAFT DECISIONS ON THE CEILING OF CONTRIBUTIONS (S/261 AND 262)

3810. The CHAIRMAN said that the two draft decisions on the ceilings of contributions for the Paris Union and the Berne Union, which appeared in document S/12, had been reproduced in documents S/261 and S/262 for convenience.

3811. Mr. LABRY (France) said that, as the French Ministry of Finance had approved the figures contained in document S/12, the Delegation of France would endorse the draft decisions prepared by BIRPI.

3812. Mr. WINTER (United States of America) said he noted, from paragraph 29 of document S/12, that the budget deficit in 1967 would amount to Swiss francs 131,000. In view of the possibility of a further increase in that deficit, as a result of rising costs in the years to come, his Delegation fully supported the proposed decision in document S/261 but would like to have more detailed information about the budget for 1968, 1969 and 1970 at the Coordination Committee's meeting in December 1967.

3813. Mr. KELLBERG (Sweden) said that his Delegation, which agreed with the two previous speakers' remarks, would vote for the draft decisions in document S/261 and S/262 since there were valid reasons for raising the budget ceiling, as explained in document S/12. It was high time that some positive action was taken about the deficit and BIRPI should be provided with the wherewithal to carry out its program efficiently.

3814. Mr. KRUGER (South Africa) said that his Delegation fully supported the two proposals before the Committee.

3815. Mr. LAURELLI (Argentina) said that he appreciated the need for increases in the budget, but did not understand why they should amount to $30,000 every year, particularly at a time when there was a downward trend in contributions. He would like to know on what basis such progressive increases were calculated.

3816. Mr. ELMAN (Israel) said that, as, for obvious reasons, he had not received precise instructions from his Government regarding the two proposals before the Main Committee, he would have to abstain from the vote thereon, but he queried the necessity of such provisions. If, as the Committee had been informed, the new financial provisions would soon take effect, it might be that the appropriate organs of each Union could decide whether or not to increase the budget, according to their individual anticipated expenditure for 1968, 1969 and 1970.

3817. Mr. QUINN (Ireland) said that his Delegation, which shared the views of the Delegates of France, the United States of America and Sweden, would vote in favor of the two draft decisions in S/261 and S/262. The increases proposed were modest, having regard to the general inflationary tendencies since 1963, to the expected increase in future activity, and to the better service that would be rendered by a more streamlined machine.

3818. Mr. DE HAAN (Netherlands) said the Delegation of the Netherlands, which fully appreciated the work of BIRPI, would support the two proposals.

3819. Mr. HAERTEL (Federal Republic of Germany) said he would vote for the two proposals.

3820. Mr. MAEDA (Japan) said that his Delegation supported the proposals in documents S/261 and S/262.

3821. Mr. CIPPICO (Italy) said he viewed with sympathy the proposed extension of activities for which increased expenditure was required and would therefore vote in favor of the two draft decisions before the Main Committee. He would, however, have to refer the matter to his Ministry for official confirmation.

3822. Mr. SAVIĆ (Yugoslavia) said that the Delegation of Yugoslavia supported the two draft decisions.

3823.1 Mr. RIBEIRO (Brazil) also approved them.

3823.2 He was surprised, however, that the increase provided in document S/261 from 1968 to 1969 was proportionately higher than that from 1969 to 1970: in the first case the increase was 18%, whereas in the second case it was only 15%. It was known that administrative expenses normally increased by 5% per annum. It would therefore seem more logical to provide for a proportionately higher increase.

3824.1 Mr. ARTEMIEV (Soviet Union) would vote for the draft decision contained in document S/261, but as his country was not a member of the Berne Union, he would abstain in respect of document S/262.

3824.2 Like the Delegate of the United States, he thought that at the end of 1967 the budget for 1968-70 would have to be very carefully studied.

3824.3 If the proposal contained in document S/260 regarding priority fees were adopted, the Vienna Conference would no doubt be able to lower the ceiling of contributions.

3825. Mr. MARINETE (Rumania) said that, although the Delegation of Rumania did not object to the increases proposed in the two documents, it though that budgetary proposals should be as detailed as possible. In any case, it would be advisable to stress the fact that the figures stated were maximum figures and that the need for economies should never be forgotten.

3826. Mr. HOFFMANN (Luxembourg) said that the Luxembourg Government would have liked to receive a draft budget for the next three years along with document S/12. The Delegation of Luxembourg would nonetheless support the two draft decisions.

3827. Mr. OSSIKOWSKI (Bulgaria) said that the Delegation of Bulgaria shared the view of the Delegate of the Soviet Union.

3828. Mr. MAZARAMBROZ (Spain) declared that the Delegation of Spain, having regard for BIRPI's efficiency, would vote in favor of the two draft decisions, hoping that the priority tax proposed by his Delegation would eventually solve all the financial problems.

3829. Mr. MORF (Switzerland) said that the Swiss Government was entirely in favor of the two proposals submitted by BIRPI, particularly since, under the new procedure, it would no longer have to ask for the increase of contributions every two or three years.

3830. Mr. MENDES-RIVAS (Uruguay) said he would have to abstain as he had not received any instructions from his Government. He wished to point out, however, that his abstention did not imply any criticism of the two drafts.

3831. The CHAIRMAN informed the Committee that the observer of the African and Malagasy Industrial Property Office (OAMPI) had expressed the wish to state the views of his Organization, and he invited him to take the floor.

3832.1 Mr. EKANI (African and Malagasy Industrial Property Office (OAMPI)) recalled that OAMPI drew from its budget the amount of the contributions due by its member States to BIRPI; any increase in these contributions was accordingly of primary interest to it.

3832.2 He pointed out, on the one hand, that OAMPI was at present obliged to adopt a policy of financial austerity and, on the other hand, that the absence of any document justifying the proposed increases prevented its Council from obligating the necessary funds.

3832.3 In addition, without objecting to the principle of raising the ceilings, OAMPI would like the decision to be taken in accordance with regular procedure, either in the context of the Paris and Berne Unions or under the Stockholm Act.

3832.4 Assuming that the matter was not urgent, Mr. Ekani recommended a compromise solution: only States which were in a position to accept an increase in the ceiling of contributions at this stage would be bound by the decision, and the others would have the possibility of accepting it only when the documents of justification were made available to them.

3833.1 Mr. BOGSCH (Deputy Director, BIRPI) said, in reply to the points raised, that the first question asked, various aspects of which had been touched upon by the Delegates of the United States, Rumania, Luxembourg, the Soviet Union and the Observer from OAMPI, was why more detailed information had not been provided to justify the proposed increases. As explained in document S/12, in both the Paris and Berne Unions a somewhat special system was in force according to which an upper limit figure was to be adopted for each Union. The Swiss Government, as the sole authority in financial matters, would decide whether or not the full amount would be used but, in taking that decision, would be guided by the Coordination Committee which, at its meeting in December 1967, would have before it detailed information on every budget item.

3833.2 The Delegate of Israel had asked whether the decision on the budgetary increases could be delayed until the new financial provisions came into effect. The reply was definitely in the negative, in view of the already existing deficit.

3833.3 Lastly, he agreed with the Delegate of Brazil that it appeared somewhat abnormal for increases to be degressive rather than progressive but that was due to the fact that in the first years a deficit would have to be absorbed.

3834.1 Mr. LAURELLI (Argentina) said he considered that the existing system of budgetary ceilings should be set aside in future in favor of a more practical and more realistic arrangement. While the present system remained in use, the trend in budget increases should be downward rather than progressively upward as proposed in document S/261. He asked for those remarks to be recorded fully in the minutes.

3834.2 He also shared the views of those delegates who considered that more detailed information should be given about the different budget items.

3835.1 Mr. HOFFMANN (Luxembourg) said he had listened with interest to the statements made by Mr. Bogsch. He noted that the full amount of the ceiling would not necessarily be used and that the final decision would be left to the Swiss Government after consultation with the Coordination Committee.

3835.2 The Luxembourg Government, which was not represented on that Committee, would have liked to have access to the draft triennial budget at this stage, but it was nevertheless prepared to accept the new ceilings proposed.

3836. Mr. EKANI (African and Malagasy Industrial Property Office (OAMPI)) repeated that OAMPI, although not opposed in principle to the raising of the ceilings of contributions, formulated express reservations on the fact that adequate data for taking a decision were not available. He also asked that States might retain their freedom of action as long as they had not received all the documents justifying the proposed increases.

3837. The CHAIRMAN, noting that no delegations had declared itself opposed to the draft decisions contained in documents S/261 and S/262, invited the Committee to adopt these two drafts simultaneously.

3838. *The two proposals regarding the ceilings of contributions (Paris Union and Berne Union) were adopted unanimously.*

3839. Mr. KELLBERG (Sweden) pointed out that the equivalent of the word "ordinary," in the English text of the first operative paragraph of the draft decision in document S/261, did not appear in the French version.

3840. Mr. BOGSCH (Deputy Director, BIRPI) said that the texts of all resolutions would presumably be referred to the Drafting Committee when such matters would be dealt with.

3841. Mr. WINTER (United States of America) said he had received instructions from his Government to state that it would favor the deletion of the provision for extraordinary contributions referred to in paragraph 28 of document S/12, if that opinion was generally shared by the Committee.

3842. Mr. BOGSCH (Deputy Director, BIRPI) said that the provision for extraordinary contributions had originally been designed to cover the expenses of Diplomatic Conferences. The amount was so small that it served no useful purpose. The new administrative provisions did not provide for keeping the provision; consequently, its deletion might be considered as having been decided. Of course, such deletion would become effective only when the new administrative provisions entered into force.

3843. Mr. MORF (Switzerland) pointed out that, as recalled in paragraph 24 of document S/12, Article 14(5)(b) of the Lisbon Act provided that the countries of the Paris Union might "modify by unanimous decision the maximum annual amount of the expenditure of the International Bureau, provided they meet as Conferences of Plenipotentiaries of all the countries of the Union, convened by the Government of the Swiss Confederation." It would therefore be advisable to state that the delegates who had just adopted the increase in the ceilings had acted not as members of Main Committee IV of the Conference, but as Plenipotentiaries.

3844. Mr. BOGSCH (Deputy Director, BIRPI) said that the two texts would come before the Plenary during the following week. Formal decisions would then be taken by a Conference of Plenipotentiaries in respect of the Paris Union and by the Plenary Assembly of the Union in respect of the Berne Union.

3845. Mr. SHER (Israel) suggested that the Credentials Committee should indicate which delegations had specific powers for voting when the matter came before the Plenary Assembly.

3846. Mr. BOGSCH (Deputy Director, BIRPI) said he would be glad to refer the question to the Credentials Committee. His first reaction, however, was that it was a matter for each delegation to decide.

DRAFT RESOLUTION CONCERNING A STUDY ON PRIORITY FEES (S/260)

3847. The CHAIRMAN said that the draft resolution contained in document S/12 concerning a study on priority fees had been reproduced for convenience in document S/260.

3848. Mr. BOGSCH (Deputy Director, BIRPI) recalled that this question had already been raised in another context by the Delegation of Spain which had been the first to make this interesting suggestion. The Secretariat would like it to be thoroughly studied: if the Committee wished, the Coordination Committee might in December entrust this study to a Group of Experts.

3849. Mr. LABRY (France) said that, having heard the explanations given on various occasions by the Delegate of Spain, the Delegation of France supported this proposal.

3850. Mr. SAVIĆ (Yugoslavia) supported the draft resolution submitted by BIRPI.

3851. Mr. LAURELLI (Argentina) said that his Delegation agreed with the proposal to set up a Working Group.

3852. Mr. HAERTEL (Federal Republic of Germany) proposed that the resolution should refer explicitly to the convocation of a Committee of Experts.

3853. Mr. WINTER (United States of America) said that his Delegation was prepared to support the proposal in document S/260 and the amendment thereto of the Delegation of the Federal Republic of Germany. It would be helpful if the Secretariat could provide any expert committee that might be set up with information about the costs of the proposed study.

3854.1 Mr. STANESCU (Rumania) recalled that the Delegation of Rumania had already had occasion to make some reservations on the compatibility of such a provision with the other provisions of the Paris Convention.

3854.2 He accordingly pointed out to the Secretariat that the Group of Experts instructed to consider the matter should not only study it from the financial aspect but should consider it with reference to this point too.

3855. Mr. MAKSAREV (Soviet Union) thought that the proposal of the Delegation of Spain which had been endorsed by the Secretariat of BIRPI was very reasonable. He thought it should be taken up by the Vienna Conference.

3856. Mr. MENDEZ-RIVAS (Uruguay) said that the Uruguayan Government was favorable to the idea of collecting a modest priority fee.

3857. Mr. MORF (Switzerland) supported the BIRPI proposal.

3858. Mr. DE HAAN (Netherlands) approved the constitution of a group of experts, but pointed out that a number of private representatives should be associated with its work. This was a proposal which might well give rise to certain objections from inventors; it would therefore be better, on the one hand, to let them state their point of view and, on the other, to explain clearly to them the need for such a fee.

3859. Mr. DA CRUZ (Portugal) said that his Delegation supported the proposal in document S/260.

3860. Mr. LORENZ (Austria) said that the Delegation of Austria was in favor of the draft resolution.

3861. Mr. BOWEN (United Kingdom) said that his Government fully agreed to carrying out a study.

3862. Mr. KRISPIS (Greece) also expressed his support for the proposal in document S/260.

3863. Mr. BOGSCH (Deputy Director, BIRPI) said he assumed the Main Committee would agree that the Drafting Committee should be asked to insert a reference in the resolution to the effect that the study should be carried out with the assistance of a Committee of Experts.

3864. The CHAIRMAN invited the Committee to adopt the Draft Resolution reproduced in document S/260, as amended by the suggestions made by Mr. Bogsch.

3865. *The Draft Resolution, as amended, was adopted unanimously.*

MADRID AGREEMENT (MARKS): SHARE OF FEES

Article 8(5) and (6) (S/229)

3866.1 The CHAIRMAN opened the discussion on document S/229, containing a proposal by the Delegation of the Netherlands to add a new sentence to paragraphs (5) and (6) of Article 8 of the Madrid Agreement concerning the International Registration of Trademarks and Service Marks.

3866.2 He pointed out that the proposed text might be improved by the Drafting Committee.

3867. Mr. LABRY (France) said that the Delegation of France unreservedly supported the proposal, which seemed based on an entirely sound principle.

3868. Mr. HAERTEL (Federal Republic of Germany) inquired how many countries party to the Madrid Agreement had not yet ratified the Nice Act and how many of them intended to do so in the near future.

3869. Mr. BOGSCH (Deputy Director, BIRPI) replied that the number of countries party to the Madrid Agreement which had not yet ratified the Nice Act was not very high, and that most of them had expressed the intention of depositing their instruments of ratification very shortly.

3870. The CHAIRMAN invited the Committee to adopt the proposal of the Delegation of the Netherlands, subject to its being put into final form.

3871. *The proposal was adopted unanimously.*

The meeting rose at 12:25 p.m.

EIGHTEENTH MEETING

Wednesday, July 5, 1967, at 2:35 p.m.

DELETION OF HEADINGS FOR ADMINISTRATIVE AND FINAL CLAUSES

3872. The CHAIRMAN invited the Main Committee to decide on three urgent practical points concerning the final approval of the documents printed in Stockholm, and asked Mr. Bogsch to explain the details.

3873. Mr. BOGSCH (Deputy Director, BIRPI) said that the main question was that of the administrative and final clauses of the Paris and Berne Conventions; in the documents considered by the Committee, those clauses had headings, which the Secretariat proposed to delete, as the other articles had no headings.

3874. Mr. LABRY (France) approved the Secretariat proposal.

3875. *It was decided that there should be no headings to the administrative and final clauses of the Paris and Berne Conventions.*

TITLE OF THE MADRID AGREEMENT CONCERNING INTERNATIONAL REGISTRATION OF TRADEMARKS

3876. Mr. BOGSCH (Deputy Director, BIRPI) pointed out that the title of the Madrid Agreement concerning the International Registration of Trademarks was incomplete, as it contained no mention of the service marks introduced by the Nice Agreement. The Secretariat suggested that only the word "Marks" should be mentioned, as this term covered both trademarks and service marks.

3877. Mr. SAVIĆ (Yugoslavia) supported the Secretariat proposal.

3878. *It was decided that in the title of the Madrid Agreement, the word "Marks" should not be followed by any descriptive terms.*

TITLE OF MADRID AGREEMENT FOR REPRESSION OF FALSE OR DECEPTIVE INDICATIONS OF SOURCE

3879. Mr. BOGSCH (Deputy Director, BIRPI) pointed out that the title of the Madrid Agreement for the Repression of False or Deceptive Indications of Source had originally been followed by the words "on merchandise," which had been deleted at the time of the Lisbon revision, because they did not appear anywhere in the text, which only referred to the word "goods." As the Lisbon Conference had failed to give the full title, and the shortened title was obscure, the Secretariat proposed that the words "on goods" should be added.

3880. *It was decided to adopt as the title of the Madrid Agreement on indications of source the words: "Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods."*

ASSEMBLY: VOTING (continued) (S/264)

3881. The CHAIRMAN called for comments from delegations on the proposal by the Working Group concerning Article 13(4)(c) of the Paris Convention (S/264). The text which had been submitted consisted of a common portion, followed by two alternatives A and B which reflected the two possible interpretations on which the opinions of delegations had been divided at the fifteenth meeting of the Committee.

3882.1 Mr. KRISPIS (Greece) expressed his satisfaction that the Working Group had been able to produce a text which did not contain ambiguous words such as "provisional" and "final." Their absence made the text an improvement on the earlier one (S/251-S/252).

3882.2 His Delegation maintained its preference for the procedure outlined in Proposal B.

3883. Mr. NORDENSON (Sweden) said that, provided the text was to be reviewed by the Drafting Committee, he would make no comments at the present stage.

3884. The CHAIRMAN said it would be preferable if delegates submitted comments of a purely drafting nature to the Drafting Committee, which was to meet on the following morning.

3885. Mr. ROGGE (Federal Republic of Germany) asked the meaning of the words "may meet" in subparagraph (c). He wondered if they implied that the Assembly could not meet if the number of countries represented was less than one-third of the countries members of the Assembly. He considered that if the number of countries represented was less than one-third, the Assembly should be able to meet to study a problem, as long as it did not take any decision.

3886. The CHAIRMAN, replying to the Delegate of the Federal Republic of Germany, said that an Assembly which did not include one-third of the member countries could not be regarded as official. It would be only natural that delegations who had made the journey specially would undertake an exchange of views, but that could not lead to any decisions. In that connection, the French text of document S/264 was slightly different from the English text; the English said: "the Assembly may meet," while the French text said: "*l'Assemblée ... peut délibérer.*" Possibly there was a shade of meaning there which would answer the question put by the Delegate of the Federal Republic of Germany.

3887.1 Mr. BOGSCH (Deputy Director, BIRPI) observed that the Delegate of the Federal Republic of Germany had raised an interesting question, on which there might be certain doubts even on the basis of the French text. There were three possibilities. First, if the number of countries represented was more than one-half of the countries members of the Assembly, the Assembly could take decisions. Secondly, if the representation was less than one-half but more than one-third of the membership, the Assembly could take conditional decisions—it would be noted that such decisions were no longer to be termed "provisional." Thirdly, if the representation was less than one-third of the membership (the situation referred to by the Delegate of the Federal Republic of Germany), it would seem clear that the Assembly could discuss, but could not take any kind of decision.

3887.2 It might be possible, on the basis of the English and French texts, to argue that the Assembly could not deliberate or even meet if the representation were less than one-third, but he did not think that that was the Working Group's intention. All that the Working Group wanted to emphasize was that, in any session where the number of countries represented was less than one-half but more than one-third of the membership, the Assembly could not take any effective decisions. The

Working Group had not wished to make any provision for the situation where the representation was less than one-third of the membership.

3888. The CHAIRMAN considered that Mr. Bogsch had given the only logical interpretation, and that this interpretation should be taken into account when the text was drafted.

3889.1 Mr. SHER (Israel) suggested that the point raised by the Delegate of the Federal Republic of Germany might be met if the words "may meet" in the first sentence of subparagraph (c) were replaced by wording to the effect that the Assembly "would be deemed to have met the quorum requirement under the preceding subparagraph" and if the word "however" were inserted at the beginning of the following sentence. That would mean that, for the purposes of the meeting, the Assembly would be deemed to have met with a full quorum, subject to the condition that any decision taken at such a session would be effective only after the postal vote.

3889.2 The question he had raised the previous day concerning negative decisions did not appear to have been covered in the Working Group's text. He would not press the point, however, and would be satisfied with the proposed text if it were understood that the decisions referred to in it would normally be positive ones.

3890. Mr. MAZARAMBROZ (Spain) said that the word "*deliberar*"—which was the Spanish translation of the word "*délibérer*" in the French text—had a legal and technical meaning: namely the possibility to meet, speak and reach agreement on decisions. Consequently, the French text seemed to cover the point that the Working Group had wanted to cover and which would appear in the present provision. The situation where less than one-half but more than one-third of the member countries were represented should not prevent the Assembly from meeting and discussing topics but should prevent it taking any decision until the necessary quorum had been attained.

3891. Mr. MAAS GEESTERANUS (Netherlands) said he thought a solution might be found on the lines of the suggestion made by the Delegate of Israel. There was, however, really no need for the Conference to decide whether the Assembly could deliberate without a quorum. He was sure that other international organizations had the same problem, and he was not aware of any that had as yet tried to solve it. He suggested that international practice should be followed and a simple statement be included to the effect that a quorum existed when one-third of the membership was represented at an Assembly session.

3892. Mr. PISK (Czechoslovakia) agreed entirely with the comments of the Delegate of the Netherlands.

3893. Mr. LABRY (France) asked what would happen if less than one-third of the members of the Assembly were present.

3894.1 The CHAIRMAN replied that in such a case no decision, even of a conditional nature, could be taken. Delegates would be able to meet for an exchange of views which would help to clarify the situation, but they would not be able to take any decision.

3894.2 Moreover, if all delegations were in agreement on the sense of the common portion of the Working Group's proposal, and if there were no ambiguity about the three possible situations envisaged by Mr. Bogsch, that part of the text of the Article could be handed over to the Drafting Committee for revision. He therefore invited the Committee to choose between alternatives A and B.

3895. Mr. RAZAFINDRATANDRA (Madagascar), reminding the Committee of what he had said the previous day, stressed once again how necessary it was for distant countries to be able to make full use of the period allowed them, and expressed himself in favor of alternative B.

3896. Mr. PISK (Czechoslovakia) said that his Delegation preferred Proposal B because it provided that, in the event of a written vote, a decision would become effective only on the expiration of a period of three months. A procedure whereby a decision would become effective as soon as the necessary quorum had been obtained would only cause confusion, since the position would be constantly changing as the votes came in. Three months was not too long a period to wait.

3897. Mr. NORDENSON (Sweden) said that his Delegation, too, preferred Proposal B. He agreed with all the arguments advanced the previous day in support of such a procedure and would not repeat them. There was, however, an additional argument. It was not at all clear how the procedure in Proposal A would work in practice. The Assembly might, for example, meet in a session which was short of a quorum by ten members and take a provisional decision, the Director General thereafter notifying member countries and asking them for votes in writing. If during the first, say, two or three weeks, the Director General received nine replies and, if, on the following day, ten replies arrived at the same time, would he have to choose one of them to make up the necessary quorum, without knowing whether it was affirmative or negative, or would he have to take all ten into account and thus derogate from the provision since the procedure for a postal vote should stop as soon as a quorum had been obtained? The situation would be very complicated and would place the Director General in an extremely difficult position.

3898. Mr. ROGGE (Federal Republic of Germany) said he was in favor of Proposal B for the reasons given during the previous discussion. For reasons of clarity, he proposed that the words "from the date of the communication" should be inserted at the end of the first sentence.

3899. Mr. LABRY (France), Mr. HOFFMANN (Luxembourg), Mr. H'SSAINE (Morocco) and Mr. STANESCU (Rumania) expressed themselves in favor of alternative B.

3900. Mr. HOFMEYR (South Africa) said that, although he would not oppose Proposal B if the majority favored it, he did not find it entirely satisfactory. The procedure proposed would discriminate between countries which participated in an Assembly and countries which did not. He appreciated the difficulties involved in Proposal A, to which the Delegate of Sweden had drawn attention, but there were other factors, too, to be considered. The principle of a postal vote had first been introduced into the Convention in the context of the quorum; the Secretariat had pointed out that it was desirable to speed up the adoption of the budget. There was nothing against a waiting period of three months, but countries represented at an Assembly session should have the same time for reflection as those which were not.

3901. The CHAIRMAN stated that all those delegates who had spoken had opted for alternative B. Hence, unless any delegate asked for a vote, he would consider that the Committee approved alternative B.

3902. Mr. CHAMBERLAIN (United Kingdom) observed that there was nothing in the text to indicate when the period of three months would expire. Would the expiry of the period be the date of dispatch or the date of receipt of a country's vote or abstention? What would

happen if a vote which had been dispatched within the stipulated period reached the Secretariat too late owing to postal delays? He suggested that the Drafting Committee might consider the question.

3903. The CHAIRMAN agreed with the Delegate of the United Kingdom that the Main Committee must decide exactly when the three-month period was to start: from the time of dispatch of communication or from the time of receipt.

3904. Mr. BOGSCH (Deputy Director, BIRPI) said there could be no doubt whatever that the date in question should be the date of receipt.

3905. Mr. MAAS GEESTERANUS (Netherlands) did not agree, as he thought that the distant countries would be placed at a disadvantage. It would be fairer to take the date on which the dispatch of their reply was registered, but even in that case they would be at a disadvantage by comparison with the other countries, because their communication would take longer to reach the Bureau.

3906. Mr. BOGSCH (Deputy Director, BIRPI) said the question raised a number of points of detail which would be clearer in the Rules of Procedure of the Assembly. Moreover, he considered that the period of three months was fully adequate to compensate for the drawbacks mentioned by the Delegate of the Netherlands; thanks to the efficacy of modern means of communication and the speed with which mail was distributed, communications from distant countries would be received within four or five days in any case.

3907. Mr. SHER (Israel) agreed with what Mr. Bogsch had said.

3908. Mr. KRISPIS (Greece), referring to the comment of the Netherlands Delegate, suggested that a vote by cable should be accepted, provided it was confirmed in writing within a reasonable time.

3909. Mr. MWENDWA (Kenya) said he had understood that the period would start, not on the date the decision was taken but on the date the Director General communicated it to member countries. There might be some delay between those two dates. He agreed with the Chairman and Mr. Bogsch that the end of the period should be based on the date that postal votes reached the Secretariat. Even if a communication took seven days, a total of only two weeks of the three-month period would be lost.

3910. The CHAIRMAN said that at the present stage of discussion the Main Committee could not attempt to deal with all the problems raised by the provisions of Article 13(4)(c), some of which would have to be covered by the rules of procedure of the Assembly. Nevertheless, there was nothing to prevent the Committee from including in the text additional details such as the one proposed by the Delegate of the Federal Republic of Germany concerning the date from which the three-month period was to run.

3911. Mr. HOFFMANN (Luxembourg) wondered whether it might not be better to make the period run from the date of the session at which the Assembly had taken the decision which was being communicated to members. This would give an exact date, and it would clearly be the duty of BIRPI to transmit the communication in the shortest possible time.

3912. Mr. BOGSCH (Deputy Director, BIRPI) thought that the proposal of the Delegate of the Federal Republic of Germany was preferable because, under the system advocated by the Delegate of Luxembourg, the decision might, if the worst came to the worst, be communicated to countries after the expiry of the period.

3913. The CHAIRMAN suggested that alternative B should be referred to the Drafting Committee with the request that that Committee should include the amendment proposed by the Delegate of the Federal Republic of Germany.

3914. *It was so decided.*

SETTLEMENT OF DISPUTES (continued): PROPOSED AMENDMENTS TO ARTICLE 27*bis* OF THE BERNE CONVENTION AND PROPOSED INSERTION OF A NEW ARTICLE *(between Article 18 and Article 19)* IN THE PARIS CONVENTION (S/222)

3915.1 Mr. DE SANCTIS (Italy) thought the Committee was not unaware of the position of the Delegation of Italy on this question, as it had already had occasion to take part in a preliminary debate. The Delegation of Italy, as it had already stated, would support any solution advocated for the Berne Convention, even including a separate Protocol, an idea which had been suggested by some delegations. Hence, it approved the solution put forward for the new Article of the Paris Convention by the Delegations of the Netherlands and Switzerland in document S/222.

3915.2 Nevertheless, in regard to the Berne Convention, the Delegation of Italy could not agree to any weakening of the guarantees offered to Union States and to individuals by Article 27*bis* of the Brussels Act in regard to the application and interpretation of the Convention or any weakening as a result of the profound and often obscure changes made to that Convention by the present Stockholm revision.

3915.3 That position, which the Delegation of Italy had maintained unswervingly, was further strengthened as a result of the revision of the substantive clauses of the Berne Convention, not to mention the problem of the Protocol Regarding Developing Countries.

3915.4 In regard to the Paris Convention, the Delegation of Italy accepted the proposals contained in document S/222 and it would even be prepared to accept a separate Protocol. For the Berne Convention, on the other hand, there were two possible solutions: one was to retain the provisions of Article 27*bis* of the Brussels Act while the second, which the Delegation of Italy put forward in order to allay the apprehensions of some countries which were parties to the Berne Convention but could not accede to the Brussels Act because of the clause concerning the obligatory jurisdiction of the International Court of Justice, would be to make certain changes to the wording of the new Article proposed in document S/222. In paragraph (1), for instance, the words "on some other method of settlement" would be replaced by the words "to settle the question by means of arbitration," and in paragraph (2) the words "paragraph 1" would be replaced by the words "the alternative referred to in the previous paragraph."

3915.5 For the Berne Convention, therefore, the Delegation of Italy was anxious that a clear and obligatory procedure should apply to everyone. If a country could not accept the jurisdiction of the International Court of Justice, recourse could be had to arbitration.

3916.1 Mr. MAAS GEESTERANUS (Netherlands) said that, during the previous discussions, the Delegation of the Netherlands had been under the impression that there

was a majority for the compromise suggested by Switzerland and the Netherlands, but the text had not been distributed in time. Following consultations between the Delegation of the Netherlands and some delegations which had not yet made up their minds, it appeared that the text suggested in document S/222 was the most acceptable.

3916.2 The views of delegations were divided between two extreme tendencies. Some wanted to see the Berne Union retain Article 27*bis* as it appeared in the Brussels Act, and were opposed to any weakening of the provisions, including the removal of the regulation into a Protocol providing for the optional settlement of disputes. Others saw no need for the inclusion of a similar article in the Paris Convention and were opposed to any compulsory regulation under that Convention.

3916.3 The Delegation of the Netherlands had been under the impression that the proposal contained in document S/222, both for the Paris Convention and the Berne Convention, was the maximum which certain delegations were prepared to accept in the way of a weakening of the existing regulation, while for others it was as far as they were prepared to go towards the inclusion of a regulation in the Convention. The Delegation of the Netherlands considered, therefore, that the Committee should recommend to the Plenary Assembly of the Berne and Paris Unions, which was to meet the following week, to adopt the proposed text.

3917. Mrs. RATUSZNIAK (Poland) said that, in the prevailing spirit of international cooperation, she would not oppose the Netherlands proposal provided it were valid for both Conventions. Otherwise, her Delegation would have to make a reservation regarding settlement of disputes under the Berne Convention, since it could not accept the provisions regarding compulsory jurisdiction.

3918. Mr. STANESCU (Rumania) said his Delegation would prefer not to see this text inserted in the Paris Convention and would approve the change proposed for the Berne Convention. Nevertheless, in a spirit of compromise, it was prepared to vote for the proposal as a whole.

3919. Mr. MORF (Switzerland) repudiated the idea that the Delegation of Switzerland had abandoned the principle of compulsory arbitration. That was not the case. It would actually have preferred to see a compulsory clause included in the Paris Convention but, as it was well aware that such a proposal would have had no chance of being adopted, the Delegation of Switzerland had assisted in the preparation of document S/222, which it hoped would be accepted both for the Berne Convention and the Paris Convention.

3920. Mr. KRISPIS (Greece) said that, although his Delegation had originally expressed itself in favor of an optional Protocol, it was now prepared, in the prevailing spirit of compromise, to accept the draft in document S/222.

3921.1 Mr. ARTEMIEV (Soviet Union) reminded the Committee that his Delegation had already had occasion to express its views on the question of recourse to international jurisdiction for the settlement of possible disputes between members of the Paris Union, and said that he would now like to spell out these views in detail. It appeared that the majority of delegations considered that this jurisdiction should be of an optional nature, and the Soviet Delegation welcomed the spirit of compromise which had led to that decision.

3921.2 In regard to the question of whether the provisions concerning that jurisdiction should be inserted in the text of the Paris Convention or contained in a separate Protocol, the Soviet Delegation considered that the latter solution was preferable from the practical point of view. On the other hand, it would simplify the procedure for accession to and ratification of the Stockholm Act. Secondly, it would avoid the need for a considerable number of countries to make reservations regarding recognition of an international jurisdiction, which would be the case if those provisions were included in the actual text of the Convention. Finally, recognition of the principle of optional international jurisdiction had the same legal effect whether it was incorporated in a Protocol or written in the provisions of the Convention.

3921.3 Nevertheless, if the majority of delegations preferred that those provisions should be included in the text of the Convention, the Soviet Delegation would support the majority and vote for document S/222.

3922. Mr. LABRY (France) said the French Government regarded as excellent the provision contained in the Brussels Act. In its view, every international convention should contain an arbitration clause which made the settlement of disputes obligatory. Like the Delegation of Italy, the Delegation of France was prepared to see the compulsory jurisdiction of the International Court of Justice replaced by that of a court of arbitration which, in its view, seemed likely to lead to the withdrawal of the reservations made by some countries in regard to the Brussels Act. To judge by some statements which had been made, that had not been the case. In the circumstances, the Delegation of France, while sharing the apprehensions expressed by the Delegate of Italy, was willing to show a spirit of compromise by supporting the proposal in document S/222, while deploring the fact that the principle of the compulsory settlement of disputes had not been maintained.

3923.1 Mr. DE SANCTIS (Italy) reiterated his regrets that the revision of the Brussels Act should have been the occasion for modifying several of its provisions in a manner which was unfavorable to authors and which weakened the guarantees which States should have that the Convention would be precisely applied and interpreted.

3923.2 The Delegation of Italy had already expressed its view on that point but wished it to be duly noted in the summary record of the meeting, so that there should be no misunderstanding, that, while it was prepared to renounce the compulsory jurisdiction of the International Court of Justice, even for the Berne Convention, it must insist on the need for a clause concerning compulsory arbitration. Finally, the Delegation of Italy would take note of the statements made on this subject by those delegations present.

3924. Mr. BOWEN (United Kingdom) said that, during the earlier discussions, he had stated his Delegation's preference for Article 27*bis* as it appeared in the Brussels Act, with a similar provision in the Paris Convention. His Delegation maintained its position but, in the spirit of compromise pervading the whole Conference, would be prepared to accept the compromise in document S/222 because the provision in question was to be included in both the Paris and Berne Conventions. Moreover, the text would meet the position of countries which found it difficult to accept Article 27*bis* as it now appeared in the Paris Convention.

3925. The CHAIRMAN stated that all the delegations apart from the Italian had expressed themselves, with a greater or less degree of enthusiasm, in favor of the compromise suggested by the Delegations of the Netherlands and Switzerland (S/222). The Committee would therefore be able to recommend to the Plenary of the Berne and Paris Unions that this proposal should be adopted.

3926. *The Main Committee approved document S/222 without modification.*

APPLICATION OF EARLIER ACTS: PARIS CONVENTION (*Article 18*) AND BERNE CONVENTION (*Article 27*) (S/265)

3927. The CHAIRMAN invited the members of the Committee to submit their comments on the text adopted by the Working Group of Main Committees II and IV (S/265) and asked Mr. Voyame, the Chairman of the Group, to explain briefly how the text had been drawn up.

3928. Mr. VOYAME (Switzerland) reminded the Committee that the decision had been taken not by the Working Group but by Main Committees II and IV in joint meeting. Those committees, like the Working Group, had devoted long consideration to the question of what texts were applicable by countries of the Union which were not bound by the same text or, in other words, which had not finally ratified the same text. After considering various solutions, the Working Group had come to the conclusion that it was practically impossible to reach agreement on any text other than that of the Brussels Act. Hence, the Group had proposed that Main Committees II and IV should keep to that text, amending it in accordance with the new Stockholm Act. It was that amended text which was before the Committee. His comments concerned Section A of the document only.

3929. Mr. HAERTEL (Federal Republic of Germany) said that the proposed text contained no provision concerning relations between a country which was not a member of the Union but ratified the Stockholm Act and a country which subscribed to the Brussels Act.

3930. Mr. VOYAME (Switzerland) replied that the question had been debated at length in the Working Group, without any result. The Group had finally decided to leave Main Committee IV to solve the problem, in view of the fact that the matter did not concern the Protocol and was therefore outside the competence of Committee II. If Main Committee IV deemed it opportune to take up the discussion again, he would have a solution to suggest to it.

3931.1 Mr. BODENHAUSEN (Director of BIRPI) said he would like to add some details to the comments of Mr. Voyame, the Chairman of the Working Group. It had been agreed in the Working Group and at the joint meeting of Main Committees II and IV that there was always a legal link between all the countries of the Union. Hence, when a new country acceded to the Union, it would have a legal link with all the other countries of the Union, even if the latter were not bound by the latest text which had been ratified by the new country.

3931.2 There was still the question, however, of deciding what text formed the basis for that legal link. The question was not solved in the Paris Convention or in the Brussels Act of the Berne Convention with the result that different countries held different ideas on the subject, France and the United Kingdom in particular. It had been impossible to find a happy mean. It was for that reason that the Working Group, and then the two Main Committees meeting jointly, had decided to maintain the status quo. It would then be for the courts of each country to interpret the Paris and Berne Conventions on that point and decide which text should apply.

3932.1 Mr. VOYAME (Switzerland) said he was not submitting a formal proposal and that he would be prepared to withdraw it if it was likely to give rise to too much discussion. His point of view was as follows: as there was a Union, there must of necessity be a link between the States of the Union, but those States normally applied only those Acts to which they were parties. A new State acceding to the Stockholm Act would apply the provisions of that Act, whereas a State which did not accede to the Stockholm Act but was bound by the Brussels Act would apply the provisions of the Brussels Act. Hence, there would be an imbalance in reciprocity which might be unacceptable to countries granting greater protection.

3932.2 That imbalance could be corrected by allowing a State which was bound by a text granting a greater measure of protection to apply on a particular point—for the protection might be of greater or lesser extent, depending on the points under consideration—the same system of protection granted to it by a State bound by a text providing a lesser degree of protection.

3933. Mr. HAERTEL (Federal Republic of Germany) approved the principle underlying the proposal of the Chairman of the Working Group, which he found eminently reasonable. Nevertheless, the principle of reciprocity ought to be included in the text of the Convention. But the Berne Convention contained no mention of it.

3934. Mr. LABRY (France) thought that, in the absence of any reciprocity clause in the Berne Convention, Union countries would be at a disadvantage by comparison with those countries which acceded to the Stockholm Act. Hence, the Delegation of France supported the proposal to insert in the Berne Convention a provision under which Union States which did not ratify the Stockholm Act would, if they so wished, make use of reciprocity.

3935. Mr. MAAS GEESTERANUS (Netherlands) thought it would be better not to write into the Convention any provision on such a difficult problem. As the Director of BIRPI had indicated, it could be argued that there was no legal obligation to apply any of the Acts of the Berne Convention to a country which was not a party to those Acts. If the United States of America, for example, became a member of the Union through the Stockholm Act, it would not be a party to the same Acts as many other members of the Union which had ratified only the Rome or Brussels Acts. Thus, under a certain interpretation of international law, there would be no legal obligation to apply any of the other Acts to the United States of America. A traditional practice might, however, exist within the Union, and the Main Committee might wish to discuss the possibility of mentioning that practice in the Convention—perhaps in the form of a new rule governing relations after the entry into force of the Stockholm Act. On the whole, however, he felt it would be wiser for the Conference not to try to insert in the Convention provisions concerning existing practices.

3936. Mr. LABRY (France) confessed himself unable to understand the position of the Delegation of the Netherlands. That position might perhaps be very well founded from the point of view of public international law, but it was in flagrant contradiction with the conclusions adopted by the Working Group and by Main Committees II and IV, which the Director of BIRPI had explained. Did the Delegation of the Netherlands really consider it desirable that a country acceding freshly to the Union should have no link in law with the existing members of that Union? The Delegation of France could not subscribe to such an interpretation. The very fact that there was a Union meant that there must be legal links between the countries which were members of that Union.

3937. The CHAIRMAN inquired whether, at the present stage of the debate, the members of the Main Committee intended to submit a concrete proposal, or whether they would prefer to leave States free to apply the provisions of their domestic legislation in the absence of any reciprocity clause.

3938. Mr. VOYAME (Switzerland) said he would be prepared to submit a proposal provided that it did not give rise to long discussion.

3939. Mr. STANESCU (Rumania) said he was not opposed to the submission of a concrete proposal, but he doubted whether it was appropriate to try to settle an extremely delicate problem in the short time available before the end of the Conference. It would be better to leave the matter to the practice and jurisprudence of countries, leaving the problem to be taken up again at a later stage after further study.

3940. The CHAIRMAN shared the views of the Delegate of Rumania. It was unlikely that any text could secure a sufficient majority in the Main Committee. The problem could be taken up again when sufficient information had been obtained from national practice in the case under consideration.

3941. Mr. NORDENSON (Sweden) said he had no objection to the procedure outlined by the Chairman. Strictly speaking, however, the text of document S/265 was not correct, since as a result of the corrigendum to the Paris Convention (S/9/Corr.1), paragraphs (2) and (3) of Article 27 had already been deleted. Consequently, the section A of document S/265 should be amended to exclude the reference to paragraph (2) of Article 27 and section B should be deleted.

3942. Mr. BODENHAUSEN (Director of BIRPI) pointed out that Main Committees II and IV, at their joint meeting, had based their work on the texts of documents S/9 and S/3 and had suggested amendments to those texts; in that connection, the Delegate of Sweden was correct from the formal point of view. The result was the same, however, because it was proposed merely to replace paragraph (1) and to delete two others.

3943. Mr. PARDO (Argentina) remarked that an amendment which he had submitted at the joint meeting of Main Committees II and IV the previous day did not appear to have been incorporated in the text before the Committee.

3944. The CHAIRMAN replied that the amendment submitted by the Delegation of Argentina had been referred to the Drafting Committee and that no provision had been made to consider it in the Main Committee.

3945. Mr. PARDO (Argentina) said that in submitting his amendment he had not said whether he considered it a drafting matter or not. What he had proposed was that for purposes of clarity the words "which are not party to this Act or which, although party to this Act, have made a declaration as permitted by Article 25(1)(b)(i)," in the section C, should be deleted.

3946.1 Mr. VOYAME (Switzerland) said that the Working Group had considered the Argentine amendment to be a drafting amendment and had therefore referred it to the Drafting Committee. The Working Group had thought that the Delegation of Argentina was running counter to the efforts of the Group in seeking to settle not merely the situation of those countries which had not acceded to the Stockholm Act, but also that of those countries which would adhere to that Act, by stipulating that, in either case, the acceptance of the countries would be necessary.

3946.2 In his view, that meant that for countries which acceded to the Stockholm Act, acceptance would be automatic owing to the very fact of accession, and for other countries a declaration would be required like that stipulated in the former Article 25*quater*.

3946.3 The Delegate of Argentina considered that his amendment could be interpreted differently, in the sense that an express declaration would be required in both cases if the Protocol was to be applicable to the works of a country, which would mean that there would no longer be any link between the Convention itself and the Protocol and that the Protocol would therefore not be an integral part of the Convention. Assuming that the amendment could be interpreted in that sense, it would have been rejected by Main Committee II, which had agreed by a substantial majority that the Protocol should be an integral part of the Convention.

3947. Mr. PARDO (Argentina) said that there were two possible interpretations: the one given by the Chairman of the Working Group and the one he himself had given. If it was to be considered as a drafting amendment, he might have to reconsider his position.

3948. Mr. VOYAME (Switzerland) said that the decision of Main Committee II had been taken after the amendment had been submitted.

3949. The CHAIRMAN asked the Delegate of Argentina whether that was his personal interpretation of the amendment; if that was the case, the amendment could not be considered because the vote in Main Committee I had been taken after the amendment was submitted.

3950. Mr. PARDO (Argentina) said that at the time he had submitted the amendment, no substantive decision had been taken and obviously he had been unaware of the result of that decision. His amendment had not been voted on. If, in essence, it ran counter to the result of the substantive vote, he would not press it, provided it was made clear in the minutes that the amendment had been submitted.

3951. *The Committee approved document S/265.*

ACCESSION TO EARLIER ACTS: ARTICLE 28 OF THE BERNE CONVENTION (S/9/Corr.1)

3952. *The proposed amendment to Article 28 was adopted unanimously.*

ACCESSION TO EARLIER ACTS: ARTICLE 16*quater* OF THE PARIS CONVENTION (S/3/Corr.1)

3953. *The proposed amendment to Article 16*quater *was adopted unanimously.*

The meeting rose at 5:25 p.m.

NINETEENTH MEETING

Thursday, July 6, 1967, at 2:30 p.m.

DRAFT RESOLUTION CONCERNING A STUDY ON PRIORITY FEES (continued) (S/266)

3954. The CHAIRMAN invited discussion of document S/266.

3955. Mr. BOGSCH (Deputy Director, BIRPI) drew attention to an error in the draft: the words "International Bureau" should be replaced by the word "Union."

3956. *With that correction, the draft resolution (S/266) was adopted unanimously.*

DRAFT DECISION ON THE CEILING OF CONTRIBUTIONS TO THE PARIS UNION (S/266)

3957. *The draft decision (S/266) was adopted unanimously.*

DRAFT DECISION ON THE CEILING OF CONTRIBUTIONS TO THE BERNE UNION (S/266)

3958. *The draft decision (S/266) was adopted unanimously.*

ASSEMBLY: VOTING (continued) (ARTICLE 13(4)(c) IN THE PARIS CONVENTION; CORRESPONDING ARTICLES IN THE BERNE CONVENTION AND THE WIPO CONVENTION) (S/266)

3959. *The text contained in document S/266 was adopted unanimously.*

ACCESSION TO EARLIER ACTS (ARTICLE 23 IN THE PARIS CONVENTION; CORRESPONDING ARTICLE IN THE BERNE CONVENTION) (S/266)

3960. *The text contained in document S/266 was adopted unanimously.*

MADRID AGREEMENT - MARKS: ADMINISTRATIVE PROVISIONS AND FINAL CLAUSES (S/254)

3961. The CHAIRMAN then invited discussion of document S/254 containing a version of the Madrid Agreement (Marks) revised on the basis of previous decisions of the Committee.

3962. *Articles 1 to 13 were adopted unanimously.*

3963. The CHAIRMAN then invited discussion of Article 14.

3964. Mr. BOGSCH (Deputy Director, BIRPI) pointed out, in reference to paragraph (6), that the system proposed in document S/254 for the Madrid Agreement provided that a country would be able, after entry into force of the Stockholm Act, to accede to the said Act together with the Nice Act of June 15, 1957, whereas the system set out in document S/266 for the Paris Convention appeared to be a different one. In the view of the Secretariat, however, the difference was only apparent; if a country acceded to the Stockholm Act of the Paris Convention and, at the same time, declared that it acceded to the earlier Acts, the Director General of the Organization would take note of that accession, despite the difference of terminology.

3965. Mr. MAAS GEESTERANUS (Netherlands) observed that it would be difficult for his Delegation to accept the amendment of any article of this Agreement or of any other convention if accompanied by an interpretative declaration by the Secretariat.

3966. Mr. BOGSCH (Deputy Director, BIRPI) said that, according to the Stockholm Acts, the Director General was going to be the depositary of the instruments of ratification and accession. For the same situation, two different texts had been adopted or were on the point of being adopted. One of these texts provided that a country may not adhere to previous texts, the other provided that a country may not adhere to previous texts except jointly with adhering to the latest text. The International Bureau would be the future organ in charge of examining whether an instrument of ratification was acceptable or not as the Swiss Government would no longer be in charge of this task. He thought that the report should show that it was the intention of the Director General of the Organization to accept instruments of ratification in respect of the Stockholm Acts which would also refer to former Acts.

3967. Miss NILSEN (United States of America) asked whether it would not be desirable to bring the corresponding text of the Paris Convention into conformity with the text of Article 14(6) of the Madrid Agreement.

3968. Mr. MAAS GEESTERANUS (Netherlands) also wished to raise the same question as that posed by the Delegate of the United States. He further referred to previous discussions where an explanation had been given by one of the Delegates of Switzerland for the reason why it would not be possible to accede to the Stockholm Act and at the same time accept previous Acts. He did not wish to reopen the debate but he merely wished to know whether the Secretariat could retrace, in the Acts of this Conference, any opinions expressed by any delegates showing that it would not be possible to accept previous Acts and the Stockholm Act at the same time. He was of the firm opinion that the Director General of BIRPI would not be free to interpret two Conventions adopted by the same Conference in two different ways. Either the Committee should discuss once more this clause and coordinate both clauses or the Director General would not be in a position to interpret or to read the texts as if they were the same.

3969.1 Mr. DE SANCTIS (Italy) reminded the Committee that it was only after long discussions that the Drafting Committee had reached agreement on the text appearing in document S/266, and that it had based its work on Article 28 of the Berne Convention, which stated that countries could not accede to Acts earlier than the Act in force. That was quite normal, in view of the fact that the later Act replaced the preceding Acts.

3969.2 Having said that, he must make a distinction between accession to earlier Acts and the application of those Acts: a country could not accede to earlier Acts, as they had been replaced by the latest Act; but there was a link between the countries which were bound by the latest Act and those which had not acceded thereto, because all those countries were members of the same Union.

3969.3 Finally, there was nothing to prevent a country acceding for the first time to the Paris Union from making a declaration making express provision for the application of the earlier Act.

3969.4 For those reasons, he favored the retention of the text contained in document S/266 for the Paris Convention and for the Berne Convention.

3970. Mr. LABRY (France) reminded the Committee that the Director of the International Bureau would act as depositary. It was not the function of the depositary to interpret the instruments which he received. Hence the Director would transmit the text of any instrument of ratification or accession. Moreover, as Mr. de Sanctis had said, it was perfectly possible for a State to declare itself bound by the earlier Acts when acceding to the Paris Convention.

3971. The CHAIRMAN asked whether or not the Committee wished to harmonize the text of the Paris Convention and that of the Madrid Agreement on this point. He noted that the Committee did not wish to do so.

3972. *Article 14 was therefore adopted unanimously.*

3973. *Articles 15 to 18 were adopted unanimously.*

MADRID AGREEMENT - INDICATIONS OF SOURCE (S/255)

3974. *The text of the Madrid Agreement (Indications of Source), as set out in document S/255, was adopted unanimously.*

THE HAGUE AGREEMENT (S/256)

3975. *The text of the Hague Agreement, as set out in document S/256, was adopted unanimously.*

NICE AGREEMENT (S/257)

3976. *The text of the Nice Agreement, as set out in document S/257, was adopted unanimously.*

APPLICATION OF EARLIER ACTS (continued): ARTICLE 27(3) OF THE BERNE CONVENTION (S/268)

3977. Mr. MORF (Switzerland) said that the Committee had decided on July 5 to delete paragraph (3) of Article 27 of the Berne Convention. The Delegation of Switzerland proposed that discussion on that question should be reopened and, if the Committee so agreed, that consideration should be given to the drafting of paragraph (3) as contained in document S/268.

3978. Mr. PARDO (Argentina) wished to know exactly what subject was going to be discussed.

3979. The CHAIRMAN pointed out that, under Rule 35 of the Rules of Procedure of the Conference, it was possible to revert to a question which had already been considered. In this case, it was a question of discussing the draft Article 27(3) submitted by the Delegation of Switzerland.

3980. Mr. PARDO (Argentina) asked whether the document submitted by the Delegation of Switzerland referred to the document prepared by the Working Group.

3981. Mr. BOGSCH (Deputy Director, BIRPI) said that the separate document referred to therein had not finally been distributed. Document S/265, containing the proposal to delete paragraph 3 of Article 27 of the Berne Convention, had been adopted. The Delegation of Switzerland had that day submitted document S/268 which proposed that the Committee should go back on its decision to delete the paragraph concerned.

3982. Mr. PARDO (Argentina) said that the Delegation of Argentina supported the Swiss proposal to reopen the discussion.

3983. Mr. LABRY (France) said that the Delegation of France supported the Swiss proposal to reopen the discussion.

3984. The CHAIRMAN, noting that the proposal of the Delegation of Switzerland was supported by two delegations and that no delegation opposed it, said that the Committee would reopen discussion on Article 27(3) at its next meeting.

The meeting rose at 4 p.m.

TWENTIETH MEETING

Friday, July 7, 1967, at 11 a.m.

LISBON AGREEMENT - DRAFT PRESENTED BY THE DRAFTING COMMITTEE OF MAIN COMMITTEE IV (S/258)

3985.1 The CHAIRMAN invited discussion on this draft, which concerned only those countries to which the Lisbon Agreement applied (S/258).

3985.2 No delegation having asked for the floor, a vote was taken, article by article.

3986. *Articles 1 to 18 were approved without change.*

3987. *The text of the Lisbon Agreement, as amended by the Drafting Committee (S/258), was approved as a whole.*

APPLICATION OF EARLIER ACTS (continued): PROPOSAL TO REINTRODUCE A PARAGRAPH (3) INTO ARTICLE 27 OF THE BERNE CONVENTION (S/268)

3988. The CHAIRMAN put before the Committee the proposal of the Delegation of Switzerland (S/268) to reintroduce a paragraph (3) into Article 27 of the Berne Convention.

3989.1 Mr. NORDENSON (Sweden), speaking on a point of order, said that when it had been decided at the last meeting to reopen the discussion on Article 27, his Delegation had understood that, after the Delegation of Switzerland had introduced its proposal in document S/268, the latter would be dealt with in accordance with Rule 35 of the Rules of Procedure. Consequently, after the Delegation of France had seconded the proposal, his Delegation had not opposed it, on the understanding that it would be put to the vote under Rule 35. The Chairman had however ruled that as there was no opposition, no vote would be required.

3989.2 His Delegation and, he believed, certain other delegations, were opposed to the proposal; he urged that before resuming discussion a vote be taken on whether or not the matter should be reconsidered.

3990. The CHAIRMAN said he had reminded the Main Committee on the previous day about Rule 35 of the Rules of Procedure, dealing with reconsideration of proposals which had been adopted or rejected. In other cases, following the work of the Drafting Committee, questions of substance had been reopened when no objection had been raised, and no vote had been taken as required by Rule 35. At the previous day's meeting, he had inquired if there was any opposition. No objections had been raised, and he had concluded from this that no delegate wanted a formal vote.

3991.1 Mr. NORDENSON (Sweden) said the Chairman's question as to whether delegates insisted on the procedure of Rule 35 being applied had passed unnoticed by his Delegation. It felt, however, that, in dubio, the Rules of Procedure should be followed without it being necessary to invoke them, particularly on a procedural matter.

3991.2 Two theories existed regarding the interpretation of Article 27 in the Brussels Act and much time had already been spent debating them. He did not think more time should be devoted to repeating the arguments in support of those theories; he moved that Rule 35 be applied and a vote taken.

3992. Mr. LABRY (France) said that, although paragraph (1) of Article 27, which dealt with relationships between countries of the Union parties to the Stockholm Act, gave rise to differences of interpretation, the same did not apply to paragraph (3), proposed by the Delegation of Switzerland, which merely sought to regulate the relations between countries of the Union and countries outside the Union which might become parties to the Stockholm Act. He therefore disagreed with the view of the Delegate of Sweden concerning the value of discussing the proposal of the Delegation of Switzerland.

3993. The CHAIRMAN said that the Rule 35 of the Rules of Procedure was applicable in regard to the procedural point raised by the Delegate of Sweden. An appeal had been made against the Chairman's decision. As the Delegate of Sweden had invoked application of Rule 35, he (the Chairman) would put to the vote the appeal of the Delegation of Sweden against his decision of the previous day to allow the question to be discussed.

3994. *The appeal by the Delegation of Sweden was rejected by 18 votes against 5, with 11 abstentions.*

3995.1 The CHAIRMAN said that, as the decision taken on the previous day had been confirmed, he would invite discussion on the proposal of the Delegation of Switzerland (S/268).

3995.2 He pointed out that the Delegate of Switzerland had asked that in document S/268 the words: "...the countries party to this Act..." should be replaced by "...countries outside the Union which may become parties to this Act."

3996. Mr. LABRY (France) explained why the Delegation of France supported the proposal. He began by reminding the Main Committee that the successive Acts of a Convention dealt with the same subject, contained a large number of common clauses and established links between all the countries parties to the various Acts. For the Paris and Berne Unions, the existence of a general consensus in regard to certain articles clearly indicated that the States were constituted into Unions. It was therefore quite normal to take account of the links existing between these States. Finally, international law did not rule out exceptions due to domestic law or to contracts and States could not be obliged to ratify or approve international conventions which ran counter to the individual agreements by which they were bound. For those States which might subsequently become members of the Union, every effort must be made, while taking due account of national laws, to establish links in law between the new and old member States. In order to avoid distortions which would have serious consequences for the Unions, it was desirable that the older members should apply those provisions which contained a common minimum of protection. The object of the Swiss proposal was to regulate the relations between old members and new members, while paying due regard to de facto situations.

3997. Mr. HAERTEL (Federal Republic of Germany) endorsed the comments of the Delegate of France and supported the Swiss proposal.

3998. Mr. DITTRICH (Austria) said his Delegation supported the Swiss proposal.

3999. The CHAIRMAN asked whether any of the delegates were opposed to the Swiss proposal.

4000. Mr. NORDENSON (Sweden) said he was opposed to the proposal in document S/268 for reasons already stated. Possibly he had not fully understood the Swiss proposal, but it seemed to him that while it would impose on the new member countries the obligation to apply the Stockholm Act, it would allow those which had acceded to the Brussels Act the possibility of adapting the level of protection. Suppose, on the other hand, that at some stage the Stockholm Act provided increased protection, those acceding to it would not have the possibility of adapting to a possibly lower level of protection provided by the Brussels Act. If that interpretation was correct, he wondered what the justification for the resulting lack of balance was.

4001. Mr. VOYAME (Switzerland) said it was for the countries which were parties to the Brussels Act to adapt their protective measures by bringing them up to the level of the Stockholm Act. In point of fact, the provision contained in Article 27(3) was somewhat theoretical, and all countries would in general apply the latest text which they had ratified or to which they had acceded, but it was essential to allow them the possibility of reducing the level of protection if necessary. As the matter had been discussed at length in earlier meetings, he considered that the discussion could be drawn to a speedy close and a vote taken.

4002. Mr. DE SANCTIS (Italy) asked whether the provisions laid down for Article 27(3) of the Brussels Act ought not to feature in Article 18 of the Paris Convention, which also dealt with the application of earlier Acts.

4003. Mr. BOGSCH (Deputy Director, BIRPI) said that, from the point of view of BIRPI, it was desirable that the same decision should be taken in regard to the Berne Convention and the Paris Convention. In view of the fact that there was very little difference in the level of protection under the various Acts of the Paris Convention, the reciprocity provisions contained in the Swiss proposal were less important for the Paris Union than for the Berne Union. But the fundamental question—whether those countries which were parties to the Stockholm Act only had or had not any links with the countries which were not parties to the Stockholm Act—affected the Paris Convention no less deeply than the Berne Convention. It would therefore be desirable for that part of the Swiss proposal, at least, to be incorporated in the Paris Convention as well.

4004. Mr. VOYAME (Switzerland) expressed his agreement with Mr. Bogsch.

4005. Mr. BOWEN (United Kingdom) said that as the Committee had already agreed to accept Article 31, paragraphs (1) and (2), he would ask the Chairman to rule that the paragraphs already approved be retained and a new paragraph (3) added.

4006. The CHAIRMAN pointed out that there was no question of amending Article 31. The Delegation of Switzerland merely proposed to reintroduce, in modified form, paragraph (3) of Article 27, which had been deleted.

4007. Mr. BOGSCH (Deputy Director, BIRPI) explained that there was some confusion about the numbering of the Articles. The Swiss proposal concerned Article 27: Application of Earlier Acts. At the previous meeting, it had been decided to delete paragraph (3) of Article 27, which had left the Article incomplete. It was now being proposed that a new paragraph (3) be added.

4008. Mr. BOWEN (United Kingdom) said he was satisfied with that explanation. He had noted however that the text proposed for paragraph (3) overlapped somewhat with that of paragraph (2) as already adopted. He suggested that it be referred to the Drafting Committee.

4009. The CHAIRMAN confirmed that the text would be referred to the Drafting Committee when it had been adopted.

4010. Mr. McDONALD (Canada) said he did not think that the last part of the text proposed for paragraph (3) beginning with the words "and allowing it the right..." added anything of substance to the Article.

4011. Mr. VOYAME (Switzerland) reiterated that the purpose of his Government's proposal was to establish links between all the member States of the Union. In order to eliminate any difference between the position of the countries party to the Brussels Act—which gave the widest protection—and that of the countries party to the Stockholm Act—which would provide less protection—countries party to the Brussels Act would be given the possibility of reducing the level of protection granted.

4012. Mr. WEINCKE (Denmark) said his Delegation was opposed to the Swiss proposal for the reasons given by the Delegate of Sweden, namely, the lack of balance which would result if it were adopted.

4013. The CHAIRMAN declared the general debate closed and put the Swiss proposal to the vote.

4014. *The Swiss proposal was adopted by 27 votes to 4, with 6 abstentions, and was referred to the Drafting Committee.*

Introduction of Swiss Proposal (S/268)

4015. The CHAIRMAN raised the question as to whether the principle behind this proposal should be incorporated in Article 18 of the Paris Convention.

4016. Mr. NORDENSON (Sweden) said that as his Delegation was opposed to the principle underlying the proposal, it also opposed its inclusion in the Paris Convention.

4017. Mr. LORENZ (Austria) thought it desirable that this fundamental question should be settled in regard to the Paris Convention. The text proposed by Switzerland, which had just been adopted for the Berne Convention, could not be applied as it stood to the Paris Convention, as it contained a reference to a reservation which concerns the Berne Convention only; that point could easily be cleared up by the Drafting Committee, however. A more serious difficulty was that the Paris Convention and the Berne Convention dealt with different situations. For that reason he proposed that the Main Committee should decide whether or not it was necessary to introduce into the Paris Convention the principle contained in Article 27(3) of the Berne Convention. If it was considered to be necessary, a decision could be taken on the content of the clause, which would then be referred to the Drafting Committee.

4018. Mr. SHER (Israel) said he considered that the principle had no place in the Paris Convention. The Berne Convention contained rules on levels of copyright protection, whereas the Paris Convention dealt with national treatment and questions of priority. He saw no reason why the principle could not be included in the Berne Convention and omitted from the Paris Convention. The matter should not be dealt with hastily.

4019.1 Mr. BOGSCH (Deputy Director, BIRPI) pointed out that Article 27 regulated two questions. One was the adjustment to the level of protection, which, as he had already said, was not very important in the Paris Convention as it stood. In that respect the Delegate of Israel was right. The second, however, concerned the important principle that countries acceding to the Stockholm Act only would be under obligation to apply it to such countries of the Union which were party to earlier texts only. The reader of the Stockholm Act might find it difficult to understand why that second point was regulated only in one of the two Conventions.

4019.2 In reply to the Delegate of Austria, he said that the text would be sent to the Drafting Committee and referred back to the Committee, which could ensure that the wording was suitably adjusted for inclusion in the Paris Convention.

4020. Mr. LABRY (France) thought it would be justifiable to insert this text, if only because of the value of having a provision in the Paris Convention dealing with the relations between the members of the Union and the States which would be parties to the Stockholm Act.

4021. Mr. STANESCU (Rumania), on the other hand, considered the clause to be superfluous. The fact that it had been included in the Berne Convention did not justify its inclusion in the Paris Convention. The argument that it was essential to create a link between all the countries of the Paris Union was not very convincing.

4022. Mr. CURTIS (Australia) welcomed the possibility of settling such a difficult legal problem, which had considerable legal implications for relations between countries, in the text of the Convention. He agreed with the principle that a country becoming a party to the Stockholm Act, though not simultaneously to the Brussels Act, should by that means establish links with the countries of the Brussels Act. The question of establishing a common link had been of concern to the Main Committee, and the Swiss proposal provided a solution. If it was approved in substance, the proposal in document S/268 could be sent to the Drafting Committee.

4023. Miss NILSEN (United States of America) favored inclusion of the substance of the Swiss proposal in the Paris Convention. A provision establishing a link between countries was important; if the substance could be agreed on, the text could be sent to the Drafting Committee.

4024. Mr. MAZARAMBROZ (Spain) agreed with the principle of standardizing in the Convention the relationship between different countries of the same Union. The principle contained in the Swiss proposal and approved for the Berne Convention should be included in the Paris Convention with the necessary changes.

4025. The CHAIRMAN invited the Committee to vote on the principle of inserting in Article 18 of the Paris Convention a clause on the lines of Article 27(3) of the Berne Convention. The Drafting Committee would then be able to prepare a text which would be submitted to the Committee at its next meeting.

4026. Mr. LORENZ (Austria) said that there were various means of establishing a link between the countries of the Union. He wondered whether it was really necessary to build this link into the Convention and make a hard and fast decision forthwith.

4027. The CHAIRMAN thought that the fears of the Delegate of Austria could be allayed if the Main Committee were asked to vote on the principle first of all and then to refer the matter to the Drafting Committee which would submit a text to the Committee.

4028.1 Mr. DE HAAN (Netherlands) thought that the argument adduced by the Delegate of Switzerland on behalf of his proposal did not apply to the Paris Convention, as revised at Lisbon and then at Stockholm.

4028.2 There were two broad lines of approach: to make the wording of the two Conventions correspond as closely as possible, or to incorporate only those clauses which were strictly necessary. He hoped that the application of Article 27(3) would give satisfactory results in regard to the Berne Convention, but it was not possible to foresee all its legal effects. For that reason he would prefer not to see any innovations introduced into the Paris Convention unless they were absolutely necessary.

4029. Mr. SHER (Israel) said that the text of paragraph (3) which it was proposed should be included in the Berne Convention, only prescribed the duties of new members towards the older members of the Union; it did not regulate the duties of those adhering to the Berne Convention by accession to the Brussels Act or of those adhering to the Paris Convention by accession to the Lisbon Act. He did not think the proposal in document S/268 provided a good solution as it did not solve the problem as a whole.

4030. Mr. LABRY (France) said that Mr. de Haan was right in stressing the different situations prevailing in regard to the Paris and Berne Conventions. Nevertheless, quite apart from the question of reciprocity, it would be valuable to establish a legal link between the old and new members of the Union. Moreover, the operation of the principle of assimilating the nationals of each country of the Union to nationals (Article 2 of the Paris Convention) obliged each State to extend the full treatment applied to its own nationals.

4031. Mr. SAVIČ (Yugoslavia) shared the views of the Delegate of the Netherlands.

4032. The CHAIRMAN suggested that the Main Committee should empower the Drafting Committee to submit a text for Article 18 of the Paris Convention similar to the clause which had been inserted in Article 27 of the Berne Convention.

4033. *That proposal was adopted by 23 votes to 6, with 12 abstentions.*

The meeting rose at 12:30 p.m.

TWENTY-FIRST MEETING

Monday, July 10, 1967, at 4:30 p.m.

APPLICATION OF EARLIER ACTS - BERNE CONVENTION (continued) (S/292)

4034. The CHAIRMAN invited consideration of document S/292, which was a draft for a new paragraph (2) of the Article 32 concerning the application of the Stockholm Act of the Berne Convention to the relations between countries acceding to the Union and countries of the Union which were not parties to the Act or which declared that their accession to the said Act did not apply to the substantive provisions.

4035. Mr. SHER (Israel) expressed some doubts as to the drafting of new item (ii) of this article. He asked for some clarification as to which countries this item applied as regards their relations.

4036. The CHAIRMAN said that in his view the provision applied "in the relations" between the two groups of countries referred to in the new paragraph (2).

4037. Mr. SHER (Israel), in the light of the explanations given by the Chairman, agreed that it would be sufficient if such clarification were stated in the report.

4038. The CHAIRMAN stated that, in those circumstances, *the provision contained in document S/292 was unanimously adopted.*

APPLICATION OF EARLIER ACTS - PARIS CONVENTION (continued) (S/291)

4039. The CHAIRMAN invited discussion of document S/291, containing a draft of a new text intended to introduce into the Paris Convention, mutatis mutandis, a clause similar to the one contained in document S/292 for the Berne Convention.

4040. *The provision contained in document S/291 was adopted unanimously.*

DATE OF APPLICATION OF THE PROTOCOL REGARDING DEVELOPING COUNTRIES (S/293)

4041. The CHAIRMAN invited discussion of document S/293, containing a draft of a new Article 25(2) dealing with the application of the Protocol Regarding Developing Countries (Berne Convention).

4042. Mr. SHER (Israel) said that, although he agreed to the proposed draft for Article 25(2)(d) of the Berne Convention, there appeared to be a slight discrepancy in the texts. Under the system adopted under this Convention, which was not similar to the usual procedure, provision was made for the entry into force of the final clauses on a specific date, whereas, generally, final clauses came into force immediately. If this were now the rule, he considered that it would be useful to add to subparagraph (d) that, "notwithstanding other provisions of the Convention," this provision would come into force immediately.

4043. Mr. STRNAD (Czechoslovakia) pointed out that the Committee had decided that the developing countries ought to be able to invoke the Protocol forthwith, and that it had been unable to find any other way of achieving this apart from the clause in question.

4044. Mr. LABRY (France) said that the Delegation of France supported the draft contained in document S/293.

4045. Mr. SHER (Israel) proposed that the following words be added at the beginning of the sentence of subparagraph (d) of Article 25(2): "Irrespective of Article 32." This would clearly indicate that the Protocol would apply immediately.

4046. Mr. BOGSCH (Deputy Director, BIRPI) agreed with the Delegate of Israel's suggestion. In order to indicate clearly that this was an exception to the general rule, he suggested that the following words be added to subparagraph (d): "*Notwithstanding any other provision in this Act*, the Protocol may be applied, ..."

4047. Mr. LABRY (France) and Mr. STRNAD (Czechoslovakia) said they could accept that wording.

4048. Mr. BOWEN (United Kingdom) referred to the Article of the Berne Convention on the entry into force of the Stockholm Act. He was particularly anxious that the amended wording of Article 25(2)(d) should not have any consequential effect on paragraph (3) of Article 32.

4049. Mr. BOGSCH (Deputy Director, BIRPI), in answer to the Delegate of the United Kingdom, observed that his objection, which was entirely valid, also applied to

the text as it now stood without the oral amendment just made. This was a sweeping statement even without the additional wording. If this was considered to be too sweeping a statement, it should perhaps be reviewed now.

4050. Mr. STRNAD (Czechoslovakia) said he understood that Mr. Bowen was raising the question of the effect which the provisions of document S/293 might have on those of document S/292. It had an effect, in the sense that a country outside the Union which became a party to the Stockholm Act (S/292) would be able to apply the Protocol (S/293) forthwith.

4051. Mr. BOWEN (United Kingdom) declared that, provided it was made clear that a country bound by the Brussels Act and which remained bound by that Act, had the possibility of notifying its acceptance of the application of the Protocol, and provided that the new wording of subparagraph (d) of Article 25(2) did not overrule this provision, he was satisfied.

4052. Mr. SHER (Israel) said that in his opinion, Article 32(2) of the Berne Convention would only come into force when the Stockholm Act came into force.

4053. Mr. BOGSCH (Deputy Director, BIRPI) suggested that the problem could perhaps be solved by adding the words "and before its entry into force"; that would imply that an exception was being made to the principle that any rule made in connection with the Convention should enter into force at the same time as the Convention.

4054. Mr. LABRY (France) concurred, but suggested that the phrase should read: "may be applied before the entry into force and as soon as the present Act is signed."

4055. Mr. NORDENSON (Sweden) asked whether Mr. Bogsch's proposal referred to the initial entry into force of the Stockholm Act of the Berne Convention and whether this was to be interpreted as meaning entry into force, with respect to the country which applies the Protocol. If this were not the case, there might be a period after the initial entry into force and up to the time when that country became itself bound by Articles 1 to 20, during which it would not be clear whether it could apply the Protocol or not.

4056. Mr. BOGSCH (Deputy Director, BIRPI) stated that the intention was that it should apply even before the initial entry into force of the Stockholm Act and it therefore applied to both cases. A country could both apply the Protocol before the initial entry into force of the Stockholm Act and also apply it after the Act had come into force among other countries but not as far as its own country was concerned.

4057. Mr. NORDENSON (Sweden) declared that he was satisfied with the explanation given by Mr. Bogsch but had some doubts as to whether the text clearly reflected the situation. There were two concepts involved: the first which was the entry into force of the Stockholm Act itself following the tenth deposit, and the second the entry into force in respect of each country. If all delegates were in agreement on the interpretation just given, this would be satisfactory.

4058. The CHAIRMAN stated that, on that understanding, *the text appearing in document S/293, with the amendment proposed by Mr. Bogsch and Mr. Labry, was adopted.*

DRAFT REPORT OF THE MAIN COMMITTEE IV (S/288)

4059. The CHAIRMAN invited consideration of document S/288, the draft report submitted by Mr. de Sanctis, the Rapporteur of the Committee.

4060. The RAPPORTEUR introducing document S/288, emphasized the fact that it was a very brief report. This was due partly to the fact that the views of the various delegations were reflected in the minutes, so that there was no need to mention them in the report, and partly to the fact that the matters under discussion were not questions of private international law; hence there was no need to include in the report interpretations which, while they might be valuable in the case of disputes between individuals, would be of little value in connection with public international law.

4061. Mr. LORENZ (Austria), referring to paragraph 9 of the report, stated that Austria was in favor of a quorum of one-third. The Delegation of Austria had put forward the proposal mentioned in the report as a compromise, and it would like its own preference to be mentioned too.

4062. Mrs. RATUSZNIAK (Poland) requested that the report should also mention in paragraph 9 that the Delegation of Poland had favored a quorum of one-half.

4063. The RAPPORTEUR took note of the requests made by Mr. Lorenz and Mrs Ratuszniak.

4064. Mr. LAURELLI (Argentina), with reference to the second part of paragraph 8 of document S/288, suggested that, in addition to the Delegations of Madagascar and Senegal, the report should also mention the three countries which made the proposal contained in document S/189. He also suggested that the last sentence of this paragraph be deleted.

4065. The RAPPORTEUR said he would take note of the first point. In regard to the second point, he would redraft the phrase in question, but he could not simply delete it, as it was not an expression of his personal opinion but of the reasons which had led the Main Committee to reject the proposal contained in document S/189.

4066.1 Mr. ROGGE (Federal Republic of Germany) observed that the reference made to the Berne and Paris Conventions in the last sentence of paragraph 7 of the report should only apply to the Berne Convention because the Lisbon Act of the Paris Convention already provided for a Conference of Representatives.

4066.2 He also suggested that in paragraph 10, last but one sentence, the word "Proposals" should read "A proposal" and in the same sentence the words "were rejected" be replaced by "did not receive the required majority."

4067. The RAPPORTEUR took note of those comments.

4068.1 Mr. RIBEIRO (Brazil) asked that the report should include a mention of the discussions about the location of the revision conferences. It had been suggested that they should be held at Geneva and it had been decided that the question should be included in the agenda for the Vienna Conference; that should be mentioned in the report.

4068.2 In addition, the last sentence of paragraph 8, if it was retained, should also include the arguments of the minority.

4069. The RAPPORTEUR took note of those comments.

4070.1 Mr. MORF (Switzerland), referring to the penultimate sentence of paragraph 15, proposed the following wording: "The joint meeting of these two Committees, under the chairmanship of Mr. Voyame, referred the preliminary examination of these matters to a Working Group which submitted ..."; Mr. Voyame had in fact taken the Chair at the joint session and not merely in the Working Group.

4070.2 He also proposed that the following words be added after the phrase "that the countries" in the penultimate sentence of paragraph 17: "not members of the Union but parties to the Stockholm Act..."

4070.3 He also pointed out that in the last sentence of paragraph 22 the words "the permanent committees" should be replaced by "the permanent committee."

4070.4 Finally, he wished to thank the Rapporteur for the opinion which he had expressed under paragraph 23 in regard to the activities of the Swiss Government in its capacity as Supervisory Authority.

4071. The RAPPORTEUR took note of those comments.

4072. Mr. LAURELLI (Argentina), with reference to paragraph 13, said that in his opinion, this sentence did not fully reflect the views expressed and he asked that the principles involved should be clearly stated in the report. The report should also include that his Delegation had asked for the deletion of the system of ceilings. This was a matter of substance and he believed that it should be included in the report for the reference of future conferences of revision.

4073. Mr. BOGSCH (Deputy Director, BIRPI) recalled that in the new system adopted for the Stockholm Act, the system of ceilings would no longer apply.

4074. The RAPPORTEUR pointed out that the report merely stated what had been achieved. Nevertheless, he would be prepared to include Mr. Laurelli's comments.

4075. Mr. BOWEN (United Kingdom) suggested that paragraphs 15, 16 and 17 of the report should reflect some of the main views expressed in connection with the application of earlier Acts. This would be of particular interest for future conferences of revision. In this respect, a clear distinction should be made between the provisions of the Berne Convention and those of the Paris Convention. Whereas there had been little argument in regard to the Paris Convention, there had been conflicting views so far as the Berne Convention was concerned, particularly in regard to the relations between existing member countries of the Union. He recalled that the Committee had decided to retain as Article 27(1) of the Stockholm Act the corresponding text of the Brussels Act. The question of reciprocal relations was a solution propounded in the case of countries which accede to the Stockholm Act and thereby join the Union for the first time. However, there existed a third possibility, namely that of developing countries of the Union, or countries which joined the Union for the first time as developing countries, applying the Protocol to other member countries of the Union. He suggested that the report be amended on these lines.

4076. The RAPPORTEUR said he had planned to complete the report in the light of the discussions which had taken place that morning in the Drafting Committee. He would therefore take account of Mr. Bowen's comments.

4077. The CHAIRMAN said that, as no one else had asked for the floor, *the report was approved, subject to the comments which had been made by the various speakers.*

CLOSING DECLARATIONS BY THE DELEGATIONS OF AUSTRALIA, FRANCE AND THE UNITED KINGDOM

4078. Mr. LABRY (France) made the following declaration on behalf of his Government: "The Delegation of France has accepted the text of Article 32 of the Berne Convention and of the corresponding Article of the Paris Convention, in order to facilitate the work of the Stockholm Conference. It wishes to state, however, that, in accordance with the rules of international law, the Government of the French Republic is required to comply only with those agreements to which France has definitely become a party or which France has decided to apply temporarily in its relations with certain States, by virtue of domestic legislation, provided that, in the absence of any stipulation to the contrary which may have been agreed by France, the other Union member State concerned grants to works of French origin or works created, within the meaning of the Union Conventions, by a French national, a protection which is not less than that granted by French law to works of the same nature."

4079. Mr. BOWEN (United Kingdom) made the following statement: "The Delegation of the United Kingdom considers that under Article 32(1) of the Berne Convention, countries party to the Stockholm Act are entitled to apply that Act in their relations with the other countries of the Union, whether or not they are party to the Stockholm Act. Similarly, the Delegation of the United Kingdom considers that countries of the Union not party to the Stockholm Act are entitled to apply the latest Act to which they are party in their relations with other countries of the Union."

4080. Mr. PETERSSON (Australia) made the following statement: "With regard to the interpretation of Article 32(1) of the Berne Convention, the Delegation of Australia takes the view that Australia is free to apply the provisions of the Stockholm Act in its relations with other member countries of the Union whether or not parties to the Stockholm Act."

SPECIAL AGREEMENTS (S/294)

4081. Mr. HAERTEL (Federal Republic of Germany), introducing document S/294 on behalf of the Committee's Working Group, explained that the purpose of the document was to introduce, *mutatis mutandis,* into the Madrid Agreement (Trademarks) and the Nice and Lisbon Agreements, the provisions which had been included in the Berne Convention (S/292) and the Paris Convention (S/291).

4082. *Document S/294 was adopted unanimously.*

CLOSING REMARKS

4083. Mr. STANESCU (Rumania), speaking on behalf of the Main Committee, congratulated the Chairman on the way in which he had discharged his duties. He suggested that the Main Committee should adopt an oral motion of thanks and praise.

4084. The CHAIRMAN thanked Mr. Stanescu and suggested that the Main Committee should congratulate Mr. de Sanctis, its Rapporteur, on his work.

4085. Finally, the CHAIRMAN and Mr. DE SANCTIS (Italy) thanked the Government of Sweden, the delegates, the Chairmen of the Working Groups and the Drafting Committee, and the Secretariat, for their work.

The final meeting rose at 7:15 p.m.

MAIN COMMITTEE V

Chairman: Mr. Eugene M. BRADERMAN (United States of America)
Secretary: Mr. Arpad BOGSCH (Deputy Director, BIRPI)
Rapporteur: Mr. Joseph VOYAME (Switzerland)

FIRST MEETING

Monday, June 19, 1967, at 9:35 a.m.

OPENING OF THE MEETING

4086.1 The CHAIRMAN stressed the importance of the work of Main Committee V, which was to consider the proposed International Intellectual Property Organization. He observed that problems undoubtedly would arise during the course of the discussions but he was confident that they would be resolved in the spirit of cooperation which had characterized the previous meetings of the Committee of Experts in Geneva. He then drew attention to document S/10, which contained a Draft Convention Establishing the International Intellectual Property Organization (IPO), prepared by BIRPI at the request of the Government of Sweden, and to document S/15, which contained the observations of Governments on the Draft Convention.

4086.2 He reminded the Committee that, in accordance with the provisions of Rule 33 of the Rules of Procedure, proposals for amendments to the Draft Convention had to be submitted in writing 24 hours prior to the meeting at which they were to be discussed. He proposed to consider all amendments already distributed as having been submitted within the prescribed period. He also proposed to exercise leniency in applying the rule to non-substantive proposals, provided no objections were raised.

GENERAL DISCUSSION

4087.1 Mr. CIPPICO (Italy) said his Delegation had some doubts regarding the very complex matter before the Committee. In the first place, the establishment of a new Organization was potentially a very costly operation. His Delegation was fully aware of the great value that IPO would have as a forum for the developing countries and a medium for giving them technical assistance, but thought that, if the existing Unions—which had been criticized in some quarters as being antiquated—were reorganized, they could perform a large number of the functions envisaged for the new Organization. Secondly, despite the safeguards provided under the Draft Convention, his Delegation was not certain that the autonomy of the two Unions would be preserved, or that they would not trespass upon one another.

4087.2 His Delegation would not press its views, however, if there was a large majority in favor of establishing the new Organization.

4088.1 Mr. DE MENTHON (France) recalled that the French Government had not been without hesitation in supporting the idea of replacing the present system of administration of BIRPI by a new and larger body with a structure more akin to that of the modern international organizations. It seemed to him that BIRPI and the Swiss Government, which was responsible for its supervision, had performed their task very competently and efficiently, in spite of the small means at their disposal. The Delegation of France wished to pay tribute to their outstanding achievement.

4088.2 The French Government was particularly apprehensive that the new Organization might be unwieldy, both in its mechanisms and in its financial consequences, and that such a complex structure would not afford the Unions, which had given proof both of their vitality and their personality, all the guarantees necessary for the protection of their independence and their purpose. In consideration, however, of the fact that a number of Union countries appeared to favor the establishment of an International Intellectual Property Organization, and since in its opinion, the present proposal represented a considerable improvement on previous proposals, the French Government had finally accepted the principle of the establishment of IPO, subject to the express reservation that certain provisions contained in document S/10 would be amended.

4088.3 As the observations made by France in document S/15 indicated, the attitude of the Delegation of France in the debates which were about to open would be essentially concerned with three problems: on the one hand, to maintain the system of protection of intellectual property which the Paris Union and the Berne Union had progressively established, and which the French Government believed to be essential for the economic and cultural progress of all countries regardless of the extent of their development, and, on the other hand, to ensure that the independence and special role of each Union and hence the equality of the Unions should be fully respected. Finally, a clear distinction should be made, in their accomplishment, between the two tasks incumbent on the Organization—administrative coordination among the Unions, and promoting the protection of intellectual property throughout the world—and, consequently, the respective functions of the General Assembly and of the Conference should be clearly defined as any confusion between the two tasks might well endanger the fundamental objective, which was, and should remain, the protection of intellectual property.

4089.1 Mr. GARCÍA INCHAUSTEGUI (Cuba) observed that the Committees's task was a complex one requiring a knowledge of previous definitions. Since the drafting of the United Nations Charter, international legislation had been trying to establish that the main objective of international charters, conventions and agreements was international cooperation for the benefit of those most in need of it, namely, the developing countries. Yet, underdevelopment and threats to international peace and security, which had been the main concern of international legislators in recent years, had not disappeared, but dominated the present-day world.

4089.2 Although the provisions in the United Nations Charter and in the constitutions of the Specialized Agencies and other international organizations had become a dead letter, and the developing countries were still as backward as they had been before the war, the very mention of the developing countries in those instruments was a recognition of the desire of millions of human beings for a better life. But the reference to the developing countries in the Draft Convention was concerned merely with legal assistance and ignored the sphere where even more valuable aid could be given to such countries.

4089.3 One of the most serious gaps between the developed and the developing countries was the technological gap. The Prime Minister of Cuba had described the plight of the developing countries, which, without any technological knowledge, had to face the task of building technical schools, technological institutes, and schools for all levels of education; and had to start training hundreds of thousands of skilled workers and technicians in order to overcome centuries of poverty and backwardness. It was an impossible task when every penny had to be spent on buildings, factories, and material needs.

4089.4 The Government and people of Cuba believed, as their leader had proclaimed, that all technical knowledge was wealth to which the whole of humanity was entitled—especially those who had suffered the greatest exploitation. All developing countries had the right to all the technical knowledge ever published in the world. Much of the wealth of the advanced countries had been acquired from colonial rule; developed countries had developed at the expense of the now developing countries. International regulation of access to knowledge and technology was the only way of bridging the gap.

4090.1 Mr. TAKAHASHI (Japan) said that, in principle, his Government considered that there was a need for an organization of the kind proposed, to provide common administrative organs for existing and future intellectual property Unions and to improve and modernize their administration. His Government would support the proposals in the Draft Convention, with two provisos.

4090.2 In the first place, it hoped that every effort would be made to coordinate the functions of IPO with those of UNESCO, in view of UNESCO's important work as the administrative organ of the Universal Copyright Convention.

4090.3 Secondly, while it was essential to preserve the autonomy of the existing Unions, it was important to ensure that IPO would be a forum for countries which were not members of them.

4091. Mr. VAN BENTHEM (Netherlands) said that his Government fully agreed with the principle of the proposal to create IPO. The proposed Organization would be a useful instrument for coordinating the work of existing Unions and, in particular, for promoting the protection of intellectual property by enabling countries which were not members of the Unions to participate in discussions. His Government regarded the latter point as so important that it would have been prepared to support the more far-reaching proposals contained in the 1964 draft. As his Government had taken part in the preparatory work, it had no particular observations on the Draft Convention.

4092.1 Mr. KRIEGER (Federal Republic of Germany) welcomed the proposal to modernize the administrative structure of the Paris and Berne Conventions and to establish an International Organization for the Protection of Intellectual Property. It was time to adapt those Conventions to new requirements of international law. Their long tradition and proven success made them a suitable basis for building the new Organization, and would ensure continuity of activity and avoid duplication of work by a number of organs.

4092.2 The International Intellectual Property Organization which would result from adoption of the proposed Draft Convention would provide only a minimum solution. He would have preferred a solution on the lines of the 1964 draft, which would have given the new Organization more independence of action and would have integrated the existing Unions more closely in it.

4092.3 However, in order to help the Conference to produce results acceptable to all the countries concerned, and bearing in mind that a number of participants in the preparatory work had had different views, his Delegation would, in principle, accept the proposed solution as a compromise.

4093. Mr. WINTER (United States of America) said that his Government supported the establishment of the proposed IPO. An international organization concerned with protection was desirable, and the creation of a framework for administrative coordination was long overdue. There was no basis in law for coordination in either the Paris or Berne Conventions in their present form. The basic administrative structure had changed very little since the 1880s. His Delegation had supported the idea of a Conference with non-Union participation, believing that it would promote better understanding of the basic principles of the protection of intellectual property. He was sure that the problems that would inevitably arise would be solved if they were approached in a spirit of cooperation.

4094.1 Mr. BÉNYI (Hungary) stressed the historic importance of the Committee's task and said that the proposed new Organization was designed to work for the whole world, including those States which were not yet members of any of the intellectual property Unions, namely, the developing countries. The aim was to adapt the Unions so as to provide better coordination between them and to broaden their international representation. Consequently, his Delegation considered that the principal objective of the new Organization should be to further the efficient protection of intellectual property and the rights of authors throughout the world, to harmonize national laws, and to give legal-technical assistance in the sphere of intellectual property to those countries requesting it.

4094.2 The successful accomplishment of that task would depend on the universal character of the Organization. In the interests of protecting intellectual property on an international scale, that universal character was of concern to any country party to the existing instruments. In deciding on future action in the sphere of intellectual property, there could be no going back on the conditions of the Paris and Berne Conventions which permitted countries to accede at their own request. Any objection to the principle of universality could have only purely political grounds as a basis. All countries interested in intellectual property must gather together in the new Organization; no political problem could possibly arise, for the countries taking part in the present Conference did not necessarily have diplomatic relations with one another, nor could such relations be a legal consequence of their participation. His Delegation believed, therefore, that the absence of the German Democratic Republic, which belonged to intellectual property Unions and applied their instruments in its territory, was detrimental to the Committee's work.

4094.3 The Conference was noteworthy in being the first to be attended by representatives of many new countries whose contribution was vital to the new Organization. The famous dictum of Pliny—*Ex Africa*

semper aliquid novi—was valid for the developing countries. The new Organization was of vital importance to them, and the injection of new blood would help the new Organization to achieve its universal aims.

4094.4 His Delegation intended at a later stage to make a number of proposals, one of them being for the abolition of two categories of membership as proposed by the Working Party. The Convention should recognize only Members and should exclude the idea of associates, since a system of first-class and second-class Members might lead to difficulties. Similarly, the establishment of duplicate forums—the General Assembly and the Conference—would be cumbersome, complicated and costly, even if they met concurrently.

4095. Mr. QUINN (Ireland) welcomed the proposals for modifying and coordinating administrative machinery. Subject to observations on matters of detail, his Delegation and Government accepted the proposals in document S/10 for establishing an Intellectual Property Organization.

4096.1 Mr. MAKSAREV (Soviet Union) expressed his thanks to BIRPI and its collaborators and experts who had prepared proposals for establishing a new Organization for the protection of intellectual property. The Delegation of the Soviet Union approved it in principle and considered that its objectives should be as follows: on the one hand, to promote the idea of the protection of intellectual property throughout the world, to strengthen all forms of international cooperation in that field, to enable the largest possible number of countries to adhere to the existing Unions so as to consolidate and improve the functioning of those Unions, and finally to coordinate the efforts undertaken in the field of international law as regards the protection of intellectual property. Furthermore, its purpose should be to help the developing countries more particularly to establish the present system of protection of intellectual property, so as to contribute to their economic development and strengthen their independence. Lastly, it would be desirable that the new Organization should acquire the status of a Specialized Agency of the United Nations, the purpose of which was to promote international understanding.

4096.2 The Delegation of the Soviet Union noted with satisfaction that the Draft IPO Convention took several of those principles into account. Furthermore, it drew the attention of the Committee to the question of countries' participation in the new Organization, which would certainly call for most careful consideration, as the principal problem to be solved was to enable the largest possible number of countries to become full Members of the new Organization, which should have a universal role.

4096.3 Like the Delegation of Hungary, Mr. Maksarev deplored the absence of a Delegation from the German Democratic Republic, which was thus deprived of the right of expressing its views with regard to the establishment of IPO.

4097.1 Mr. OSSIKOWSKI (Bulgaria) recalled that Bulgaria, which had been a member of the Paris Union for more than 40 years, duly appreciated the advantages which the Convention for the Protection of Industrial Property ensured for member States, and said that it welcomed any new improvement in that field.

4097.2 After examining the Draft text of the Convention establishing IPO, the Delegation of Bulgaria had duly noted the fact that the purpose of the new Organization was to help to promote the protection of intellectual and industrial property, and to contribute to the solution of problems relating thereto. Its essential purpose should also be to extend to other countries, especially the developing countries, the same system of protection, through the systematic grant of legal-technical assistance. Any country should have the right to become a Member of the Organization, on the sole condition that it recognized and respected the principles of the Convention.

4097.3 While supporting in principle the establishment of the new Organization, the Delegation of Bulgaria reserved the right to submit observations on certain articles of the proposed Convention.

4098.1 Mr. KŘÍSTEK (Czechoslovakia) said that his Government greatly appreciated the advantages which the new Organization might bring, and the progress that it represented as regards the protection of intellectual property throughout the world. Apart from the modernization of the two principal Unions, the Delegation of Czechoslovakia hoped that the new Organization would make it possible to solve a number of problems still outstanding such as, for example, those relating to patents.

4098.2 The Delegation of Czechoslovakia also noted with satisfaction that legal-technical assistance to the developing countries was among the immediate objectives of the new Organization, and wished to draw this to the attention of all countries that could contribute to it. While the BIRPI Draft satisfied most requirements, it would be highly desirable for the new Organization to be accessible to all countries which wished to become Members and which were prepared to accept the conditions imposed by the Convention, on an equal footing.

4098.3 The Delegation of Czechoslovakia also considered that the autonomy of the Unions should be strictly respected within the framework of the proposed Organization.

4099.1 Mr. SABA (UNESCO), at the invitation of the Chairman, said that the Secretariat of UNESCO had examined with great interest the proposals to set up a new intergovernmental organization to deal with intellectual property and appreciated the opportunity of taking part in the work of the Stockholm Conference on this important matter.

4099.2 Since its foundation, UNESCO had always worked in close cooperation, in matters of copyright, with the United International Bureaux for the Protection of Intellectual Property. The Director-General of UNESCO, who attached the greatest importance to this cooperation, sincerely hoped that work would continue with the new Organization proposed in the spirit of existing arrangements with BIRPI. Therefore, to the extent that the Draft IPO Convention aimed at modernizing the administrative framework of the Paris and Berne Unions and their common Secretariat, UNESCO had no observations to put forward, only wishes.

4099.3 From the Draft Convention contained in document S/10 it appeared, however, that it was intended not only to reorganize the structure of BIRPI but also to give the new Organization that was to succeed it a much wider competence than it was at present accorded.

4099.4 The fundamental aim of the proposed organization was: "to constitute the framework for the general promotion of the protection of intellectual property, on a world-wide basis, that is, also for and in the States which are not yet members of any of the existing intellectual property Unions."

4099.5 This objective was reflected in the functions of the new Organization, the main ones being: (i) to encourage the conclusion of new conventions, agreements or treaties relating to intellectual property; (ii) to

promote the adoption of measures to improve the protection of intellectual property throughout the world and to standardize national legislation in this respect; (iii) to offer its cooperation to countries requesting legal-technical assistance with respect to intellectual property.

4099.6 Furthermore, Article 3 of the Draft provided that the new Organization might assume or participate in the administration of conventions, agreements and treaties relating to intellectual property other than those already administered by BIRPI, on the request of the competent organs established by such conventions, agreements or treaties. The legal bearing of this provision might be questioned. In the case of the Universal Copyright Convention, for example, would the letter of this text imply that the Intergovernmental Committee established by Article XI of that Convention to study the problems of its application and operation could decide by a simple majority of its members to transfer to the new Organization the administration of that Convention, which was at present assumed by UNESCO? This would amount to accepting that a mere six or seven States would have the power to alter a decision adopted unanimously at the Geneva Diplomatic Conference of 1952 and confirmed by UNESCO's General Conference and to adopt a measure that would be binding on the 55 States at present parties to that Convention. It was obvious that such a result would be in flat contradiction with the general principles of law that any legal act shall be amended only by an act reversing it, that is, by the contracting parties unanimously.

4099.7 However, apart from the strange legal procedure that it proposed for revising international texts that had been concluded and ratified, without States parties to them being consulted, Article 3 of the Draft Convention establishing the International Intellectual Property Organization gave food for thought, because it seemed clear that it must be interpreted as a claim to exclusive competence by the new Organization in matters of intellectual property. If such were indeed the intention of the authors of the Draft Convention, this claim would have to be given very close consideration, for it would be a matter of exceptional, even grave, importance.

4099.8 The protection of intellectual property could be viewed from very different angles. It could be inspired by principles that could not be altogether identical, and were the ultimate aims of some of its originators should not be forcibly restricted.

4099.9 As indicated by the title, "Objective and Functions," of Article 3 of the Draft Convention establishing IPO, it should be pointed out that while the functions were in the plural, the objective was in the singular. The objective of the Organization to be established was to promote cooperation among States in the protection of artistic, literary and scientific property, and also of industrial and commercial property.

4099.10 While, then, a wide measure of protection was to be provided, ranging from literary works to scientific discoveries, industrial patents and commercial designations, the objective to be pursued was limited to such protection.

4099.11 The authors of the proposals to establish IPO advanced this limitation and consequent specialization as a reason—Mr. Saba was referring, in particular, to paragraph 50 of the Commentary on Article 4—for not allowing other organizations, not specialized in intellectual property matters, to deal with those questions, which would thenceforth be the sole responsibility of the new Organization.

4099.12 Others might well think that the Organization's specialized and limited objective and functions should not be used as an argument in support of any claim to sole responsibility. It was possible to take a wider view, bringing in broader preoccupations, of the protection of the moral and material rights of creative workers, and it should be possible to assume responsibilities with respect to such protection as well as with respect to the promotion of education, science and culture.

4099.13 This, in fact, was the view—shared by UNESCO—of the Universal Declaration of Human Rights and of the International Covenant on Economic, Social and Cultural Rights, which was unanimously approved on December 16, 1966, by the 120 States composing the United Nations General Assembly, concerning the protection of the moral and material interests resulting from any scientific, literary or artistic production.

4099.14 Under Article 27 of the Universal Declaration of Human Rights and Article 15 of the International Covenant on Economic, Social and Cultural Rights, such protection was only one aspect and one part of a wider right that it was commonly agreed to call the right to culture, though this was only a very imperfect definition of what was meant. To define it more fully, Mr. Saba read the actual terms of Article 15, which, adopted only a few months before by all the Members of the United Nations, conveyed well the consensus of the international community on the conception that should prevail:

"1. The States parties to the present Covenant recognize the right of everyone:
(a) To take part in cultural life;
(b) To enjoy the benefits of scientific progress and its applications;
(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States parties to the present Covenant to achieve the full realization of this right [the sole right comprised in the three items described in paragraphs (a), (b) and (c) above] shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and cooperation in the scientific and cultural fields."

4099.15 This unanimous view of the Members of the United Nations that the right of the creative worker was a particular aspect of the right to culture was indeed the one that had always guided and must continue to guide UNESCO's activities in those fields.

4099.16 From the start of the work of the Preparatory Commission that met in London in November 1945, it had been apparent that one of the fundamental tasks of the new United Nations Specialized Agency for education, science and culture was to promote international cooperation in every sphere of intellectual activity. It was entrusted with this task by its founder States: the Constitution of the Organization expressly provided that UNESCO should encourage cooperation among the nations in all branches of intellectual activity by collaborating in the work of advancing the mutual knowledge and understanding of peoples and by recommending such international agreements as might be necessary to promote the free flow of ideas by word and image.

4099.17 The General Conference of UNESCO had constantly given proof of its interest in copyright matters by assigning to UNESCO a program in this field, which was essentially to ensure the universality of the principles of legal and moral protection by encouraging international standardization of measures affecting intellectual rights.

4099.18 The Organization saw three imperatives in this mission: (i) the imperative of a strictly universal conception of its action, as the Organization had a universal mission, since the very terms of its Constitution defined its fundamental task as being to further universal respect for human rights, while its Member States, numbering 121, represented every part of the world; (ii) the imperative of implementing human rights as they were defined in the Universal Declaration, particularly in Article 27, and in Covenants, especially under Article 15 of the International Covenant on Economic, Social and Cultural Rights; (iii) the imperative of furthering education, science and culture, which implied that questions of copyright should not be considered in isolation and solely from the legal viewpoint, but in close relation with any other technical, economic, social or political measure designed to achieve the two aims of preserving the integrity and meaning of creative works and of securing their dissemination and assimilation.

4099.19 It was therefore UNESCO's function, in accordance with its own aims and the mission entrusted to it, to ensure the implementation of cultural rights and, more particularly, of copyright. The responsibilities that it assumed in this respect in accordance with its Constitution could not be surrendered.

4099.20 This recapitulation had seemed necessary in view of the contradictions that might arise between UNESCO's activities and those of the proposed new Organization, if the administrative reorganization of BIRPI, as it existed at present, were to serve as the basis for an extension of the functions of that Organization and a claim to exclusive competence.

4100.1 Mr. SHER (Israel) said that his Delegation was in favor of the proposals for establishing the Intellectual Property Organization, subject to certain modifications already indicated by his Government and shown in document S/15.

4100.2 He pointed out that it would be difficult for the Committee to reach conclusions in respect of the question of administration without knowing the results of the work of Main Committee IV.

4101. The CHAIRMAN said that the Secretary would endeavor to keep the Committee informed of the relevant decisions in Main Committee IV.

4102.1 Mr. GABAY (United Nations) said that there was great scope for cooperation between the United Nations and IPO, especially in assistance to the developing countries. He hoped that the fruitful cooperation which existed between the United Nations and BIRPI would continue to operate within the new Organization.

4102.2 The subject area in which the new Organization would operate was covered largely by those in which the United Nations and the Specialized Agencies were competent. But, while the organizations of the United Nations system would focus their activities on the general problem of economic and social development, IPO would be concerned with its own specific subject. The continued cooperation between the United Nations and IPO would provide a good opportunity for strengthening technical assistance to the developing countries in the sphere of industrial property.

4103. Mr. EKANI (African and Malagasy Industrial Property Office (OAMPI)) noted with satisfaction the unanimous decision of the countries represented at the Conference to establish the proposed new Organization. The member States of OAMPI considered that Organization to be a desirable and necessary instrument. It nevertheless appeared from the statements by delegates and from the reference documents before them that the objectives assigned to that new Organization were both numerous and complex. He considered, therefore, that it was essential to differentiate well beforehand between those objectives, as otherwise the very purpose of the proposed Organization might well be endangered.

4104. Mr. KEMPE (United Nations Industrial Development Organization (UNIDO)) said that UNIDO was a new Organization and had come to the Conference primarily to listen and not to speak. It welcomed the opportunity to participate in the Conference and believed that an international protective system for patents, trademarks, copyrights, and industrial designs, was vital in the transfer of proprietary information from the industrialized to the developing countries. In this context, UNIDO welcomed the coming into being of an Intellectual Property Organization. UNIDO under the direction of the United Nations Industrial Development Board, had the role of coordinating industrial development technical assistance within the UN system. It felt there was a great deal to be done in developing industry throughout three-quarters of the world and that there was more than enough for everyone to do.

ORGANIZATION OF WORK

4105. The CHAIRMAN suggested that the Committee should consider the proposed Draft Convention in detail, together with the relevant amendments proposed by Governments.

PREAMBLE
(S/85, S/113, S/119 and S/128)

4106. Mr. STANESCU (Rumania) said that the Rumanian Government approved in principle the establishment of an Intellectual Property Organization. The idea behind the amendment to the Preamble of the Convention (S/85) proposed by his Delegation was that it was not sufficient to proclaim immediate objectives of an administrative and technical character; it was also necessary to take into account the most remote purposes, which would have long-term repercussions at the human level. It was a question in the present case of better understanding and cooperation among peoples.

4107. Mr. LORENZ (Austria) said that the amendment submitted by his Delegation (S/113) was concerned purely with drafting. He submitted it for consideration by the members of the Committee without insisting that it be put to the vote. The Delegation of Austria considered that the necessity of modernizing the administration of the Unions and of making them more efficient, submitted as one of the primary tasks of the new Organization, did not justify its establishment, and that it would be possible to satisfy these requirements by creating new organs for each Union separately. Furthermore, as regards modernization, the objectives of the proposed Organization should include coordination among the Unions, especially since they would be administered by a joint Secretariat.

4108. Mr. WINTER (United States of America) introduced the United States amendment in document S/119. His Government considered it sufficient to state the aims of the Intellectual Property Organization and unnecessary to state the means of achieving them, since the latter were set out in other provisions of the Convention.

4109.1 Mr. DE SANCTIS (Italy) was of the opinion that the amendments to the Preamble proposed by the various delegations raised purely drafting points and it was therefore for the Drafting Committee to evolve a formula which would satisfy everybody.

4109.2 The proposal of the Delegation of Italy (S/128) which was also concerned with drafting, was designed to draw a clear distinction between the objectives proper to each Union by specifying the respective fields of each of them, namely on the one hand, the protection of industrial property and, on the other hand, the protection of literary and artistic works.

4110. Mr. DE MENTHON (France) said that the Delegation of France was, in principle, in favor of the proposal by the Delegation of Rumania and that it approved the drafting amendment proposed by the Delegation of Italy, but it was more hesitant as regards the proposals of the Delegations of the United States and Austria. He considered, like the Delegate of Italy, that only drafting questions were involved.

4111. Mr. AZABOU (Tunisia) said that, after having studied the amendments proposed by the Delegations of Rumania, Austria, the United States, and Italy, the Delegation of Tunisia preferred to keep to the text contained in document S/10 because, in its opinion, it was a better reflection of the objectives allocated to the future Organization.

4112. Mr. SHER (Israel) supported the United States amendment.

4113. Mr. SCHOEMAN (Republic of South Africa) supported the Italian and United States amendments, subject to deletion of the words "in particular ... developing countries" at the end of the Preamble. He suggested that the two amendments should be combined by the Drafting Committee.

4114. Mr. VAN BENTHEM (Netherlands) said he would prefer the Austrian amendment combined with the United States amendment. He suggested that the two should be referred to the Drafting Committee.

4115. Mr. TRUCKENBRODT (Federal Republic of Germany) considered that the Rumanian proposal referred to principles of international law and international cooperation on which everybody was apparently agreed, but those principles were the result of a choice and, on that account, the proposal needed to be examined more closely. Furthermore, the meaning of the expression "mutual advantage" did not seem very clear to him, but he saw no objection to submitting the proposal concerned to the Drafting Committee on the condition that all delegations should have the right to revert to it and to supplement the wording if necessary.

4116. Mr. MAKSAREV (Soviet Union) supported the proposal of the Delegations of Rumania, which seemed to him entirely satisfactory. He would like the Drafting Committee to base the Preamble on the proposals submitted by the Delegations of Rumania and the United States.

4117. *It was agreed, on a show of hands, to instruct the Drafting Committee to redraft the Preamble on the lines of the Rumanian amendment (S/85), taking into account the Austrian, Italian and United States proposals.*

ESTABLISHMENT AND ORGANS: *Article 1*[1] *(S/120)*

4118. Mr. WINTER (United States of America) introduced his Delegations's amendment (S/120). Since it related merely to a drafting question, he suggested it be referred to the Drafting Committee.

4119. Mr. PÁLOS (Hungary) reserved the right to return to the list of organs specified in Article 1 and to submit a proposal on the subject at a later date.

4120. Mr. MORF (Switzerland), referring to the footnote to Article 1, said that he preferred "World" to "International."

4121.1 The CHAIRMAN said that, in the absence of any objection, he would assume that the Committee agreed that the United States amendment should be referred to the Drafting Committee.

4121.2 As for the Delegation of Switzerland's proposal, he would suggest that the matter be deferred until the Committee had discussed the Draft Convention further and had had an opportunity to see which word was more suitable.

4122. *It was so agreed.*

DEFINITIONS: *Article 2* *(S/117, S/121 and S/122)*

4123. Mr. DE MENTHON (France) said that the proposal of his Delegation concerning Article 2(vii) (S/117) had two aspects. The first was concerned with drafting and was of a legal nature: it proposed replacing the words "and any other convention, agreement or treaty" by the words "and any other international undertaking." The other aspect was designed to make the text more precise by incorporating the idea that the international undertakings the administration of which might be assumed by the Organization should be undertakings designed to promote the protection of intellectual property, particularly since the States party to these international undertakings would, by virtue of Article 6 of the Draft (S/10), be called to attend the General Assembly.

4124. Mr. WINTER (United States of America) drew attention to two amendments submitted by his Delegation. The first, contained in document S/121, had been submitted because his Delegation considered that the reference to the Secretariat would be more appropriate in Article 9. The second, contained in document S/122, dealt with a matter of drafting.

4125. Mr. BÉNYI (Hungary), referring to item (vii), suggested that the Drafting Committee's attention should be drawn to the fact that, whereas all the instruments referred to in the Draft Convention and the Unions were defined, there was no definition of "Special Union."

4126. Mr. TROTTA (Italy) referred to the observations of the Italian Government contained in document S/15 according to which it would be appropriate to insert in Article 2 a definition of the expression "intellectual property." That definition, outlined in paragraph 34 of the Commentary on Article 1 (S/10), was difficult to establish. It must nevertheless be included in a Convention with the specific purpose of protecting intellectual property. The Delegation of Italy was prepared to combine its efforts with those of other countries in finding a satisfactory formula.

4127. The CHAIRMAN suggested that if the Delegate of Italy wished to make a formal proposal he should submit it in writing.

[1] Unless otherwise specified, all Article references in the captions are to S/10.

4128. Mr. SHER (Israel) asked if his Government's drafting proposal in document S/15 could be drawn to the attention of the Drafting Committee.

4129. The CHAIRMAN replied that, in accordance with Rule 33 of the Rules of Procedure, any proposal for amendment would have to be submitted in writing.

4130. *It was agreed to refer Article 2, together with the amendments proposed in documents S/121 and S/122 and made during the discussion, to the Drafting Committee.*

OBJECTIVE AND FUNCTIONS: *Article 3 (S/116, S/123 and S/129)*

4131.1 Mr. DE MENTHON (France) remarked that in reading Article 3 it had seemed to him that there was some confusion between the two objectives assigned to the Organization, namely, on the one hand, the objective of administrative coordination among the Unions and, on the other hand, the objective of promoting the protection of intellectual property. The distinction was, however, drawn in the Preamble. The purpose of the French proposal concerning Article 3(1) (S/116) was to express more clearly the two tasks of the Organization by dividing the said paragraph into two subparagraphs which approximately reproduced the terms of the Preamble.

4131.2 The enumeration given in paragraph (1) would doubtless give rise to a discussion as to whether such enumeration was necessary or not. In the case of its being maintained, the Delegation of France suggested that it be preceded by the words "in particular" since it was impossible to define at the present stage all the fields which would be subject to the régime of the protection of intellectual property.

4132. Mr. WINTER (United States of America) introduced the amendment submitted by his Delegation (S/123) and drew attention to an omission: the wording after item (vi) of paragraph (1) in the BIRPI text should be added at the end of the wording proposed by his Delegation.

4133. The CHAIRMAN pointed out that item (v) of paragraph (1) of the United States amendment referred to persons. He suggested it might be reworded, "the protection of performances ..." to bring it into line with wording used in the other items.

4134. Mr. WINTER (United States of America) concurred.

4135. Mr. CIPPICO (Italy) introduced his Delegation's amendment (S/129). The wording it proposed would have the advantage of replacing an over-complicated and confusing list by a clear simple statement of the Organization's objective.

4136. Mr. MAKSAREV (Soviet Union) and Mr. MARINETE (Rumania) supported the amendment proposed by the Delegation of the United States (S/123). It was, in fact, more correct and more in conformity with the purpose of the Organization that the provisions of the text should refer to the work protected rather than to persons.

4137. Mr. OSSIKOWSKI (Bulgaria) thought that in Article 3(2) the order of the functions which would devolve upon the future Organization should be changed so as to list them in order of importance. As far as the Delegation of Bulgaria was concerned, the primary task of the Organization and also the very purpose of its existence was to improve the system of protection of intellectual property and, to that end, to afford its cooperation and its legal-technical assistance. It would be appropriate, therefore, that the present items (vi) and (vii) specifying those fundamental objectives should take the place of items (ii) and (iii) respectively, the scope of which was less important, and which would then become items (vi) and (vii).

4138. Mr. VAN BENTHEM (Netherlands) said he was satisfied to leave drafting amendments to the Drafting Committee. There was, however, a major question to be decided: whether paragraph (1) should contain a general statement, as proposed in the French and Italian amendments, or a detailed enumeration, as in document S/10. His personal preference was for a general statement, but he was prepared to defer to the views of the majority.

4139. Mr. SHER (Israel) said that he had originally favored the United States amendment. After hearing the discussion, however, he would support the Italian amendment, as it provided a clearer statement of the Organization's aims, namely, to promote administrative cooperation between the Unions and, in cooperation with other organizations, to deal with new matters at present outside the scope of the Unions.

4140.1 Mr. LEDOUX (Senegal) was also of the opinion that the proposed amendments submitted were primarily concerned with drafting, but he noted that the Delegation of France had expressed two ideas affecting the substance of the question. The first of those ideas was that it was essential to emphasize the necessity of maintaining the autonomy of each Union within the framework of IPO, and the second that it was essential to promote the protection of intellectual property in developing countries.

4140.2 As regards the enumeration contained in Article 3(1), Mr. Ledoux shared the opinion of the Delegate of the Netherlands, but considered that, if that enumeration were to be maintained, it would be necessary, as the Delegate of France had suggested, to insert before it the words "in particular."

4141. Mr. KRIEGER (Federal Republic of Germany) agreed with the Delegate of the Netherlands that the Committee must decide between a general and a detailed statement for paragraph (1). If a detailed statement was included, there was always a danger of omitting an item; on the other hand, a precise statement of the Organization's task might be desirable.

4142.1 Mr. BODENHAUSEN (Director of BIRPI) said that there appeared to be little support for the long list of items proposed in document S/10. The reasons were clear and had been clearly stated. He suggested that the list be dropped in this Article and possibly transferred to the Article on definitions. In that case, the United States amendment would no longer be relevant here, and the French and Italian amendments could be referred to the Drafting Committee.

4142.2 Personally, he preferred the Italian amendment because it was more concise and because it mentioned cooperation with other international organizations, which was one of the purposes of the reorganization.

4143. Mr. WINTER (United States of America) withdrew his amendment in favor of the Italian amendment.

4144. Mr. GARCÍA TEJEDOR (Spain) expressed himself in favor of the Italian amendment.

4145. The CHAIRMAN suggested that Article 3 should be referred to the Drafting Committee together with the French and Italian amendments to paragraph (1) and the Delegate of Bulgaria's proposal concerning paragraph (2), with a note indicating that most speakers favored the Italian amendment.

4146. *It was so agreed.*

The meeting rose at 12:25 p.m.

SECOND MEETING

Monday, June 19, 1967, at 2:40 p.m.

OBJECTIVE AND FUNCTIONS: *Article 3* (continued) *(S/116, S/123, S/131 and S/138)*

4147. Mr. MAKSAREV (Soviet Union) recalled that it had been decided at the previous meeting to entrust the Drafting Committee with the task of preparing a draft of paragraph (1) that would be shorter than the text proposed by the Program of the Conference (S/10). Mr. Maksarev proposed that the Drafting Committee should nevertheless take into consideration the various points set out by the Delegation of the United States in its amendment concerning Article 3 (S/123), although that amendment had been withdrawn.

4148. *It was so agreed.*

4149. Mr. VOYAME (Switzerland) pointed out that, following the statement made at the previous meeting by the representative of UNESCO, it might be feared that the wording "on the request of ... the competent organs established by such conventions" appearing in paragraph (2)(ii) of Article 3 of the Draft might give rise to confusion. It was for that reason that the Delegation of Switzerland proposed (S/138) that the opening of the paragraph should be modified by the addition of the word "accept" to read "may accept to undertake the administration, or participate...," and that the phrase in question should be deleted.

4150. Mr. SABA (UNESCO) found the new wording proposed by Switzerland satisfactory. It meant that IPO could agree to undertake the administration of other conventions, agreements or treaties if the necessary legal conditions were fulfilled.

4151. Mr. DE MENTHON (France) said that the Delegation of France, in view of the arguments put forward by the Delegation of Switzerland and by the representative of UNESCO, was prepared to accept the wording proposed by Switzerland (S/138), with the proviso that, as he (Mr. de Menthon) had already proposed at the previous meeting (S/117), the reference should be not to "other existing intellectual property conventions, agreements and treaties," but to "any other international undertaking designed to promote the protection of intellectual property." This was in any case a drafting amendment.

4152. Mr. MAKSAREV (Soviet Union) supported the Swiss proposal (S/138) as amended by the proposal of the Delegation of France.

4153. Mr. LEDOUX (Senegal) endorsed the modification proposed by the Delegation of France, with the proviso that the generic term to replace the words "conventions, agreements and treaties" should in fact be the word "undertaking."

4154. Mr. VOYAME (Switzerland) was agreeable that his proposal (S/138) should be revised as proposed by the Delegation of France.

4155. *The Swiss proposal (S/138), as amended by the proposal of the Delegation of France, was adopted and referred to the Drafting Committee for final wording.*

4156. Mr. CONK (Czechoslovakia) recalled that both Bulgaria and Czechoslovakia (S/131) had proposed that item (ii) should be replaced by item (vi) and that the question of renumbering the items of the paragraph had already been referred to the Drafting Committee.

4157. Mr. SHER (Israel) proposed that item (viii) be placed at the beginning of paragraph (2) and the other points renumbered accordingly.

4158. *It was agreed to send these proposals to the Drafting Committee for closer examination.*

4159. Mr. ABI-SAD (Brazil) pointed out that the Drafting Committee had already been asked to study the proposals concerning item (vi) of Article 3(2) that had been presented at the previous meeting by Italy. Item (vii), which referred to the same type of question, should also be referred to the Drafting Committee.

4160. Mr. DE MENTHON (France) drew the attention of the members of the Committee to the draft amendment that the Delegation of France wished to make to paragraph (2)(i) (S/116), which was essentially a drafting point. Its purpose was to state more clearly than had been done in the Draft (S/10) that the future Organization would not absorb the Unions, but would simply put its administrative services at the disposal of each of them.

4161. *The Committee decided to refer the French proposal (S/116) to the Drafting Committee for closer examination.*

MEMBERSHIP: *Article 4*

4162.1 The CHAIRMAN proposed that the Committee delay consideration of Article 4 until all of the proposals concerning this Article had been distributed and the Committee agreed.

4162.2 *It was so agreed.*

HEADQUARTERS: *Article 5*

4163. *Article 5 was approved.*

GENERAL ASSEMBLY: *Article 6*
(S/84, S/93, S/93 Add., S/96, S/102, S/118, S/124, S/133 and S/141)

4164.1 Mr. RAZAFINDRATANDRA (Madagascar) presented the amendments of his Delegation (S/84) to the Draft. He pointed out that that amendment was similar to the one that his Delegation had proposed in relation to the Paris Convention and that consideration of the question had been reserved. It would therefore also be appropriate to reserve consideration of the question in relation to the IPO Convention.

4164.2 The Delegate for Madagascar informed the Committee that he withdrew from his amendments the proposals concerning Article 8 and Article 6(3)(a). The Committee therefore still had before it amendments relating to Article 6(1) (addition of a subparagraph (c)), and Article 7.

4165. Mr. SHER (Israel) observed that it would be impossible to define the nature of the General Assembly until a decision had been reached on what other organs the new body was to have, in particular whether there was to be a Conference or not. In other words, no decision could be taken on Article 6 before Article 7 had been considered.

4166. After a brief procedural discussion, *it was decided to continue the debate on Article 6 in so far as that Article dealt with the functions of the General Assembly, and to exclude for the time being the question of the membership of the Assembly, any necessary adjustments to be made later according to the decisions taken on Article 7.*

4167. Mr. WINTER (United States of America), introducing the first draft amendment contained in document S/93, said that some Delegations were concerned by the proposal that the triennial budget should be adopted by the Conference. His Delegation was suggesting that the General Assembly would be the more appropriate body to fulfil that function.

4168. Mr. SHER (Israel) asked whether the United States proposal meant that once the General Assembly had adopted the budget, the Unions were automatically bound to pay the amount that had been approved.

4169. Mr. BODENHAUSEN (Director of BIRPI) explained that the proposal was the sequel to wider proposals covering all the Unions, which had been adopted unanimously before the Delegate of Israel had arrived in Stockholm. The autonomy of the individual Unions was safeguarded, each Union being left to decide the share of the expenses it would bear. The parts of the general proposal relating to the Paris and Berne Unions had been approved, and the proposal under consideration could not be separated from the rest.

4170. Mr. SHER (Israel) said he must be allowed time to study the text. He thought the proposal might be acceptable but suggested that the wording of the Article be amended to make it clear that the decisions regarding the separate amounts to be contributed to the general expenses would be taken by the Unions individually and not by the IPO.

4171. Mr. MARINETE (Rumania) proposed that the Drafting Committee should examine the possibility of stating in the Draft Convention that the General Assembly would be the decision-making organ of the future Organization. If the Drafting Committee were to accept this point, it would naturally be valid for all the Unions.

4172. *The Committee decided to refer the suggestion to the Drafting Committee.*

4173.1 Mr. DE MENTHON (France) presented the proposals of the Delegation of France relating to Article 6 (S/118). In relation to paragraph (2), the second and third additional items proposed by the Delegation of France were dependent upon the decision that would subsequently be taken by the Committee on the proposals of the Drafting Committee with regard to enumeration of the functions of the General Assembly. If the Committee were to restrict itself to mentioning in paragraph (2) "other functions" allocated to the General Assembly, it would not be necessary to specify that the General Assembly would approve the Headquarters Agreement, because that stipulation would certainly appear in the Headquarters Agreement itself, nor to state that the General Assembly would approve the financial regulations of the Organization, because that stipulation would appear in Article 10.

4173.2 Nevertheless, with regard to the first additional item that the Delegation of France wished to see included in paragraph (2) of Article 6, Mr. de Menthon thought that it would be merely normal for the Convention to provide that the General Assembly should do everything for the development of the protection of intellectual property.

4174. Mr. CONK (Czechoslovakia) compared Article 6(1) of the Draft IPO Convenion (S/10) and Article 13(1) of the proposals for revising the Paris Convention (S/3) and noted that Article 13(1) contained a stipulation in subparagraph (c) ("The expenses of each delegation shall be borne by the Government which has appointed it") that did not appear in paragraph (1) of Article 6 of the Draft IPO Convention. It was advisable to coordinate the texts of those two Articles.

4175. Mr. BOGSCH (Deputy Director, BIRPI) observed that a United Kingdom proposal to that effect was being prepared for distribution.

4176. Mr. MORF (Switzerland) asked the Delegate for France, who wished to see a point added to Article 6(2) stipulating that the General Assembly would make proposals for the development of the protection of intellectual property (S/118), to whom those proposals would be made since it was understood that the General Assembly would be the supreme organ of the future Organization.

4177. Mr. DE MENTHON (France) said that the proposals would be made either to the Assembly of the Berne Union or to the Assembly of the Paris Union or possibly to any Union that had no Assembly.

4178. Mr. VAN BENTHEM (Netherlands) asked the Delegate of France what would be the connection between his proposal concerning the competence of the General Assembly to make proposals for the development of the protection of intellectual property and the text of Article 7, paragraph (2)(a)(i), where it was stated that the Conference should "discuss matters of general interest in the field of intellectual property and may adopt resolutions and recommendations relating to such matters."

4179.1 Mr. DE MENTHON (France) observed that there was a difference between the two cases. The Conference would discuss matters of general interest that were not addressed directly to any one Union. The General Assembly would, according to the proposed Convention, examine and approve the reports of the Coordination Committee. The Delegation of France wondered whether there were not grounds for providing that the General Assembly could, following that examination, possibly formulate proposals for the Unions for the development of the protection of intellectual property.

4179.2 Nevertheless, having regard to the differences of interpretation that had become apparent in the Committee, the Delegate for France did not press the point.

4180. *The proposals of the Delegation of France (S/118) were adopted as amended.*

4181. The CHAIRMAN suggested that paragraph (1)(b), in keeping with the decisions taken by Committee IV, should state that governments should be represented by one delegate or a single delegation.

4182. *It was so agreed.*

4183. The CHAIRMAN suggested that similar proposals contained in documents S/102 and S/124, which also corresponded to decisions reached by Main Committee IV, be referred to the Drafting Committee.

4184.1 Mr. LORENZ (Austria), who presented the proposals of his Delegation (S/102) with regard to Article 6 and Article 7 of the Draft IPO Convention, observed that it was necessary to coordinate the corresponding articles in the Draft IPO Convention and in the Paris Convention, that is to say that the provisions already adopted in that respect by Main Committee IV should be taken into consideration.

4184.2 Furthermore, it was advisable to take substantive decisions on the financial régime of the new Organization, on the division of tasks between the General Assembly, the Conference, and the Coordination Committee, all of which were decisions that would necessarily have a bearing on the administrative provisions that were under consideration. The Delegation of Austria therefore reserved the right, after the adoption of substantive decisions on those matters, to submit written proposals

that the Drafting Committee would possibly have to take into consideration when finalizing the administrative provisions.

4185.1 Mr. TRUCKENBRODT (Federal Republic of Germany) presented two draft amendments that the Committee would shortly have before it in writing (S/141).

4185.2 It would be desirable to add the words "and give instructions to such Committee" at the end of the proposed text of paragraph (2)(i).

4185.3 It would also be desirable to insert a new item between items (v) and (vi) of the present paragraph (2) with the following wording: "review and approve reports and activities of the Director General concerning the Organization and give instructions to him on such matters." The present item (vi) would then become item (vii).

4186. Mr. BOGSCH (Deputy Director, BIRPI) said that the effect of the German proposal would be to put in words what was implied in the Draft IPO Convention, namely, that the Coordination Committee and the Director General were under the orders of the General Assembly. He had no objection to the proposal.

4187. Mr. SHER (Israel) said that the Coordination Committee should not be regarded as an organ of the General Assembly, since its function was to coordinate the activities of the Conference and the General Assembly. He suggested that further discussion of the question be deferred pending submission of the German proposal in writing.

4188. *It was so agreed.*

4189. Mr. GARCÍA TEJEDOR (Spain) said that by establishing French and English exclusively as the working languages of the Secretariat, item (iv) of paragraph (2) in effect laid down a principle when it ought to be dealing only with the functions of the Assembly. Furthermore, he was not sure of the legal implications of that item in relation to the Paris and Lisbon Acts, which established Spanish as well as English and French as official languages in certain circumstances, inter alia, at revision conferences. He therefore reserved his position pending further discussion of the scope of the item and a decision as to whether Article 6 was the right place to deal with the question of the working languages.

4190. Mr. BOGSCH (Deputy Director, BIRPI) said that at the time when the Committee of Experts had drafted the proposals for the Convention, the number of Spanish-speaking members of the Unions had been very few. That number had since considerably increased and as soon as it was high enough to justify the adoption of Spanish as a working language, the Assembly would not hesitate to follow the example of other international organizations and do so. The question also depended in practice on the financial implications.

4191. Mr. BOERO-BRIAN (Uruguay) said he agreed with the previous two speakers. He suggested that the General Assembly of the proposed IPO be authorized to establish all the official working languages, including French and English. While he had no wish to minimize the importance of French and English, he felt that it would perhaps be fairer to give the Assembly the appropriate authorization in general terms.

4192. Mr. BOGSCH (Deputy Director, BIRPI) said he would have no objection to leaving out any mention of particular languages.

4193. Mr. GARCÍA TEJEDOR (Spain) said he would like to consult other delegations interested in the question and would give his views the following morning.

4194. Mr. MAKSAREV (Soviet Union) was also of the opinion that any decision on the advisability of mentioning the working languages of the General Assembly of the Organization should be postponed to the following meeting.

4195. *It was so agreed.*

4196.1 Mr. VŠETEČKA (Czechoslovakia) announced that his Delegation was going to distribute a proposed amendment to paragraph (3)(b) and (c) of Article 6 to fix the quorum of the General Assembly at one-half of the Member States, and not merely at one-third.

4196.2 The matter had already been debated in Main Committee IV and, for the reasons already given on that occasion, it was advisable not to allow too small a number of Member States to settle matters that would assume great importance, particularly at the outset of the existence of the future Organization. It should therefore be provided in paragraph (3)(c) of Article 6 that the General Assembly should take its decisions by a two-thirds majority.

4197. Mr. BODENHAUSEN (Director of BIRPI) suggested that the Drafting Committee be asked to bring the provisions defining the quorum into line with those approved by Committee IV for the Assemblies of the Unions.

4198. *It was so agreed.*

4199. *Paragraph (3), as amended, was approved.*

4200. *Paragraphs (4) to (6) were approved.*

4201. *Article 6, as a whole, as amended, was approved.*

The meeting rose at 4:35 p.m.

THIRD MEETING

Tuesday, June 20, 1967, at 9:30 a.m.

MEMBERSHIP: *Article 4*
(S/96, S/132 and S/150)

4202. The CHAIRMAN said the first item to be discussed was Article 4 on membership. The appropriate documents were S/10 and proposals S/96 (United Kingdom), S/132 (Czechoslovakia) and S/150 (Czechoslovakia, Hungary, the Netherlands, Poland, Soviet Union).

4203. Mr. GRANT (United Kingdom) said his Delegation considered that it would be unfortunate if the General Assembly, which was essentially a technical and specialist body, were to be made a forum for political arguments. The Delegation of the United Kingdom had therefore proposed in document S/96 a formula they hoped would meet requirements for membership and would obviate political arguments in a non-political forum.

4204.1 Mr. PISK (Czechoslovakia) considered the arguments in the Commentary on Article 4 of the Draft IPO Convention in favor of two categories of membership unconvincing. IPO was to be an independent and separate organization and there was no justification for a distinction between Full and Associate Members. There had been precedents—for example, in the Conventions of the World Health Organization and the International Telecommunication Union—but in those organizations associate membership had existed only for so-called dependent territories.

4204.2 He recognized that States not members of Unions could not take part in decisions on matters of exclusive concern to the Unions, since that would contradict the principle of the independence of Unions. As a matter of principle, however, there should be equal rights for all Members of the Organization.

4204.3 It would simplify a complicated structure if the General Assembly and the Conference could be combined, with a single membership in the Organization, subject, however, to a distinction with respect to rights and duties between Members which were members of Unions and those which were not.

4205.1 Mrs. RATUSZNIAK (Poland) said that with regard to Articles 4, 6, and 7, she favored the proposals in documents S/132 and S/150.

4205.2 As regards Article 4, it had been repeatedly explained at the preparatory meetings of experts and in the Commentary on the Draft IPO Convention that one of the new Organization's main purposes was the general promotion of the protection of intellectual property on a world basis; it should therefore be open to all States—developing or already developed.

4205.3 At numerous international conferences held under the auspices of the United Nations, delegates favoring clauses limiting membership had argued that such clauses were justified, since the status of a State had not been precisely defined by international law. But States existed independently of recognition by other States, if they fulfilled the conditions of being a sovereign power and having a people and territory. International law covered a much wider community than that of the United Nations. The Stockholm Conference was not being held under the auspices of the United Nations; it was an independent conference of sovereign States, making its own decisions. Her Delegation supported alternative C (Article 4, S/10), and asked that it be given priority when the vote was taken.

4205.4 As regards the proposal for a General Assembly and a Conference, it would simplify the Organization and obviate the need for dual membership if there was only one body. Autonomy, which was the basic reason for the proposal for a separate Conference and two categories of members, could be preserved by giving the right to vote on matters concerning the Unions only to members of Unions, and countries not members of Unions would not then feel that they were in the position of second-rate members.

4206. Mr. VAN BENTHEM (Netherlands) emphasized that it was essential to draw a distinction between two quite different things: on the one hand, the conditions for admission of members, which in no way affected the question of structure, and to which the proposal of the United Kingdom (S/96), supported by the Delegation of the Netherlands, and the proposal of Czechoslovakia (S/132) referred; on the other hand, the question of structure, which had no bearing either on the conditions of admission or on the functions or the autonomy of the various Unions. The latter question had been dealt with in the joint proposal (S/150), which had the merit of avoiding any unnecessary distinction between two categories of members.

4207.1 The CHAIRMAN pointed out that there were two distinct questions for discussion, which had been linked in the Draft but could be more usefully discussed separately.

4207.2 The Delegations of Poland and the Netherlands had pointed out that one of the questions—and the one he would like to see discussed first—was whether it was necessary to have two classes of members or could a more adequate formula be found?

4208. Mr. WINTER (United States of America) saw merit in the proposal contained in paragraph 1(a) of document S/150, designating countries as "members" in the sense of members of Unions or as "not members of Unions," rather than as Full and Associate Members. The term was purely descriptive of an existing situation and would apply to States which were parties to the Paris and Berne Conventions or States which were not parties to conventions but still Members of the Organization. His Delegation therefore supported the wording proposed in document S/150, paragraph 1(a).

4209.1 Mr. DE MENTHON (France) stated that the joint proposal (S/150) contained two quite different ideas: paragraph 1(a) dealt primarily with a matter of terminology and the Delegation of France was not opposed to it although the French Government had indicated its preference for the expression "Full Members and Associate Members" used in the initial draft (S/10).

4209.2 On the other hand, he found it impossible to accept the confusion created by paragraph 1(b) between the General Assembly and the Conference, and between countries members of the Union and non-member countries. The setting up of the Organization had a dual purpose: (i) administrative coordination between the existing Unions (provided by the General Assembly, an inter-Union Assembly whose purpose was to examine problems common to the Unions), and (ii) promotion of the protection of intellectual property on a world-wide basis. The second objective was separate from the first, and the fact that the Conference was envisaged as a second Assembly clearly indicated the framework within which that objective would be realized. The distinction between Member States and States not yet members of the Unions should be maintained. By uniting all States in a single organ entrusted with all problems, they would seem to be wishing to exert pressure on the Unions at the expense of their administrative autonomy.

4209.3 This would mean going back to the Draft submitted in 1964 by the Committee of Experts, against which the French Government had raised numerous objections. If his Government had supported the present Draft, it was because that Draft differentiated clearly between the two objectives that were being pursued, objectives that were stated in the Commentary on the Preamble, in the Preamble itself, and also in Articles 2 and 3 dealing with definitions and with the objective and functions of the Organization. If that Draft were now to be called in question, the French Government would be unable to accept even the principle of the setting up of IPO.

4210.1 Mr. SHER (Israel) supported the proposal in document S/150, paragraph 1(a).

4210.2 His Delegation's proposal regarding Article 6 (S/157) also stated that the General Assembly should consist of the States which were parties to the Conventions irrespective of whether they were members of any of the Unions. He considered that when creating a new legal body it would be neither just nor right to distinguish between two groups of members. Autonomy must be ensured for the Unions, but for the new Organization there should be only one class of members.

4211.1 Mr. DE SANCTIS (Italy) said that the Delegation of Italy, like those of France and the United States, was of the opinion that the question raised by paragraph 1(a) (S/150) was one of terminology. As it had always stated in the earlier Committees of Experts, the Delegation of Italy preferred the expression "Full Members and Associate Members," but it believed that conciliation was possible on that point.

4211.2 The question raised by paragraph 1(b) was quite a different matter. The views of the Delegation of Italy on that subject were known. He did not wish to

repeat what the Delegate of France had said, but he must stress the fact that the General Assembly of IPO should be a common organ of the Unions, which would enable a more up-to-date administrative organization to be established. As an inter-Union Assembly it could not include countries that were not members of those Unions. It was also the objective of IPO to invite other countries to enter the great family of the Unions for the protection of intellectual property. They would then become de jure Members of the General Assembly.

4212. Mr. OSSIKOWSKI (Bulgaria) could not agree to any restriction in the conditions for the admission of members. The idea of having a dual category of members was based on a misconception. There should be only one category based on the equality of all countries. The other international organizations did not draw a distinction between full members and associate members. Such a distinction would be in flagrant contradiction with the objective of the Organization. IPO, which was based on the equal rights of all countries, was called upon to play a decisive role in the evolution of the protection of intellectual property. He therefore associated himself with the joint proposal (S/150) and proposed the adoption of an Article 4 providing for only one category of members.

4213.1 Mr. MAKSAREV (Soviet Union) also considered that it was the task of IPO to promote technical progress universally and to extend the protection of intellectual property to all countries of the world. The functioning of the Organization would be hampered if an attempt were made to maintain the distinction between Full Members and Associate Members at the level of the Conference and of the General Assembly. That distinction would discourage non-member States from taking an interest in basic matters relating to intellectual property, whereas they ought to be informed and guided.

4213.2 He reserved his position on the matters raised by paragraphs (2) and (3) of Article 4.

4213.3 He supported alternative C of the original Draft (S/10) concerning the conditions for the admission of members, and thought that it would be possible to reconcile the point of view expressed by the Delegation of France and his own.

4214.1 Mr. MORF (Switzerland) referred to paragraph 1(a) of the proposed text (S/150) and accepted the change in terminology.

4214.2 The solution envisaged in paragraph 1(b) seemed to him to be dangerous; it was a first step towards a weakening of Unions, to which he attached great value.

4215.1 Mr. PÁLOS (Hungary) recalled that, at the time of the preparatory work, the delegates had agreed to avoid all discrimination between members, as the new Organization was to be based on the principle of universality. Now, the draft of Article 4 in document S/10 established a difference between members which could not be reconciled with the principle of universality. That text raised very important problems which required frank and close examination. The arguments set out in document S/10 in favor of the distinction between Full Members and Associate Members did not seem to him to be acceptable, because they placed Associate Members in a disadvantageous position. He could very well concede the idea of a single Assembly in which the Unions would have the right of veto whenever their interests alone were concerned. The examination of matters of common interest to the Unions and to all Members of IPO would take place in conditions of equality. The Delegation of Hungary would be in favor of that solution. In important cases, decisions taken by the General Assembly could also be taken by the Assemblies of the Paris and Berne Unions. Paragraph (3)(g) of Article 6 which had been conceived in that spirit, could be extended. All distinction between countries which were members of the Unions and those which were not would then become pointless.

4215.2 It had been asserted that the distinction between two categories of members would facilitate the accession to IPO of countries that were not members of the Unions. He believed, on the contrary, that it would prevent those countries from acceding to IPO, because the role which they would be able to play in it would be only a subordinate one. The developing countries would have no further inducement to accede to it.

4215.3 He therefore declared himself in favor of a single category of members.

4216.1 Mr. LULE (Uganda) fully agreed with those Delegates who were opposed to differentiating among members; he drew attention to the Commentary in the English text of S/10, paragraph 50, and said that if the aim was the widest possible participation—without which the Organization would fail to fulfil its task—no distinction should be made. Opening the Organization to countries which were not yet parties to its Conventions, Agreements and Treaties was likely to lead ultimately to their accession.

4216.2 Discussion of Article 4 naturally preceded discussion on Articles 6 and 7. According to Article 7(3)(a) and (b) in document S/10, each State member had one vote in the Conference and both Full and Associate Members would, together, constitute a quorum. He could not therefore see why, since members had the same rights, functions and duties, they should not also be equal in designation.

4217. Mr. KUDRIAVTSEV (Byelorussia) stressed the objective of the Organization as stated in Article 3: to promote cooperation among States in the field of protection for intellectual property. History taught that international collaboration was possible only if there were equal rights between States from the start. He therefore urged that that principle should be applied in IPO. Countries that were not members of the Unions should be Full Members. That equality of rights was essential if the Organization was to function effectively. Many intergovernmental organizations had been set up since the War, and it was the principle of the equality of all member States that had been applied. The Conference of Stockholm could not act otherwise. Hence he supported the joint proposal (S/150).

4218.1 Mr. VAN BENTHEM (Netherlands) pointed out to the Delegate of France, who had alleged that the solution advocated in the joint proposal (S/150) was a return to a former Draft, that that was by no means the case. The former Draft of a single Assembly had defined in a different way the powers which were vested in the General Assembly in the present Draft. The Delegation of the Netherlands had never thought of returning to a former Draft which had been rejected by the majority of experts. The new proposal (S/150) advocated a more elegant structure, but made no change in regard to the functions of the General Assembly or to the presence of countries that were not members of the Unions within the coordinating organ (see Article 6 of S/10).

4218.2 Should the joint proposal (S/150) not obtain a majority of votes, the Delegation of the Netherlands was ready to return to the present Draft, because it was essential to find a text which would secure the largest possible number of affirmative votes. He added that he was obviously speaking only in the name of his Delegation.

4219. The CHAIRMAN said the Delegation of the Netherlands had correctly pointed out that the 1966 Committee of Experts had drawn no distinction between members. The proposed formula, which had been thought to be acceptable had been found only after consultation between the Secretariat, the Government of Sweden and a number of delegations.

4220.1 Mr. BODENHAUSEN (Director of BIRPI) said he understood the Committee was now discussing only the question of whether there should be two categories of member States and what the categories should be called, and that the second question of which countries would be accepted as members, was to be discussed later. There was an alternative proposal regarding the first question. The BIRPI proposal contained in document S/10 proposed two categories of members and the joint proposal in document S/150 proposed to eliminate the distinction. He gathered that there was no opposition to the latter idea.

4220.2 If, as had been repeatedly stated, the difficulty lay in the wording, would it not be possible to accept paragraph 1(a) in document S/150 and refer it to the Drafting Committee without prejudice to the question of accepting paragraph 1(b), since some delegates were definitely opposed to the latter proposal: the discussion on paragraph 1(b) could then be deferred until Article 7 was discussed.

4220.3 In connection with paragraph 1(b), the Delegation of the Netherlands had stated that there was no difference in substance between the two proposals; that it was mostly a question of presentation; and that without the Conference the General Assembly would continue to be governed by almost the same rules as those contained in document S/10. As the powers of the Assembly and the Conference had not yet been discussed, that remained to be seen. If it was really only a matter of presentation, however, it would be a pity if IPO lost the support of very important countries. He hoped therefore that matters would not be made too difficult for countries with very strong views which did not wish to accept anything differing greatly from the BIRPI proposal in S/10.

4220.4 He doubted whether the necessary majority could be reached, as the Rules of Procedure required a three-fourths majority in the IPO Plenary Meeting and a four-fifths majority in the Berne and Paris Unions. Even were a majority obtained, it would be regrettable if there were important abstentions.

4221.1 The CHAIRMAN said that there appeared to be general agreement in the Committee that there should be the widest possible participation in IPO, that the function of IPO was to coordinate the Unions and to promote the protection of intellectual property throughout the world—which was why the participation of States not members of the Unions was desirable—and that the integrity of the Unions must be maintained. There appeared to be some concern about the possible discrimination implied by the words "Full and Associate Members." The proposals submitted by the Delegations of Czechoslovakia, Hungary, the Netherlands, Poland and the Soviet Union, with indications of support by the Delegations of Uganda, Bulgaria and Byelorussia, expressed the desire to eliminate that distinction. The eight countries mentioned and five others had spoken in favor of paragraph 1(a) in document S/150. He proposed that it be referred to the Drafting Committee as an acceptable substitute for the first part of the proposed Article 4, with the suggestion that the latter be recast to reflect the proposals contained in paragraph 1(a) in document S/150.

4221.2 There being no objection, he opened the discussion on paragraph 1(b) in document S/150.

4221.3 He pointed out that attempts to show that there was no distinction was due to the desire that there should be none and said distinctions existed both in the BIRPI proposal in document S/10 and in the joint proposal in document S/150.

4221.4 In the case of a General Assembly including members of Unions and countries not members of Unions, the distinction would be between those that had a vote and those that had not. If there was both a General Assembly and a Conference, there would be a single class of members, all with the right to vote in the former, which was mainly for the purpose of coordination among the Unions, and in the latter there would again be a single class of members all with the right to vote. In both cases, however, there would be a distinction.

4221.5 One of the differences between IPO and other organizations was that any State could change the situation by joining the Paris or the Berne Union.

4221.6 He asked the sponsors of the proposal contained in document S/150 whether he would agree to the BIRPI proposal to discuss the proposal contained in paragraph 1(b) in document S/150 when Article 7 was discussed.

4222. Mr. MAKSAREV (Soviet Union) had no objection to the matter being deferred.

4223. The CHAIRMAN said the Committee's next task was to discuss the second aspect of membership. Two Delegations had submitted proposals, the Delegation of the United Kingdom in document S/96 and the Delegation of Czechoslovakia in document S/132.

4224.1 Mr. PISK (Czechoslovakia) said the development of international relations was becoming increasingly important and conventions such as the IPO Convention should be open to all without discrimination. His Delegation could not accept the proposal contained in document S/96 or alternatives A and B in document S/10. The proposal of the Delegation of the United Kingdom and alternatives A and B contained a discriminatory clause making IPO membership conditional on United Nations membership. The Conference was not being held under the aegis of the United Nations, any more than the Berne or Paris Conventions. The pattern of those Conventions should therefore be followed as suggested in alternative C which attached no conditions.

4224.2 He assured the Delegation of the United Kingdom that he had no desire to turn a technical conference into a political forum; he only wished to preserve universality, a generally recognized principle of international law. Should that principle not be accepted, his Delegation would reflect their opinion in their vote. He believed that the idea of membership expressed in document S/132 was fully compatible with that principle.

4225.1 Mr. MIQUELON (Canada) wished to go on record as opposing the principle outlined in alternative C of document S/10. He also had strong reservations about paragraph (3)(ii) of Article 4, unless the word "States" was clearly defined.

4225.2 The proposed IPO Organization was to be a technical one, and should not have to take decisions on controversial issues. He therefore supported the proposal of the Delegation of the United Kingdom.

4226. Mr. STANESCU (Rumania) stated that the Government of the Socialist Republic of Rumania was in favor of the principle of the universality of the Organization, which was the only principle in conformity with the evolution of international law. Every country should have the right to become a Member of IPO without any

discrimination. Quoting the celebrated phrase of Descartes on common sense, he considered that the Stockholm Conference should refuse to introduce into the new Organization a policy of discrimination that would infringe the sovereignty of States. He therefore declared himself in favor of alternative C of the initial Draft and thought, like the Delegate of Czechoslovakia, that drafting questions could be resolved after discussion.

4227. Mr. LENNON (Ireland) agreed that political questions should be avoided. Membership in international organizations, however, usually involved questions of recognition and status. The road to membership should not be opened as in alternative C. He expressed his support for the British proposal.

4228.1 Mr. OSSIKOWSKI (Bulgaria) said that all countries should be admitted to IPO without any restriction, provided that they accepted the rules of the Organization. He stressed the universal character which IPO should have, mentioning in that respect paragraph 50 of the Commentary in document S/10.

4228.2 Alternative C had his full support, because it eliminated all distinction between members. It would be difficult to concede that the composition of an organization protecting intellectual property should be restrictive.

4229. Mr. EVENSEN (Norway) said that the Delegation of Norway agreed with the BIRPI proposal but preferred that of the United Kingdom. The United Kingdom's proposal mentioned the International Court of Justice as an independent possibility in connection with membership in the Organization. He agreed that the International Court of Justice deserved every support; nevertheless he considered it might be possible to make certain amendments which would give the General Assembly a say in inviting new members.

4230. Mrs. RATUSZNIAK (Poland) reminded the Chairman that the Delegation of Poland had expressed its approval of alternative C.

4231. The CHAIRMAN said the statement of the Delegation of Poland had been noted.

4232.1 Mr. PÁLOS (Hungary) also stressed that the principle of universality should be applied in the new Organization, and made reference in that respect to the terms of the Preamble (S/10). Only the application of that principle would enable the protection of intellectual property to be extended and to be introduced into countries where it still did not exist.

4232.2 Alternative C of the initial Draft was the only one that did not create discrimination with regard to accession, and he would draw the attention of delegates to Articles 16 and 16*bis* of the Paris Convention (Revision of Lisbon) and to Article 25 of the Berne Convention (Revision of Brussels), which established the principle of universality. As those two Conventions had functioned well and new countries had been able to accede without difficulty, he could see no reason for changing the existing system.

4232.3 Mr. Pálos supported alternative C, which seemed to him to be the only acceptable solution.

4233. Mr. ROJAS (Mexico) thought it would be dangerous for the future and for the smooth operation of the Organization if the General Assembly could invite a State to become a member. That would entail the risk of giving a political bias to the discussions and would thereby modify the character of the Organization. Political matters were the province of other organizations. It was for that vitally important reason that the Delegation of Mexico regretted that it was unable to accept the proposals contained in document S/10 and thought that the proposal of the United Kingdom (S/96) was preferable, provided that, in its final form, it contained the terminology that would be adopted by the Conference of Stockholm to designate the Members of IPO.

4234. Mr. DE MENTHON (France) was ready, having heard the arguments put forward by the Delegates of the United Kingdom and Mexico, to support the United Kingdom proposal (S/96), although the French Government had initially expressed its preference for the BIRPI proposal (S/10), which effectively reflected the dual nature of the objectives of IPO.

4235. Mr. MWENDWA (Kenya) said his Delegation was in favor of including as many States as possible in IPO and in this respect it would have been excellent if the universality principle could have been accepted. The definition of the word "State" appeared, however, to raise insuperable difficulties. Clearly the Secretariat of the Organization could not provide that definition. He therefore favored a solution couched in a more defined form and thought the United Kingdom's proposal contained in document S/96 might be combined with the BIRPI proposal in Article 4(3)(ii). This would then read: "Membership of the Organization shall be open to all States Members of the United Nations or any of the Specialized Agencies or Parties to the Statute of the International Court of Justice or States invited by the General Assembly to become a party to the present Convention." He suggested this because although the term "State" had not yet been defined, if the General Assembly had to decide which States should be invited, every Member State would have to decide for itself whether it recognized the State invited as a State. A similar formula had also been recognized at the 21st Session of the United Nations General Assembly to consider the Convention on the Law of Treaty in preparation for the Conference on Plenipotentiaries in 1968, and he thought such a formula might solve the difficulty.

4236. Mr. MAKSAREV (Soviet Union) approved alternative C of document S/10: all the Unions had free access to the Organization and any State accepting the provisions of the Convention could become a Member of the new Organization. IPO was very much an open Organization, based on the underlying principle of the Unions, that of voluntary accession. Many international treaties, for example the Outer Space Treaty, did not stipulate any precondition. It would be illogical to introduce discriminatory conditions into such an Organization as IPO.

4237.1 Mr. LAURELLI (Argentina) thought that there were no grounds for innovation in setting up technical organs such as IPO. Despite the diplomatic nature of the present Conference, its members remained bound by their respective mandates, by the legal precedents governing relations between States and by the multilateral treaties that the latter had adopted. The Delegate of Argentina could not conceal his uneasiness at the innovations inherent in some proposals. His country was not in favor of the creation of precedents that ran the risk of arousing national susceptibilities and it would prefer to see the existing juridical system maintained. The United Nations was the organ which should decide political matters. If a lesser organization, whether or not affiliated to the United Nations, refused to submit a contentious question to the United Nations, it would find itself in the anomalous situation of a technical organ having to decide a political matter. He could not therefore accept the alternatives of document S/10.

4237.2 He declared himself in favor of the United Kingdom proposal (S/96). That text contained a form of words which had yielded excellent results in other technical organizations and did not imply any discrimination.

4238.1 Mr. TRUCKENBRODT (Federal Republic of Germany) emphasized that his Delegation supported the proposal contained in document S/96 and could not accept either alternative C or the BIRPI proposal contained in document S/10. He would like to give some details about the so-called Vienna formula which formed the basis of the United Kingdom proposal in document S/96.

4238.2 Some delegations had spoken as though by adopting the Vienna formula, the United Nations had been practising discrimination. The formula had been adopted for the first time in 1961 and subsequently in all multilateral conventions, namely, the Vienna Convention on Diplomatic Relations (1961), the Vienna Convention on Consular Relations (1963), the United Nations Convention on Transit Trade of Landlocked Countries (1965), the United Nations Convention on the Elimination of all Forms of Racial Discrimination (1965), the International Covenant on Economic, Social and Cultural Rights (1966), and the International Covenant on Civil and Political Rights (1966). With the sole exception of the Outer Space Treaty in 1966, all the agreements mentioned had been under the auspices of the United Nations.

4238.3 Resolution 1903(XVIII) adopted at the United Nations General Assembly, providing for the opening up to other States of certain conventions drawn up under the auspices of the League of Nations had used the criterion of the Vienna formula. Moreover, reference to membership in the United Nations or Specialized Agencies had also been used to determine participation in international conferences in 1958 and 1960 when States were invited to participate in the Geneva Conference on the Law of the Sea, and in 1961 and 1963 in connection with the Vienna Conference on Diplomatic Relations. In 1966, two United Nations conferences had adopted the formula mentioned by the Delegate of Kenya. A variation of the formula had been used for invitations to the coming Conference on the Peaceful Use of Outer Space.

4238.4 Membership in the United Nations Conference on Trade and Development (UNCTAD) was also limited to Members of the United Nations or Specialized Agencies and the United Nations resolution on the United Nations Industrial Development Organization (UNIDO) had also made use of the same criteria. As the following multilateral agreements showed, the Vienna formula was also applied outside the United Nations: the International Coffee Agreement (1962), the Convention on the Recovery Abroad of Maintenance, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the *Convention complémentaire à la Convention de Varsovie pour l'Unification de certaines Règles relatives au Transport aérien international effectué par une Personne autre que le Transporteur contractuel,* the Agreement on the Joint Financing of certain Air-Navigation Services in Iceland, and the corresponding agreement for Greenland.

4238.5 The countries which had signed the Conventions had not thought that they were thereby adopting a policy of discrimination towards others. Moreover, many States which had opposed the United Kingdom's proposal had themselves signed such multilateral Conventions.

4238.6 The recognition of States was a political problem which had to be settled. The Delegate of Argentina had stated clearly that the United Nations was the appropriate forum. His Delegation thought that acceptance of the United Kingdom's proposal would obviate political arguments both in the Committee and the new Organization.

4239. Mr. LULE (Uganda) said he had intended to vote for the United Kingdom's proposal in document S/96 but he would have liked to see that proposal adopted in full, and the BIRPI proposal with an amendment to ensure invitation by unanimity of votes.

4240. Mr. WINTER (United States of America) expressed his support for the United Kingdom's proposal regarding the membership provisions of the proposed Article 4, as set out in document S/96. The Czechoslovak proposal in document S/132, which was alternative C of document S/10, was not acceptable to his Delegation.

4241. Mr. SHER (Israel) supported the United Kingdom's proposal in document S/96 in so far as membership in IPO was concerned.

4242.1 Mr. KUDRIAVTSEV (Byelorussia) had heard many speakers stressing the fact that it would be undesirable to introduce certain political aspects into the new Organization. But it seemed to him that those delegates had attempted, precisely for political reasons, to restrict the accession of countries that were not Members of the United Nations or of one of the Specialized Agencies (S/96). That attitude was not one which should be adopted by men who believed in practical action. The mission of the new Organization was to develop international collaboration in a real and universal sense.

4242.2 Certain delegates had spoken of the experience of the United Nations and its Specialized Agencies but he thought that universality was missing in those organizations. It would be regrettable if IPO were to inherit the defects of the United Nations and to follow its bad traditions as well as its good ones. The Stockholm Conference had sovereign power to apply the principle of universality; There was nothing to prevent it from choosing alternative C if that seemed to be the best. The United Nations had many good traditions and had done many good deeds. But membership in the United Nations was still not universal and that was not a good tradition. For the purpose of real international cooperation and mutual understanding, the principle of universality should be observed.

4243. Mr. LAURELLI (Argentina) pointed out that the Delegate of Byelorussia had passed a rather hasty judgment on the United Nations, which had long experience in the field of international law. At difficult moments in the life of States it was within the framework of the United Nations that solutions should be sought. He himself did not think that some of the traditions of the United Nations should be hastily condemned.

4244. Mr. GARCÍA TEJEDOR (Spain) thought that at the present stage of development of the international community the United Nations provided the most suitable legal framework for the definition of the word "State." The United Kingdom proposal (S/96) would improve the initial text. That document provided a juridical working basis capable of eliminating any political interference.

4245. Mr. BOERO-BRIAN (Uruguay) emphasized the dual nature of the present Conference, which was both diplomatic and technical. It was the common wish that the largest number of States should be able to accede to the Convention. The Delegate of Uruguay therefore supported the proposal of the United Kingdom, which offered the greatest possibilities in that respect.

4246. Mr. KELLBERG (Sweden) still considered the BIRPI proposal in document S/10 the best, and he paid tribute to BIRPI's tireless efforts to find a formula acceptable to the greatest number of countries at the Stockholm Conference. It left the door open as far as the Paris and Berne Conventions were concerned and it also contained the Vienna formula with a slight adjustment. He asked the delegates to consider the BIRPI proposal which, he thought, provided a way out of an impasse. The political question had been left in abeyance, as was only right at such a conference. His Delegation supported the BIRPI proposal.

4247.1 Mr. HEMMERLING (Council for Mutual Economic Assistance (COMECON)) said his organization ascribed great importance to IPO, for which there was an objective need. The purpose of such an Organization could, however, only be achieved if the principle of universality referred to in the IPO Draft Convention was respected. He welcomed alternative C because it corresponded to the principle of the Paris and Berne Unions.

4247.2 The refusal to allow the German Democratic Republic to be a party to the Paris and Berne Conventions should be reconsidered.

4248. Mr. TRUCKENBRODT (Federal Republic of Germany), on a point of order, said he had no objection to the Observer for COMECON speaking as an Observer, but he formally opposed any statements concerning a territory which the Observer for COMECON did not represent.

4249.1 The CHAIRMAN ruled that the Observer for COMECON could continue his statement without reference to a State or territory.

4249.2 He noted that the Observer for COMECON made a renewed reference to the German Democratic Republic, and ruled therefore that any statement by the Observer for COMECON with reference to a State was out of order, and called for a vote on the question.

4250. *The Committee unanimously decided that such a statement was out of order.*

4251.1 The CHAIRMAN, after the Observer for COMECON persisted in his reference to a State, ruled that his statement was concluded.

4251.2 Summing up, the Chairman said the morning's discussion had been interesting and useful. Seven States had supported the Czechoslovak proposal, alternative C as set out in document S/132, and 15 States had supported the United Kingdom's proposal, contained in document S/96. The Delegation of Sweden had preferred the BIRPI version; the Delegation of Norway had wished to amend the United Kingdom's proposal by giving the General Assembly the right to invite States; the Delegation of Kenya and others had suggested that the United Kingdom's proposal, modified by the BIRPI proposal, would be acceptable. Argentina and Spain had pointed out that the United Nations was the best body to arbitrate on political issues, while some delegations had thought that the United Nations tradition should not be observed.

4251.3 He suggested setting up a small working group to represent the various points of view in an attempt to work out a compromise.

4252. Mr. TRUCKENBRODT (Federal Republic of Germany) said his Delegation would prefer to decide later on the proposal of the Chairman, as they would need details of the composition of the working group.

COMPOSITION OF THE WORKING GROUP ON MEMBERSHIP

4253. The CHAIRMAN said he wished to suggest the composition of the Working Group and asked the meeting to express their opinion by a show of hands.

4254. *The proposal was carried with one abstention.*

4255. The CHAIRMAN suggested that the Delegations of Czechoslovakia, France, Kenya, Mexico, the Soviet Union and the United Kingdom should provide the members of the Working Group; they would be informed by the Secretary when it was to meet.

The meeting rose at 12:50 p.m.

FOURTH MEETING

Tuesday, June 20, 1967, at 2:40 p.m.

GENERAL ASSEMBLY: *Article 6* (continued) *(S/155)*

4256. The CHAIRMAN reminded the Committee that the Delegate of Spain had asked if item (iv) of paragraph (2), concerning the working languages of the Secretariat, could be reconsidered. The Delegations of Argentina, Brazil, Chile, Colombia, Ecuador, Mexico, Peru, Spain, Uruguay and Venezuela had submitted an amendment to that item, contained in document S/155.

4257. Mr. DELICADO (Spain), followed by Mr. GARCÍA TESEDOR (Spain), introducing document S/155, said that the question of working languages was of the greatest importance for his Delegation, particularly at the present juncture. A new Organization was being established, and it was vital that the arrangements for working languages should be adequate from the start. In his opinion, the Organization could not do better than be guided by the experience of the United Nations. He and the other sponsors of the amendment were accordingly proposing that, instead of the more limited wording in the BIRPI Draft, the working languages should be determined taking into consideration the practice of the United Nations.

4258. Mr. BODENHAUSEN (Director of BIRPI) said that so far as the Secretariat was concerned, there would be no objection to the amendment proposed by the Spanish and other delegations, provided it were understood that, in determining the working languages, the General Assembly would take into account not only United Nations practice, but also financial considerations. The preparation of documents in more than one working language had very serious budgetary implications.

4259. Mr. CIPPICO (Italy) said he had intended to raise the question of finance himself. As the Delegate of a country whose language was not one of the working languages of the United Nations, but which would be a contributor to the budget of IPO, he was concerned with the practical aspects of the question. Could the Director of BIRPI give the Committee any idea of the cost of using a working language—for example, in interpretation, translation and the preparation of documents?

4260.1 Mr. BODENHAUSEN (Director of BIRPI) replied that it would be difficult to give any precise figures because the cost would depend on what a working language really meant in practice. At present, BIRPI used two working languages, namely, French and English. That meant that all documents were produced in both languages; interpretation in both languages was provided for all meetings, and the periodicals *Industrial Property* and *Copyright*, were published in the two languages. It would be very difficult to assess the cost of all those services for a third language.

4260.2 Perhaps the best method would be to introduce other languages in stages. For example, it would be possible without undue pressure on the budget to issue the documents in Spanish—and possibly in Russian too—for special occasions. A case in point was the present Conference, for which certain documents had been produced in four languages in accordance with the Rules of Procedure, although that was not provided for under the Berne or Paris Conventions. Exceptions had been made in the past and the method could be extended.

4261. Mr. LABRY (France) said he could see no objection to the adoption of a third, or even a fourth work-

ing language, but he would like to be informed as precisely as possible of the financial implications of a decision of that kind. The introduction of a new working language was liable to involve quite considerable expense. That was the only anxiety of the Delegation of France, which had no desire to take sides for or against the use of any language.

4262.1 Mr. BOERO-BRIAN (Uruguay) said that the Spanish-speaking delegations had based their proposal on a principle. They believed that in the question of working languages IPO should follow the criterion of the United Nations. There was no mention of Spanish in the proposed amendment.

4262.2 He appreciated the difficulty of ascertaining the financial implications of the amendment, but urged that delegations should not lose sight of the question of principle in their concern over financial considerations.

4263. Mr. MAKSAREV (Soviet Union) said he would be quite in favor of the proposal submitted by the Spanish-speaking delegations, particularly as Russian was one of the working languages of the United Nations, but he preferred the solution recommended by the Director of BIRPI, by which a new working language could be introduced gradually by stages.

4264. Mr. LAURELLI (Argentina) said that, quite apart from financial considerations and the balance between languages, it would be useful to know what was the practice in UNCTAD and the principal Specialized Agencies based in Geneva—the International Labour Organization, the World Health Organization, the International Telecommunications Unions and the World Meteorological Organization—as they were comparable with IPO.

4265.1 Mr. BODENHAUSEN (Director of BIRPI) said that it would be difficult to draw a parallel with other organizations because they had differing membership, budgets, resources and obligations. It would not be reasonable, for example, to say that because WHO used certain languages IPO must use the same ones. The question must be considered on its merits.

4265.2 The advantage of the amendment in document S/155 was that it allowed some freedom to the General Assembly which would decide at the appropriate time which would be IPO's working languages. At that time the Secretariat would give the General Assembly full information on the measures proposed and their financial implications. The question could not be decided at the present stage, but when the time came for a decision it would be taken in full knowledge of all that was involved.

4266. Mr. WINTER (United States of America) said that after hearing the discussion and the observations of the Director of BIRPI, his Delegation was prepared to support the amendment in document S/155.

4267. The CHAIRMAN asked if the Committee was prepared to approve the proposed amendment in document S/155, to the effect that the General Assembly of IPO would determine the languages which would be the working languages of the Organization, taking into account the Director's remarks and also the need to examine the financial considerations before a final decision was taken as suggested by the Delegates of France, the Soviet Union and the United States of America. He proposed to put the amendment to the vote on that understanding.

4268. *The amendment to item (iv) of paragraph (2) of Article 6 proposed in document S/155 was approved, subject to the considerations outlined by the Chairman, by 29 votes to 9 with 13 abstentions.*

4269. The CHAIRMAN said that the Drafting Committee would be instructed to amend item (iv) of paragraph (2) of Article 6 in accordance with document S/155.

4270.1 Mr. GARCÍA TEJEDOR (Spain) speaking also on behalf of the other delegations sponsoring the amendment, thanked the Committee for its cooperative attitude and for approving the amendment.

4270.2 The sponsors of the amendment understood the concern expressed over the financial effects of introducing additional working languages; they would, at the appropriate time, help in every possible way to find methods of meeting the financial problems without burdening member and contributing countries.

CONFERENCE: *Article 7*
(S/84, S/93, S/93 Add., S/96, S/102, S/125, S/145 and S/150)

4271.1 The CHAIRMAN said that amendments had been submitted by the following Delegations: Madagascar (S/84); France, the Federal Republic of Germany, Hungary, Italy, Soviet Union, United Kingdom and United States of America (S/93 and S/93 Add.); United Kingdom (S/96); Austria (S/102); United States of America (S/125); South Africa (S/145); Czechoslovakia, Hungary, Netherlands, Poland, and the Soviet Union (S/150).

4271.2 He suggested that the Committee should first decide whether the Conference should exist or not. In the event of an affirmative decision, it would be useful to discuss details. If the Committee decided against the Conference, it would be a waste of time to discuss the text of Article 7.

4272. Mr. SHER (Israel) drew attention to document S/157 in which his Delegation proposed a new version of Article 6, which was intended to cover Article 7 as well. His Delegation was of the firm opinion that if IPO was to have only one kind of Member (whether or not they were Members of Unions), it should have only one main organ. The existence of two organs might cause difficulty owing to conflicts of interests and objectives. His Delegation was accordingly proposing that there should be only one main organ, but that the autonomy of the Unions should be ensured.

4273. Mr. LABRY (France) pointed out that the Head of his Delegation had already indicated at the previous meeting of the Committee that the position of the French Government in that respect was absolutely firm. Although the French Government thought that the future international Intellectual Property Organization should be open to all States without discrimination, it could not agree that States which had accepted clearly defined obligations under the Conventions should be placed on the same footing as States which had not availed themselves of the opportunity to accede to those Conventions; that would be the effect if the latter were granted the same effective status, even though they had different rights. The instructions of the French Government were categorical: the Delegation of France was fully authorized to discuss the procedure for setting up IPO, but it definitely could not agree that a system that had been laboriously worked out, at the cost of various compromises, should become the subject of amendments which would be prejudicial to the autonomy of the Unions.

4274.1 Mr. DE SANCTIS (Italy) said that at that stage in the discussions the Delegation of Italy was in favor of the establishment of IPO and its organ, the Conference, in which all States concerned with problems of intellectual property could participate on a basis of perfect equality. With regard to the General Assembly, the

Italian Delegation thought that it should fulfil the functions of an inter-Union organ, dealing with administrative matters common to both Unions. As each of the Unions had its own Assembly, it would be the function of the General Assembly to ensure liaison between them. There was no question here of introducing any discrimination between States on the basis of whether or not they were Members of the General Assembly, but it should be noted, as had been agreed at the previous meeting, that there would be countries which were members of the Unions and countries which were not such members.

4274.2 Hence no alteration of substance should be made to a general structure, which, as the Delegate of France had said, had been worked out at the cost of great effort. The Italian Government would be prepared to withdraw the reservation that it had made in relation to IPO in its official remarks, provided that the BIRPI Drafts were maintained.

4275. The CHAIRMAN reminded the Committee that all delegations had made great concessions in order to reach agreement on the establishment of the Organization. The draft text of Article 7 represented a compromise of many differing views. The Committee had decided at its previous meeting, under Article 4, to abolish the categories of Full Membership and Associate Membership, in favor of a single category embracing members and non-members of Unions. The text of paragraph (1), subparagraph (2) would be amended in accordance with that decision. He urged the Committee to recognize the desirability of having a Conference in which all countries which had become Members of the IPO—whether they were members of Unions or not—would be entitled to speak and vote on a equal footing.

4276. Mr. SHER (Israel) withdrew his Delegation's amendment in document S/157.

4277. Mr. KRIEGER (Federal Republic of Germany) agreed with the Chairman's suggestion. He was favorably disposed to the idea underlying the proposal in document S/150, but realized that the Committee's task was to reach a compromise solution, taking into account the position of the Delegates of France and Italy.

4278. Mr. VAN BENTHEM (Netherlands) said that, having heard the statements of the Delegates of France and Italy, the Delegation of the Netherlands concurred with the proposal of the Chairman.

4279. Mr. BOGSCH (Deputy Director, BIRPI) drew attention to the amendment to paragraph (1) proposed by the Delegation of the United Kingdom (S/96).

4280. The CHAIRMAN suggested that the Drafting Committee should be requested to amend subparagraph (a) of paragraph (1) in accordance with the proposals at the previous meeting and the proposal in document S/96, and that consideration of subparagraph (b) should be deferred until the Committee V had been informed of the action taken by Committee IV.

4281. *It was so agreed.*

4282. The CHAIRMAN drew attention to the proposals for amendments to paragraph (2) of Article 7 (S/93, S/96, S/102, S/125 and S/145).

4283.1 Mr. SCHOEMAN (South Africa) introduced his Delegation's proposal (S/145) for a new text to replace item (i) of paragraph 2(a).

4283.2 His Delegation supported the view that there should be Union Members and non-Union Members of IPO and that they should meet in the Conference, which, it considered, should be a meeting-place where Union and non-Union Members could discuss matters of common interest. Those matters would come under legal-technical assistance and include the training of personnel in industrial and intellectual property offices, drafting model laws and giving guidance to countries needing assistance in organizing and developing their industrial and intellectual property offices with a view to obtaining the greatest possible benefit from the assistance received from the United Nations Development Program and other sources.

4283.3 It was to be expected that the triennial meetings of the Conference would be concerned with improving ways and means of giving legal-technical assistance and that any recommendations adopted by way of resolution would need serious consideration by the Members of the Unions who, in co-operation with BIRPI, were ultimately responsible for their execution. Matters concerning the propagation of industrial and intellectual property could be discussed under item (i) of paragraph (2)(a) and his Delegation was proposing to amend that item accordingly.

4284. Mr. VAN BENTHEM (Netherlands) said he preferred the more general terms of the BIRPI Draft. Any more detailed specification of matters of general interest might have a restrictive effect.

4285. Mr. WINTER (United States of America) introduced his Delegation's amendment to item (i) of paragraph (2)(a), in document S/125. Its purpose was to remove the reference to "resolutions" from the BIRPI text, since the word "recommendations" alone defined more precisely the Conference's functions.

4286. Mr. DE SANCTIS (Italy) supported the proposal of the Delegation of the United States of America.

4287. The CHAIRMAN having asked for a show of hands on the South African amendment (S/145) suggested that, as there was no support for the amendment, item (i) of paragraph (2)(a) should be referred to the Drafting Committee together with the United States amendment (S/125).

4288. *It was so agreed.*

4289. The CHAIRMAN drew attention to the amendment to item (ii) of paragraph 2(a) proposed by the Delegations of France, Federal Republic of Germany, Hungary, Italy, Soviet Union, United Kingdom and United States of America (S/93).

4290. *It was agreed to instruct the Drafting Committee to amend item (ii) of paragraph 2(a) in accordance with the amendment proposed in document S/93.*

4291. The CHAIRMAN drew attention to the Austrian amendment to item (v) of paragraph 2(a) (S/102).

4292. Mr. BOGSCH (Deputy Director, BIRPI) pointed out that Committee IV had approved similar wording.

4293. *The amendment was approved.*

4294. The CHAIRMAN drew attention to the proposal of the Delegate of the United Kingdom (S/96) to delete subparagraph (b) of paragraph (2).

4295. Mr. BOWEN (United Kingdom) said that the subparagraph merely said that the Conference would be given different titles according to whether it was discussing industrial property or copyright. He was not clear about the purpose of the subparagraph—unless it was to exclude from a copyright conference countries which had joined the Paris Union but not the Berne Union, while admitting countries which had joined neither Union—and that would be illogical. The clause was in any case useless and should be deleted.

4296. The CHAIRMAN explained that the provision was not intended to exclude anyone from any discussions, but was in deference to the autonomy of the Unions; there were persons as well as Governments who were interested either in copyright or in industrial property matters, so that when the Conference was convened on either of those subjects, it would be better if it were designated accordingly. That would make the functions of the Conference clearer and more precise when it was convened at a particular time.

4297. Mr. KRIEGER (Federal Republic of Germany) supported the amendment of the Delegate of the United Kingdom. Deletion of the provision in question would prevent difficulties of a practical nature.

4298. Mr. WINTER (United States of America) said that the subject had given rise to long discussions at the meeting of the Committee of Governmental Experts in Geneva in 1966. Although he agreed that two different designations might cause confusion, he also recalled that good reasons had been advanced for the practice. He suggested that, as a compromise, the matter might be clarified in the regulations of the IPO Convention on the Conference.

4299. The CHAIRMAN said that it might be wise to recognize the right, when appropriate, to designate individual conferences by a special functional title; yet it would be more suitable to insert it in the Rules of Procedure rather than make it part of the text of the Convention. He suggested that subparagraph (b) of paragraph (2) should be deleted, on the understanding that the possibility of using the designations therein described would be provided for in the future rules of procedure of the Conference.

4300. *It was so agreed.*

4301. The CHAIRMAN then turned to paragraph (3) and drew attention to the amendment of the Delegation of the United Kingdom to subparagraph (b), in document S/96, which was a logical consequence of the abolition of the two separate categories of membership.

4302. *It was agreed to refer the amendment in S/96 to the Drafting Committee.*

4303. The CHAIRMAN drew attention to the amendment to paragraph 3(d) proposed by seven delegations (S/93).

4304. Mr. BOGSCH (Deputy Director, BIRPI) explained that there would no longer be a budget "of the Organization" but only a budget of the "Conference," which would be financed by voluntary contributions from the Unions and regular contributions from the non-Union countries. It was only normal that when that budget was voted on, only those members whose finances were involved should vote.

4305. *The amendment to paragraph (3)*(d) *contained in document S/93 was approved, subject to the replacement of the word "Associate" by the words "non-Union."*

4306. Mr. WINTER (United States of America) introduced document S/169, in which his Government proposed that the principle of "a majority of two-thirds of the votes cast" should be applied to voting in the Conference in subparagraphs (a), (d) and (e), etc., of paragraph (3).

4307. The CHAIRMAN remarked that the same principle had been accepted by Committee IV.

4308. Mr. KRIEGER (Federal Republic of Germany) suggested that the amendment was not necessary in subparagraph (a).

4309.1 Mr. WINTER (United States of America) withdrew the amendment in respect of that subparagraph.

4309.2 He said in reply to a further comment by Mr. Krieger that the word "etc." had been inserted as a precaution, to ensure that the amendment would be made to all parts of Article 7 relating to voting. That could be left to the Drafting Committee.

4310. The CHAIRMAN said that the Drafting Committee would ensure that all the references to voting in Article 7 would provide for a two-thirds majority.

COORDINATION COMMITTEE: *Article 8*
(S/84, S/93, S/93 Add., S/96, S/103, S/104, S/126, S/134, S/142, S/158, S/166)

4311. The CHAIRMAN said that amendments had been submitted by the following Delegations: Madagascar (S/84); France, Federal Republic of Germany, Hungary, Italy, Soviet Union, United Kingdom and United States of America (S/93 and S/93 Add.); United Kingdom (S/96); Austria (S/103 and S/104); United States of America (S/126); Czechoslovakia (S/134); Federal Republic of Germany (S/142); Israel (S/158); Switzerland (S/166).

4312. Mr. BOGSCH (Deputy Director, BIRPI) said that the amendment of the Delegation of the United States to subparagraph (a) of paragraph (1) (S/126) was in conformity with the intention of the Article, that countries parties to both the Paris and the Berne Convention should not be excluded.

4313. *It was agreed to refer the amendment in document S/126 to the Drafting Committee.*

4314. Mr. BOGSCH (Deputy Director, BIRPI) said that there were three proposed amendments to subparagraph (c) of paragraph (1): documents S/93, S/103 and S/158.

4315. Mr. KRIEGER (Federal Republic of Germany) said that although his Delegation was one of the sponsors of the amendment in document S/93, he preferred the Austrian amendment (S/103).

4316. Mr. SHER (Israel) said that his Delegation's amendment (S/158) was no longer valid in its present form, since a related proposal had been withdrawn. The word "Organization" should be replaced by the word "Conference."

4317. Mr. LABRY (France) thought that the proposal of the Delegation of Austria would unduly enlarge the role of the Coordination Committee, whose functions should actually be limited to financial and administrative matters. The principle had been admitted that the Unions were independent and could discuss all matters within their competence, and it was the existence of a common secretariat which would give rise to problems of a financial, budgetary and administrative nature common to the various Unions. It was therefore normal that a Coordination Committee should be entrusted with the allocation of common expenditure. In view of the very wide powers of the Conference the Austrian draft proposal as it stood would have the result of introducing, via the Coordination Committee, a principle which appeared to the Delegation of France to be at variance with that of the independence of the Unions. The Delegation of France would therefore keep to the text proposed in document S/93.

4318. Mr. LORENZ (Austria) said that the object of the proposal made by his Delegation was simply to replace the expression "matters of direct interest to the Conference" by more precise terms, and that it was not part of its purpose to oppose the view of the Delegation of France or of other delegations. It would be useful to establish more precisely the functions of the Coordina-

tion Committee within the framework of the Organization. If those functions were to be restricted to budgetary matters, the most adequate proposal would be that in document S/93. Should the other delegations support that proposal, the Delegation of Austria would not oppose it, but if they considered that the Coordination Committee should be given more extensive functions, the Delegation of Austria would maintain its amendment subject to drafting changes.

4319.1 Mr. KELLBERG (Sweden) agreed with other speakers that the words "of direct interest to the Conference" were open to a variety of interpretations and needed clarifying.

4319.2 He supported the amendment proposed by the Delegation of Austria (S/103) because he considered that non-Union countries should have the right to participate in the discussion of questions of concern to the Conference. The amendment submitted by seven Delegations (S/93) was too restrictive. He would have supported the wording proposed by the Delegation of France in document S/15 had it been resubmitted.

4320. Mr. VAN BENTHEM (Netherlands) endorsed the comments of the Delegates of the Federal Republic of Germany and Sweden and supported the amendment of the Delegation of Austria.

4321. The CHAIRMAN asked whether, in view of the explanation of the Delegate of Austria, the Delegate of France would be prepared to accept the Austrian amendment.

4322. Mr. LABRY (France) said that the Delegation of France had never intended to exclude from the competence of the Coordination Committee matters relating, for example, to the program of technical and legal assistance. It was the organ that should deal with those highly important problems in addition to budgetary and administrative matters. On the other hand, the Delegation of France still believed that the functions attributed to the Coordination Committee in the proposal of the Delegation of Austria were far too extensive, since reference to Article 7 showed that the Conference would deal with all matters of general interest in the field of intellectual property. It would clearly be useful to give a clear definition of the tasks of the Coordination Committee, and it was possible that the wording used in document S/93 might form the basis for a draft which would come closer to reality without running the risk of creating regrettable confusion.

4323. Mr. LORENZ (Austria) emphasized the close analogy existing between the tasks of the Executive Committees of the Unions and those of the Coordination Committee. The latter should prepare all the work of the plenary organs—the General Assembly and the Conference—and should deal with all matters for which the plenary organs were competent. Its functions would therefore cover a field as large as that of the Conference itself. Hence the Delegation of Austria could not understand the objections raised by the Delegation of France to its amendment.

4324. The CHAIRMAN said that the remarks just made by the Delegation of Austria had shown him that he had been mistaken in thinking that there was no disagreement between the intentions of the Austrian and French amendments. The French proposal was, in fact, more restrictive than the Austrian one.

4325. Mr. BOGSCH (Deputy Director, BIRPI) said that what was wanted was to associate non-Union countries in the Coordinating Committee's work on the budget of the Conference, its legal-technical assistance program, and the establishment of the agenda for the Conference. Those items were set out in Article 7 and could be reproduced in Article 8 or mentioned by cross-reference.

4326. The CHAIRMAN said that the Secretary's suggestion was sound and proposed that the Drafting Committee be instructed accordingly.

4327. *It was so agreed.*

4328. Mr. KRIEGER (Federal Republic of Germany) suggested that a fourth point should be added, namely, amendments to the Convention (Article 13) as set out in Article 7 (2)(a)(iv).

4329. The CHAIRMAN said he understood from Mr. Bogsch that the point was covered under Article 13. He suggested that the Drafting Committee should be asked to check the matter and include the question of amendments if necessary. The Drafting Committee would also be instructed to include the United Kingdom amendment in document S/96.

4330. *It was so agreed.*

4331. Mr. BOGSCH (Deputy Director, BIRPI) drew attention to the amendment to item (i) of paragraph (3) of Article 8 in document S/93, which was a consequential change due to the fact that there was no longer a budget of the Organization. There would be a budget of the Conference, financed by voluntary and regular contributions. There would also be expenses common to the Unions, and the Unions would discuss in the Coordinating Committee how they should be distributed. The non-Union countries would not participate in such discussions, as the subject did not concern their budget.

4332. *The amendment to item (i) of paragraph (3) of Article 8 in document S/93 was approved.*

4333. Mr. BOGSCH (Deputy Director, BIRPI) drew attention to a further amendment to item (i) of paragraph (3) of Article 8 proposed by the Delegation of the Federal Republic of Germany (S/142) and pointed out that the last part of the sentence was no longer applicable as a result of the acceptance of the amendment in document S/93.

4334. Mr. KRIEGER (Federal Republic of Germany) said that his Delegation's amendment was based on a similar provision in Article 13 of the Paris Convention in Document S/3. He considered that it would be useful to have such a provision in the present Convention.

4335. *The amendment in document S/142 was approved, with the deletion of the wording at the end of the text: "and in particular ... budget of the organization."*

4336. Mr. BOGSCH (Deputy Director, BIRPI) drew attention to the amendments to items (iii) and (iv) of paragraph (3) of Article 8 in document S/93, which were a consequence of the elimination of the Organization's budget. He also drew attention to the amendment of the Delegation of Austria to item (iv) of paragraph (3), contained in document S/104, which raised the question whether, since the Conference was to meet every three years and adopt a triennial program and budget, there was need for annual revision and, if so, by whom. Would it be the Coordinating Committee?

4337. Mr. LORENZ (Austria) said that the object of the amendment presented by his Delegation (document S/104) was to define more closely certain points that had not been settled. Under the proposal in document S/93 there would be two sorts of budgets: the budget of expenses common to the Unions, and the budget of the Conference. The former would be annual; the latter, triennial. Did the authors of that proposal mean to opt for the system of the annual budget? In that case, it would be pointless for two organs to concern themselves simultaneously with the budget. Moreover, was there any particular reason why a different financial procedure should be adopted for the Organization and the Unions? At all events, a decision would have to be taken between

the two systems, that of a budget worked out for a lengthy period by a plenary organ, with provision for annual review by a smaller organ, or that of an annual budget.

4338.1 Mr. BOGSCH (Deputy Director, BIRPI) said that the coordination of the common expenses of the Unions would be carried out annually, as provided under item (i) of paragraph (3).

4338.2 The Delegation of Austria had, however, raised a pertinent question, which was not mentioned by the authors of the amendment in document S/93, because it was difficult to forecast needs three years ahead. The Secretariat would have no objection to following the practice of other organizations, whereby the Coordination Committee would be responsible for approving adjustments between meetings of the Conference. That would be covered by the Austrian amendment, subject to any necessary drafting changes.

4339. Mr. LORENZ (Austria) said that it would be most desirable to conform to the provisions adopted by Main Committee IV wherever financial matters were concerned; in other words, they should specify clearly the organs competent, on the one hand, to establish the budget and, on the other hand, to verify the final accounts. Lastly, procedures could, in case of need, be laid down for urgent decisions. That was the spirit in which the proposals of the Delegation of Austria had been conceived.

4340. The CHAIRMAN suggested that the Secretary should be asked to ensure that the provisions in Article 8 concerning the Coordination Committee's responsibility regarding agenda, budget and accounts were coordinated with the similar powers of the General Assembly.

4341. *It was so agreed.*

4342. Mr. BOGSCH (Deputy Director, BIRPI) drew attention to the Austrian amendment to item (vii) of paragraph (3), contained in document S/104. A similar provision had been approved by Main Committee IV.

4343. *The amendment was approved.*

4344. Mr. BOGSCH (Deputy Director, BIRPI) drew attention to the amendment to paragraph (4) proposed by the Delegation of Switzerland (S/166). The problem was really one of terminology. The drafters of the BIRPI text had regarded every session of the Coordination Committee as a regular session; but it could equally well be said that the Coordination Committee met once a year and that any other session was an extraordinary one.

4345. The CHAIRMAN asked whether the Main Committee agreed to the provision in the amendment that an extraordinary session could be convened by the Director General himself and also at the request of one-quarter of its Members.

4346. Mr. MORF (Switzerland) said that his Delegation had been of the opinion that the procedure to be adopted for the meetings of the Coordination Committee should be the same as that which Main Committee IV had stipulated for the Executive Committee of the Paris Union and the Berne Union, because there was no reason to choose any other procedure.

4347. Mr. LORENZ (Austria) stressed that convocation was an official act, always carried out by the Director General. As far as the initiative for convocation was concerned, Main Committee IV had decided in principle that it could be taken either by the Director General, or by at least one-quarter of the member countries of the Coordination Committee. It would therefore be appropriate to specify that "the Coordination Committee shall meet on the initiative of the Director General or at the request of one-quarter of its members."

4348. The CHAIRMAN said that the Delegate of Switzerland had rightly pointed out that his amendment conformed with the decision of Main Committee IV concerning the Executive Committees of the Paris and Berne Unions. It was logical to give the Director General discretion in the present case.

4349. *The amendment in S/166 was approved.*

4350. Mr. BOGSCH (Deputy Director, BIRPI) drew attention to the amendment of the Delegation of Czechoslovakia to subparagraph (a) of paragraph (6) in document S/134. He reminded the Main Committee that since the submission of the amendment it had decided that Conference and General Assembly decisions should be made by a two-thirds majority of the votes cast instead of by a simple majority. Main Committee IV had decided that Assembly decisions should be made by a two-thirds majority, but had left Executive Committee decisions with a simple majority.

4351. Mr. VŠETEČKA (Czechoslovakia) explained that, given the importance of the matters to be entrusted to the Coordination Committee, the Delegation of Czechoslovakia thought that the Committee should take its decisions by a two-thirds majority rather than by a simple majority. Nevertheless, it would not press its proposal if other delegations preferred the solution adopted by Main Committee IV for the Executive Committees of the Unions.

4352. Mr. BODENHAUSEN (Director of BIRPI) said he hoped the Delegate of Czechoslovakia would not press his amendment, because the situation of IPO was analogous to that of the Unions. Main Committee IV had, as a compromise, agreed to a two-thirds majority for the Assembly and a simple majority for the Executive Committee, to enable it to function. The tasks of the Executive Committee of the Unions were no less important than those of the Coordinating Committee; consequently, the rules should not differ. If IPO was to be able to operate, the General Assembly could vote by a two-thirds majority, but it was essential for the Coordinating Committee, which had to take speedy action, to work on a simple majority.

4353. The CHAIRMAN asked the Delegate of Czechoslovakia if he would agree that, as the voting in the General Assembly would be by a two-thirds majority, the provision regarding the Coordinating Committee could be the same as that for the Executive Committees of the Unions, which were very important bodies.

4354. Mr. VŠETEČKA (Czechoslovakia) withdrew his proposal.

4355. The CHAIRMAN, in reply to an observation by Mr. Krieger confirmed that paragraph (5) subparagraph (c) of Article 8, along with a number of others, had been deferred until the Main Committee V knew what action had been taken by Main Committee IV.

4356. Mr. CIPPICO (Italy), referring to paragraph (3), item (v) of Article 8, said that the procedure for nominating candidates could prove very lengthy. Was there any reason why the Coordination Committee could not nominate more than one candidate at a time?

4357. Mr. BODENHAUSEN (Director of BIRPI) said that the Expert Committee in Geneva had had long and complicated discussions on the subject. The text of item (v) represented a compromise achieved with difficulty. He hoped that in such a delicate matter, as there was no other proposal before the Committee, the provision would be left as it was.

4358. Mr. CIPPICO (Italy), in reply to a question from the Chairman, said he would think the matter over. His only concern was for efficiency.

4359. Mr. RAZAFINDRATANDRA (Madagascar), referring to the matter raised by the Delegate of the Federal Republic of Germany, recalled that when document S/84 had been considered the Delegation of Madagascar had announced that it was withdrawing its amendment concerning the Coordination Committee.

The meeting rose at 6:15 p.m.

FIFTH MEETING

Wednesday, June 21, 1967, at 10:35 a.m.

INTERNATIONAL BUREAU: *Article 9 (S/121, S/143 and S/154)*

4360. Mr. BOGSCH (Deputy Director, BIRPI) said that draft amendments to Article 9(1) had been submitted by the Delegation of the United States and Austria in documents S/121 and S/154, respectively. The idea embodied in the United States proposal had already been approved and was in fact merely transferred from Article 2, from which it had been deleted. The Austrian proposal was the same in effect, but also suggested the division of the paragraph into two parts, separating the historical account of the origins of the Bureau from the description of its functions.

4361. Mr. SHER (Israel) supported both draft amendments and proposed in addition that the description of the Bureau's functions should include a statement explaining that the Bureau would also carry out such functions as might be allocated to it by the Unions.

4362.1 Mr. LORENZ (Austria) presented the amendments to Article 9 proposed by his Delegation (S/154).

4362.2 The "International Bureau," whose creation was provided for in Article 9, represented the chief element of the common administration. It was in order to harmonize the provisions of the new IPO Convention, on the one hand, and the relevant provisions of the Conventions of Paris and of Berne, on the other hand, that the Delegation of Austria was proposing a new wording for the first paragraph.

4362.3 The following paragraphs define the nature of the International Bureau, the duties of the Director General and the composition of the Bureau. In view of the remarks made by the Delegate of Israel, the Delegate of Austria thought that it would be appropriate to state in an additional paragraph that the Unions also entrusted their administrative duties to the International Bureau.

4362.4 Instead of specifying the composition of the Bureau, the Delegation of Austria proposed to say that the International Bureau "... is directed by a Director General, assisted by ...," on the understanding that it rested with the Secretariat of BIRPI to decide on that point.

4362.5 In the opinion of the Delegation of Austria, paragraph (6) of Article 9 as proposed in the program of the Conference did not call for amendment. It would nevertheless be advisable to stipulate in one of the provisions of Article 9 that the Secretariat duties of the various organs of the Organization were assumed by the International Bureau, but that was a matter of a purely stylistic nature that the Drafting Committee could deal with.

4363. Mr. BOGSCH (Deputy Director, BIRPI) observed that the Austrian and Israeli proposals were substantially the same.

4364. *It was decided to approve the United States and Austrian amendments and to refer them to the Drafting Committee together with the Israeli proposal.*

4365. Mr. BOGSCH (Deputy Director, BIRPI) said that the amendment proposed to paragraph (3) by the Delegation of the Federal Republic of Germany (S/143) would complete the paragraph by indicating to whom the Director General was responsible.

4366. Mr. CIPPICO (Italy) suggested that the paragraph should state in effect that the head of the Organization was the Director General, who represented the Organization and the Unions in accordance with the powers conferred upon him by the General Assembly.

4367. Mr. SHER (Israel) asked whether the Director General would be responsible only to the General Assembly of IPO and whether, read in conjunction with paragraph (1)(c) of Article 13*ter* of the Paris Convention, the proposed text might not lead to confusion over the question of responsibilities.

4368. Mr. LULE (Uganda) referring to Articles 6 and 7, asked whether the Director General would be responsible in any way to the Conference, some of whose members would not be members of the Assembly.

4369. Mr. BOGSCH (Deputy Director, BIRPI) suggested that if the Delegate of Italy was prepared to amend his proposal so that it read along the following lines: "in accordance with the powers entrusted to him by the competent organs," all requirements would be met.

4370. Mr. VAN BENTHEM (Netherlands) observed that the paragraph dealt with two separate questions, namely the Director General's responsibility in regard to the functions vested in him, and his capacity as the representative of the Organization for external relations.

4371. Mr. MAKSAREV (Soviet Union) was of the opinion that it would be desirable to make paragraph (3) of Article 9 more explicit and to add at the end of the text proposed in the program of the Conference the words: "the Director General is responsible to the General Assembly and shall report to it."

4372. Mr. CIPPICO (Italy) pointed out that the Director General was responsible to the General Assembly alone because the General Assembly was the supreme organ of the Organization. He could not, therefore, be responsible to other organs unless the General Assembly so decided. He doubted whether the suggestion made by the Delegate of the Soviet Union would meet situations which might arise during the three years between Assemblies when the Director General might find he needed fresh instructions. He suggested it would be better to follow the course recommended earlier by Mr. Bogsch and draft provisions similar to those adopted by other international organizations.

4373. Mr. WINTER (United States of America), supported by Mr. KRIEGER (Federal Republic of Germany), proposed that the Secretariat be asked to prepare a fresh version of the paragraph in question for submission to the Committee.

4374. *It was so agreed.*

4375.1 Mr. LABRY (France) said that the Delegation of France had intentionally not submitted a proposed amendment in due form with regard to paragraph (2) of Article 9. He wished, however, to recall that, during the preparatory work, the French experts had suggested, on the one hand, that the Director General should be a national of a State that was a member both of the Berne Union and of the Paris Union, and, on the other hand,

that all matters relating to the Paris Union should be entrusted to one of the Deputy Directors General, whilst all matters relating to the Berne Union should be entrusted to the other Deputy Director General.

4375.2 The Director of BIRPI had said at that time, with regard to the second suggestion, that such a division of powers was liable to promote division and rivalry within the Organization. The Delegation of France had accepted that point of view.

4375.3 The Director of BIRPI had also urged that the Director General of the new Organization should be chosen exclusively on account of his abilities. The Delegation of France did not question the merit of that argument. It did not, however, consider it incompatible with the other principle according to which the Director General of the Organization should be a national of a State that was a member of both Unions. Nevertheless, it would not propose an amendment, but it wished its statement to be included in the minutes of the Main Committee.

4375.4 Mr. Labry wished to make it clear that the position adopted by the Delegation of France had no reference to any particular State whatsoever or any person whomsoever.

4376. The CHAIRMAN thanked Mr. Labry for not pressing the point and assured him that his observations would be inscribed in the minutes. He noted that, there being no formal proposal and no support for the declaration of the Delegation of France, the text will remain as it is in document S/10, that is, without any limitation as to the nationality of the Director General who, consequently, could be a national of only one Union or both of them.

4377. Mr. LORENZ (Austria) pointed out that some of the duties assigned to the Director General were assigned to him personally since, for example, the various organs could not meet unless they were convened by the Director General. It would be advisable to provide that those duties could automatically be discharged by a Deputy Director General in the event of the Director General being prevented from fulfilling them. There was probably no need to submit a formal proposal on the subject, because the very idea of a Deputy Director General implied that the latter could automatically assume the functions devolving upon the Director General when, for instance, the latter was ill. A definite statement in that regard might, however, be useful.

4378. *The Main Committee decided to mention that statement in its report.*

4379. Mr. WINTER (United States of America) asked whether the omission from the Austrian draft amendment to paragraph (5) (S/154) of the reference to the Assemblies and to the Executive Committees was intentional or was covered by the drafting of the Paris and Berne Conventions.

4380. Mr. BOGSCH (Deputy Director, BIRPI) said that the Delegation of Austria had proposed the deletion of the reference to the Assemblies and the Executive Committees because those bodies were organs of the Unions only and not of the Organization. From the legal point of view, there was no need to refer to those bodies in the IPO Convention.

4381. *It was agreed to follow the Austrian amendment.*

4382. Mr. MAKSAREV (Soviet Union) thought it desirable, in the last sentence of paragraph (6) of Article 9, to adopt the expression generally used by the United Nations and its Specialized Agencies and to say: "Due regard shall be paid to the importance of recruiting the staff on the basis of an equitable geographical distribution."

4383. Mr. WINTER (United States of America) pointed out that at the Meeting of Experts in May 1966 the question of recruitment had been discussed at length and the wording finally adopted was that of Article 101 of the United Nations Charter.

4384. Mr. PETERSSON (Australia) said that he preferred the wording contained in document S/10.

4385. *It was decided to approve the text of paragraph (6) as shown in document S/10 with the understanding that the term "on as wide a geographical basis as possible" meant, in practice, the same as "on an equitable geographical basis."*

4386. Mr. MORF (Switzerland) inquired whether the second sentence of paragraph (6) of Article 9 should be interpreted as meaning that the Director General could appoint the Deputy Directors General and thereafter submit those appointments to the Coordination Committee, or that he could appoint the Deputy Directors General only after having obtained the approval of the Coordination Committee. In the view of the Delegation of Switzerland, the Director General ought only to be able to proceed to the appointment of the Deputy Directors General after having obtained the approval of the Coordination Committee.

4387. The CHAIRMAN said he would expect that the appointment of any Deputy Director General by the Director General would be subject to approval by the Coordination Committee.

4388. Mr. MORF (Switzerland) recalled that, during the preparatory work, the representative of BIRPI had expressed a different opinion. Nevertheless, if the Conference endorsed the interpretation that had just been given by the Chairman, the Delegation of Switzerland would not insist on a clarification of the wording of the second sentence of paragraph (6) of Article 9.

4389. Mr. AGAG (Algeria) and Mr. VAN BENTHEM (Netherlands) shared the views of the Delegation of Switzerland on the interpretation to be given to the second sentence of paragraph (6).

4390. Mr. KRISPIS (Greece) asked whether approval in that sense would be equivalent to the power of veto.

4391. Mr. BOGSCH (Deputy Director, BIRPI) observed that if the Chairman's interpretation was the correct one, the Coordination Committee would have more than the power of veto since no appointment would be effected until the Coordination Committee had given its approval.

4392. Mr. LULE (Uganda) said that two alternative procedures were possible. The Director General could appoint his Deputy subject to the Coordination Committee's approval or he could propose a Deputy and appoint him after the Coordination Committee had expressed its approval. He would prefer the second alternative, but study of the practical implications of both procedures was desirable.

4393. Mr. WINTER (United States of America) said that in his view the Director General should be allowed to use his discretion in the appointment of his Deputy. He suggested that the words "subject to approval" be used instead of the words "with the approval."

4394. Mr. CIPPICO (Italy), Mr. MAKSAREV (Soviet Union) and Mr. DELICADO (Spain) supported the United States suggestion.

4395. Mr. CARDOSO (Portugal) thought that a guide might be found in the procedure provided for in item (v) of Article 8(3): The Director General would nominate the Deputy Directors General and, if the Coordination

Committee did not give its approval, the Director General would submit further nominations to the Committee, until the latter's approval was obtained.

4396. Mr. BOGSCH (Deputy Director, BIRPI) said that the Committee appeared to be in agreement that the appointment of the Deputy Director General should be made only after the approval of the Coordination Committee had been received. The United States proposal could be adopted and referred to the Drafting Committee, it being understood that, while the power of appointment lay in the hands of the Director General, the Director General could not exercise that power without having the prior approval of the Coordination Committee.

4397.1 Mr. CIPPICO (Italy) observed that the French text used the term *Vice-directeurs généraux* for the English Deputy Directors General. The United Nations had one Deputy Director General and several Assistant Directors General; both categories would appear to be covered in the document by the term *Vice-directeurs généraux*.

4397.2 He wondered whether the Director General should not be allowed more freedom in the appointment of the Assistant Directors General than he was in that of his Deputy.

4398. Mr. BOGSCH (Deputy Director, BIRPI) said that whereas in most organizations the title of "Deputy" was reserved for cases where only one deputy was appointed, there were exceptions to that general rule. The substantive issue was whether the Organization should have one Director General, one Deputy Director General and more Assistant Directors General, or one Director General and several Deputy Directors General and Assistant Directors General in addition.

4399. Mr. KRISPIS (Greece) asked whether the Director General could submit two or three names and leave it to the Coordination Committee to select one of them.

4400. Mr. BOGSCH (Deputy Director, BIRPI) said that the Director General could only submit one name at a time, otherwise the appointment would be more in the nature of an election by the Coordination Committee.

4401. Mr. KRISPIS (Greece) remarked that it would apparently be more accurate to state that the appointment was made by the Coordination Committee on the suggestion of the Director General.

4402. Mr. KRIEGER (Federal Republic of Germany) proposed that, in the second sentence of paragraph (6), the word "with" be replaced by the word "after."

4403. *It was so decided.*

FINANCES: *Article 10 (S/93, S/93 Add. and S/167)*

4404.1 Mr. BOGSCH (Deputy Director, BIRPI) drew attention to document S/93 in which could be found a new text for the first three paragraphs of Article 10 proposed by several delegations. The wording proposed was in harmony with decisions taken by Main Committees IV and V in relation to the establishment of separate budgets for the common expenses of the Unions and the Conference.

4404.2 The Delegation of Switzerland had also submitted amendments to Article 10 (S/167), the first of which, in respect of paragraph (3)(b), would fall if the joint amendment (S/93) were adopted.

4405.1 Mr. KELLBERG (Sweden) said that he supported the compromise formula submitted in document S/93 for the first three paragraphs of Article 10.

4405.2 He was not altogether clear about arrangements for the financing of legal-technical assistance. In Article 7, paragraph (2)(a), item (iii) referred to the establishment by the Conference of the triennial program of legal-technical assistance "within the limits of the budget of the Organization." The joint draft text for Article 10, paragraph (3), item (iii) referred to "sums received for services rendered by the International Bureau in the field of legal-technical assistance" as one of the sources for the financing of the budget. He wondered if he was right in assuming that the sums and the services referred to were services not financed out of the budgetary allocations for legal-technical assistance.

4406. Mr. BOGSCH (Deputy Director, BIRPI) said that when experts were sent into the field to provide legal-technical assistance, their contract with the Organization covered all their fees and expenses. At the same time, the Organization might conclude a contract with the country concerned for the recovery of part of those fees and expenses. This was one of the cases which would come under item (iii).

4407. *It was decided to replace the first three paragraphs of Article 10 in document S/10 by the text proposed in document S/93.*

4408. *The amendment to paragraph (5)(a) in document S/167 was approved in principle and referred to the Drafting Committee.*

LEGAL CAPACITY: PRIVILEGES AND IMMUNITIES: *Article 11 (S/96, S/135 and S/156)*

4409. *The amendment proposed by the Delegation of Israel (S/156) was approved.*

4410.1 Mr. PISK (Czechoslovakia), introducing his Delegation's amendment to Article 11 (S/135), said that paragraph (3) in document S/10 placed no obligation on any Member State to grant officials or representatives of the Organization diplomatic privileges or immunities. It only authorized the Organization to enter into individual agreements on privileges and immunities with individual countries. His Delegation was proposing that the Organization should align its practice with that of other international organizations which had arrangements obliging Member States to grant diplomatic privileges and immunities on the basis of the so-called "functional theory." Such an obligation was expressed by the use of the word "shall" in paragraph (3), subparagraphs (a) and (b) (S/135).

4410.2 His Delegation's object in submitting its proposal was to draw attention to existing practice with a view to finding a solution acceptable to all. He would not, however, press the amendment if it did not meet with general approval.

4411.1 Mr. BOGSCH (Deputy Director, BIRPI) said that he had no objection to or preference for either formula. The BIRPI Draft only *allowed* for the possibility of conclusion of agreements between the Organization and Member States because it had appeared excessive for an organization with no more than some 80 employees and five or six experts travelling around the world to *oblige* all Member States to enter into a separate treaty on immunities and privileges.

4411.2 The Czechoslovak proposal seemed to contain an inconsistency in that its paragraph (4) stated that legal capacity would be defined in a multilateral agreement, whereas, under paragraph (1), legal capacity was automatic. Moreover, the Headquarters Agreement, with which paragraph (2) dealt, was necessarily a bilateral arrangement. Consequently, if the Czechoslovak proposal were to be approved, its paragraph (4) should become subparagraph (c) of paragraph (3) and the reference to legal capacity should be deleted from it.

4412. Mr. KELLBERG (Sweden) said that the type of agreement—that is, a multilateral convention for privileges and immunities—proposed by the Delegation of Czechoslovakia conformed more closely to normal international practice than the proposals in document S/10. Before committing himself to either text, he would like to give the matter further consideration.

4413. Mr. KRIEGER (Federal Republic of Germany) said he thought that ad hoc agreements were preferable to an obligatory general agreement.

4414. Mr. VAN BENTHEM (Netherlands) agreed with Mr. Bogsch that the Czechoslovak proposal extended privileges and immunities beyond those at present required by the Bureaux. In his country, there was a tendency to restrict privileges and immunities to a minimum, and he thought that the text proposed in document S/10 would be preferred by his Government. He was prepared to consider the question further, but reserved his position.

4415. Mr. SHER (Israel) said that in his opinion paragraph (4) of the Czechoslovak proposal could create difficulties. He also reserved his position.

4416. Mr. HEWITT (United States of America) agreed that the Czechoslovak proposal was in line with customary international practice. The Article in document S/10 had, however, been drafted to meet the needs of the proposed new Organization, and he would prefer to see it adopted as it stood.

4417. Mr. BOGSCH (Deputy Director, BIRPI) observed that the question of diplomatic privileges and immunities was a delicate subject in parliamentary circles. He feared that the text proposed by the Delegation of Czechoslovakia might delay ratification of the Convention. He appreciated the desire of the Delegate of Czechoslovakia to obtain more ample privileges and immunities for the Organization than BIRPI had thought were necessary at the present stage. When the time came for more extensive privileges and immunities, the necessary treaties could be concluded.

4418. Mr. PISK (Czechoslovakia) said he was prepared to defer consideration of his proposal to a later conference, not only because of the difficulties alluded to in connection with paragraph (4) as proposed by his Delegation, but also because the current session of the International Law Commission was studying the question of ad hoc diplomacy and the diplomacy of conferences and it would be useful to see whether it accepted the "functional theory." He had not wished to broaden the scope of the immunities accorded to the Organization but only to place IPO on an equal footing in that respect with other international organizations.

4419.1 Mr. BOWEN (United Kingdom) said that his Delegation had proposed, in document S/96, the deletion of the words "bilateral or" at the beginning of paragraph (3) because it considered that the present needs of the Organization were met by the bilateral agreement to be concluded with the Swiss Confederation under paragraph (2). Should privileges and immunities with other Member States be required, they could be best obtained by multilateral agreements in the preparation of which all Member States could have their say.

4419.2 His proposal was based on the general principle that officials and representatives of the Organization should enjoy the same privileges and immunities in all Member States. If the conclusion of bilateral agreements were authorized, possible subsequent differences in the privileges and immunities accorded by different Member States might lead to discontent among officials of the Organization.

The meeting rose at 12:40 p.m.

SIXTH MEETING

Wednesday, June 21, 1967, at 2:30 p.m.

LEGAL CAPACITY: *Article 11* (continued) *(S/175)*

4420. The CHAIRMAN reminded members of the Committee that at the end of that morning's meeting the Delegation of the United Kingdom had proposed the elimination of the words "bilateral or" at the beginning of paragraph (3) of Article 11.

4421. Mr. BOGSCH (Deputy Director, BIRPI) thought that under present conditions there was likely to be a need for bilateral or multilateral agreements; if a branch office were established under the Patent Cooperation Treaty Plan for Latin America, Africa or Asia, one country would have to house that branch office. The inclusion of the word "bilateral" thus was a practical necessity, and he would like it to be retained.

4422. Mr. BOWEN (United Kingdom) said he was willing to withdraw the United Kingdom's proposal in the light of Mr. Bogsch's explanation.

4423. Mr. DESBOIS (France) submitted the proposal of the Delegation of France (S/175) and read out the text proposed by the Delegation for paragraph (4)(a) and (b).

4424. Mr. MORF (Switzerland) considered that it would be preferable to replace the expression "with the approval" by the expression, "*subject to the approval,*" which seemed to him to be more appropriate.

4425. Mr. DESBOIS (France) considered that the terms of paragraph (4)(a) of the French proposal should satisfy the Delegate of Switzerland: the General Assembly would intervene after the Director General had consulted the Coordination Committee. It was, therefore, a question of confirmation.

4426. Mr. MORF (Switzerland) said he was not convinced by the explanation given, but he would agree to the question being referred to the Drafting Committee.

4427. Mr. BOGSCH (Deputy Director, BIRPI) believed that he saw a slight difference in substance between the two proposals. According to the Swiss proposal, the Director General would not only negotiate but sign an agreement which the General Assembly would approve later. According to the French version, the Director General would negotiate the Draft Agreement, submit it to the General Assembly and be authorized by that body to sign it.

4428. Mr. DESBOIS (France) reiterated his own interpretation: the conclusion of the agreement was subject to the approval of the General Assembly. He suggested the following more precise wording: "... conclude, after having obtained the approval of the General Assembly."

4429. The CHAIRMAN said it was clear that in one case an agreement would be concluded subject to final approval; in the other not until the General Assembly had acted.

4430. Mr. VAN BENTHEM (Netherlands) said both drafts would have the same legal effect. The agreement could not enter into force until the competent body had given its approval. It was purely a matter of wording and should be referred to the Drafting Committee.

4431. The CHAIRMAN thought there was in fact some difference, but if there was general agreement, the matter would be referred to the Drafting Committee.

4432. Mr. DESBOIS (France) agreed that the wording which he had proposed should be submitted to the Drafting Committee.

4433.1 The CHAIRMAN said the Delegation of France had made its point quite clear in the redrafted statement. As revised, the statement would read: "The Director General shall be authorized to negotiate in cooperation with the Coordination Committee, and with the approval of the General Assembly to conclude the Agreement."

4433.2 The French proposal signified negotiating, with the help of the Coordination Committee, an agreement which it was desired to conclude, but which could not be concluded until the General Assembly gave its approval. In the other instance, the agreement would be negotiated and concluded, but the final papers could not be signed until approved by the General Assembly.

4434. Mr. MORF (Switzerland) recalled that the General Assembly was to meet every three years. Was it to be considered that the conclusion of the agreement should be suspended until such a meeting took place, or would an extraordinary session be held?

4435. Mr. DESBOIS (France) acknowledged that the question was a delicate one, but considered that a Headquarters Agreement was rarely of such urgency as to necessitate convening an extraordinary session of the General Assembly. He admitted that the formula proposed by the Delegate of Switzerland was more suitable for dealing with emergencies.

4436. The CHAIRMAN asked the Delegation of France and the Delegation of Switzerland to attempt to find a solution which could then be sent to the Drafting Committee.

4437. Mr. KELLBERG (Sweden) wished, with the permission of the Chairman, to refer back to paragraph (3) of Article 11 which mentioned three categories that might enjoy privileges and immunities; he remembered that a number of treaties contained a clause granting such privileges and immunities to experts on mission. He did not ask that such a clause be included, but would like mention of it to appear in the record.

4438. Mr. CHAMBERLAIN (United Kingdom) asked the Chairman for permission to speak on paragraph (1) of Article 11. He drew attention to the words "... on the territory of each member State ..." which the Delegation of the United Kingdom interpreted as meaning the metropolitan territory and any dependent territories to which the Paris and Berne Conventions had been extended. The Stockholm Draft Convention contained no territorial application article, nor was it necessary. As the wording might raise doubts, however, he wished his statement to go on record.

4439. Mr. VAN BENTHEM (Netherlands) wished to be associated with the statement of the Delegation of the United Kingdom.

4440. Mr. PETERSSON (Australia) wished to be associated with the comments by the two preceding speakers.

4441. Mr. KRIEGER (Federal Republic of Germany), on a point of order, said it appeared that the text of Article 11, paragraph (3), in document S/10 was to be maintained; he noted, however, that there was a written proposal for amendment by the Delegation of Israel in document S/156.

4442. The CHAIRMAN said the amendment had been dealt with.

RELATIONS WITH OTHER ORGANIZATIONS:
Article 12
(S/165)

4443.1 The CHAIRMAN then opened the discussion on Article 12, of document S/10. A proposal had been submitted by the Delegation of the Federal Republic of Germany in document S/165.

4443.2 Mr. KRIEGER (Federal Republic of Germany) said that as stated in Article 12, the Coordination Committee would have the power to approve general agreements or treaties concluded by the Director-General for the Organization. In certain cases, such agreements might be of considerable importance and it would be proper, therefore, to introduce the principle of a qualified majority for the approval of any agreement by the Coordination Committee. His Delegation suggested a two-thirds majority.

4444. Mr. SHER (Israel) asked for clarification. Did that proposal mean that the requirements laid down in Article 8, paragraph (6) subparagraph (b) were to be dispensed with?

4445. Mr. KRIEGER (Federal Republic of Germany) said that it was not intended to change the competent body; the proposal was that a two-thirds majority of the Coordination Committee would be necessary for approval.

4446. The CHAIRMAN said that although the Main Committee V had agreed earlier—in conformity with the decision of Main Committee IV on the Executive Committees of the two Unions—that the Coordination Committee would follow the general practice of taking a majority vote, the present proposal was the exception, namely that when the Coordination Committee considered arrangements with other organizations a two-thirds majority vote would be required.

4447. Mr. VAN BENTHEM (Netherlands) agreed with the proposal by the Delegation of the Federal Republic of Germany provided it did not lead to further exceptions to the rule.

4448. Mr. SHER (Israel) said he understood, therefore, that under the proposal of the Delegation of the Federal Republic of Germany, when a vote was taken under Article 12, a two-thirds majority would be necessary and the rule in Article 8, paragraph (6), subparagraph (b) would not apply. It could also be interpreted to mean that even if paragraph (6) subparagraph (b) applied, the vote in each Union would be subject to a two-thirds majority.

4449. Mr. KRIEGER (Federal Republic of Germany) observed that his Delegation only wanted a two-thirds majority to apply to Article 12.

4450. Mr. LULE (Uganda) asked whether the qualified majority would only apply to delegates attending the Coordination Committee or to the total membership of the Coordination Committee.

4451. Mr. WINTER (United States of America) thought it was reasonable to ask that the principle of simple majority be adhered to. The proposal in document S/165 would also apply to paragraph (2) of Article 12, arrangements for consultation and cooperation with non-governmental organizations; that would create a historical precedent. It was unusual to require a qualified majority for consultation with non-governmental organizations and his Delegation would therefore prefer all issues before the Coordination Committee to be decided by simple majority.

4452. Mr. KRIEGER (Federal Republic of Germany) withdrew his Delegation's proposal after consideration of the views expressed by the Delegations of the Netherlands and the United States of America.

4453. The CHAIRMAN said the Delegation of the Soviet Union had also expressed agreement.

4454. Mr. LABRY (France) considered that it would be desirable to delete the word "general" in the second sentence of Article 12(1). In working relations with the intergovernmental organizations all agreements, whether general or restricted in scope, should be submitted for the approval of the Coordination Committee.

4455. Mr. DE CARVALHO (Portugal) felt that if it was decided to delete the word "general" one could not say "any agreement." In addition, if it is desired to maintain the present wording, the second sentence of Article 12(1) seemed to establish that a possible agreement between IPO and the United Nations providing for close cooperation with the most important intergovernmental organizations should be submitted to the Coordination Committee and ultimately to the General Assembly for approval (Article 6(3)(f)), in order to be concluded.

4456. Mr. BOGSCH (Deputy Director, BIRPI) stated, in reply to the Delegate of Portugal, that the agreement referred to in Article 6 implied more than close cooperation with the United Nations, and was thus entirely different from the working agreements referred to in Article 12; hence no contradiction was involved.

4457. Mr. DE CARVALHO (Portugal) observed that, if the interpretation to which he had referred was not correct, it should be pointed out that there was no provision in the IPO Convention such as Articles 11(4), 12(1) and 12(2) conferring powers on the Director General to negotiate and ultimately to conclude a possible agreement between IPO and the United Nations in accordance with Articles 57 and 63 of the Charter of the United Nations.

4458. Mr. WINTER (United States of America) said the word "general" in the second sentence of Article 12, paragraph (1) referred back to the first sentence of that paragraph. The text as it stood was quite clear and his Delegation supported the wording of paragraph (1) as drafted.

4459. Mr. KRISPIS (Greece) considered the words "effective working" and "closely" superfluous. He proposed their deletion.

4460. The CHAIRMAN said he assumed that the Delegate of Greece meant that there could be no working relation which would not be effective.

4461. Mr. LABRY (France) observed that from a reading of paragraph (1) of Article 12, only agreements of a general nature appeared to require approval by the Coordination Committee; such would not, therefore, be the case in regard to special agreements. He merely wished to point out to the Main Committee that that appeared to be illogical.

4462.1 Mr. BOGSCH (Deputy Director, BIRPI) said he would attempt to deal with all three questions.

4462.2 The word "general" in Article 12 had been used to designate ad hoc projects such as sponsoring meetings with UNESCO, for instance, for copyright and seminars for developing countries. They did not require the formal agreement or approval of the Coordination Committee, but could come under the heading of "general agreements." Such matters appeared in the program and the budget and anyone having a right to comment could do so. He had, however, no objection to deletion of the word.

4462.3 He personally agreed with the requests by the Greek Delegation for the omission of certain adjectives.

4462.4 As regards the proposal by the Delegation of Portugal, any agreement under the United Nations Charter was an entirely different matter. It was under the jurisdiction of the General Assembly, not of the Coordination Committee, and was subject to a heavily qualified majority.

4463.1 The CHAIRMAN asked delegates to express their opinion on the proposal to delete the word "general" in the second sentence of Article 12, paragraph (1). He noted that a large majority preferred the text in document S/10.

4463.2 He also asked delegates to express themselves by a show of hands on the question of the deletion of adjectives raised by the Delegation of Greece. He noted again that the majority preferred the existing text in document S/10.

4464. Mr. KELLBERG (Sweden) said Article 12, paragraph (1) mentioned agreements on cooperation with intergovernmental organizations. He hoped there would be no confusion between such agreements and those concerning participation in the administration of other IPO agreements mentioned in Article 6, paragraph (3), subparagraph (d), items (ii) and (iii).

4465. Mr. BOGSCH (Deputy Director, BIRPI) said that, as in the case of the Portuguese proposal, the record should show that neither the agreements referred to by Mr. Kellberg nor possible agreements with the United Nations came under the heading "working agreements," but were governed by their own rules.

AMENDMENTS: *Article 13*
(S/93, S/93 Add. and S/174)

4466. The CHAIRMAN invited members to proceed to Article 13, and the amendments (S/93 and S/93 Add.), submitted by the Delegations of France, the Federal Republic of Germany, Hungary, Italy, the Soviet Union, the United Kingdom, and the United States of America. The Delegation of France had also submitted a proposal (S/174) which, as the Secretary had pointed out, was an amendment to the original proposal in which France had participated. Finally, there was document S/179, which as Main Committee IV had not concluded its discussions, was not the final draft and would therefore not be considered at the meeting.

4467.1 Mr. BOGSCH (Deputy Director, BIRPI) read out the joint proposal in document S/93. An amendment to the Convention was within the competence of the Conference in which all States Members participated, whether members of Unions or not, subject to the important restriction that States not members of any Union would not vote on amendments placed before the Conference, except in the rare cases where their rights and obligations were affected.

4467.2 He also pointed out that the words "Full Members" or "Associate Members" would henceforth be replaced by "members of Unions," and "States not members of Unions."

4467.3 He had the impression that the proposal by the Delegation of France in document S/174—as it appeared in the observations of France—was probably superseded by document S/93 which was of a later date. He asked the Delegation of France for clarification.

4468. Mr. LABRY (France) confirmed that the joint proposal contained in document S/93 was distributed at a later date than the proposal in document S/174. It was therefore only necessary to consider document S/93.

4469. The CHAIRMAN said the proposal presented by the Delegation of France on Article 13, paragraph (2) was superseded by the joint proposal contained in document S/93.

4470.1 Mr. RAZAFINDRATANDRA (Madagascar) said he only wished to point out that the Article 13 with which document S/179 was concerned was that of the Paris Convention.

4470.2 As regards the proposals contained in document S/84, he would rely on the decisions taken by Main Committee IV.

4471. The CHAIRMAN confirmed that due note had been taken of the statement made by the Delegate of Madagascar.

4472. Mr. LORENZ (Austria) stated that in Main Committee IV the Delegation of Austria, referring to the documents containing parallel provisions for the Unions of Paris and Berne, had made certain reservations regarding the proposals for amendment between which a distinction should be drawn according to whether or not they had financial implications. The Delegate of Austria requested Main Committee V to take note of that declaration, and he recalled that the question had been raised by his Delegation in document S/21.

4473. Mr. PÁLOS (Hungary) pointed out that Main Committee IV had adopted a new wording for Articles 13 and 23 of the Paris and Berne Conventions. According to those new texts, amendments to the Articles concerned could be submitted by any country which was a member of one of those Unions, by the Coordination Committee (instead of the Executive Committee) and by any Member State. Article 13 of the IPO Convention should be brought into harmony with Article 13 of the Paris Convention.

4474. The CHAIRMAN said the question had been decided in Main Committee IV. It permitted the proposal of amendments by the Executive Committee, which, as had been pointed out, would be the Coordination Committee. He asked whether there were any objections to applying that decision also to the corresponding paragraph in Article 13. As there were none, the matter would be referred to the Drafting Committee.

4475.1 Mr. LABRY (France) proposed the addition in the French version of Article 13(3) of the words "*or approbation*" after the word "*acceptation*," as the word "*acceptation*" would not be adequate in French.

4475.2 He also suggested adding to the same paragraph after "amendments shall enter into force," the words, "*one month after* their acceptance or approval, etc." A period of one month after notification had been received by the Director General seemed to him to be necessary in order that the Member States should know when three-fourths of the Member States had expressed a favorable opinion and could thus carry out their obligations.

4476. The CHAIRMAN reminded the Committee that there were two suggestions by the Delegation of France. One was to add the words "or approval" after the word "acceptance" in the first sentence of paragraph (3) in both the English and French versions for the sake of clarity. The other was to include a time factor. As there was no objection it would be referred to the Drafting Committee for inclusion in the revision of Article 13 with the previously adopted amendments in paragraph (2).

4477. Mr. TROTTA (Italy) considered that a formula had been found which was sufficiently flexible to enable amendments to the Convention to be adopted by the Conference and the Assemblies of the Paris and Berne Unions. Would it be enough, however, for amendments which might affect the fundamental aims of the Organization to be adopted by those bodies only? Would it not be necessary, in the case of major decisions, to provide for a revision conference at which unanimity would have to be reached?

4478. Mr. BOGSCH (Deputy Director, BIRPI) said this was an entirely new idea, as a revision conference had never yet been contemplated. The IPO Convention was similar to the Acts constituting the other Specialized Agencies of the United Nations, the Assemblies of which could decide to make amendments to those Acts. To make provisions for a revision body would involve an innovation the consequences of which would have to be carefully considered.

4479. Mr. TROTTA (Italy), at the request of the Chairman, withdrew his proposal.

BECOMING PARTY TO THE CONVENTION: ENTRY INTO FORCE OF THE CONVENTION: *Article 14*

4480. The CHAIRMAN said the Committee would now discuss Article 14, for which there was no amendment proposed.

4481. Mr. KRIEGER (Federal Republic of Germany) raised a question of drafting. As had been pointed out in the observations submitted to the Conference in document S/15, his Delegation had queried the wording of paragraph (1)(b) of Article 14. It appeared from the Commentary that countries, members of the Paris and Berne Unions, could become a party to the proposed IPO Convention only if at the same time they acceded to the Stockholm version of the Paris and Berne Conventions, at least to the extent that administrative provisions were concerned. His Delegation fully approved of that aim but thought reference should be made in Article 14, paragraph (1)(b) to item (i) of both Article 16, paragraph (1)(b) of the Paris Convention and Article 25, paragraph (1)(b) of the Berne Convention. Otherwise mere accession to the substantive provisions of the Stockholm version of the Convention would make accession to the IPO Convention possible.

4482. Mr. BOGSCH (Deputy Director, BIRPI) said the paragraph must be maintained because the question in the Paris Union of dividing the ratification of the Stockholm Act was still open and the wording would depend on the decision taken in Main Committee V.

4483. Mr. LORENZ (Austria) agreed with the observation made by the Delegate of the Federal Republic of Germany which was already to be found in the document containing the observations of Governments (S/15).

4484. Mr. SHER (Israel) raised a question of drafting. In Article 14, paragraph (1)(b) it was stated that a State could become a party to the Convention only if it concurrently ratified or acceded to the Stockholm Act.

It was, however, quite possible that the Paris and Berne Conventions could be ratified prior to the Convention. He therefore suggested that the Drafting Committee add the words "previously or" before the word "concurrently" in paragraph (1)(b).

4485. The CHAIRMAN said the proposal was going to be examined by the Drafting Committee.

4486. Mr. LABRY (France) asked the Secretariat why a simple procedure of approval of amendments was provided for in Article 13, whereas under the terms of Article 14 acceptance of the Convention called for signature and ratification or deposit of an instrument of accession. Under French law ratification was necessary not only for the Convention itself, but also for amendments made to it.

4487. Mr. BOGSCH (Deputy Director, BIRPI) recalled that the new Convention would be signed in Stockholm. Signature could be followed by ratification or by the deposit of an instrument of accession. The amendments, as in the case of other Charters of Specialized Agencies of the United Nations, would not only be approved by signature but adopted by the Assembly so that there would be no need to mention ratifications. If the constitutional regulations of certain countries required ratification of amendments, there was nothing in the text of Article 13 which would prevent the Governments of those countries from seeking ratification by their respective parliaments; that would, moreover, be necessary in the majority of cases.

4488. Mr. LABRY (France) said he was not convinced by the explanation given by Mr. Bogsch. In France, no distinction was made between amendments approved by an Assembly and provisions signed at a Diplomatic Conference. If certain possibilities were taken into account in Article 14(1), they should also be taken into account, for reasons of consistency, in Article 13.

4489. Mr. STANESCU (Rumania) stated that a system analogous to that of France existed in his country: when an international Act had been ratified, all subsequent amendments thereto must be equally ratified. He therefore considered that the observation of the Delegate of France was pertinent and that the idea of ratification should be included in Article 13(3), as that would facilitate matters for all countries concerned.

4490. Mr. SHER (Israel) said he had just noticed that the United Nations Charter confirmed the stand taken by the Delegate of France.

4491. The CHAIRMAN asked the Delegations of France and Israel to examine the matter and if what the Delegate of France had proposed was indeed normal practice, the matter would be referred to the Drafting Committee.

4492. Mr. VAN BENTHEM (Netherlands) referring to the end of Article 14(3)(a) proposed adding after "this Convention" the words, "as prescribed in paragraph 2(a)," because the dates of entry into force were different in paragraphs (2)(a) and (2)(b).

4493. The CHAIRMAN said the matter would be referred to the Drafting Committee.

4494.1 Mr. LABRY (France) said he would suggest to the Drafting Committee a change in the form of paragraph (1)(b).

4494.2 He recalled that unanimity was the rule for the approval of amendments made to the Berne and Paris Conventions, including the administrative clauses. If the Stockholm Convention were adopted, that rule would be replaced by the rule of a simple majority or by a more or less qualified majority in regard to the administrative clauses of the Berne and Paris Unions and the new IPO Convention. Such measures were entirely justifiable, but it was hardly conceivable that the new system could enter into force when only 10 to 12% of the Member States of the Unions would be bound by the Convention which had created the system in question, and a very large majority of such States would only be parties to the texts prior to the Stockholm Act. It was true that there were various coexisting Acts governing the substantive provisions of the Paris and Berne Conventions, but in regard to organization the coexistence of two very different régimes would be likely to create a delicate situation if the entry into force of the new system was not based on the consensus of a substantial number of Union States. The French Government therefore proposed that the Committee should fix at 30 the number of members of the Paris Union and at 20 the number of members of the Berne Union who must have undertaken one of the acts specified in paragraph (1)(a) before the new Convention could come into force.

4495. Mr. WINTER (United States of America) said his Delegation could not agree to increasing the number of ratifications to 30 for the Paris Union and 20 for the Berne Union before the Convention could become effective. The urgent need for a Convention, one of the main objectives of which was administrative coordination for the Unions that so far had no legal basis, had been generally recognized. No real problem would be created by retaining the reasonable figure proposed in the text of document S/10, and he urged the Main Committee to accept the latter.

4496. Mr. BOGSCH (Deputy Director, BIRPI) said Main Committee IV had unanimously decided that the new administrative provisions of the Paris Convention would come into effect after 10 ratifications. It would, therefore, be logical to require the same number of ratifications for the entry into force of IPO as the joint organs of IPO should start functioning as soon as the separate new organs of the two main Unions started functioning.

4497. Mr. MAKSAREV (Soviet Union) saw no reason for amending Article 14(2)(a) of document S/10 because the sooner the new Convention came into force, the better.

4498. Mr. CIPPICO (Italy), referring to the reply of the Delegation of Italy to the BIRPI proposal, said that without insisting on a figure, he thought the number should be increased. As the text in document S/10 stood, the Convention could come into force after ratification by ten countries only. As it was an important international Act he thought a greater number would be preferable and suggested twenty for the Paris Union.

4499. Mr. VAN BENTHEM (Netherlands) said his Delegation fully supported the position taken by the Delegations of the Soviet Union and the United States of America.

4500.1 The CHAIRMAN asked the delegates to express their opinion by a show of hands on a proposal by the Delegation of France that before the Convention could enter into force there must be ratifications by 30 members of the Paris Union and 20 members of the Berne Union.

4500.2 The Chairman noted that the majority opposed that proposal; he asked for a show of hands on the proposal made by the Delegate of Italy with respect to the Paris Union, namely that there should be 20 ratifications before the Convention could enter into force.

4500.3 The Chairman noted that the majority also opposed that suggestion, and said that the proposed text suggested ten members of the Paris Union and seven members of the Berne Union.

4501. Mr. KRISPIS (Greece) wished to know whether there would be any Director General of the Organization before the first ten and seven ratifications respectively.

4502. Mr. BOGSCH (Deputy Director, BIRPI) said the question was answered in Article 19.

DENUNCIATION: *Article 15*
(S/172)

4503. The CHAIRMAN said the Committee would now discuss Article 15, for which there was one proposal (S/172) by the Federal Republic of Germany.

4504. Mr. KRIEGER (Federal Republic of Germany) said that contrary to a former version adopted by the 1966 Committee of Experts at Geneva, the new wording in Article 15, paragraph (1) of document S/10 no longer provided that the Convention could only be denounced if membership in the Unions were relinquished. His Delegation thought it should not be possible to denounce the IPO Convention without denouncing membership in the Paris and Berne Unions and they would like the former version discussed. They fully agreed with the statement in paragraph 107 of the Commentary that the condition contained in the former version still appeared logical.

4505. Mr. LABRY (France) said the Delegation of France preferred the text recommended by the 1966 Committee of Experts. As the new provisions proposed in document S/172 represented a step backward, he could not vote for them.

4506. Mr. BOGSCH (Deputy Director, BIRPI) summarized the historical background of the Article concerned: in 1966 the opinions of the experts had been divided, and when the final vote was taken the proposal of the Delegate of the Federal Republic of Germany had prevailed. When the present text was drafted, the Director of BIRPI had supported the opinion of the minority, an exceptional case which was explained by his desire to meet the very insistent request of the minority.

4507.1 Mr. MAKSAREV (Soviet Union) preferred the wording of Article 15(1) as it appeared in document S/10.

4507.2 He proposed that in paragraph (2) the period of one year prescribed in the Paris and Berne Conventions should be deleted in the new IPO Convention.

4508. Mr. WINTER (United States of America), in agreement with the Delegation of the Soviet Union and France, supported the text in document S/10.

4509. Mrs. RATUSZNIAK (Poland) agreed with the Delegation of France.

4510. Mr. KRIEGER (Federal Republic of Germany) said that as he remembered and as Mr. Bogsch confirmed, in the 1966 Committee a majority of experts had accepted the version presented by his Delegation, including the United States of America and the Soviet Union.

4511. The CHAIRMAN said that in May 1966, the German proposal had been correct. If the subsequent attempts made to reach agreement on disputed points were taken into account, the proposal by the Delegation of France must be considered correct.

4512. Mr. KRIEGER (Federal Republic of Germany) withdrew his proposal.

4513. Mr. SHER (Israel) said that any change should also be reflected in paragraph (3)(a) of Article 14.

4514. Mr. MURAKAMI (Japan) wished to be put on record as sharing the view of the Delegation of the Federal Republic of Germany.

4515. The CHAIRMAN said the Soviet Union had raised a point on Article 15, paragraph (2), suggesting deletion of the one year effective date so that denunciation could take effect immediately.

4516. Mr. GARCÍA TEJEDOR (Spain) considered that the word "immediately" would be too specific. It was essential to allow time so that Member States could be duly informed of the denunciation. If a period of 30 days was allowed from the date on which the Director General received notification, the denunciation would take effect with sufficient rapidity.

4517. Mr. MAKSAREV (Soviet Union) agreed with the Delegate of the United States of America that a reasonable time should be allowed after notification to the Director General, for example, a month at the maximum.

4518. Mr. BOWEN (United Kingdom) thought the provision in Article 15, paragraph (2) was a customary one. One year was not a long time to wait for a country wishing to withdraw. A shorter time was likely to entail practical difficulties in the operation of the Organization. He would prefer to retain the one-year period.

4519. Mr. KRIEGER (Federal Republic of Germany) thought that it was not only necessary that there should be sufficient time to inform the Member States of proposed denunciations but also for Member States to make the necessary adjustments. He would therefore prefer to retain the one-year period.

4520. The CHAIRMAN asked delegates to try and arrive at a compromise. The Soviet Union had suggested an amendment which would change one year to one month in Article 15, paragraph (2).

4521. Mr. CIPPICO (Italy) said that as organizational adjustments, including financial ones, had to be made in such cases, he suggested six months.

4522. Mr. MAKSAREV (Soviet Union) saw no reason why a period of six months should not be adopted.

4523. Mr. WINTER (United States of America) and Mr. BOWEN (United Kingdom) supported the proposal made by Italy and agreed to by the Soviet Union.

4524. *It was so agreed.*

NOTIFICATIONS: *Article 16*
(S/96)

4525. The CHAIRMAN said the Committee would now discuss Article 16, for which there was one amendment, namely S/96.

4526. Mr. BOWEN (United Kingdom) said he had raised that point in connection with the Paris and Berne Unions. The Deputy Director of BIRPI had assured him it was unnecessary to specify that the Director was obliged to notify changes in subscription classes as that was already covered by other articles. If his Delegation could be assured that the same would apply to Article 16, he would withdraw his proposal.

4527. Mr. BOGSCH (Deputy Director, BIRPI) confirmed that that was so and Mr. Bowen withdrew his proposal.

RESERVATIONS: *Article 17*

4528.1 The CHAIRMAN invited the Committee to discuss Article 17.

4528.2 The Chairman said that there were no comments on Article 17 and invited discussion on Article 18.

FINAL PROVISIONS: *Article 18*

4529. Mr. DE CARVALHO (Portugal) recalled that a single copy of the IPO Convention would be signed in English, Spanish, French, and Russian. He proposed that Article 18(2) should expressly mention that an official text would also be drawn up in the Portuguese language, in addition to those already provided for. He observed that the Portuguese version would maintain the tradition followed by the Paris and Berne Unions and that it would be useful for the 110 million people who now speak Portuguese.

RESERVATIONS (continued)

4530. Mr. MAKSAREV (Soviet Union) desired to make it plain that he would accept Article 17 concerning reservations, but he did not want acceptance to constitute a precedent for other Conventions.

FINAL PROVISIONS (continued)
(S/182)

4531. Mr. VAN BENTHEM (Netherlands) said that although there were good reasons for increasing the number of languages in international organizations, for example substantive law, he did not understand the special reasons of the Delegate of Portugal. In the United Nations the number was limited to three, four or five.

4532. Mr. BOGSCH (Deputy Director, BIRPI) said the Portuguese language had a historical connection with the Paris and Berne Conventions and the Secretariat agreed to include Portuguese in Article 18, paragraph (2).

4533. Mr. VAN BENTHEM (Netherlands) wished to know what was the position as regards the Paris Convention.

4534. Mr. BOGSCH (Deputy Director, BIRPI) said that the text of the Paris Convention as revised at Lisbon provided for a Portuguese translation.

4535. Mr. VAN BENTHEM (Netherlands) agreed, provided no precedent was created thereby.

4536. The CHAIRMAN said there was a new proposal submitted by the Delegation of Japan before the Committee (S/182); if adopted it would become Article 18 while the present Article 18 would become Article 19.

4537. Mr. MURAKAMI (Japan) thought an article on the settlement of disputes should be included in the Convention as was the case in many instruments of United Nations Specialized Agencies. The proposal was closely connected with Article 27*bis* of the Berne Convention. Many suggestions regarding that question were contained in document S/9. His Delegation had proposed the amendment in document S/182 as a matter of principle, because they wished to retain the substance of Article 27*bis*. Nevertheless, they suggested that discussion of the matter be deferred until the results of Main Committee IV, which was considering the question, became available.

4538. The CHAIRMAN said he assumed the the Main Committee would agree that the discussion of the Japanese proposal should be deferred. The question raised earlier by the Delegation of the United Kingdom regarding Article 18, paragraph (2) was not being overlooked.

TRANSITIONAL PROVISIONS: *Article 19*
(S/153)

4539. The CHAIRMAN invited the Committee to consider Article 19 on which a proposal had been submitted by the Delegation of Austria (S/153).

4540. Mr. LORENZ (Austria) explained that it was concerned with the form which had caused his Delegation to submit the proposal contained in document S/153.

4541.1 The CHAIRMAN said that if there was no objection the formula would be referred to the Drafting Committee.

4541.2 Summing up he said that the Main Committee had discussed the working program and as a number of delegates had thought it useful if Main Committees IV and V alternated, Main Committee V would not meet on the following day. The Working Group on Article 4 (membership) would, however, meet and, provided they had been able to reach a compromise solution, that solution would be discussed in the plenary meeting of the Main Committee on Friday morning when the following points would be also debated: (i) the title of the Organization and whether it was to include the word "international" or the word "world;" (ii) the report of the Working Group on Article 4 on membership; (iii) a point on Article 9, paragraph (3), for which the Secretariat would provide a draft; (iv) document S/182; (v) the final conclusions of Main Committee IV with respect to voting.

4541.3 The Drafting Committee would meet on Tuesday, and a draft would be made available to all members of that Committee.

The meeting rose at 5:30 p.m.

SEVENTH MEETING

Friday, June 23, 1967, at 9:40 a.m.

INTERNATIONAL BUREAU: *Article 9* (continued)
(S/198)

4542. The CHAIRMAN invited comments on the revised text of paragraph (3) of Article 9, prepared by the Secretariat in the light of the Committee's earlier discussion (S/198).

4543. Mr. BOGSCH (Deputy Director, BIRPI) read out the text.

4544. Mr. WINTER (United States) said that the Secretariat's recommendation was acceptable to his Delegation.

4545. *The Committee approved the text proposed in document S/198 and referred it to the Drafting Committee.*

LEGAL CAPACITY; PRIVILEGES AND IMMUNITIES: *Article 11* (continued)
(S/194)

4546. The CHAIRMAN drew attention to the amendment to paragraph (4) of Article 11 submitted by the Delegations of France and Switzerland (S/194) and invited one of the sponsors to introduce it.

4547.1 Mr. MORF (Switzerland) recalled that at the previous meeting the Delegations of France and Switzerland had presented two different proposals. Now, as requested, they were presenting a single proposal, which appeared in document S/194.

4547.2 The expression "with the approval of the Coordination Committee," which appeared in document S/10, was to be replaced by the words "subject to the approval of the Coordination Committee." This would make it clear that the agreements concluded would have to be approved by the Coordination Committee.

4547.3 The Franco-Swiss amendment also provided that the agreements would have no legal effect until they were approved by the Coordination Committee. Such a stipulation seemed, if not absolutely essential, at least desirable.

4548. Mr. BOGSCH (Deputy Director, BIRPI) suggested that the second sentence might be more positive if reworded to read: "These agreements shall take effect upon such approval."

4549. Mr. DESBOIS (France) said the Delegation of Switzerland would doubtless have no objection to the redrafting of the second phrase, as suggested by the Secretariat to read as follows: "These agreements shall take legal effect after their approval by the Coordination Committee."

4550. Mr. CIPPICO (Italy) said that it might be advisable to clarify whether the Coordination Committee would approve agreements "en bloc," as was usually the case, or item by item. Perhaps some provision in that connection should be incorporated in the rules of procedure.

4551. Mr. CHAMBERLAIN (United Kingdom) said that, as he read the proposed text, the Director General would need the Coordination Committee's approval both to negotiate and to conclude agreements. His Delegation considered that approval should only be needed to conclude agreements, and he suggested that paragraph (4) of Article 11 be reworded to read: "The Director General shall be authorized to negotiate and, subject to the approval of the Coodination Committee, to conclude the agreements referred to in paragraphs (2) and (3)."

4552.1 Mr. DESBOIS (France) said that it would be a simple matter to meet the wishes of the Delegate of the United Kingdom. It was in fact the conclusion of the agreements and not their negotiation that should be subject to ratification.

4552.2 With regard to the remark of the Delegate of Italy, he pointed out that the question of whether ratification should take place "en bloc" or "paragraph by paragraph" might be settled by the rules of procedure.

4553. Mr. CIPPICO (Italy) said that the remarks of the last two speakers had cleared up the difficulty. Obviously, in approving the conclusion of an agreement, the Coordination Committee would examine all points very carefully, and no provision governing such approval would be required in the rules of procedure.

4554. Mr. BOGSCH (Deputy Director, BIRPI) said that, according to his understanding, three steps would be involved if the original proposal as now amended were adopted: first, the Director would negotiate the agreement on his own initiative; secondly, he would sign it on his own responsibility, but would inform the co-signatory that his signature required the Coordination Committee's ratification; and, thirdly, the Coordination Committee would either approve the agreement—in which case the agreement would be valid—or would ask for certain changes to be made to it, in which case further negotiations would have to take place.

4555. Mr. SHER (Israel) said he was somewhat confused; according to his understanding under the terms of the United Kingdom proposal an agreement could only be signed and concluded after the Coordination Committee's approval had been obtained, whereas the procedure as explained by Mr. Bogsch did not appear to differ from that laid down in the original proposal.

4556.1 Mr. STANESCU (Rumania) said that the second phrase proposed by the Delegations of France and Switzerland no longer made sense if it was stipulated that the agreements could be concluded and signed only after having received the approval of the Coordination Committee.

4556.2 Moreover, that phrase seemed to prejudge the approval of the Member States.

4556.3 He therefore proposed that the phrase should be deleted.

4557. The CHAIRMAN suggested that paragraph (4) of Article 11 might be reworded to read: "The Director General shall be authorized to negotiate and, after the approval of the Coordination Committee, to conclude the agreements referred to in paragraphs (2) and (3) above."

4558. Mr. BOWEN (United Kingdom) said that that wording was quite satisfactory to his Delegation.

4559. Mr. KRISPIS (Greece) said that, if he had understood Mr. Bogsch's explanation correctly, namely, that the Director General could negotiate an agreement on his own initiative, then the words "shall be authorized" in the amendment suggested by the Chairman were not needed and could be deleted.

4560. Mr. MWENDWA (Kenya) said that the amendment suggested by the Chairman was acceptable to his Delegation, since it would ensure that an agreement was signed only after the Coordination Committee's approval had been obtained.

4561. Mr. DESBOIS (France) said that the Delegation of France would willingly accept the deletion of the words "be authorized," which could give rise to ambiguity. It would be possible to say: "The Director General shall be empowered to negotiate and, after approval by the Coordination Committee, to conclude the agreements referred to in paragraphs (2) and (3) above."

4562. Mr. BOWEN (United Kingdom) said that while he agreed that it might be right to delete the words "shall be authorized" he could not accept the replacement of those words by "shall" since thus worded the negotiation of agreements would become an obligation for the Director General. The point could better be met by using the word "may."

4563. Mr. LULE (Uganda) said that in his opinion something more than a point of drafting was involved. The question of whether or not the Director General should negotiate an agreement on his own initiative was a matter of principle which the Committee might wish to examine further before referring any text to the Drafting Committee.

4564. The CHAIRMAN pointed out that there seemed to be general agreement that the Director General should have the authority to negotiate on his own initiative —an authority which should be provided for in paragraph (4) of Article 11. If there was not agreement on that point, a matter of principle would be involved.

4565. Mr. KRIEGER (Federal Republic of Germany) asked whether the second sentence of the joint draft amendment (S/194) would stand.

4566. The CHAIRMAN replied that it was unnecessary.

4567. Mr. KELLBERG (Sweden), referring to paragraph (7) of Article 8 (Coordination Committee), suggested that some provision might be made for a country with which an agreement was to be concluded to have an ex officio seat on the Coordination Committee when that agreement was being considered. The country in question would then have the right to vote.

4568. Mr. BOGSCH (Deputy Director, BIRPI) said that such a provision seemed unnecessary. The country concerned would have the right to sit as an observer, if not as a member of the Coordination Committee, and the fact that it was not entitled to vote in the former case would be rather appropriate since it was an interested party, and a party without whose agreement the agreement would not be concluded in any case.

4569. Mr. MAKSAREV (Soviet Union) suggested the following wording, which seemed to him simpler: "The Director General may negotiate and conclude the agreements referred to in paragraphs (2) and (3) above. These agreements shall enter into force after their approval by the Coordination Committee."

4570. Mr. LABRY (France) saw no objection to the wording proposed by the Delegate of the Soviet Union, but he pointed out that it made the Coordination Committee responsible for approving the entry into force of the agreements and not their signature.

4571. Mr. VAN BENTHEM (Netherlands) said that his Delegation had no objection to the wording suggested earlier by the Chairman. The Drafting Committee might be asked to redraft Article 12 (Relations with Other Organizations) along similar lines.

4572.1 The CHAIRMAN observed that the Drafting Committee would be requested to examine Article 12 in the light of the decision taken on the wording of Article 11.

4572.2 He then asked whether the Committee agreed in principle that the Director General should be authorized to negotiate agreements on his own initiative but to sign them only after the Coordination Committee's approval had been obtained, that approval being tantamount to approval of the conclusion of an agreement.

4573. Mr. KRIEGER (Federal Republic of Germany) said that his Delegation fully agreed with the Chairman.

4574. *It was agreed to request the Drafting Committee to draw up a final text embodying the solution as suggested by the Chairman.*

SETTLEMENT OF DISPUTES (S/182)

4575. The CHAIRMAN drew attention to document S/182 which contained a proposal by the Delegation of Japan for a new article concerning the settlement of disputes.

4576. Mr. MURAKAMI (Japan) said that his Delegation would abide by whatever decision Main Committee IV took on Article 27*bis* of the Berne Convention concerning settlement of disputes. If the Committee considered a similar provision to be unnecessary in the IPO Convention, in order to speed up the Committee's work his Delegation would not insist upon its proposal in document S/182.

4577. Mr. MAAS GEESTERANUS (Netherlands) informed the Committee that there had been some discussion among a number of delegations, including his own, with a view to reconciling the different views on the provisions for settlement of disputes to be included in the Berne and Paris Conventions. Main Committee IV was to consider the question the following week.

4578. Mr. BOGSCH (Deputy Director, BIRPI) explained that BIRPI had not included a jurisdictional clause in its proposals since it had been the view of several expert committees that there was no need for such a clause in the IPO Convention which was of an administrative character. Since the Delegation of Japan did not insist upon its proposal, he suggested that, without prejudice to any solution that might be found for the Berne and Paris Conventions, the Committee should decide not to include such a clause in the IPO Convention.

4579. The CHAIRMAN suggested that in the light of the foregoing remarks, the Committee should decide not to include a jurisdictional clause in the IPO Convention.

4580. *It was so agreed.*

COMPOSITION OF THE DRAFTING COMMITTEE

4581. The CHAIRMAN suggested that the Delegates of the following countries should be appointed to serve on the Drafting Committee: Brazil, Czechoslovakia, France, Germany (Federal Republic), Japan, Kenya, Spain, Sweden, Soviet Union, United Kingdom, and United States of America. The Chairman added that if any delegation was specially interested in the drafting of a particular provision it could attend the meeting or meetings of the Drafting Committee which dealt with such a provision.

4582. *It was agreed to set up a Drafting Committee composed of the members suggested by the Chairman.*

The meeting rose at 10:30 a.m.

EIGHTH MEETING

Wednesday, June 28, 1967, at 9:40 a.m.

ORGANIZATION OF WORK (continued)

4583. The CHAIRMAN said that only three substantive items remained to be settled in the proposed Draft Convention (S/10). The first was the question of membership (Article 4). The second was the name of the new Organization (Article 1). The third was the question of voting rights, in respect of which Main Committee IV had been only partly successful in producing the hoped for solution.

MEMBERSHIP: *Article 4* (continued) *(S/188)*

4584. The CHAIRMAN said that the Working Group on Membership had met on three occasions under the chairmanship of the Committee's Secretary, Mr. Bogsch. Its report was contained in document S/188.

4585.1 Mr. BOGSCH (Deputy Director, BIRPI), introducing the Working Group's report (S/188), said that the comparatively long time the Working Group had taken to complete its task had enabled all the members except the Delegate of Mexico to obtain instructions from their Governments. As a result, the text proposed in the

report had been agreed on almost unanimously; the Delegate of Mexico reserved his position.

4585.2 The text proposed was essentially the same as the BIRPI text except for two points. The first difference was the inclusion of the International Atomic Energy Agency (IAEA) and the International Court of Justice in the provision invoking membership of the United Nations and the Specialized Agencies. The IAEA, although not technically a Specialized Agency, was linked with the United Nations system, as was the International Court of Justice.

4585.3 The second difference was that the categories of Full Membership and Associate Membership had been replaced by a single category of membership in the Organization.

4586. The CHAIRMAN said that the text represented a compromise worked out in the spirit of cooperation that had characterized all the Committee's discussions. As everyone was aware, many delegates would have preferred a different text and there were also individual preferences which were recorded in the minutes of the meetings. But the Working Group had been willing, in the interest of reaching common agreement through compromise, to accept a text even if it did not entirely meet individual wishes.

4587. Mr. SHER (Israel) said that he had not yet had an opportunity of consulting his Government. Although he had at first favored the practice current in most organizations, according to which membership was based on the membership of the United Nations and the Specialized Agencies, in the interest of cooperation he would abstain in any vote at the present stage in the hope that his Government would be able to approve the text at a later date.

4588. Mr. STANESCU (Rumania) said he had already expressed his preference for a wording in Article 4 of the IPO Convention which would take full account of the universal character of the future Organization. As he did not wish to repeat the arguments which he had already put forward on that subject, he would merely say that he was obliged to make some reservations in regard to the compromise solution contained in the report of the Working Group (S/188). The Delegation of Rumania would therefore abstain if that document was put to the vote.

4589. Mr. HAERTEL (Federal Republic of Germany) said that he had originally supported the United Kingdom proposal (S/96). However, in the prevailing spirit of cooperation he would not oppose the Working Group's text, but would abstain if it were put to the vote.

4590. Mr. QUINN (Ireland) said his position was similar to that of the Delegate of Israel. His Delegation had had precise instructions from its Government and had stated its position at the third meeting. He would reserve his position for the time being.

4591. Mr. MAKSAREV (Soviet Union) wished it to be noted in the summary record that the Delegation of the Soviet Union regarded alternative C of the 1965 Committee, as set out in the Conference program, as the best and fairest solution. It was the only wording which would ensure that there would be no discrimination whatever in regard to admission to the new Organization. In the Working Group, the Delegation of the Soviet Union, in a spirit of constructive cooperation, had raised no objection to the draft of Article 4 submitted by BIRPI (S/10) but the Delegation of the Soviet Union would have to abstain when it came to a vote on the recommendation of the Working Group (S/188). It was only natural that membership in the new Organization should be open to any State which was a member of the Berne Union or the Paris Union, but some countries did not recognize the German Democratic Republic as a legitimate member of those Unions, although it duly discharged all its obligations under the Berne and Paris Conventions and under the Special Agreements.

4592. Mr. KRISPIS (Greece) said that he, too, had no instructions from his Government concerning the proposed text and would therefore have to abstain in the event of a vote at the present stage.

4593.1 Mrs. RATUSZNIAK (Poland) said that she had already stated her Delegation's view, which was that the new Organization should be open to all States desiring to become members. Only universality would be fully satisfactory to her Delegation.

4593.2 Since the proposed text did, however, provide the possibility for all countries to accede to the Convention if the General Assembly were guided by a spirit of true international cooperation, her Delegation would not vote against the text but would abstain.

4594.1 Mr. VŠETEČKA (Czechoslovakia) said that, as a member of the Working Group, he had joined in the efforts to reach a compromise. As he had informed the Working Group, only alternative C of the 1965 Committee, which had originally been proposed by Czechoslovakia, would fully meet the universality which his Delegation considered essential. For that reason, he strongly opposed the United Kingdom proposal (S/96) which would have made membership in IPO dependent solely on membership in the United Nations. Such discrimination was not normal in conventions outside the aegis of the United Nations.

4594.2 The text submitted by the Working Group, while still not entirely satisfactory to his Delegation, was more acceptable than the United Kingdom proposal. He would abstain if the Article were to be put to a vote.

4595. Mr. WINTER (United States of America) said he had supported the United Kingdom proposal at the third meeting. However, in the spirit of cooperation shown during the present discussions, his Delegation would accept the compromise text proposed by the Working Group.

4596. Mr. MAZARAMBROZ (Spain) said that he would have to postpone any comment until he had received instructions from his Government.

4597. Mr. OSSIKOWSKI (Bulgaria) said that he would abstain in the event of a vote, for the same considerations as those stated by the Delegate of the Soviet Union.

4598.1 Mr. PÁLOS (Hungary) recalled that at the third meeting of Main Committee V the Delegation of Hungary had stated that it gave absolute priority to the principle of the universality of the new Organization. The Hungarian Delegation could accept any compromise solution for the wording of Article 4 which would guarantee that that principle was respected. In that connection, the solution recommended by the Working Group (S/188) showed some progress, but not enough. The only satisfactory solution would be to adopt alternative C of the 1965 Committee (S/10).

4598.2 Hence the Delegation of Hungary was unable to support the recommendation of the Working Group (S/188) but, in a spirit of cooperation, it would confine itself to abstaining in the vote.

4599. Mr. LABRY (France) said that in response to the spirit of conciliation shown by several delegations, the Delegation of France would vote for the compromise proposal recommended by the Working Group (S/188).

4600. Mr. MORF (Switzerland) and Mr. SCHURMANS (Belgium) said that they were in favor of the compromise recommended by the Working Group (S/188).

4601. Mr. GRANT (United Kingdom) said his Delegation would accept the Working Group's text, subject to any necessary drafting changes by the Drafting Committee.

4602. Mr. CIPPICO (Italy) supported the Working Group's proposal and the spirit of the conciliation it showed.

4603. Mr. DE HAAN (Netherlands) said he was in favor of the Working Group's text.

4604. Mr. MURAKAMI (Japan) said he would abstain in a vote on the text as he had not yet received instructions from his Government.

4605. Mr. JASIN (Indonesia) said he was consulting his Government on the matter.

4606. Mr. MWENDWA (Kenya) said he would vote for the compromise text. Although it would not entirely satisfy everyone, it had taken all points of view into account and was the best text possible in the circumstances.

4607. The CHAIRMAN said that the Main Committee approved the text proposed by the Working Group since a large majority of members had indicated, either overtly or tacitly, that the compromise text would be acceptable and since no opposition had been voiced. A number of delegates had reserved their positions, stated their intention to abstain in the event of a vote, or indicated that they were seeking instructions from their Governments. He hoped that any necessary Government instructions would have been received before the matter was considered by the Plenary.

4608. *The Committee approved the Chairman's summing up of the discussion.*

ESTABLISHMENT AND ORGANS: *Article 1* (continued)

4609. The CHAIRMAN opened discussion on the question of the name of the proposed new Organization.

4610. Mr. BOGSCH (Deputy Director, BIRPI) said that two names were suggested for the Organization in document S/10: "International Intellectual Property Organization" and "World Intellectual Property Organization." BIRPI preferred the second.

4611. Mr. MURAKAMI (Japan) said that his Delegation also favored "World Intellectual Property Organization." The new Organization was intended to constitute a coordinated administration for the intellectual property Unions and for the worldwide protection of intellectual property. Consequently it should not be an inter-State or an intergovernmental body but an organization that would protect the private rights of persons far beyond the boundaries of their States. In that sense the term "World" was more appropriate and had a fuller meaning than the word "International."

4612.1 Mr. VŠETEČKA (Czechoslovakia) said that the epithets "international" and "world," as applied to organizations, were often interchangeable, as they had no exact legal meaning.

4612.2 It was true that an "international" organization could be constituted by a very small number of States, whereas a "world" Organization consisted in principle of a larger number of States.

4612.3 The Preamble to the IPO Convention began by stressing the fundamental purpose of the new Organization, which was to promote the protection of intellectual property throughout the world and, to that end, to encourage worldwide cooperation; hence it was an essential purpose of the Organization to recruit as many members as possible. Moreover, the functions which the new Organization was to assume, particularly in the sphere of patents, had by their very nature a worldwide scope and could not be effectively carried out except on a world scale.

4612.4 Finally, not only would the new Organization recruit as many members as possible and have a worldwide scope, but it would be the sole Organization of its kind in the world.

4612.5 In order to take account of these various factors, he considered, like the representative of the Secretariat, that the epithet "world" should be adopted.

4613. Mr. MAKSAREV (Soviet Union), agreeing with the Delegates of Japan and Czechoslovakia, favored the epithet "world," which exactly expressed the vocation of the new Organization.

4614. Mr. HAERTEL (Federal Republic of Germany) said he favored the use of the word "World" in the title for the reasons stated by the Delegates of Czechoslovakia and the Soviet Union.

4615. Mr. MORF (Switzerland) reminded the Committee that the Delegation of Switzerland had already expressed itself in favor of the epithet "world" at the beginning of the session, for the reasons set out in paragraph 35(b) of the Commentary accompanying the Program of the Conference (S/10).

4616. Mr. SAVIĆ (Yugoslavia) also preferred the adjective "world."

4617. Mr. LABRY (France) said that during the preliminary work the French Delegation had expressed a preference for the word "international." However, bearing in mind the opinion expressed by the majority of delegations represented on the Committee, and the arguments which had been adduced, the Delegation of France had no objection to the use of the epithet "world."

4618. Mr. DA CRUZ (Portugal) considered that the term "world" would better express the vocation of the new Organization.

4619. Mr. WINTER (United States of America) and Mr. LAURELLI (Argentina) expressed themselves in favor of the word "world."

4620. Mr. CIPPICO (Italy) said that in the preparatory stages of the Conference the Delegation of Italy had been opposed to the term "world" as being perhaps somewhat pretentious. It had no strong objection, however, especially in view of the majority of opinion in favor of the term, but he thought that the initials might sound rather odd in English.

4621. Mr. GRANT (United Kingdom) agreed with the Delegate of Italy. He hoped that the Secretariat would be able to rearrange the initials.

4622. Mr. RIBEIRO (Brazil) also favored the term "world" and agreed that it would be better to rearrange the initials.

4623. Mr. PÁLOS (Hungary) said that the name of the Organization was not a legal or a technical problem: it was a matter of taste. He was in favor of the term "world," as it expressed the universal character and

purpose of the Organization and conformed with the wording in the Preamble to the Convention: "...to promote the protection of intellectual property throughout the world..." Moreover, the name would be more distinctive, since many international organizations used the word "international" in their names but few only used the word "world."

4624. Mr. MAZARAMBROZ (Spain) also favored the term "world" as it described the Organization's functions better than the terem "international," and he hoped to see the word "world" retained."

4625. Mr. WINTER (United States of America) suggested that the Drafting Committee should be asked to find a more suitable arrangement of the name—for example "World Organization for Intellectual Property."

4626. Mr. KRISPIS (Greece) said he preferred the term "International" as it was more accurate legally and it was more in keeping with past international practice. He had no strong feelings on the subject however, and would join with the majority.

4627. The CHAIRMAN summing up, said that while at least one delegation would have preferred the term "international," the overwhelming majority favored "world." He would consider the latter as unanimously accepted. The Drafting Committee would be instructed to consider the question of abbreviation by initials raised by the Delegates of Italy and the United Kingdom.

4628. *It was so agreed.*

VOTING RIGHTS
(S/84 and S/214)

4629. The CHAIRMAN invited the Committee to consider the question of voting rights which had been raised by the Delegate of Madagascar.

4630.1 Mr. BOGSCH (Deputy Director, BIRPI) said that in Committee IV the problem had been solved in a different way for the Paris and Berne Unions and the Special Agreements under the Paris Union.

4630.2 For the Paris Union, a proposal had been adopted to the effect that if countries grouped together in a Special Agreement had a common industrial property office (the only example at present was the OAMPI) they could appoint one member to represent all of them, who would express their views but without voting rights. Any member of such a grouping could ask another member to vote for it, so that a country could cast two votes if it held a proxy from another country.

4630.3 In the case of the Special Agreements concluded under the Paris Convention (Madrid, The Hague, Lisbon and Nice) no such provision had been included since none of the OAMPI countries was as yet a party to any of the Special Agreements. Nor had such a provision been included in the Berne Convention, which dealt with copyright and was not applicable to countries with a common industrial property office.

4631.1 Mr. RAZAFINDRATANDRA (Madagascar), referring to the details given by the Secretariat concerning the decisions taken by Main Committee IV, recalled that the Delegation of Madagascar had of its own accord withdrawn its proposed amendment in respect of the Berne Convention, so that the amendments which had been made to Article 13 of the Paris Convention had not been carried over into the Berne Convention. Strictly speaking, therefore, there was no question of a decision by Main Committee IV.

4631.2 The Delegation of Madagascar had not insisted that its proposal, as now incorporated in the text of Article 13 of the Paris Convention (S/214), should be extended to the other Agreements, as no members of OAMPI were parties to those Agreements. That would not necessarily be the case in the future, however, as members of OAMPI might at a later stage think it desirable to accede to those Agreements.

4631.3 The Delegation of Madagascar asked that its initial proposals (S/84), as approved by Main Committee IV in respect of the Paris Convention (S/214), should be incorporated in the IPO Convention.

4632. Mr. LAURELLI (Argentina) said that the wording approved by Main Committee IV in respect of Article 13 of the Paris Convention (S/214) was discriminatory. It had been possible to adopt that wording in connection with the Paris Union only because of the existence in the Paris Convention itself of the provisions set out in Article 12. But the IPO Convention contained no similar provisions and there was no reason to generalize the system advocated for the Paris Union in a new Convention. Hence the Delegation of Argentina was opposed to any extension to the IPO Convention of the provisions henceforward included in Article 13 of the Paris Convention as a result of the proposal of Madagascar (S/214).

4633. Mr. MAZARAMBROZ (Spain) concurred in the arguments put forward by the Delegation of Argentina and also opposed any extension to the new IPO Convention of the system henceforth incorporated in Article 13 of the Paris Convention (S/214).

4634. The CHAIRMAN said that since the proposal by the Delegate of Madagascar had not been seconded, no such provision would be included in the Convention.

4635.1 Mr. EKANI (African and Malagasy Industrial Property Office (OAMPI)) said he wished to make some comments on the decision which had been taken by Committee V in regard to the proposal of Madagascar.

4635.2 The member States of OAMPI considered that there was a connection, at least at a certain level, between questions affecting the Paris Union and questions affecting the new IPO Organization, particularly as far as the Assembly was concerned. Main Committee V appeared to have concluded that such was not the case. He took note of that fact.

4635.3 In particular, he failed to understand how certain delegations which declared themselves unable to approve the system of delegation of powers could nevertheless ask that the system should be generalized.

4635.4 Be that as it may, the member States of OAMPI, in the spirit of compromise which had prevailed in the work of the Committee, would not insist on the adoption of their solution and were already very satisfied that it had been taken into account in connection with the Paris Union.

4635.5 Nevertheless, every country enjoyed sovereign status, and he had taken careful note of the positions adopted by the various delegations.

4636. Mr. LABRY (France) did not contest the validity of the arguments of the Delegate of Argentina when he had reminded the Committee that the IPO Convention contained no provisions similar to those of Article 12 of the Paris Convention and pointed out that the Committee was dealing with a new Convention. It could not be denied, however, that there was a close connection between the new Convention on the one hand, and the Paris and Berne Conventions on the other, since the new Convention was to contain all the machinery of inter-union cooperation, the importance of which could not be underestimated.

ORGANIZATION OF WORK (continued)

4637. The CHAIRMAN said that the Main Committee had concluded its preliminary work and would meet again early in the following week when the Drafting Committee had completed its task. He hoped that delegates who had stated that they would have to abstain on the question of membership would endeavor to obtain instructions from their Governments in time for the Main Committee's next meeting so that the item would be completed before it was referred to the Plenary.

DEFINITION OF TERM: LEGAL-TECHNICAL ASSISTANCE

4638. Mr. RIBEIRO (Brazil) asked for an explanation of the term "legal-technical assistance" which was used in paragraph (2), item (vii) of Article 3.

4639. Mr. BOGSCH (Deputy Director, BIRPI) said that the term had been used for years by BIRPI. It meant technical assistance in the field of law and administration. It was admittedly rather an awkward term, but it had been devised in an effort to describe two characteristics of the activity: first, that the Organization would be giving technical assistance in the sense understood in the United Nations system; and secondly, that the assistance given would be legal and administrative rather than material. "Technical assistance in the legal field" could be used in the Portuguese and Spanish translations of the Convention, if the term "legal-technical" would be considered as untranslatable.

4640. Mr. LABRY (France) agreed with the Delegate of Brazil that the Drafting Committee, in the course of its work, might consider the possibility of finding a more felicitous term than "legal-technical assistance," in certain languages at least.

The meeting rose at 10:45 a.m.

NINTH MEETING

Tuesday, July 4, 1967, at 2:35 p.m.

DRAFT TEXT SUBMITTED BY THE DRAFTING COMMITTEE (S/250)

4641. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the Draft Text of the Convention (S/250).

4642.1 Mr. KELLBERG (Sweden), speaking as Chairman of the Drafting Committee, said that the Drafting Committee had agreed unanimously on almost all the questions it had considered. It had taken into account the discussions in the Main Committee and the general instruction to bring the text of the proposed Convention into line with the wording of the Paris and Berne Conventions.

4642.2 The document comprised 21 articles, two more than the original draft (S/10), because Articles 3 and 14—according to the numbering in document S/10—had been divided in each case into two new articles. The order of some of the articles had been changed: Article 5, Headquarters, had become the new Article 10, and the last five articles had been rearranged in more logical sequence.

4642.3 A point of substance had been raised in connection with new Article 2, Definitions. During the debate in the Main Committee, it had been suggested that paragraph (1) of Article 3 should be simplified and incorporated in the new Article on Definitions. The text prepared by the Drafting Committee followed the lines of the former Article 3 modified to stress the works requiring protection rather than the persons. In new Article 5, Membership, paragraph (2), item (i), there was a minor drafting change, mentioned only because of the importance of the Article: the words "is a party to the Statute" (of the International Court of Justice) had been introduced as the correct terminology to use in connection with the International Court.

4642.4 In new Article 6, General Assembly, item (viii) had been inserted in paragraph (2) as a consequential change in conformity with paragraph (2), item (ii) in new Article 5, Membership, allowing a State to become a member at the invitation of the General Assembly without being a member of either of the Unions. In the last sentence of the same Article 6, paragraph (3), subparagraph (c), approval of the words "within this period" would have to be deferred pending the decision on the point to be taken by Main Committee IV.

4642.5 The footnote under new Article 6, paragraph (3), subparagraph (d) referred to the question of the majority required for General Assembly decisions which the Drafting Committee referred back to the Main Committee for clarification.

4642.6 The footnote in the text of new Article 13 indicated that notwithstanding the decision reached by the Main Committee, the Drafting Committee considered that the words "effective" and "closely" were superfluous.

4643. The CHAIRMAN invited the Main Committee to consider the Draft Convention article by article.

PREAMBLE

4644. *The Preamble was approved.*

ESTABLISHMENT OF THE ORGANIZATION: *Article 1*

4645. The CHAIRMAN observed that the Article contained the name of the Organization agreed on by the Committee.

4646. *Article 1 was approved.*

DEFINITIONS: *Article 2*

4647.1 The CHAIRMAN said that the new text was very similar to that in document S/10. A correction should be made in item (vii): the word "arrangement" in the English text should be replaced by the word "agreement" ("engagement" in French).

4647.2 The discussion in the Main Committee was reflected in item (viii), on which agreement had been unanimous.

4648. Mr. LORENZ (Austria) asked whether the formula "programme de radiodiffusion" (broadcasts) appearing in the French version of item (viii) of Article 2 (S/250) was legally valid and did not incur the risk of being understood as "programmes imprimés" (printed programs).

4649. Mr. BOGSCH (Deputy Director, BIRPI) replied that, in effect, while the English version contained a neutral word ("broadcast"), there might be some hesitation, as far as the French version was concerned, between the term "programmes" and the term "émissions." The term "émissions" appeared, however, to be too general.

4650. Mr. GAJAC (France) stated that there could not be any confusion in the case concerned between broadcasting programs and printed programs. The drafters of the French version had preferred the term "programmes" because it was more limited in scope than the term "émissions." The text was entirely satisfactory as it stood.

4651. Mr. STANESCU (Rumania) asked why the part concerning performances of performing artists, etc., had been placed between "trademarks, etc." and "protection against unfair competition." It would be more logical to have them appear immediately after the words "literary, artistic, and scientific works."

4652. Mr. BOGSCH (Deputy Director, BIRPI) said that the order chosen was not, strictly speaking, based on any logical reason but simply on grammatical grounds.

4653. Mr. GAJAC (France) considered that the observation of the Delegate of Rumania was justified; the part concerning "performances of performing artists..." should either be placed second in the list, or at the very end, after the words "unfair competition," because there was no question in that case either of literary or of industrial property.

4654. Mr. WINTER (United States of America) seconded the proposal of the Delegate of France that the part "performances, etc." be brought forward to the second place in the list.

4655. The CHAIRMAN observed that the sequence of the parts listed under "intellectual property" should not be interpreted as reflecting any order of importance.

4656. *Article 2, as amended, was approved.*

OBJECTIVES OF THE ORGANIZATION: *Article 3*

4657. The CHAIRMAN said that, as the Chairman of the Drafting Committee had pointed out, the new Article 3 comprised, with the drafting changes previously noted, the first paragraph of the former Article 3 (S/10).

4658. *Article 3 was approved.*

FUNCTIONS: *Article 4*

4659. The CHAIRMAN said that in the new Article 4, which was the second paragraph of the former Article 3, the order of the items and some words had been changed, but no substantive alterations had been made.

4660. *Article 4 was approved.*

MEMBERSHIP: *Article 5*

4661. Mr. KRISPIS (Greece) said that he had no objection to the drafting of the Article, but he reserved his position on its substance until the document came before the Plenary Assembly.

4662. Mr. KUDRIAVTSEV (Byelorussian Soviet Socialistic Republic) stated with regard to Article 5 that only alternative C of the 1965 Committee, as it appeared in the program of the Conference (S/10), would have been entirely satisfactory to the Delegation of the Byelorussion Soviet Socialist Republic. In a spirit of cooperation, his Delegation would not vote against the proposed text, but would abstain when it was put to the vote. Mr. Koudriavtsev wished this to be recorded in the minutes of the meeting.

4663. The CHAIRMAN thanked the Delegate of the Byelorussion Soviet Socialist Republic for not opposing the approval of Article 5.

4664. *Article 5 was approved.*

GENERAL ASSEMBLY: *Article 6*

4665. Mr. STANESCU (Rumania) considered that it would be more appropriate in the French version of item (ix) of paragraph (1)(c) of Article 6 (S/250) to eliminate the comma as it might tend to change the meaning of the phrase following.

4666. Mr. GAJAC (France) stated that the comma appeared in the French version only because of the length of the antecedent governing the relative clause which followed. He did not, however, have any objection to the omission of the comma which would in no way alter the sense of the text.

4667. *It was decided to approve the suggestion of the Delegation of Rumania.*

4668.1 Mr. LORENZ (Austria) noted that Article 6 (S/250) was the first containing provisions of a financial character, and he took the opportunity of making a general observation in that connection.

4668.2 He recalled that the Committee had decided to bring the financial provisions in the Draft Convention establishing WIPO into harmony with the corresponding provisions of the Paris Convention and the Berne Convention.

4668.3 All the Convention texts concerning the Paris Union and the Berne Union contained provisions relating to the budget and to the final accounts. The Draft WIPO Convention (S/250) contained many provisions relating to the budget of common expenses and the budget of the Conference as well as financial provisions relating to the Coordination Committee, but none concerning the final accounts. That omission should be rectified in the final text of the Convention.

4669. Mr. BOGSCH (Deputy Director, BIRPI) explained in that connection that the situation was not as clear as in the case of the Berne and Paris Unions, as the Convention establishing WIPO contained provisions relating to the budget of the Conference, which was voted on by the Conference, and provisions relating to the budget of common expenses which was voted on by the General Assembly. In such circumstances, the Secretariat had considered it preferable to leave the settlement of that question to the future drafters of the Financial Regulations.

4670. Mr. LORENZ (Austria) was not entirely satisfied with that explanation as the Paris Union and the Berne Union also had financial regulations, which did not prevent the relevant Conventions from containing provisions relating to the final accounts.

4671. The CHAIRMAN said that it had already been pointed out that the Draft Convention contained more financial clauses than was normal in such documents. The question of the final accounts was in any case covered.

4672. Mr. LORENZ (Austria) did not wish to press the point, but desired it to be recorded in the minutes that the Delegation of Austria had expressed the wish that the Convention establishing WIPO should contain a provision relating to the final accounts.

4673. Mr. SHER (Israel) observed that it was laid down in the Draft Administrative Provisions and Final Clauses of the Paris and Berne Conventions, item (iii) of subparagraph (a) of paragraph (2) of Article 13, Assembly (S/251-S/252) that the Assembly should "review and approve the reports and activities of the Director-General of the Organization concerning the Union and give him all necessary instructions concerning matters within the competence of the Union." That included the approval of the final accounts. He could not see any reason for having a different text in the WIPO Convention unless it could be argued that since the accounts in question were those of different Unions, final accounts were unnecessary.

4674. Mr. BOGSCH (Deputy Director, BIRPI) said that the accounts of two budgets were under consideration, namely the budget of the Conference and the budget of the common expenses voted by the General Assembly. The approval of the final accounts of the Organization as a whole could not be entrusted to any one body without giving careful consideration to the choice of that body or the division of the tasks between the various bodies involved.

4675. Mr. LORENZ (Austria) stated that he agreed, provided that the question were settled in the financial regulations.

4676. The CHAIRMAN said that this was the general understanding.

4677. Mr. LORENZ (Austria) recalled, with reference to paragraph (1)(b) of Article 6, that the text initially proposed in the Program of the Conference (S/10) provided that the Government of each State should be represented in the Assembly by "one or more delegates." The present text (S/250) referred to only "one delegate." Should that provision be interpreted as nevertheless authorizing the Governments to appoint several delegates?

4678. Mr. BOGSCH (Deputy Director, BIRPI) said that a delegation could comprise an unlimited number of delegates and alternate delegates, but it could only have one head or chief delegate.

4679. Mr. KRISPIS (Greece) reminded the Committee that, in the United Nations, delegations could have one head and five main delegates.

4680. Mr. WINTER (United States of America) recalled that the question had first been raised by the Delegate of the Federal Republic of Germany. It had been discussed in both the Main Committee and the Drafting Committee. The item had been included in the Draft Convention solely to make it clear that while alternates could, of course, be designated by the head of a delegation to carry out his functions, each country could only have one vote in the General Assembly.

4681. Mr. SINGER (Federal Republic of Germany) said that the principle that each delegation had only one vote in the General Assembly was laid down in subparagraph (a) of paragraph (3) of Article 6.

4682. The CHAIRMAN said that the correct explanation had been given by the Secretary. The idea was that every delegation must have a leader.

4683. *The Committee agreed on that interpretation.*

4684. Mr. BOWEN (United Kingdom) said with reference to the footnote in Article 6(3)(d) that he had not understood the Article to mean that the two-thirds majority was to become a general rule for all Assembly decisions. The provisions of subparagraphs (e) and (f) should certainly be retained owing to the particular importance of the questions to which they referred

4685. Mr. HAERTEL (Federal Republic of Germany) supported the suggestion of the Delegate of the United Kingdom, which undoubtedly reflected the opinion of the Committee, as could be seen from the minutes of the Sixth Meeting. The question had moreover been decided in Main Committee IV. The text of the Draft Convention should therefore be retained.

4686.1 The CHAIRMAN said that his notes corroborated what the Delegates of the United Kingdom and the Federal Republic of Germany had said. Consequently, subparagraphs (e) and (f) would remain in the Convention.

4686.2 He then reminded the Committee that, as the Chairman of the Drafting Committee had explained, paragraph (3)(c) was reserved pending the decision to be taken by Main Committee IV.

4687. *Article 6, with the exception of paragraph (3)(c), reserved pending the decision of Main Committee IV, was approved.*

CONFERENCE: *Article 7*

4688. The CHAIRMAN said that the principle which had guided the Committee in its discussion was expressed in item (v) of paragraph (2).

4689. *Article 7 was approved.*

COORDINATION COMMITTEE: *Article 8*

4690. Mr. SHER (Israel) asked with reference to paragraph (1)(b) whether a State that was a member of the Executive Committee of each of the two Unions would be entitled to have one seat, or two, on the Coordination Committee.

4691. Mr. BOGSCH (Deputy Director, BIRPI) said that as was shown by the history of the provision, the intention was clearly that a country should be represented on the Coordination Committee by one delegate only even if that country was a member of both Executive Committees. The answer to the question was, moreover, given in the first sentence of subparagraph (a) of paragraph (1).

4692. The CHAIRMAN agreed that subparagraph (a) of paragraph (5) threw light on the question.

4693. Mr. SHER (Israel) said that some countries appointed different delegates to the Paris and Berne Unions because the affairs dealt with by those Unions were handled by different Ministries. The fact that a country could be represented on the Coordination Committee by only one delegate should in his view be more clearly stated, but he would not press the point.

4694. *Article 8 was approved.*

INTERNATIONAL BUREAU: *Article 9*

4695. The CHAIRMAN pointed out that in the English version of subparagraph (a) of paragraph (4) the words

"Administrative Officer" had been replaced by the word "Executive" to bring the English version closer to the French.

4696. *Article 9 was approved.*

HEADQUARTERS: *Article 10*

4697. *Article 10 was approved.*

FINANCES: *Article 11*

4698. Mr. LORENZ (Austria) noted that in paragraph (8)(a) of Article 11, it was prescribed that the Organization would have a working capital fund, but as it would have two separate budgets, one for the Assembly and one for the Conference, would it not be necessary to provide for two working capital funds?

4699. Mr. BOGSCH (Deputy Director, BIRPI) replied that in the opinion of the Secretariat that question should be settled by the future drafters of the financial regulations.

4700. *Article 11 was approved.*

LEGAL CAPACITY; PRIVILEGES AND IMMUNITIES: *Article 12*

4701. *Article 12 was approved.*

RELATIONS WITH OTHER ORGANIZATIONS: *Article 13*

4702. *Article 13 was approved.*

BECOMING PARTY TO THE CONVENTION: *Article 14*

4703. Mr. THALER (Austria) observed that in paragraph (1)(b) of Article 14 (S/250) the reference should be to Article 20(1)(b)(i) and not to Article 16(1)(b)(i) of the Stockholm Act of the Paris Convention.

4704. *Article 14, as amended, was approved.*

ENTRY INTO FORCE OF THE CONVENTION: *Article 15*

4705. *Article 15 was approved.*

RESERVATIONS: *Article 16*

4706. *Article 16 was approved.*

AMENDMENTS: *Article 17*

4707. Mr. SHER (Israel), supported by Mr. Gajac (France), proposed that the words "or ratification" be inserted in paragraph (3) immediately after the word "acceptance," since in French law, as the Delegate of France had pointed out, amendments were not accepted but ratified.

4708. Mr. PISK (Czechoslovakia) said that the notion of acceptance included ratification. He proposed the insertion of the words used in the United Nations Charter: "if they are accepted in accordance with their constitutional processes."

4709. Mr. BOGSCH (Deputy Director, BIRPI) said that the word "acceptance" had been chosen because it covered ratification, signature not subject to ratification, and accession, that is all three cases mentioned in Article 14, paragraph (1). However, the Czechoslovak proposal seemed to be acceptable and the text could be amended to conform with the wording of the United Nations Charter.

4710. *Article 17 was approved, subject to inserting in it the words "in accordance with their constitutional processes."*

DENUNCIATION: *Article 18*

4711. *Article 18 was approved.*

NOTIFICATIONS: *Article 19*

4712. *Article 19, as amended, was approved.*

FINAL PROVISIONS: *Article 20*

4713. Mr. GAJAC (France) stated that it was now French usage to speak not of *clauses finales* (final provisions) but of *dispositions protocolaires* (protocol provisions). It would therefore be appropriate to amend the title of Article 20 in the French version (S/250) accordingly.

4714. *It was agreed.*

4715. Mr. SHER (Israel) asked, with reference to paragraph (1)(a), how the four versions in the four different languages would be incorporated in a single copy.

4716. Mr. BOGSCH (Deputy Director, BIRPI) said that the four versions would be bound in one book with the different language versions following each other or printed in four parallel columns.

4717. Mr. SHER (Israel) asked which country's delegate would be the first to sign the document.

4718. Mr. BOGSCH (Deputy Director, BIRPI) said that the countries would be listed in alphabetical order according to their names in French. The reason for the adoption of that order was that most Acts would be signed only in French and it was also in accordance with the tradition of the Paris and Berne Conventions. The decision had been taken by the host Government of the Stockholm Conference.

4719. Mr. SHER (Israel) proposed that the decision be included in the document.

4720. Mr. DE HAAN (Netherlands) observed that since the decision would be reflected in the form of the final document, it was unnecessary to include it in the text.

4721. Mr. KRISPIS (Greece) said that he could not support the Israeli proposal. No precedents for inclusion of any such statement existed in preceding Acts.

4722. Mr. SHER (Israel) withdrew his proposal.

4723. *Article 20 was approved.*

4724. Mr. BOERO-BRIAN (Uruguay) had waited until the Committee had approved the draft of Article 20 in order to formulate a general observation on the document as a whole. The Delegation of Uruguay, prompted by a genuine spirit of cooperation, had approved the entire draft of the WIPO Convention in the double version in English and French (S/250), as had all the other delegations represented on the Committee. As, however, the discussion had mainly been concerned with grammatical difficulties, the Delegation of Uruguay felt bound to make a general reservation in respect of drafting, as the Spanish text which, pursuant to paragraph (1)(a) of Article 20, was to be authentic for the Spanish-speaking member countries, had not been distributed. The Spanish-speaking delegations could not, therefore, really approve the WIPO Draft Convention until later, when they were in possession of the Spanish text.

4725. Mr. BOGSCH (Deputy Director, BIRPI) stated that provisional versions of the Draft Convention already existed in Spanish and Russian. The Secretariat had preferred, however, to wait until the Committee had taken all relevant decisions on substance in order to have these provisional versions revised by two special Drafting Committees, one Spanish and the other Russian, before distributing the texts specified as authentic in the Spanish and Russian languages.

4726. Mr. SANABRIA MARTIN (Spain) endorsed the observations made by the Delegate of Uruguay and thanked Mr. Bogsch for his explanation.

TRANSITIONAL PROVISIONS: *Article 21*

4727. Mr. SHER (Israel) asked whether it was necessary to include paragraph (4), since the same provisions were contained in the Paris and the Berne Conventions and they could not in any case have legal effect in the new Convention.

4728. Mr. BOGSCH (Deputy Director, BIRPI) said that the inclusion of paragraph (4) was probably not indispensable from a practical viewpoint but from a legal viewpoint it might be desirable to state that WIPO would accept the property of the Union.

4729. Mr. DE HAAN (Netherlands) asked what would happen to the finances of the Madrid and Hague Agreements under the new arrangement.

4730. Mr. BOGSCH (Deputy Director, BIRPI) said that the property of Unions as such, if any, would remain in their possession.

4731. Mr. DE HAAN (Netherlands) said he feared that the document as drafted might lead to the assumption that the Madrid Agreement was incorporated in the Paris Union. He hoped the Secretariat would make sure that the text as drafted was adequate.

4732. Mr. SHER (Israel) observed that the Paris and Berne Conventions gave legal personality to the Bureaux as such. He was not sure whether the same could be said of the Draft Convention, because according to that Convention the Bureau was not a separate body but an instrument of the Conference. He suggested that instead of saying that the property would devolve on the International Bureau, it would be better to say that the Bureau had the duty to accept the property. He would not make a formal amendment to that effect; he merely wished to indicate the existence of problems in connection with the Article.

4733. *Article 21 was approved.*

4734. *The document, as a whole, as amended, was approved for submission to the Plenary Assembly.*

The meeting rose at 4:25 p.m.

TENTH MEETING

Wednesday, July 5, 1967, at 9:30 a.m.

Note. — The Tenth Meeting of Main Committee V was a joint meeting with the Sixteenth Meeting of Main Committee IV. The summary minutes are reproduced under the Sixteenth Meeting of Main Committee IV.

ELEVENTH MEETING

Monday, July 10, 1967, at 3:10 p.m.

REPORT ON THE WORK OF MAIN COMMITTEE V (S/273)

4735. The CHAIRMAN opened the meeting and said that the only subject for consideration was the draft report on the work of Main Committee V (S/273). The report had been prepared by Mr. Joseph Voyame, a member of the Delegation of Switzerland.

4736. Mr. BOGSCH (Deputy Director, BIRPI) said that he had been requested by the Director of BIRPI, who was unable to attend the meeting, to congratulate the Rapporteur on having prepared a scholarly, complete, objective, and very clear account of the Committee's work.

4737. The CHAIRMAN called on the Rapporteur to introduce the Report on the Work of Main Committee V (S/273), which seemed to reflect accurately the sense of the Main Committee's discussions on the intricate subject it had been requested to examine.

4738. The RAPPORTEUR said that the lack of unity in the document, in regard to references and presentation, was due to the shortness of the time available for the preparation of the report. But the discrepancies would be eliminated afterwards. The report was not intended to replace the summary records, and hence all the statements were not included in it. The English translation had had to be prepared very quickly, and this explained why it might not be fully satisfactory in some respects.

4739. The CHAIRMAN suggested that only amendments affecting the substance of the report should be proposed during the meeting and that amendments of a purely drafting nature should be brought to the attention of the Secretary or Rapporteur outside the meeting.

4740. *It was so agreed.*

4741. The CHAIRMAN suggested that the Committee should examine the report section by section.

4742. *It was so agreed.*

SECTION I - PREAMBLE: *Paragraphs 1 to 4*

4743. The RAPPORTEUR suggested that the title "Preamble" should be replaced by "Introduction," so as not to give the impression that it contained comments on the Preamble to the Convention.

4744. Mr. CIPPICO (Italy) proposed that the end of the first sentence in paragraph 1 should be amended to read: "and the results of their work have been made available to the members of the Unions, particularly for the revision conferences."

4745. *Section I, thus amended, was approved.*

SECTION II - TERMS OF REFERENCE AND WORK OF MAIN COMMITTEE V: *Paragraphs 5 and 6*

4746. The RAPPORTEUR suggested that paragraph 5 should open with a mention of the terms of reference of Main Committee V, followed by those of Main Committee IV. Further, it was stated in paragraph 6 that a joint meeting had been held under the chairmanship of Mr. Savignon (France); in fact, however, the Chair had been taken by Mr. Braderman (United States of America), and a correction would have to be made.

4747. *Section II, thus amended, was approved.*

SECTION III - ESTABLISHMENT OF THE NEW ORGANIZATION: *Paragraphs 7 to 11*

4748. The RAPPORTEUR suggested that the order of paragraphs 8 and 9 should be reversed, that the word "other" at the beginning of the new paragraph 8 should be replaced by "several," and that the word "however" should be inserted after "noted" in the new paragraph 9. It seemed more logical to begin by mentioning those delegations which had spoken in favor of the establishment of the new Organization. In addition, the first sentence of paragraph 10 should be amended to read as follows: "the representatives of several intergovernmental organizations also expressed themselves in favor of the establishment of the new Organization."

4749. Mr. TROTTA (Italy) proposed that the end of the last phrase in the existing paragraph 8 should be amended to read: "... as it seemed to be justified by the fact that it was desired by the great majority of the member States of the Unions."

4750. *Section III, thus amended, was approved.*

SECTION IV - THE NAME OF THE ORGANIZATIONS: *Paragraph 12*

4751. *Section IV was approved without comment.*

SECTION V - OBJECTIVES OF THE ORGANIZATION: *Paragraphs 13-17*

4752. *Section V was approved without comment.*

SECTION VI - FUNCTIONS OF THE ORGANIZATION: *Paragraphs 18-22*

4753. *Section VI was approved without comment.*

SECTION VII - MEMBERSHIP OF THE ORGANIZATION: *Paragraphs 23-26*

4754. Mr. QUINN (Ireland) said that he assumed that acceptance of Section VII would not necessarily imply acceptance of the compromise referred to in paragraph 26 of the report. The Delegation of Ireland had understood that those delegations which had expressed doubts about the matter would be able to raise the question again in Plenary.

4755. Mr. KUDRIAVTSEV (Byelorussian Soviet Socialist Republic) said that the compromise referred to in paragraph 26 had not been accepted unanimously. There were many delegations which, although they had not insisted on a vote on the subject, would have preferred alternative C of the 1965 Committee (S/10).

4756. The RAPPORTEUR said that the report merely showed the position in the Committee and that the decisions taken by it would in any case have to be approved in plenary meeting.

4757. The CHAIRMAN suggested that the difficulty would be met if the word "accepted" were replaced by the words "did not object to."

4758. *It was so agreed.*

4759. *Section VII, as amended, was approved.*

SECTION VIII - THE ORGANS IN GENERAL: *Paragraphs 27-30*

4760. The RAPPORTEUR suggested that the final words of paragraph 30: "from which it would be difficult for certain delegations to depart" should be deleted.

4761. Mr. SHER (Israel) requested that Israel be included among the countries listed in paragraph 28.

4762. *It was so agreed.*

4763. *Section VIII, as amended, was approved.*

SECTION IX - THE GENERAL ASSEMBLY: *Paragraphs 30*bis *to 46*

4764. Mr. LAURELLI (Argentina) referring to paragraph 36 of the report, dealing with the working languages of the Secretariat, said that the wording finally adopted for Article 6(2)(vii) had been proposed by the Delegations of Argentina, Brazil and Uruguay and supported by the Delegation of Spain, and not proposed by the latter as it appeared from the report.

4765. The CHAIRMAN said that the appropriate change would be made.

4766. *Section IX, as amended, was approved.*

SECTION X - CONFERENCE: *Paragraphs 47-61*

4767. *Section X was approved without comment.*

SECTION XI - COORDINATION COMMITTEE: *Paragraphs 62-75*

4768. The RAPPORTEUR pointed out that in the beginning of paragraph 64 the word "proposes" should be replaced by "prepares."

4769. Mr. KELLBERG (Sweden) said that the second sentence of paragraph 73 should be so redrafted as to make it clear that the right of veto would be held by a certain number of the members of the Executive Committee of the Paris Union and of the Berne Convention within the Coordination Committee, rather than by the Committees themselves.

4770. The RAPPORTEUR admitted the validity of the comment of the Delegate of Sweden and said that it would be taken into account when the definitive text of the report was drawn up.

4771. *Section XI, as amended, was approved.*

SECTION XII - THE INTERNATIONAL BUREAU OF INTELLECTUAL PROPERTY: *Paragraphs 76-81*

4772. The RAPPORTEUR said that the following words should be added to the last sentence of paragraph 77: "but that regulation was not accepted by the Committee."

4773. Mr. LABRY (France) asked that, in the same last sentence of paragraph 77, the words "without submitting an amendment" should be deleted.

4774. The CHAIRMAN said that the amendments suggested by the Rapporteur and the Delegation of France would be made.

4775. *Section XII, as amended, was approved.*

SECTION XIII - THE HEADQUARTERS OF THE ORGANIZATION: *Paragraph 82*

4776. *Section XIII was approved without comment.*

SECTION XIV - FINANCES: *Paragraphs 83-92*

4777. *Section XIV was approved without comment.*

SECTION XV - LEGAL CAPACITY, PRIVILEGES AND IMMUNITIES: *Paragraphs 93-96*

4778. *Section XV was approved without comment.*

SECTION XVI - RELATIONS WITH OTHER ORGANIZATIONS: *Paragraphs 97-99*

4779. *Section XVI was approved without comment.*

SECTION XVII - ACCESSION TO THE CONVENTION: *Paragraphs 100-102*

4780. Mr. PISK (Czechoslovakia) said that the title of Section XVII mentioned only one of the three ways of becoming party to the Convention. The Delegation of Czechoslovakia suggested that the title should be amended to read "becoming Party to the Convention." It also suggested that in paragraph 100 the words "accede to" should be replaced by the word "accept."

4781. The RAPPORTEUR agreed that a slight difficulty of terminology was involved, because some authors considered that the term "accession" covered both ratification and accession, whereas others held that it covered accession only. In the report the term "accession" had been used in the first sense, which was the most common, and there was no need to amend the French text.

4782. The CHAIRMAN suggested the English text should be amended in accordance with the Czechoslovak proposal, which corresponded with the terminology of the Convention itself.

4783. *It was so agreed.*

4784. Mr. SHER (Israel) suggested that it might be advisable to add, in paragraph 101, a sentence to the effect that it would be impossible, under Article 14(1)(b) of the WIPO Convention (S/10), for States members of the Paris Union or the Berne Union to sign the Convention subject to ratification.

4785. Mr. BOGSCH (Deputy Director, BIRPI) explained that it would be possible for a country which was a member of, say, the Paris Union, to ratify the Paris Convention before the six months for the signature of the WIPO Convention expired and then, within the same time limit, sign the WIPO Convention without reservation as to ratification.

4786. Mr. SHER (Israel) accepted the explanation.

4787. *Section XVII, as amended, was approved.*

SECTION XVIII - ENTRY INTO FORCE OF THE CONVENTION: *Paragraphs 103-104*

4788. The RAPPORTEUR said that the word "approximately" at the end of paragraph 103 should be deleted.

4789. Mr. KELLBERG (Sweden) suggested that a reference should be made, in the third sentence of paragraph 103, to the fact that States members of the Paris Convention or of the Berne Convention would also have had to ratify the administrative provisions of the Stockholm Act.

4790. The RAPPORTEUR admitted the validity of the comment of the Delegate of Sweden and said that a clarification would be introduced into the report.

4791. *Section XVIII, as amended, was approved.*

SECTION XIX - RESERVATIONS: *Paragraphs 105 and 105*bis

4792. Mr. SHER (Israel) said that he understood that the Committee had decided that delegations' reservations respecting provisions of the Convention were not to be included in the report. If the reservation of the Delegation of the Soviet Union were mentioned in paragraph 105*bis*, a general statement relating to delegations' reservations concerning membership of the Organization should be included in paragraph 26.

4793. The CHAIRMAN suggested that, as the opinion of the Delegation of the Soviet Union on the matter was fully reported in the summary record of the relevant meeting, paragraph 105*bis* should be deleted.

4794. *It was so agreed.*

4795. *Section XIX, as amended, was approved.*

SECTION XX - AMENDMENTS TO THE CONVENTION: *Paragraphs 106-109*

4796. The RAPPORTEUR said that in the third sentence of paragraph 106 the words "revised by the Conference itself" should be replaced by "amended without the need for a revision conference."

4797. *Section XX, thus amended, was approved.*

SECTION XXI - DENUNCIATION OF THE CONVENTION: *Paragraphs 110-112*

4798. *Section XXI was approved without comment.*

SECTION XXII - NOTIFICATIONS: *Paragraph 113*

4799. *Section XXII was approved without comment.*

SECTION XXIII - SETTLEMENT OF DISPUTES: *Paragraphs 114-115*

4800. *Section XXIII was approved without comment.*

SECTION XXIV - FINAL PROVISIONS: *Paragraphs 116-117*

4801. *Section XXIV was approved without comment.*

SECTION XXV - TRANSITIONAL PROVISIONS: *Paragraphs 118-121*

4802. *Section XXV was approved without comment.*

SECTION XXVI - CONCLUSION: *Paragraph 122*

4803. Mr. KELLBERG (Sweden) suggested that, as the Convention had been prepared by BIRPI at the request of the Swedish Government, BIRPI should be mentioned before the Swedish Government at the beginning of the paragraph 122.

4804. *It was so agreed.*

4805. *Section XXVI, as amended, was approved.*

4806. Mr. WINTER (United States of America) said that it should be reported in the summary record of the meeting that the Main Committee commended the Rapporteur on his excellent report.

4807. *It was so decided.*

CLOSING REMARKS

4808. The CHAIRMAN thanked the Rapporteur, the Secretary General of the Conference and the members of the Main Committee for having helped him in his task of ensuring that the Main Committee prepare a Convention for the promotion of intellectual property.

4809. Mr. LABRY (France), speaking on behalf of the Delegation of France paid tribute to the outstanding ability which the Chairman had displayed in exercising his functions, and thanked him for the valuable help which he had given the Main Committee.

4810. The CHAIRMAN said that Main Committee V had completed its work.

The meeting rose at 4 p.m.

REPORTS

on the Work of the Five Main Committees

Report

on the Work of Main Committee I (Substantive Provisions of the Berne Convention: Articles 1 to 20)

by

Svante BERGSTRÖM, Rapporteur
(Member of the Delegation of Sweden)

Introduction

1. The Plenary Assembly of the Berne Union, which met on June 12, 1967, under the chairmanship of Mr. Gordon Grant (United Kingdom), set up Main Committee I (hereinafter referred to as " the Committee ") with the task of considering the proposals for revising the substantive copyright provisions of the Berne Convention (Articles 1 to 20), with the exception, however, of the proposals for the establishment of an additional Protocol Regarding Developing Countries, consideration of which, according to the Rules of Procedure of the Conference, came within the province of Main Committee II.

2. The Plenary Assembly of the Berne Union agreed without opposition to the proposals put forward by the Delegation of Sweden that a member of the Delegation of the Federal Republic of Germany be elected as Chairman of the Committee, that a member of the Delegation of Tunisia be elected as Vice-Chairman of the Committee, and that Professor Svante Bergström (Sweden) be elected as Rapporteur.

3. The Officers of the Committee were therefore the following: Professor Eugen Ulmer (Federal Republic of Germany), Chairman; Mr. Mustapha Fersi (Tunisia), Vice-Chairman; Professor Svante Bergström (Sweden), Rapporteur. In accordance with Rule 19, paragraph (1), of the Rules of Procedure of the Conference, Mr. Claude Masouyé (BIRPI) was appointed Secretary of the Committee.

4. The Committee elected a Drafting Committee, comprising, under the chairmanship of Mr. William Wallace (United Kingdom), representatives of the following countries: Australia (Mr. J.L. Curtis), Czechoslovakia (Mr. V. Strnad), France (Mr. Marcel Boutet), India (Mr. R. S. Gae), Mexico (Mr. Rojas y Benavides), Netherlands (Professor S. Gerbrandy), Rumania (Mr. T. Preda), Senegal (Mr. O. Goundiam), and Sweden (Professor S. Strömholm). The French representative pointed out that, in respect of those questions to which the Committee had adopted solutions not accepted by the French Delegation, his participation in the work of the Drafting Committee did not imply approval of the texts prepared by that Committee. The same observation applied to the French participation in the Working Group mentioned under paragraph 7 below.

5. In the course of its discussions, the Committee deemed it advisable to set up Working Groups to make a detailed examination of certain matters of special importance. Four Working Groups were thus established.

6. The first, under the chairmanship of Mr. De Sanctis (Italy), had the task of studying the content of certain exceptions to the right of reproduction mentioned in Articles 9 (new paragraph (2)) and 10 (paragraph (2)). This Working Group consisted of representatives of the following countries: Austria, Czechoslovakia, France, Italy, Ivory Coast, Japan, Sweden, United Kingdom.

7. The second, under the chairmanship of Professor Ulmer (Federal Republic of Germany), was responsible for examining the régime of cinematographic works. This Working Group consisted of representatives of the following countries: Belgium, Brazil, Bulgaria, Congo (Kinshasa), Czechoslovakia, Denmark, France, Federal Republic of Germany, Italy, Japan, Monaco, Spain, Sweden, Switzerland, United Kingdom.

8. The third, under the chairmanship of Mr. Strnad (Czechoslovakia), was entrusted with consideration of the possibility of inserting in the Convention special provisions relating to folklore. This Working Group consisted of representatives of the following countries: Brazil, Congo (Brazzaville), Czechoslovakia, France, Greece, India, Ivory Coast, Monaco, Netherlands, Sweden, Tunisia, United Kingdom.

9. The fourth, under the chairmanship of Mr. Cavin (Switzerland), had the task of finding a formula specifying the conditions mentioned in Article 2bis, paragraph (2). This Working Group consisted of representatives of the following countries: Bulgaria, France, Federal Republic of Germany, Monaco, Sweden, Switzerland.

10. The Officers of the Committee attended, ex officio, the meetings of the Drafting Committee and of the four Working Groups.

11. The Committee decided to consider the proposals for revision in the following order, the numbers of the Articles referred to being those of the text submitted in the *Programme* document S/1):

(a) Articles 4, 5 and 6 (eligibility criteria, country of origin), with the exception of the provisions concerning cinematographic works;

(b) Articles 9 (right of reproduction), 10 (quotations), 10bis (current events);

(c) Article 2, paragraph (2), Article 4, paragraphs (4) and (6), Article 6, paragraph (2), Article 7, paragraph (2), Article 14 (régime of cinematographic works);

(d) Article 2, paragraph (1) (choreographic works); Article 2bis, paragraph (2) (reproduction of speeches by the press); Article 6bis (moral rights); Article 7 (term of protection); Article 7bis (works of joint authorship); Article 8 (right of translation); Article 11 (right of public performance); Article 11bis (right of broadcasting); Article 11ter (right of recitation); Article 13 ("mechanical" rights); Additional Protocols Regarding (i) Stateless Persons and Refugees, (ii) the Works of Certain International Organizations;

(e) proposals submitted with regard to other provisions of the Convention.

12. Having regard to the course of events during the Conference, this Report will follow a somewhat different order. Item *(a)* will be dealt with under I, item *(b)* under II, items *(d)* and *(e)*, in so far as they refer to Articles in the Convention, under III, and item *(c)* under IV. Part V deals with joint meetings with other Committees, and Part VI with the recommendations expressed by the Committee, miscellaneous proposals, and the Additional Protocols. The Articles and paragraphs in the headings refer, where possible, to the numbering in the *Programme* of the Conference, as this was the basis for the proposals submitted by the countries and for the discussion during the Conference. If the Articles and paragraphs have been numbered differently, however, in the draft finally adopted by the Committee, the corresponding Articles or paragraphs will be indicated in brackets.

13. It should first be mentioned that the Committee took a decision on a question of general import, affecting the Convention as a whole. It had been pointed out that the expression "literary, artistic, and scientific works" appeared in

some Articles, whereas only the adjectives " literary and artistic " were used in other Articles. Following a proposal by the United Kingdom, the Committee decided to delete the word " scientific " wherever it was used in the Convention to qualify works, considering that the use of different expressions in different places was liable to give rise to misunderstandings. It was thought sufficient that Article 2, paragraph (1), should give a general definition of the term " literary and artistic works " as including " every production in the literary, scientific and artistic domain."

14. Two general remarks seem justified here concerning the interpretation of the text of the Convention. The Drafting Committee was unanimous in adopting, in the drafting of new texts as well as in the revision of the wording of certain provisions, the principle *lex specialis legi generali derogat:* special texts are applicable, in their restricted domain, exclusive of texts that are universal in scope. For instance, it was considered superfluous to insert in Article 9, dealing with some general exceptions affecting authors' rights, express references to Articles 10, 10bis, 11bis and 13 establishing special exceptions. Similarly, Articles 11, 11ter, 14 and 14bis (new) do not refer to Article 11bis. On the other hand, it was thought advisable to insert such references in cases where exceptionally, the principle *lex specialis legi generali derogat* is not applicable. Such a reference is to be found in Article 14(3), where reference is made to Article 13(1).

15. Secondly, the adoption of English as one the official languages of the Berne Convention (cf. paragraph 17 below) makes it necessary to clarify an expression appearing several times in the text: " *législation nationale* " (" national legislation "). According to the English view, which was adopted by the Drafting Committee, these words refer not only to statute law but also to common law.

16. The Committee based its discussions on the *Programme* presented in document S/1 (with the exception of the draft Protocol Regarding Developing Countries) and the proposed amendments submitted in accordance with Rule 33 of the Rules of Procedure of the Conference.

17. Lastly, it should be pointed out that, in accordance with a decision taken by Main Committee IV, the Berne Convention will henceforward have two official languages, English and French. Consequently, Main Committee I has also had to adopt an official text in English. In establishing the latter, the text contained in document S/1 and including a revision of the wording of the Brussels text prepared by a group of experts (document S/1, page 8) was used as a basis.

I. Eligibility Criteria and Country of Origin

(Articles 4, 5 and 6, or Articles 3 to 6)
with the exception of the provisions concerning cinematographic works

18. Articles 4, 5 and 6 of the Brussels text deal essentially with two fundamental questions.

19. The first relates to eligibility criteria, that is to say criteria for the application of the Convention. The main criterion differs according to whether the work is published or not. If it is not published, the criterion is the nationality of the author: he is protected if he is a national of a country of the Union (Article 4(1)). If the work is published, the only criterion is that of first publication: the author is protected if he first publishes his work in a country of the Union, irrespective of whether he is a national of a country of the Union (Article 4(1)) or whether he is not (Article 6(2)).

20. The second question relates to the basic principles of the protection of a work under the Convention: the principles of national treatment and protection *jure conventionis.* In some cases the author enjoys both national treatment and *jus conventionis* (Article 4(1), Article 6(1)). In other cases he benefits only from national treatment (Article 5, Article 6(1)). In what is called the country of origin of the work, he may not be protected at all under the Convention (Article 4(1)).

21. In addition to these two questions, the Brussels text includes a definition of two concepts closely related to the above questions, namely, publication (Article 4(4)) and country of origin (Article 4(3) and (5)). Furthermore, it contains a provision excluding formalities as a condition for protection (Article 4(2)) and other provisions permitting countries in certain cases to take retaliatory measures against countries outside the Union (Article 6(2) to (4)).

22. The *Programme* of the Conference submitted proposals on the eligibility criteria and on the definitions of the concepts of publication and country of origin. No amendment was proposed regarding the principles of protection or the provisions contained in Article 4(2) and Article 6(2) to (4) of the Brussels text.

23. As Chairman of the Committee, Professor Ulmer proposed a new draft of Articles 4 to 6 (document S/44). A new Article 3 would indicate the main criteria for the application of the Convention, with the definition of the concept of publication. Article 4 would contain certain special criteria for the application of the Convention (cinematographic works and works of architecture). Article 5 would state the principles of

protection, with the definition of the concept of country of origin, and Article 6 would reproduce the special provisions already existing in Article 6(2) to (4).

24. The Committee approved the new presentation of Articles 4 to 6 in principle, but preferred to proceed according to the order adopted in the *Programme* of the Conference. This Report also follows that order.

Article 4(1) (Article 3(1)(a)) (Article 5(1))

25. The *Programme* proposed that the nationality of the author should be the general criterion for protection under the Convention. Protection would be granted to authors who were nationals of one of the countries of the Union, according to Article 4(1), not only for their unpublished works but also for their works first published inside or even outside the Union. The proposal in the *Programme* was adopted unanimously.

Article 4(2) (Article 3(2))

26. The *Programme* proposed a new provision in Article 4(2) whereby authors who are not nationals of one of the countries of the Union but are domiciled in one of them shall, for the purpose of the Convention, be assimilated to the nationals of that country.

27. The *Programme* also proposed that an additional protocol should be adopted, enabling countries which so desire to assimilate to national authors stateless persons or refugees not domiciled but having their habitual residence in one of the countries of the Union.

28. After discussion, the Committee decided to adopt the proposal made by several delegations that the term " domiciled " should be replaced by the wider expression " having their habitual residence." The consequence of this decision would be that the proposed Additional Protocol concerning the Protection of the Works of Stateless Persons and Refugees would become superfluous. The Committee accordingly decided not to adopt that Protocol.

29. The question was raised as to when habitual residence should become a criterion for protection, as an author might change his habitual residence from time to time. This point must be determined by the Courts in the country in which protection is claimed. It is probable, however, that the decisive date will be the date when the work, without having been published, was first made available to the public. If at that date the author of the work has his habitual residence in a country

of the Union, he is protected in respect of his work under the Convention. If the work was first made available to the public by an unauthorized person, the author can claim protection under the Convention against that unauthorized person, if he has his habitual residence in a country of the Union at that date.

30. It is obvious that the same problem may be raised — and solved in the same way — as regards the date when the author's nationality should become a criterion for protection; the nationality of the author may also change from time to time.

Article 4(3) (Article 5(2))

31. This provision corresponds to Article 4(2) of the Brussels text. No amendment was proposed in the *Programme* and none was submitted during the Conference.

Article 4(4) (Article 5(4) and Article 3(4))

32. In the *Programme*, it was proposed to combine paragraphs (3) and (5) of the Brussels text in a new paragraph (4) containing, in its first subparagraph, the definition of the country of origin both for published works and for unpublished works and, in its second subparagraph, a definition of the concept of simultaneous publication. It was merely proposed to make a few minor adjustments to the first subparagraph and to draft the text accordingly.

33. According to the *Programme*, the first criterion for country of origin should be, as in the Brussels text, the country of first publication and, in the event of simultaneous publication in several countries of the Union, the country of which the legislation grants the shortest term of protection (*(a)*).

34. In the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter, according to the *Programme*, should be considered as the country of origin (*(b)*).

35. As regards unpublished works or works first published in a country outside the Union, without simultaneous publication in a country of the Union, the general criterion, according to the *Programme*, should be the nationality of the author (*(c)*(iii)).

36. The *Programme*, however, provided for two exceptions to this principle. The first relates to cinematographic works in respect of which the country of origin was considered to be the country of which the maker was a national or in which he had his domicile or headquarters (*(c)*(i)). Only in the absence of such a criterion would the nationality of the author be deci-

sive as regards the country of origin. In the same way, the country where a work of architecture and some other works of the same nature were erected or affixed to land or to a building would be the criterion for their country of origin ((*c*)(ii)), and only in the absence of such a criterion would it be the nationality of the author.

37. Switzerland proposed (document S/63) that the nationality of the author should be the general criterion for the country of origin, even in respect of published works. This proposal was, however, withdrawn after discussion.

38. India submitted a similar proposal (document S/41) providing that the nationality of the author should be the general criterion for the country of origin, either from the time when the work is made lawfully available to the public, or even before. The first part of the proposed alternative was based on the presumption that protection should begin from the date on which the work was made lawfully available to the public.

39. France proposed (document S/27) that the special criterion for cinematographic works in paragraph (*c*)(i) should be deleted.

40. These proposals were not accepted. The *Programme* was adopted by the Committee with the following minor amendments. An amendment was made to the provision in (*c*)(i) and will be mentioned later in the part of the Report dealing with cinematographic works. During the discussion on Article 6(3), which parallels Article 4, (4)(*c*)(ii), the Committee decided to make a few changes in the English version which do not affect the French text.

41. Lastly, a purely drafting amendment to subparagraph (*c*) was accepted by the Committee. Instead of giving the general principle of nationality as the criterion for the country of origin in the last sentence ((*c*)(iii)), subparagraph (*c*) would begin with this general rule, followed by the two exceptions regarding cinematographic works ((*c*)(i)) and works of architecture ((*c*)(ii)).

Article 4(5) (Article 3(3))

42. The definition of "published works" contained in Article 4(4) of the Brussels text was incorporated in the *Programme* (Article 4(5)) with two small amendments.

(*a*) According to the Brussels text, the definition of published works was valid only "for the purposes of Articles 4, 5 and 6." These words in inverted commas were excluded from the *Programme*, which meant that the definition was to relate to the whole Convention.

(*b*) The *Programme* introduced into Article 4(5), as an element in the definition of the concept of publication, the condition that the work should have been "lawfully" published.

43. No proposal was submitted to the Committee regarding the first of these two amendments.

44. As regards the second, the United Kingdom proposed (document S/42) that the word "lawfully" should be replaced by the phrase "with the consent of the author."

45. Some proposals were submitted regarding other points of the definition of published works. France proposed an additional sentence (document S/27) giving a special rule for the publication of cinematographic works.

46. India proposed (document S/41) a narrower definition excluding from "publication" as defined in the Convention the publication of gramophone records, photographs, paintings or engravings of works of architecture or other three-dimensional works.

47. Proposals submitted by the Netherlands (document S/49) and by South Africa (document S/53), and a joint proposal by South Africa, the Federal Republic of Germany, Luxembourg and Monaco (document S/60), were designed to give a wider general definition of published works than that contained in the Brussels text.

48. The Committee adopted the first amendment proposed in the *Programme*, namely, the deletion of the words "for the purposes of Articles 4, 5 and 6," thus making the definition of "published works" (and of publication) applicable to the whole Convention.

49. The Committee decided, in accordance with the United Kingdom proposal, to substitute the words "with the consent of the author" for the word "lawfully" proposed in the *Programme*.

50. Lastly, the Committee adopted a new general formula broadening the definition of published works. This formula, which was prepared by the Drafting Committee on the basis of the joint proposal referred to above, provides that the expression "published works" means works published with the consent of their authors, whatever may be the means of manufacture of the copies, provided that the availability of such copies has been sufficient to satisfy the reasonable requirements of the public, having regard to the nature of the work. This new and wider definition implies, inter alia, new conditions for the publication of cinematographic works, including television films.

Article 4(6) (—)

51. The *Programme* proposed inserting a new paragraph (6) giving a definition of the "maker of the cinematographic work." This proposal was rejected. It should be pointed out here, however, that, in a new provision inserted in Article 15(2), the Committee adopted the principle that the person or corporate body whose name appears on a cinematographic work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the maker of that work.

Article 5 (Article 5(3))

52. The Brussels text stipulates that an author who is a national of one of the countries of the Union and who first publishes his work in another country of the Union shall have national treatment in the latter country, the country of origin. This rule was retained in the *Programme* with a slight modification in the English version, where the word "native" was changed to "national." No amendment was proposed to this provision.

53. The actual substance of this rule was also maintained by the Committee, with the above modification. The rule was, however, redrafted and combined with the other rules regarding protection in the country of origin of the work. This is at present the subject of the new paragraph (3) of Article 5.

54. This last-mentioned new paragraph contains a rule, implicit but not expressly mentioned in the Brussels text, that protection, in the country of origin, of a work of which the author is a national of that country is governed solely by national legislation. Protection is therefore entirely outside the Convention. Other authors, of whose works that country is the country of origin, are entitled under the Convention to benefit from national treatment. This rule is applicable either in cases where the author is a national of another country of the Union (as stipulated in Article 5 of the Brussels text) or in cases where he is not (as stipulated in Article 6(1) of the Brussels text).

Article 6(1) (Article 3(1)(b) and Article 5(1) and (3))

55. In the Brussels text, this Article deals with *(a)* first publication as an eligibility criterion for works published by nationals of countries outside the Union, and *(b)* the principles of protection in respect of such works. On this last point, the author enjoys national treatment in the country of publication, that is to say, the country of origin, and in the other countries of the Union "the rights granted by this Convention."

56. In the *Programme*, two amendments were proposed in respect of *(a)* above. In the first place, the text stated

explicitly that it referred also to cases of simultaneous publication in a country outside the Union and in a country of the Union. In the second place, the text stated clearly that an author who is a national of a country outside the Union should be protected only in respect of those works first published or published simultaneously in a country of the Union.

57. India proposed (document S/41) deleting the whole of Article 6.

58. The amendments proposed by the *Programme* were adopted by the Committee. The substance of the provision as amended was transferred, as regards publication as a criterion of eligibility, to the new Article 3(1)*(b)* and, as regards the principles of protection, to the new Article 5(1) and (3), thus giving a text that makes the content of the provision in question clearer.

Article 6(2) (Article 4(a))

59. The *Programme* proposed inserting a new criterion for protection in respect of cinematographic works, namely, the nationality, domicile or headquarters of the maker. Subject to replacing the concept of domicile by that of habitual residence and deleting the reference to the nationality of the maker, and subject also to the principle that account should be taken in the first place of the headquarters of the maker, this proposal was adopted and the corresponding provision is contained in the new Article 4*(a)*.

Article 6(3) (Article 4(b))

60. The *Programme* also proposed including a new criterion for protection in respect of works of architecture or graphic and three-dimensional works affixed to land or to a building.

61. Australia proposed (document S/52) the amendment of the text of the *Programme* by deleting the reference to graphic and three-dimensional works.

62. The Committee adopted the *Programme* except that, on the proposal of the Drafting Committee, the English version was worded slightly differently. This provision was included in the new Article 4*(b)*.

63. It was decided that the Report should state that the criterion for the location of works of architecture and other artistic works in a country of the Union would apply only in respect of the original work. No protection under the Berne Convention could be claimed in respect solely of a copy of the work erected in a country of the Union if the original were still located in a country outside the Union.

II. Right of Reproduction

(Articles 9, 10 and 10bis)

64. In the Brussels text, Articles 9, 10 and 10bis deal with some of the aspects of the author's right of reproduction, but a general right of reproduction is not explicitly conferred on the author under the Convention. Article 9(1) provides for a right of reproduction in respect of works published in newspapers or periodicals. Paragraph (2) provides for an exception to that right: articles on current economic, political or religious topics may be reproduced by the press unless the reproduction thereof is expressly reserved; nevertheless, the source must always be clearly indicated. Paragraph (3) provides that protection shall not apply to news of the day or to miscellaneous information having the character of mere items of news.

65. Article 10(1) states that it shall be permissible to make short quotations from newspaper articles and periodicals, as well as to include them in press summaries. Under paragraph (2), the right to include excerpts from literary or artistic works for educational or scientific purposes or in chrestomathies is to be a matter for national legislation. According to paragraph (3), quotations and excerpts are to be accompanied in principle by an acknowledgement of the source and by the name of the author.

66. Lastly, according to Article 10bis, it is to be a matter for national legislation to determine the conditions under which short extracts from works may be used for the purpose of reporting current events by means of photography or cinematography or by radiodiffusion.

67. The *Programme* proposed that a general right of reproduction should be inserted in Article 9(1). In paragraph (2), the *Programme* provided for some general exceptions to that right. Article 9(1) of the existing text was omitted since it was included in the new paragraph (1) proposed. According to the *Programme*, it was no longer necessary to maintain paragraph (2) of the Brussels text, which was accordingly also omitted. Paragraph (3) was transferred unchanged to Article 2 as paragraph (7).

68. The *Programme* proposed broadening the rule on quotations contained in the existing Article 10(1) so as to make it a general rule applying to all categories of works. Paragraphs (2) and (3) were unchanged. Lastly, some minor amendments were made to Article 10bis.

69. The Committee adopted in principle the order proposed in the *Programme*, which will be followed in this Report. Accordingly, Article 9(3) of the Brussels text on

items of news will be discussed under Article 2(8) (a new paragraph was added to Article 2, so that paragraph (7) of the *Programme* becomes paragraph (8) in the text adopted by the Committee). Nevertheless, the Committee included: (i) a new paragraph (3) in Article 9, clarifying the meaning of " reproduction "; and (ii) a new paragraph (1) in Article 10[bis], corresponding to Article 9(2) of the Brussels text, which the *Programme* had proposed to omit. Consequently, the present provisions of Article 10[bis] become the second paragraph of that Article.

Article 9(1)

70. The *Programme* proposed that a general right of reproduction should be recognized in Article 9(1): authors of protected works would have the exclusive right of authorizing " the reproduction of these works, in any manner or form."

71. The principle thus stated was contested by India in a proposal (document S/86) containing an alternative: either retain the Brussels text, or permit the countries of the Union to introduce a compulsory general license with remuneration, which would be inserted in a new subparagraph *(d)* of paragraph (2).

72. Austria, Italy and Morocco submitted an amendment (document S/72) with a view to extending the protection provided in paragraph (1) by adding the right of circulation.

73. Several proposals were submitted which may be regarded as purely drafting points. Austria proposed (document S/38) adding a sentence defining " reproduction " as consisting of the material fixation of the work by all methods that permit of indirect communication to the public. Some examples were also indicated in that sentence. The Federal Republic of Germany proposed (document S/67) inserting after the words " these works " the following phrase " including the recording of these works by instruments capable of reproducing them mechanically." The United Kingdom recommended (document S/42) that it should be expressly stated in the Convention that the right of reproducing a work also included the right to reproduce " substantial parts " of the work. France proposed (document S/70) inserting after the words " in any manner or form " the words " and for any purpose."

74. The Committee rejected the proposal that a general right of circulation be included in paragraph (1). Some delegations considered that such a right would make the dissemination of a work too difficult and others thought that the preparatory work on this point was not sufficient to enable the

Conference to take a decision, for example, on the exceptions to such a general rule.

75. As regards the drafting amendments, Austria withdrew its proposal on condition that the two ideas contained in it appeared in the Report: (i) reproduction does not include public performance; (ii) reproduction includes recordings of sounds or images. There seems no doubt that such clarification is consistent with the general trend of opinion in the Committee. Furthermore, the idea expressed under (ii) was finally incorporated in a new paragraph (3) in Article 9.

76. As it was emphasized that all rights granted in respect of works under the Convention are applicable, without this being explicity stated, either to the whole work or to parts of it and that to refer to parts of a work in one Article might imply contrary conclusions in respect of other Articles, the United Kingdom withdrew its proposal.

77. The Committee decided to adopt the text of the new Article 9(1) as proposed in the *Programme.*

Article 9(2)

78. In the *Programme*, this paragraph contained the general exceptions to the right of reproduction. It provided that it would be possible for national legislation to permit the reproduction of the works referred to in paragraph (1) in three cases: *(a)* for private use; *(b)* for judicial or administrative purposes; *(c)* in certain particular cases, provided (i) that reproduction is not contrary to the legitimate interests of the author, and (ii) that it does not conflict with a normal exploitation of the work.

79. Various tendencies appeared in the proposals submitted. One of these was to restrict the exceptions indicated in the *Programme*. For instance, France proposed (document S/70) that the expression "private use" should be replaced by "individual or family use." The Netherlands made the same proposal (document S/81) in respect of item *(a)* and proposed, in respect of item *(b)*, the expression "for strictly judicial or administrative purposes" and, in respect of *(c)*, another general formula. It further proposed that exceptions should apply only if they were expressly provided for in the Convention itself and in the national legislation concerned as well. The Federal Republic of Germany proposed (document S/67) inserting in item *(c)* a third condition for exceptions to the general rule in paragraph (1), namely, that reproduction should not conflict with the author's right to obtain equitable remuneration.

80. Another tendency was to extend the exceptions indicated in the *Programme*. Thus, India proposed (document

S/86) that, if the Brussels text was not maintained, it would be expedient to add after item *(c)* a clause to appear as item *(d)*, permitting a compulsory general license for reproduction, with the right for the author to obtain remuneration. Rumania submitted a similar amendment (document S/75) under which, however, the compulsory license was to apply only in the country in which it was prescribed.

81. There was also a tendency to group all the exceptions in a single formula and thus to eliminate items *(a)* and *(b)* of the *Programme* text. A proposal to that effect was submitted by the United Kingdom (document S/42). Instead of the expression used in the *Programme*, namely, " in certain particular cases where the reproduction is not contrary to the legitimate interests of the author," the following phrase was to be used: " in certain special cases where the reproduction does not unreasonably prejudice the legitimate interests of the authors."

82. A purely drafting point was raised by Monaco (document S/66). Paragraph (2) should include an express reference to the special exceptions contained in other provisions of the Convention, such as Articles 10, 10bis, $11^{bis}(3)$ and 13(1) (Article 13(2) of the existing text).

83. The Committee decided in the first place that the exceptions should be included in a general clause corresponding to item *(c)* and then referred the problem to the Working Group on Articles 9(2) and 10(2), to which reference was made in the Introduction to this Report.

84. The Working Group decided to adopt the amendment proposed by the United Kingdom, with some slight alterations in the English version (document S/109). It proved very difficult to find an adequate French translation for the expression " does not unreasonably prejudice." In the Committee, it was finally decided to use the expression " *ne cause pas un préjudice injustifié.*"

85. The Committee also adopted a proposal by the Drafting Committee that the second condition should be placed before the first, as this would afford a more logical order for the interpretation of the rule. If it is considered that reproduction conflicts with the normal exploitation of the work, reproduction is not permitted at all. If it is considered that reproduction does not conflict with the normal exploitation of the work, the next step would be to consider whether it does not unreasonably prejudice the legitimate interests of the author. Only if such is not the case would it be possible in certain special cases to introduce a compulsory license, or to provide for use without payment. A practical example might be photocopying for various purposes. If it consists of pro-

ducing a very large number of copies, it may not be permitted, as it conflicts with a normal exploitation of the work. If it implies a rather large number of copies for use in industrial undertakings, it may not unreasonably prejudice the legitimate interests of the author, provided that, according to national legislation, an equitable remuneration is paid. If a small number of copies is made, photocopying may be permitted without payment, particularly for individual or scientific use.

86. The Committee finally adopted the following wording for paragraph (2) of Article 9: " It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author."

Article 9(3)

87. Article 13(1) of the Brussels text provides that authors of musical works shall have the exclusive right of authorizing: (i) the recording of such works by instruments capable of reproducing them mechanically; (ii) the public performance by means of such instruments of works thus recorded. Since the Committee decided to delete this paragraph (1) of Article 13, it was considered appropriate to include in Article 11(1) and in Article 11ter(1) a reminder that the right of performance and the right of recitation include, among other things, the right at present referred to in Article 13(1). In order to coordinate the provisions of the Convention, the Drafting Committee proposed the insertion of a reminder of the present Article 13(1) also in Article 9(3), stating that for the purposes of the Convention any sound or visual recording shall be considered as a reproduction; even the making of copies of the recording is, of course, regarded as reproduction. The Committee accepted the Drafting Committee's proposal.

Article 10(1)

88. The *Programme* proposed an extension of the existing rule in Article 10(1) which deals with the right of quotation and refers only to newspaper articles and periodicals: its application would be extended to all categories of works. The *Programme* also proposed the deletion of the condition according to which only " short " quotations are permitted. On the other hand, the *Programme* introduced certain conditions restricting the freedom of quotation: (i) the works quoted were to have already been " lawfully made available to the public," (ii) the quotations were to be " compatible with fair

practice," and (iii) they were to be made only " to the extent justified by the purpose."

89. France proposed (document S/45) reintroducing the condition that only " short " quotations should be permitted. Switzerland made the same proposal (document S/68) and suggested in addition that the phrase " justified by the purpose " relating to condition (iii) should be replaced by the phrase " that they serve as explanation, reference or illustration in the context in which they occur." Czechoslovakia, Hungary and Poland submitted a proposal (document S/51) providing that the work could also be quoted in translation.

90. After discussion, the Committee decided to leave the French text as proposed in the *Programme*, but to make a slight change in the English version. It was felt that the reasons for replacing the word " lawfully " in connection with condition (i) by the words " with the consent of the author " were not valid here, and the word " lawfully " was therefore retained. It was also pointed out that the last phrase, referring to press summaries, gave rise to some ambiguity. It was felt, however, that it would be difficult to get rid of that ambiguity, which the Courts would be able to decide upon, and that it was not absolutely essential to do so.

91. The question of the right to translate quotations will be considered in connection with Article 8.

Article 10(2)

92. The *Programme* proposed no substantial change in Article 10(2) of the Brussels text. According to that provision, it is a matter for national legislation or for special agreements concluded between the countries of the Union to permit the inclusion of excerpts from protected works in " educational or scientific publications " or in " chrestomathies " in so far as this inclusion is justified by the purpose. The only change proposed in the *Programme* concerned the wording of the English text, the French text remaining unchanged; the word " excerpts " was replaced by the word " borrowings," which was felt to correspond better to the French word " *emprunts*."

93. The Netherlands proposed (document S/108) that this paragraph be deleted. In a joint proposal submitted by Bulgaria, Czechoslovakia, Poland and Rumania (document S/83), it was suggested that the scope of this paragraph be broadened to include radio and television broadcasts and phonograms.

94. After some discussion, in the course of which suggestions were made that this provision should be restricted slightly, the question was referred to the Working Group set up to study Article 9(2) and Article 10(2).

95. The Working Group submitted a proposal (document S/185) which considerably restricted the utilization referred to in paragraph (2). The word "borrowings" was no longer mentioned. The provision referred to the "utilization" of works "to the extent justified by the purpose," but only "by way of illustration for teaching," provided that such utilization was "compatible with fair practice." The Working Group also suggested — as an alternative in square brackets — that the authorization might extend to "broadcasts" and to "phonograms."

96. After an amendment submitted jointly by Brazil, Mexico and Portugal (document S/216) substituting the word "recordings" for "phonograms," the Committee adopted the Working Group's basic proposal and the extension to broadcasts and recordings. It subsequently decided to add the words "sound or visual" before "recordings," thus eliminating any doubt as to the possibility that this provision might not apply to visual recordings as well as sound recordings.

97. The wish was expressed that it should be made clear in this Report that the word "teaching" was to include teaching at all levels — in educational institutions and universities, municipal and State schools, and private schools. Education outside these institutions, for instance general teaching available to the public but not included in the above categories, should be excluded.

Article 10(3)

98. The *Programme* made no change, apart from slight amendments to the English text, in Article 10(3) of the Brussels text dealing with the obligation to mention the source and the name of the author in the case of utilization under paragraphs (1) and (2). The Committee decided to adopt the new text submitted by its Drafting Committee, which made no changes of substance but merely some drafting amendments in the English and French versions.

Article 10bis (Article 10bis(1) and (2))

99. In a joint proposal submitted by Czechoslovakia, Hungary and Poland (document S/51), and in a proposal by Japan (document S/80), the reintroduction was suggested, in a new paragraph (3) of Article 9, of the provision at present contained in Article 9(2) dealing with borrowings from newspaper articles. According to the *Programme*, that provision was to have been deleted.

100. The above proposals also provided that the right to borrow articles should apply not only to reproduction by the

press but also to broadcasting. In addition, the first of the two proposals stated that, in the cases referred to in the provision in question, articles could be used not only in the original but also in translation.

101. The Committee adopted three of the concepts contained in the two amendments referred to above — namely, the reintroduction of the existing provision of Article 9(2) concerning borrowings from newspaper articles, its extension to broadcasting, and — at first — the insertion of such provisions in a new paragraph (3) of Article 9.

102. It was decided, however, on the proposal of the Drafting Committee, to change the opening words in order to bring them into line with the corresponding words in paragraph (2) of the new version, so as to avoid the impression that it is compulsory for countries to insert in their legislation such a restriction on the author's right of reproduction.

103. The Drafting Committee later made three other proposals: (i) to insert in the new paragraph (3) the words " which are published in the newspapers or periodicals," which are taken from Article 9(1) of the Brussels text and which obviously impose upon the meaning of the word " articles " a restriction judged necessary, after the deletion of Article 9(1), so as to retain the meaning of the new paragraph; (ii) to give the press the possibility of borrowing material of the same nature from broadcasting programs, thus restoring the balance between the rights of the two media concerned; (iii) to insert the new paragraph, not in Article 9 as paragraph (3) of that Article, as previously proposed, but in a new paragraph (1) of Article 10bis, since it was felt that in dealing also with broadcasting this provision had more in common with the present provision of Article 10bis than the provisions of Article 9 dealing only with reproduction. The Committee agreed to these three proposals of the Drafting Committee and inserted the new provision, thus amended, in Article $10^{bis}(1)$.

104. The question of the right to translate articles used in this way will be considered in connection with Article 8 dealing with the general right of translation.

105. With regard to the provision of Article 10bis in the Brussels text concerning the reporting of current events, the *Programme* suggested four minor changes: (i) the restriction concerning " short extracts " from works was to be deleted; (ii) this provision was to be extended to cover " communication to the public by wire " in addition to photography, cinematography and broadcasting; (iii) utilization was to be permitted only " to the extent justified by the informatory purpose "; (iv) it was clearly stated that the facility referred

to in this paragraph applied only to works " which are seen or heard in the course of the event."

106. Monaco proposed some drafting amendments (document S/76). The word " record " should disappear and the words " communicate to the public " should be replaced by the words " made available to the public."

107. These two suggestions were approved by the Committee, which adopted the text of the *Programme*, thus amended, but in the form of paragraph (2) of Article 10bis.

III. Other Provisions in the Text of the Convention

Title and Preamble

108. The *Programme* made no change in the Title and Preamble of the Convention, merely adding the Stockholm revision to the list of revisions in the Title and the Brussels revision in the Preamble.

109. Brazil proposed (document S/210) that a formula should be included in the Preamble laying down the basis for protection. This formula reads as follows: " The subject of the protection granted by the present Convention, in regard to authorship and the moral rights of the author, is any production of the mind possessing features of originality, apart from inventions and discoveries, which are protected by legislation on patents and marks." A reference to that provision of the Preamble would then have had to be included in Articles 1, 4 and 6bis.

110. This proposal was rejected and the text of the *Programme* was adopted.

Article 1

111. Article 1 lays down that the countries to which the Convention applies constitute a Union for the protection of the rights of authors over their literary and artistic works. The *Programme* suggested only a slight modification of the English version, the words " the rights of authors over " being replaced by " authors' copyright in," as it was considered that the term " copyright " was much more widely known in English-speaking countries.

112. The Drafting Committee considered, however, that there might be some doubt as to whether the word " copyright " included moral rights. It was therefore decided to revert to the original wording with a minor amendment to the English version.

Article 2

113. In the Brussels text, the works protected are enumerated in paragraph (1) of Article 2. Paragraph (2) states

that adaptations of a work shall be protected as original works, without prejudice to the rights of the author of the original work. It also contains a special provision concerning translations of official texts. Paragraph (3) confers a specific copyright on the authors of collections. Paragraph (4) provides that the works mentioned in this Article shall enjoy protection in all countries of the Union and that such protection shall operate for the benefit of the author and his legal representatives and assignees. Finally, paragraph (5) contains special provisions for the protection of works of applied art and industrial designs and models.

114. In the *Programme*, the order of the paragraphs was changed slightly. A new paragraph (2) was inserted to deal with the assimilation of certain works to cinematographic works and photographic works. For that reason, the numbering of the subsequent paragraphs was changed, so that paragraph (2) became paragraph (3), and so on down to paragraph (6). The provision concerning items of press information, which appears in paragraph (3) of Article 9 of the Brussels text, was inserted in a new paragraph (7).

115. In the draft adopted by the Committee, further changes were made to the order of the paragraphs. The content of paragraph (2) was inserted in paragraph (1). A new provision dealing with fixation as a condition for protection was inserted as paragraph (2). Paragraph (3) was divided into two paragraphs, (3) and (4). Paragraph (4) of the *Programme* became paragraph (5), and so on down to paragraph (7), which became paragraph (8). This Report will follow the order of the *Programme* (except in regard to paragraph (2)).

Article 2(1) (paragraph 1))

116. The *Programme* suggested only two essential changes in the list of works in paragraph (1): (i) a change in the text concerning choreographic works and entertainments in dumb show; (ii) an amendment to the provision concerning cinematographic works and its inclusion in a new paragraph (2). Consequently, the provision on photographic works, which was drafted in a similar manner, was incorporated in this new paragraph (2), without any change of substance. These two questions will be dealt with under different headings.

117. Some countries suggested that new categories of works should be included in the list of protected works. These proposals will be examined under a separate heading.

Choreographic works and entertainments in dumb show

118. The Brussels text expressly listed among the pro tected works choreographic works and entertainments in dumb

show " the acting form of which is fixed in writing or otherwise." The *Programme* suggested that this condition of fixation should be deleted. Choreographic works and entertainments in dumb show are the only works included in the Convention for which a condition of this kind is laid down.

119. France proposed (document S/136) that the Brussels text should be maintained.

120. After a preliminary discussion in the Committee, the United Kingdom submitted a compromise proposal (document S/191). It contained two suggestions: (i) that fixation should not be required for choreographic works, but only for entertainments in dumb show, and (ii) that a new sentence should be added at the end of paragraph (1), stating that national legislations should be entitled to make fixation a general condition for protection. As this second suggestion was adopted by the Committee and inserted in a paragraph (2) (see paragraph 130 below), it was considered that the first suggestion was superfluous.

121. Finally, in view of the new provision in paragraph (2), the Committee adopted the proposal put forward in the *Programme* to delete the words " the acting form of which is fixed in writing or otherwise."

Cinematographic and photographic works

122. The *Programme* suggested a new provision for cinematographic works in the form of a new paragraph (2). The Committee decided to alter the proposed text slightly and to restore it to paragraph (1) (see paragraph 277 below).

123. The Brussels text mentioned among protected works " photographic works and works produced by a process analogous to photography." In the *Programme*, this phrase was transferred to the new paragraph (2), with a slight drafting amendment.

124. The United Kingdom proposed (document S/100) that this phrase should also include a condition concerning fixation.

125. The Committee, considering that a photographic work must by definition be fixed, adopted a wording similar to that proposed in the *Programme*, and moved it back — like the phrase dealing with cinematographic works — to paragraph (1).

New categories of works

126. India proposed (document S/73) that works of folklore should be included in the list of protected works. Furthermore, some countries proposed that televisual works should be included in this list (see paragraph 274 below).

127. The Committee did not consider it necessary to add any new categories of works to those already mentioned in the list, since the suggested categories appeared to be protected in principle under the terms of the Convention. Nevertheless, as will be indicated later, the Committee deemed it advisable to undertake a thorough study of the régime for works of folklore.

Article 2(2) (new)

128. India proposed (document S/73) inserting as a subparagraph after paragraph (1) a phrase permitting domestic laws to decide that certain specified categories of works should be fixed in some material form.

129. After a preliminary discussion on choreographic works and entertainments in dumb show, the United Kingdom submitted a similar proposal (document S/191 mentioned above in paragraph 120).

130. The Committee decided to introduce a new principle into the Convention. The terms adopted by the Drafting Committee to express this come very close to the text proposed by the United Kingdom. They read as follows: "It shall, however, be a matter for legislation in the countries of the Union to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form." This wording allows countries to prescribe fixation as a general condition for protection or to demand fixation only for one or more categories of works, such as choreographic works and entertainments in dumb show.

Article 2(3) (paragraphs (3) and (4))

131. The Brussels text (paragraph (2)) and the *Programme* (paragraph (3)) — which made no change to the existing text — contain an opening sentence which provides that translations and all other types of adaptation of a work are protected as original works, without prejudice to the rights of the author of the original work. No change was proposed to this sentence, but it was decided that the sentence by itself should constitute paragraph (3).

132. The second sentence of the Brussels text and of the *Programme* provides that it shall be a matter for national legislation to determine the protection to be granted to translations of official texts of a legislative, administrative and legal nature.

133. The Federal Republic of Germany proposed (document S/92) that the option given to national legislation should apply not only to translations of official texts but also

to those texts in their original form. It also proposed a restriction, namely, that only *official* translations should be taken into consideration for that purpose. Finally, it suggested that the new wording should be incorporated in a new paragraph.

134. Italy submitted a similar amendment (document S/161) which did not, however, contain the limitation in regard to *official* translations.

135. The Committee decided to adopt a wording in conformity with the proposal of the Federal Republic of Germany.

136. In accordance with the desire expressed by the United Kingdom, it must be clearly stipulated in this Report that the reference made in the Convention to texts of an administrative nature does not permit countries to refuse protection to all Government publications, for instance, textbooks.

Article 2(4) (paragraph (5))

137. Paragraph (3) of the Brussels text confers a specific copyright on the authors of collections. The *Programme* placed that provision in paragraph (4), but without change. As no proposal was submitted to the Committee, the paragraph was left as it was.

Article 2(5) (paragraph (6))

138. It is laid down in paragraph (4) of the Brussels text and, without change, in paragraph (5) of the *Programme* that the works mentioned in Article 2 shall enjoy protection in all countries of the Union and that this protection shall operate for the benefit of the author and his legal representatives and assignees (successors in title). As no proposal was submitted to the Committee this paragraph was left unaltered.

Article 2(6) (paragraph (7))

139. According to the first sentence of paragraph (5) of the Brussels text, domestic legislation is free to determine the protection of works of applied art and industrial designs and models. The second sentence implies an exception to the principle of national treatment: if the country of origin protects works of applied art solely as designs and models, those works shall be entitled in other countries only to such protection as is there accorded to designs and models.

140. Only one alteration was suggested by the *Programme*. Countries should not be completely free to determine protection: they should observe the minimum term of protection — twenty-five years from the making of the work — which had been inserted in Article 7(4) for works of applied art protected as artistic works.

141. Denmark proposed (document S/99) that paragraph (5) of the Brussels text should be entirely deleted and that works of applied art should thus be treated in all respects like other artistic works.

142. The Netherlands proposed (document S/140) that the second sentence of the paragraph in question should be deleted and that works of applied art should thus be submitted without restriction to national treatment.

143. Italy proposed (document S/161) that a provision in the following sence should be added at the end of the second sentence of the paragraph under consideration: the principle enunciated in this second sentence shall apply only if the legislation of countries other than the country of origin where protection is claimed accord special protection to designs and models. If that were not the case, works of applied art should be protected within the framework of the copyright law in force in the country concerned.

144. The Committee adopted the change proposed in the *Programme:* in determining the protection of works of applied art, national legislation should have regard to the provisions of Article 7(4). The Committee also adopted the principle suggested by Italy, namely, that a country which did not have special protection for designs and models should always protect works of applied art in accordance with the law of copyright.

Article 2(7) (paragraph (8))

145. The Brussels text stipulates in Article 9(3) that the protection of the Convention shall not apply to news of the day nor to miscellaneous information having the character of mere items of news. By introducing a general right of reproduction in Article 9 and by deleting the first two paragraphs of Article 9 of the Brussels text, the *Programme* transferred that provision, which is more concerned with the works protected, from Article 9 to Article 2(7), without effecting a change of substance, but with a slight alteration in the English version.

146. According to the commentary given in the *Programme*, the meaning of this paragraph was as follows: the Convention does not protect mere items of information on news of the day or miscellaneous facts, because such material does not possess the attributes needed to constitute a work. That implies *a fortiori* that news items or the facts themselves are not protected. The articles of journalists or other " journalistic " works reporting news items are, on the other hand, protected to the extent that they are literary or artistic works. It did not seem essential to clarify the text of the Convention on this point.

147. The United Kingdom proposed (document S/171) that this paragraph should read as follows: "The protection of this Convention shall not apply to the facts constituting news of the day or having the character of mere news items."

148. The Committee decided to adopt the text of the *Programme* with a slight alteration of the English version: the word "press" was inserted before the word "information."

Article 2bis(1)

149. The Brussels text stipulates in this paragraph that domestic legislation may exclude wholly or in part from protection political speeches and speeches delivered in the course of legal proceedings. The *Programme* suggested some purely formal alterations of the English version.

150. No proposal was submitted to the Committee on this paragraph. The Drafting Committee modified the proposed English version so as to bring it back to the Brussels version.

151. It was noted that this paragraph did not, like some other provisions (see paragraph 205 below), raise any special difficulty with regard to translation. As domestic legislation can refuse all protection to the works in question, it can obviously also exclude the author's exclusive right of translation.

Article 2bis(2)

152. According to this paragraph as it appears in the Brussels text, domestic legislation can determine the conditions under which lectures, addresses, sermons and other works of the same nature may be reproduced by the press. The *Programme* did not propose any modification.

153. India proposed (document S/73) that the works could be reproduced in the original form or in translation, not only by the press but also by cinematography or broadcasting.

154. It was suggested in a joint proposal by Bulgaria, Poland and Czechoslovakia (document S/79) that the right of utilizing the works should be extended to broadcasting.

155. The Federal Republic of Germany proposed (document S/92) that this right should be extended to broadcasting and to communication by wire to the public but that, in those two cases, utilization of the works should be permitted only when they refer to news.

156. Having considered the result of the discussions of the Working Group referred to in the Introduction to this Report, the Committee decided to amend this paragraph in four respects: (1) sermons were excluded from the application of the provision; (2) lectures, addresses, etc., may be

used only if they have been "delivered in public"; (3) not only may the works be reproduced by the press, but they may also be broadcast, communicated to the public by wire and made the subject of public communication as envisaged in Article $11^{bis}(1)$; (4) this use must be justified by the informatory purpose, that is to say, the character of news must apply not to the subject dealt with in the lecture, address, etc., but to the actual utilization with the object of informing the public.

Article $2^{bis}(3)$

157. Paragraph (3) of the Brussels text provides that the author alone shall have the right of making a collection of his works mentioned in paragraphs (1) and (2). No change was proposed in the *Programme* and no proposal was submitted to the Committee.

158. It was decided to maintain this text with a few alterations in the French and English versions to make the sense clearer.

Article 6bis (Moral rights)

159. According to the Brussels text, it is compulsory for the countries of the Union to protect the author's moral rights during his lifetime. That principle is stated in paragraph (1) of Article 6bis. Paragraph (2) provides that moral rights shall be maintained after the author's death *at least* until the expiry of the economic rights "in so far as the legislation of the countries of the Union permits." Paragraph (3) contains a provision concerning the means of redress for safeguarding moral rights.

160. It was proposed in the *Programme* that the countries of the Union should be obliged to maintain the moral rights until the expiry of the economic rights.

Article $6^{bis}(1)$

161. The provision of the Brussels text on the protection of moral rights during the author's life was transformed in the *Programme* to a general provision on moral rights that does not stipulate any express limitation on the term of those rights. The modification was effected by deleting the words "during his lifetime."

162. No proposal was submitted at the Conference on paragraph (1). It should be noted, however, that proposed amendments submitted during the discussion on paragraph (2) (see below) also had some bearing on paragraph (1).

163. The Committee adopted paragraph (1) as it appeared in the *Programme*.

Article 6bis(2)

164. The main change, as regards paragraph (2) of the Brussels text, which was proposed in the *Programme* was to delete the first words of the first sentence: "In so far as the legislation of the countries of the Union permits." As a result of that amendment to the text the moral rights were to be maintained after the death of the author "at least until the expiry of the economic rights." The *Programme* also provided for the amendment and simplification of the provisions contained in the last part of the paragraph regarding the persons and institutions competent to exercise the moral rights after the death of the author. Among other things, the last sentence of the paragraph was deleted.

165. Some countries proposed the elimination of the limitations on the term of moral rights. Proposals to that effect were submitted by Bulgaria (document S/197), and jointly by Greece and Portugal (document S/151).

166. Furthermore, Greece proposed (document S/183) that "literary and artistic works over which economic rights do not exist shall be protected against all use in a manner prejudicial to the cultural heritage of mankind." That proposal was to appear in a new paragraph of Article 6bis. An Austrian proposal (document S/147) providing for the insertion in Article 6bis of a new paragraph concerning the deposit of a facsimile copy of the earliest and most authentic available text or score of literary, musical, or dramatico-musical works will be analyzed later.

167. India proposed (document S/73) that the extension of protection provided for in the *Programme* should be so restricted that after the death of the author protection should not comprise the right to claim authorship of the work.

168. In order to facilitate the adoption of provisions extending the protection of moral rights *post mortem auctoris* in countries of the Union whose legal system does not, in principle, protect moral rights within the framework of copyright and which, for that reason, have considerable difficulties in providing complete protection of such rights after the death of the author, a joint proposal (document S/232) was presented by Australia, Denmark, Finland, Ireland, Norway, Sweden and the United Kingdom. That proposal provided for the insertion of a new sentence at the end of paragraph (2), according to which the legislation of a country of the Union may provide that some of the rights granted to the author under paragraph (1) shall not be maintained after his death.

169. After further discussions, a new proposal (document S/247) was submitted jointly by Australia, Austria, Denmark,

Finland, the Federal Republic of Germany, Norway, Sweden and the United Kingdom. That proposal, based in principle on the same idea as document S/232, restricted the scope of the exception made in favor of the countries of the Union which did not protect all the moral rights of the author after his death. That exception was to be allowed only in the case of countries whose legislation in force at the time of their ratification of or accession to the Stockholm Act does not contain provisions ensuring the protection *post mortem auctoris* of all the rights recognized under paragraph (1).

170. The Committee adopted, for the first sentence of paragraph (2), the text proposed in the *Programme;* the provision proposed in document S/247 was adopted as the second sentence of the paragraph. It was understood that the rights maintained in accordance with the second sentence of paragraph (2) should not necessarily be protected by rules within the domain of copyright.

Article 6bis(3)

171. In the Brussels text, paragraph (3) of Article 6bis provides that the means of redress for safeguarding the moral rights shall be governed by the legislation of the country where protection is claimed.

172. No amendment was proposed either in the *Programme* or at the Conference. Paragraph (3) is therefore maintained as it appears in the Brussels text.

Article 7 (Term of protection)

173. Article 7 deals with the term of protection of authors' rights. According to paragraph (1) of the Brussels text, the general term of protection is established as being the life of the author and fifty years after his death. Paragraph (2) deals with regulations governing cases where a country of the Union grants a term of protection in excess of that prescribed in paragraph (1). Paragraph (3) contains exceptions to the general rule prescribed in paragraph (1) for certain categories of works: cinematographic works, photographic works, and works of applied art. The term of protection granted for anonymous or pseudonymous works is specified in paragraph (4). Paragraph (5) deals with the term of protection of posthumous works in general. Finally, paragraph (6) defines the method of determining the terms of protection prescribed in Article 7.

174. The *Programme* provides for amendments in all the paragraphs of the Brussels text except paragraph (1). Paragraph (2) of the *Programme* introduces a special term of protection in the case of cinematographic works. Paragraph (3)

corresponds to paragraph (4) of the Brussels text. Paragraph (4) corresponds in part to paragraph (3) of the earlier text. Similarly, paragraph (5) deals with the same questions as paragraph (6) of the Brussels text. Finally, paragraphs (6) and (7) contain in principle provisions governing the same questions as paragraph (2) of the Brussels text.

175. In this Report, the paragraphs appear in the same order as that adopted in the *Programme* (see paragraph 12).

Article 7(1)

176. The general term of protection, the life of the author and fifty years after his death, as prescribed in this paragraph of the Brussels text, had not been changed in the *Programme*.

177. No amendment directly relating to this paragraph was submitted to the Committee. A proposal by the Federal Republic of Germany (document S/205) to the effect that negotiations should be continued between the countries concerned for the conclusion of a special agreement on the extension of the term of protection will be dealt with under the heading of " Recommendations expressed by the Committee " (see paragraph 329 below).

Article 7(2)

178. Here the *Programme* prescribes a new provision concerning the term of special protection for cinematographic works. The proposal referred to above concerning cinematographic works was adopted by the Committee with a slight change in the wording only.

Article 7(3)

179. Paragraph (4) of the Brussels text deals with the régime for anonymous and pseudonymous works in three sentences: (i) the term of protection is fixed at fifty years from the date of the publication of the work; (ii) the term of protection provided in paragraph (1) applies when the pseudonym adopted by the author leaves no doubt as to his identity; (iii) the general term of protection provided in paragraph (1) also applies if the author of an anonymous or pseudonymous work discloses his identity during the period ending fifty years after the date of publication. Paragraph (5) provides that in principle posthumous works are subject to the various provisions of Article 7.

180. The *Programme* proposed that the first sentence should be amended by fixing the end of the term of protection at fifty years " after the work has been lawfully made available to the public." The second and third sentences were left un-

changed. A fourth sentence was added, however, making a new exception to the general term of protection of anonymous and pseudonymous works provided in the first sentence. The countries of the Union would not be required to protect anonymous or pseudonymous works of which it was reasonable to suppose that their author had been dead for fifty years. Lastly, the *Programme* proposed omitting paragraph (5) on posthumous works, which was regarded as superfluous.

181. The United Kingdom proposed (document S/42) that the word " lawfully " in the first sentence should be replaced by the phrase " with the consent of the author." India proposed (document S/73) that works of folklore should form a separate category from anonymous works and should be dealt with in a separate subparagraph of paragraph (3). The protection of works of folklore would last for a period of fifty years at least from the date of publication of the work, but for this purpose the issue of any record reproducing a work of folklore would not be deemed to be publication. According to a joint proposal by Greece and Portugal (document S/151), paragraph (5) of the Brussels text relating to posthumous works should be maintained.

182. The Committee decided to adopt the text proposed in the *Programme*, but replaced the word " lawfully " in the first sentence by " with the consent of the author "; this means that the first sentence of the Brussels text was amended as indicated in the *Programme* (with the above minor alteration), that a fourth sentence was added and that paragraph (5) of the Brussels text was deleted. (As regards the decision on works of folklore, see below, under Article 15(4), paragraphs 249 to 253.)

183. When considering this paragraph, the Drafting Committee thought that there might be cases where the term of protection should begin from the moment when the work was lawfully made available to the public, but not necessarily with the consent of its author. The Committee had in mind in particular works of folklore which have been made available to the public by the authority designated under the provision proposed in Article 15(4). The action of this authority is obviously lawful, but has not been taken with the consent of the author in the strict sense. The Drafting Committee therefore proposed to revert to the word " lawfully " used in the first sentence of the *Programme*. This proposal was accepted by the Committee.

Article 7(4)

184. Paragraph (3) of the Brussels text provides that the term of protection of cinematographic and photographic works and of works of applied art shall be governed by the law of the

country where protection is claimed, but shall not exceed the term fixed in the country of origin of the work.

185. The *Programme* proposed that a minimum term of protection should be introduced in principle for those three categories of works. The provision regarding cinematographic works was transferred to paragraph (2). The minimum term of protection of photographic works was fixed at twenty-five years from the making of the work. The same term was provided for works of applied art, but only for those protected as artistic works.

186. India proposed (document S/73) that paragraph (4) should state specifically that national legislation also provided for a term of protection for industrial designs and models. Hungary proposed (document S/91) that cinematographic works should be restored to the paragraph in question and thus made subject to the term of protection proposed therein. Denmark further proposed (document S/99) that works of applied art, in so far as they are protected as artistic works, should be excluded from this paragraph and thus made subject to the general term of protection in paragraph (1). Portugal proposed (document S/152) that a period of ten years should be substituted for the period of twenty-five years proposed. The United Kingdom proposed (document S/192) that the term of protection should last, in respect of photographs, for at least fifty years from the making of the photograph and, in respect of works of applied art, for at least fifteen years from the making of the work.

187. The Committee decided to adopt the text proposed in the *Programme.*

Article 7(5)

188. Paragraph (6) of the Brussels text providing for the method of calculating the term of protection was included in the *Programme* as paragraph (5), with some drafting amendments to bring it into line with the other paragraphs of Article 7.

189. As no proposal had been submitted to the Committee, it adopted the text proposed in the *Programme.*

Article 7(6) (paragraphs (6) and (7))

190. The *Programme* transferred to paragraph (6) a provision which appears in paragraph (2) of the Brussels text, namely, that the countries of the Union may grant a term of protection in excess of those provided in the various paragraphs of the Article in question.

191. As already stated in connection with paragraph (1) of Article 7, the Federal Republic of Germany invited the

Conference (document S/205) to express the wish that negotiations should be continued between the countries concerned for the conclusion of a special agreement on the extension of the term of protection in such countries. This point will be discussed below (see paragraph 329).

192. Bulgaria and Poland proposed jointly (document S/50) that a new sentence should be added to paragraph (6), whereby the countries of the Union bound by the Rome Act at the time of accession to or ratification of the Stockholm Act would be entitled to grant a term of protection shorter than those provided in Article 7.

193. The Committee adopted paragraph (6) as proposed in the *Programme*.

194. After discussion, the Committee decided to adopt, with some drafting amendments, a proposal prepared by the Secretariat (document S/225) on the basis of document S/50 and to insert the proposed new provision in the form of a new paragraph (7). The condition imposed on the option to grant a shorter term of protection would not merely be that the country should, at the time of ratification or accession, be bound by the Rome Act, but also that the national legislation in force at the time of signature of the Stockholm Act should contain provisions affording shorter terms of protection than those provided in Article 7. It is obvious that the rule of comparison of terms of protection (Article 7(7) of the *Programme* and now Article 7(8) of the new text) is applicable in the latter case.

Article 7(7) (paragraph (8))

195. Paragraph (2) of the Brussels text also contains a provision on the principle of comparison of terms. The term is governed by the law of the country where protection is claimed, but cannot exceed the term fixed in the country of origin of the work. The *Programme* transferred this provision to paragraph (7). At the same time it was stipulated that the comparison of terms does not apply if the legislation of the country where protection is claimed should so decide.

196. Switzerland proposed (document S/69) that the formula used in the last part of the paragraph should be reversed, so that national treatment would become the principal rule and the comparison of terms an exception.

197. The Committee adopted the text as proposed in the *Programme*.

Article 7bis (Works of joint authorship)

198. Article 7bis of the Brussels text relates to the term of protection in the case of works of joint authorship. The

term is calculated from the date of the death of the last surviving author. The *Programme* worded this Article differently in order to specify that the term of protection provided in Article 7 also applies to works of joint authorship, provided that the terms measured from the death of the author are calculated from the death of the last surviving author.

199. India proposed (document S/73) inserting after the words " last surviving author " the words " who was a national of a country of the Union." It was considered that this proposal had lost its point since India's proposal (document S/41) to make the nationality of the author the general criterion of eligibility and the general criterion of country of origin had not been accepted by the Committee. It should be added, however, that the term of protection of a work of joint authorship published in a country of the Union is calculated from the death of the last surviving author whether he is a national of a country of the Union or not.

200. The Committee adopted the text proposed in the *Programme* without amendment.

201. The United Kingdom proposed (document S/42) inserting a new paragraph providing that the term of protection of the collective works mentioned in Article 2(4) should be fifty years from the death of the author of such works. Since it was pointed out that this rule seemed to be intended to apply without a special provision, the proposal was withdrawn.

Article 8 (Right of translation)

202. Under Article 8 of the Brussels text, authors enjoy the exclusive right of making or of authorizing the translation of their works throughout the term of protection of their rights in the original works. No explicit provision in this Article or in other Articles provides for any exception to this exclusive right.

203. The *Programme* did not propose any change in the text of this Article. It seems, however, to have started from the idea that it was fairly obvious that exceptions to the other exclusive rights, such as the right of reproduction, implied corresponding exceptions in respect of the right of translation and that the Convention had generally been applied in this way. It was expressly stated (document S/1, page 74) that the right to reproduce press articles also includes the right to reproduce them in the form of translations.

204. No amendment to the text of Article 8 was submitted to the Committee, but proposals affecting the right of translation were made in connection with other Articles. For

instance, there was a proposal to insert a phrase adding to the limitation of the right of reproduction a corresponding limitation of the right of translation in Article $2^{bis}(2)$ by India (document S/73), and in Article 10(1) and $10^{bis}(1)$ (new) jointly by Czechoslovakia, Hungary and Poland (document S/51). During the discussion of these proposals, the Committee considered that a general rule regarding exceptions to the right of translation was necessary and should be inserted in Article 8. It was left to the Drafting Committee to try to find a satisfactory formula and to suggest whether such a formula should be included in the text of Article 8 or merely in the part of the Report concerning that Article. The Drafting Committee opted for the latter solution and the Committee decided that the following indications should be inserted in this Report.

205. As regards the right of translation in cases where a work may, under the provisions of the Convention, be lawfully used without the consent of the author, a lively discussion took place in the Committee and gave rise to certain statements on the general principles of interpretation. While it was generally agreed that Articles $2^{bis}(2)$, 9(2), 10(1) and (2), and $10^{bis}(1)$ and (2), virtually imply the possibility of using the work not only in the original form but also in translation, subject to the same conditions, in particular that the use is in conformity with fair practice and that here too, as in the case of all uses of the work, the rights granted to the author under Article 6bis (moral rights) are reserved, different opinions were expressed regarding the lawful uses provided for in Articles 11bis and 13. Some delegations considered that those Articles also applied to translated works, provided the above conditions were fulfilled. Other delegations, including those of Belgium, France and Italy, considered that the wording of those Articles in the Stockholm text did not permit of the interpretation that the possibility of using a work without the consent of the author also included, in those cases, the possibility of translating it. In this connection, the said delegations pointed out, on the level of general principles, that a commentary on the discussion could not result in an amendment or extension of the provisions of the Convention (see also paragraph 210 below concerning the so-called "minor reservations" to Articles 11, 11bis, 11ter, 13 and 14).

Article 11 (Right of performance)

Article 11(1)

206. Under Article 11(1) of the Brussels text, the authors of dramatic, dramatico-musical and musical works enjoy the exclusive right of authorizing: (i) the public presentation and

public performance of their works; (ii) the public distribution by any means of the presentation and performance of their works. The application of the provisions of Articles 11bis and 13 is, however, reserved. The *Programme* did not propose any substantial change in the Brussels text, but merely a few minor amendments to the English version.

207. The Committee adopted the text proposed in the *Programme*, but excluded the reference to Article 13, which was no longer regarded as necessary in view of the amendments made to that Article.

208. When considering the deletion of paragraph (1) of Article 13, the Drafting Committee thought it advisable to recall that the general right of public performance provided in Article 11 also covered what Article 13(1)(ii) of the Brussels text called the public performance of works by means of instruments capable of reproducing them mechanically. It therefore proposed to insert in Article 11(1)(i), after the words "the public performance of their works," the words "including such public performance by any means or process." This proposal was adopted by the Committee.

209. In the General Report of the Brussels Conference, the Rapporteur was instructed to refer explicitly, in connection with Article 11, to the possibility of what it had been agreed to call "the minor reservations" of national legislation. Some delegates had referred to the exceptions permitted in respect of religious ceremonies, performances by military bands and the requirements of education and popularization. The exceptions also apply to Articles 11bis, 11ter, 13 and 14. The Rapporteur ended by saying that these allusions were given lightly without invalidating the principle of the right (cf. *Documents de la Conférence de Bruxelles*, page 100).

210. It seems that it was not the intention of the Committee to prevent States from maintaining in their national legislation provisions based on the declaration contained in the General Report of the Brussels Conference. It accordingly seems necessary to apply to these "minor reservations" the principle retained for exceptions to the right of translation, as indicated in connection with Article 8 (see paragraph 205).

Article 11(2)

211. Under Article 11(2) of the Brussels text, authors of dramatic or dramatico-musical works, during the full term of their rights over the original works, enjoy the same rights as those provided in paragraph (1) with respect to translations of their works.

212. No change was proposed in the *Programme* and no amendment was submitted to the Committee. Paragraph (2) remains, therefore, as it is in the Brussels text.

Article 11(3)

213. Article 11(3) of the Brussels text states that authors are not bound, when publishing their works, to forbid the public presentation or performance thereof in order to enjoy the protection of this Article. The *Programme* considered this prohibition of formalities superfluous and proposed that the paragraph be deleted.

214. As no amendment was submitted to the Committee, it decided to delete the paragraph, as proposed in the *Programme.*

Article 11bis (Right of broadcasting)

215. Article $11^{bis}(1)$ of the Brussels text deals with the exclusive right of the author to authorize the radiodiffusion and communication to the public of his work. Paragraph (2) refers to the compulsory license which national legislations may impose, subject to just remuneration, in respect of the rights referred to in paragraph (1). Paragraph (3) provides that permission for the radiodiffusion of a work does not imply permission to record the radiodiffused work, except where otherwise provided. National legislation may, however, determine the regulations for ephemeral recordings "made by a broadcasting body by means of its own facilities and used for its own emissions." Recordings may also, on certain conditions, be preserved in official archives.

216. The *Programme* considered that these rules provided an acceptable compromise between opposing interests and did not feel it necessary to propose any amendment other than some drafting amendments to the English version.

217. Brazil proposed (document S/217) a provision whereby each of the special rights included in the general broadcasting rights referred to in paragraph (1) could be exercised by the author and the right to make ephemeral recordings under paragraph (3) should not apply to profit-making organizations.

218. The United Kingdom proposed (document S/171): (i) deleting the condition in paragraph (3) that ephemeral recordings should be made by the broadcasting organization "by means of its own facilities"; (ii) restricting the right of recording to cases where "for technical or other reasons, the broadcast cannot be made at the time of the performance of the work."

219. Japan submitted a proposal (document S/112) similar to that made by the United Kingdom in respect of (i), sug-

gesting that the words "by means of its own facilities and used for its own broadcasts" be replaced by the words "as a mere technical means for the use of the broadcasts made with permission." It further expressed the opinion that broadcasting organizations should be permitted to entrust the making of ephemeral recordings to one other broadcasting organization only, which would also be entitled to broadcast the work. It considered that this view was not contrary to the provisions of paragraph (3) of Article 11bis and it asked for this interpretation of the said paragraph to be mentioned in the Report.

220. Monaco proposed (document S/77) that ephemeral recordings might be: (i) made by or for a broadcasting organization; (ii) used for its own broadcasts and for those of other organizations under the jurisdiction of the same country.

221. All these proposals were withdrawn at the session of the Committee which discussed Article 11bis.

222. The Working Group on the régime of cinematographic works proposed (document S/195) the insertion of a new paragraph (4) in Article 11bis limiting the compulsory license provided for in paragraph (2). The provisions of paragraph (2) would apply in respect of the cinematographic work and works adapted or reproduced in the cinematographic work itself only in so far as they relate to the rights provided in subparagraphs (ii) and (iii) of paragraph (1). But the Committee decided to make no amendment to the text of Article 11bis and the proposal of the Working Group was accordingly rejected.

223. Article 11ter of the Brussels text states that the author shall have the exclusive right of authorizing the public recitation of his works. No change was proposed in the *Programme.*

Article 11ter (Right of recitation)

224. The Federal Republic of Germany suggested (document S/92) including explicitly in this Article the right of authorizing: (i) the public recitation of works by means of instruments capable of reproducing them mechanically, and (ii) any communication to the public of such recitation. This proposal was accepted by the Committee.

225. The Drafting Committee suggested (document S/269) that under paragraph (1) of this Article authors should enjoy the right of authorizing: (i) the public recitation of their works, including such public recitation by any means or process; (ii) any communication to the public of the recitation of their works. This suggestion was made in order to bring the text of the paragraph into line with the new text of Article 11(1).

The Drafting Committee also suggested adding a paragraph (2) corresponding to paragraph (2) of Article 11, whereby authors shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof. The Committee adopted the text suggested by the Drafting Committee.

Article 12 (Right of adaptation)

226. Article 12 of the Brussels text deals with the exclusive right of authors to authorize adaptations, arrangements and other alterations of their works. No change was proposed in the *Programme* or by the countries in the Committee and the Brussels text remains unaltered.

Article 13 (" Mechanical rights ")

227. Article 13 of the Brussels text deals with what are called the " mechanical rights " of composers. Under paragraph (1), authors of musical works have the exclusive right of authorizing: (i) the recording of such works by instruments capable of reproducing them mechanically; (ii) the public performance by means of such instruments of works thus recorded. Paragraph (2) enables countries to introduce a compulsory license in respect of these " mechanical rights," the author being however entitled to obtain just remuneration. Paragraph (3) contains a transitional provision stipulating that the provisions of paragraph (1) do not apply retroactively to recordings lawfully made before the coming into force of the Berlin Act of 1908 or, in the case of countries acceding to the Convention at a later date, before the date of accession. Lastly, under paragraph (4), recordings are liable to seizure if they are made in accordance with paragraphs (2) and (3) and imported without permission from the parties concerned into a country which does not recognize the exceptions provided in paragraphs (1), (2) or (3).

228. The *Programme* proposed the deletion of paragraph (1), the limitation of the compulsory license in paragraph (2) and the termination of the transitional system provided in paragraph (3). No amendment was made to paragraph (4), other than in references to the previous paragraphs. Owing to the deletion of paragraph (1), the other paragraphs were renumbered.

Article 13(1) (of the Brussels text)

229. The *Programme* proposed the deletion of this paragraph. The right of recording was included in the right of reproduction provided in the new Article 9(1) and the right of public performance in that provided in Article 11(1).

230. The Netherlands suggested (document S/230) that the first paragraph of the existing text be maintained.

231. The Committee adopted the proposal in the *Programme* that it should be deleted.

Article 13(1)

232. According to the *Programme,* the compulsory license under paragraph (1), which corresponds to paragraph (2) of the Brussels text, was maintained only in respect of recordings and abolished in respect of public performance by means of the recordings made.

233. Brazil proposed (document S/217) adding a sentence providing that the provisions of Article 9(2) should not be applicable to musical works.

234. The Federal Republic of Germany (document S/92) and the United Kingdom (document S/171) proposed inserting in the text a reference to the words of musical works. The Federal Republic of Germany preferred to add after the words "authors of musical works" the words "with or without words." The United Kingdom chose a slightly longer wording: "works including any words intended by their author to be performed with them."

235. The Committee adopted the proposal of the *Programme,* adding however a special reference to the words of musical works, in accordance with the formula used in the United Kingdom proposal. The Drafting Committee proposed a text expressing this formula in more detail.

236. When considering the Drafting Committee's text, the Committee thought it preferable to adopt a simpler formula. The starting-point should be the fact that compulsory licenses — for example, in the United Kingdom and Germany — are based on the conception that the author of the music and the author of the words have given their consent once to the recording. On the basis of such consent, the compulsory license could operate even in respect of the words. The Drafting Committee therefore prepared a new formula, which was finally adopted by the Committee.

Article 13(2)

237. The *Programme* proposed putting an end to the transitional system under paragraph (2), which corresponds to paragraph (3) of the Brussels text. Only during a period not determined in the *Programme,* but which it was suggested should be very short, should it be permissible to reproduce, without the author's consent, recordings made in accordance with this paragraph.

238. The Federal Republic of Germany proposed (document S/92) that a reference to the words of musical works should be inserted in this paragraph too.

239. The Committee adopted the proposal in the *Programme*. With regard to the date on which the transitional period should end, it accepted the proposal of the Drafting Committee that this period should expire two years after the date when the country where the recordings were made became bound by the Stockholm Act.

Article 13(3)

240. This paragraph (3), which corresponds to paragraph (4) of the Brussels text, was not changed in the *Programme*, except for the references to the preceding paragraphs.

241. Brazil suggested (document S/217) that the reference to paragraph (1) should be deleted, that is to say, recordings made under a compulsory license should not be seized. The Committee adopted the wording proposed by the *Programme*.

Article 14bis (Article 14ter)

242. Article 14bis in the Brussels Act deals with the *droit de suite*. No proposal in that regard was made in the *Programme* and none was submitted to the Committee.

243. The Committee decided to leave the Article as it was but to change the numbering because of the decision mentioned below to insert a new Article 14bis dealing with cinematographic works.

Article 15

244. Article 15 of the Brussels text contains in paragraph (1) a definition of the person who should be regarded as the author of a work. Paragraph (2) stipulates that the publisher shall, in certain cases, be deemed to represent the author. No alteration was proposed in the *Programme*.

245. In the course of the Committee's work, two new provisions were inserted in Article 15: one in paragraph (2) stipulating who should be presumed to be the maker of a cinematographic work, and the other in paragraph (4) containing rules applicable to unpublished works when the identity of the author is unknown. In the new draft, paragraph (2) of the Brussels text becomes paragraph (3).

Article 15(1)

246. Paragraph (1) of the Brussels text establishes the rule that the person whose name appears on the work in the usual manner shall be regarded as the author of the work, in

the absence of proof to the contrary. As no proposal was submitted concerning this paragraph, it remains as it is.

Article 15(2) (new)

247. In a new paragraph (2) (see below under paragraph 325) the Committee adopted a rule stipulating who should be regarded as the maker of a cinematographic work.

Article 15(2) (paragraph (3))

248. Paragraph (2) of the Brussels text provides that in certain cases, as regards anonymous or pseudonymous works, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be deemed to represent the author. This provision ceases to apply if the author reveals his identity and establishes his claim to authorship of the work. No proposal was submitted with regard to this paragraph. The Committee changed the number of the paragraph, which becomes number (3); otherwise it remains unchanged.

Article 15(4) (new)

249. In a proposal (document S/73), the Delegation of India made several references to works of folklore. The Committee decided to consider the question of folklore, and a Working Group was set up for this purpose.

250. The Chairmanship of this Working Group was entrusted to Czechoslovakia, which then proposed (document S/212) that a provision on works of folklore should be inserted in the Convention. It would be a matter for legislation in the countries of the Union to appoint the authority competent to represent the authors of works of folklore and entitled to protect and enforce the author's rights, subject to the application of the second sentence of Article 15(2).

251. Taking as a basis the proposal of Czechoslovakia and some suggestions made by the Chairman of the Committee, the Working Group proposed (document S/240) the insertion in Article 15 of a new paragraph based on the following principles:

(i) the work is unpublished;
(ii) the author is unknown;
(iii) there is every ground to presume that the author is a national of a country of the Union;
(iv) if these three conditions are fulfilled, the legislation of that country may designate a competent authority to represent the author;
(v) the competent authority is entitled to protect and enforce the rights of the author in all the countries of the Union;

(vi) if such an authority is designated by a country, that country shall notify the Organization (WIPO) by means of a declaration in writing giving full information concerning the authority thus designated; WIPO shall communicate this declaration to all other countries of the Union.

252. The proposal of the Working Group did not mention the word "folklore," which was considered to be extremely difficult to define. Hence, the provision applies to all works fulfilling the conditions indicated above. It is clear, however, that the main field of application of this regulation will coincide with those productions which are generally described as folklore. The Working Group's proposal was adopted by the Committee.

253. The works of unknown authors seem to constitute a special category within the concept of anonymous works mentioned in the new text of the Convention in Article 7(3) and Article 15(3). The term of protection of anonymous works (as prescribed in Article 7) is thus also valid in respect of the works of an unknown author. If the author reveals his identity, he may establish his claim to authorship of the work in accordance with Article 15(3), last sentence. It appears that the work ceases to be subject to the special régime under paragraph (4) if it is published. If there is a publisher whose name appears on the work of an unknown author, such publisher may represent the author in accordance with Article 15(3), first sentence.

Article 16

254. Article 16 of the Brussels text deals in its three paragraphs with the seizure of infringing copies of a work. The *Programme* did not propose any amendment of this Article.

255. The United Kingdom proposed (document S/211) that the words "may" (be seized) in paragraph (1), and "may" (also apply) in paragraph (2), be replaced by "shall" (be seized) and "shall" (also apply).

256. That proposal was adopted by the Committee in principle, and the Drafting Committee proposed some purely formal amendments to the text, which were accepted by the Committee.

Article 17

257. Article 17 of the Brussels text leaves countries free "to permit, to control, or to prohibit by legislation or regulation, the circulation, presentation, or exhibition of any work or production in regard to which the competent authority

may find it necessary to exercise that right." No proposal was made in the *Programme* concerning that Article.

258. Italy proposed (document S/226) the deletion of the words "or regulation." The United Kingdom proposed (document S/171): (i) the deletion of the words "to permit"; (ii) the insertion of a new paragraph leaving countries free to enact such legislation as is necessary "to prevent or deal with any abuse, by persons or organizations exercising one or more of the rights in a substantial number of different copyright works, of the monopoly position they enjoy."

259. Australia presented a proposal (document S/215) similar to that under (ii) above but of a more general character. Each country would have the right to take such legislative measures as it deemed necessary to prevent abuses which might result from the exercise of the rights conferred by the Convention. Such measures should not, however, be prejudicial to the moral rights of the author or his right to obtain equitable remuneration.

260. Israel proposed (document S/223) the insertion of a new paragraph guaranteeing that the scores of musical works should be accessible to the public. This proposal, which was expressed in a resolution, will be examined later.

261. The Committee decided that the wording of the Article should be modified along the line of the ideas underlying the above-mentioned Italian proposal.

262. The Committee also decided to adopt the proposal submitted in the document of the United Kingdom mentioned in paragraph 258 under item (i), that is to say, to delete the words "to permit." South Africa declared that, with respect to its national legislation based on Article 17 of the Brussels text, it was forced to vote against any amendment of Article 17 in the Plenary Assembly. As a result, Article 17 would have to remain as it was. The opinion of South Africa was that, according to Article 17, the countries, as sovereign States, were free to "permit" the dissemination of the work, even against the will of the author, if that were necessary as a matter of public policy in the country. The overwhelming majority of the Committee, however, interpreted Article 17 in another sense, even in its present form including the words "to permit." This Article referred mainly to censorship: the censor had the power to control a work which it was intended to make available to the public with the consent of the author and, on the basis of that control, either to "permit" or to "prohibit" dissemination of the work. According to the fundamental principles of the Berne Union, countries of the Union should not be permitted to introduce any kind of com-

pulsory license on the basis of Article 17. In no case where the consent of the author was necessary for the dissemination of the work, according to the rules of the Convention, should it be possible for countries to permit dissemination without the consent of the author.

263. The Committee accepted, without opposition, the proposal of its Chairman that mention should be made in this Report of the fact that questions of public policy should always be a matter for domestic legislation and that the countries of the Union would therefore be able to take all necessary measures to restrict possible abuse of monopolies. Whereupon, the proposals of Australia and the United Kingdom relating to abuse of monopoly were withdrawn.

Article 18

264. Article 18(1) of the Brussels text stipulates that the Convention applies to all works that have not yet fallen into the public domain in the country of origin through the expiry of the term of protection. Article 18 also includes, in paragraphs (2) to (4), some other provisions concerning matters arising in that respect. As no proposals were made either in the *Programme* or in the Committee for alteration of this Article, it has been retained in its original form.

Article 19

265. Article 19 of the Brussels text stipulates that the Convention shall not preclude the making of a claim to the benefit of any wider provisions which may be afforded by domestic legislation. No proposal was submitted in this connection either in the *Programme* or in the Committee, and Article 19 therefore remains in its original form.

Article 20

266. Article 20 of the Brussels text contains provisions concerning the right of the countries of the Union to enter into special agreements among themselves, in so far as such agreements grant to authors more extensive rights than those granted by the Convention, or contain other provisions not contrary to the Convention. No proposal was submitted in this connection either in the *Programme* or in the Committee, and Article 20 therefore remains in its original form.

IV. Régime of Cinematographic Works

267. Cinematographic works are expressly mentioned in the Brussels text in Article 2(1), Article 4(5), Article 7(3), Article 10bis and Article 14; of these the last named is the most important and it deals only with cinematographic works.

Article 4(5), which defines the concept of publication, and Article 10bis, which concerns the reporting of current events, may be left out of account in this section since they do not refer to the special problems relating to cinematographic works. Article 2(1) mentions "cinematographic works and works produced by a process analogous to cinematography" as a category of protected works. Article 7(3) refers to the term of protection of cinematographic works according to the law of the country where protection is claimed. That term is not, however, to exceed the term fixed in the country of origin of the work.

268. Article 14(1) deals with the exclusive right of authors of pre-existing works to authorize: (i) the cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced; (ii) the public presentation and performance of the works thus adapted or reproduced. Paragraph (2) stipulates that a cinematographic work is to be protected as an original work, without prejudice to the rights of the author of the pre-existing work. Paragraph (3) gives the author of a cinematographic work the right to authorize its adaptation. Paragraph (4) excludes cinematographic adaptations from the rules concerning the compulsory license in Article 13(2). Paragraph (5) stipulates that the provisions of Article 14 apply equally to works effected by any other process analogous to cinematography.

269. The *Programme* proposed substantial changes in the present system as a result, amongst other things, of the development of television since the Brussels Conference. In Article 2(1) and (2), it offered a new definition of cinematographic works. New provisions in Article 4(4) and Article 6(2) made the headquarters or habitual residence of the maker of a film the decisive factor, in certain cases, as regards the country of origin or the eligibility criterion of the work. In Article 4(6), the *Programme* proposed a definition of the maker of a cinematographic work. The *Programme* also proposed new rules for the term of protection of cinematographic works in place of the provision in Article 7(3) of the Brussels text. In addition to the general rule in Article 7(1), it introduced as a variation for national legislations some rules which are included in a new Article 7(2).

270. In Article 14(1) to (3), the *Programme* submitted provisions for pre-existing works which corresponded to the provisions of Article 14(1) to (5) of the Brussels text. In paragraphs (4) to (7), the *Programme* introduced interpretative rules concerning contracts between authors and makers of cinematographic works.

271. The Committee decided in principle to adopt amendments or new provisions in the same paragraphs as those of the *Programme*. Some rules on the same lines as those suggested by the *Programme* in Article 14(4) to (7) were, however, placed in a new Article 14bis, with the result that Article 14bis of the Brussels text was renumbered 14ter.

272. No definition of the maker was introduced in Article 4(6). Further, a new provision, which will be mentioned below (see paragraph 325), was inserted in Article 15(2), in order to determine who is to be regarded as the maker of the film.

Article 2(1) and (2) (paragraph (1))

273. The *Programme* proposed that works assimilated to cinematographic works should be given a somewhat different definition from that contained in Article 2(1) of the Brussels text. The *Programme* replaced the phrase " works produced by a process analogous to cinematography " by the term " works expressed by a process producing visual effects analogous to those of cinematography." This definition was limited, however, to works " fixed in some material form." The assimilated work was thus defined in a new paragraph (2).

274. Bulgaria (document S/89) and Yugoslavia (document S/107) proposed that a new category of protected works should be introduced: " televisual works." For this reason, the definition of a cinematographic work contained in paragraph (1) of the Brussels text was to be retained, but the words " televisual works " were to be inserted after the definition and the new paragraph (2) was to be deleted.

275. Italy (document S/161) also favored the deletion of paragraph (2). It preferred to retain the assimilated works in paragraph (1), but defining them in a way different from that of the Brussels text and the *Programme:* " works expressed by a process analogous to cinematography."

276. Portugal (document S/110) and the Federal Republic of Germany (document S/92) submitted proposals concerning the requirement of fixation. Portugal wished to insert a new subparagraph in paragraph (2) enabling countries to protect specifically as cinematographic works works which are not fixed. The Federal Republic of Germany proposed that the words " fixed in some material form " should be deleted from paragraph (2) of the text of the *Programme.* In their place, a new phrase was to be inserted stating that there would be no obligation to protect as a cinematographic work a series of visual images not recorded in some material form.

277. The question was referred to the Working Group on the régime relating to cinematographic works, which presented

a proposal (document S/190) based on the Italian amendment (document S/161). The definition of a cinematographic work was to be transferred in its entirety to paragraph (1) and drafted as follows: "cinematographic works to which are assimilated those expressed by a process analogous to cinematography." Paragraph (2) of the *Programme* was to be deleted. The condition of fixation was no longer required as a general rule, but a provision giving countries the right to introduce fixation as a condition for protection of a work was inserted in a new paragraph (2) (see paragraph 130 above). The Committee adopted the proposal of the Working Group.

Article 4(4)(c)(i) (Article 5(4)(c)(i))

278. As regards the country of origin of cinematographic works, the *Programme* presented the following solution in Article 4(4). The first criterion for the country of origin would be publication (*(a)* and *(b)*) in the new and wider sense adopted in Article 4(5), making the country where the film is made (to a greater extent than at present) the country of origin of the film. If the cinematographic work is unpublished, the second criterion would be the country of the Union of which the maker is a national or in which he has his domicile or headquarters (*(c)*(i)). If neither the first nor the second of these criteria applies, the country of the Union of which the author is a national would constitute the third criterion (*(c)*(iii)).

279. Switzerland proposed (document S/63) that the words "habitual residence" be substituted for the word "domicile."

280. The Working Group suggested (document S/190) that item *(c)*(i) of the *Programme* should be adopted, except for two points: (i) the provision should not contain any reference to the nationality of the maker; (ii) the words "habitual residence" should be introduced instead of the word "domicile," in accordance with the above-mentioned Swiss proposal. The Committee adopted the proposal of the Working Group and inserted the provision in Article 5(4)*(c)*(i) of the new draft.

Article 4(6) (—)

281. The *Programme* proposed inserting in Article 4(6) a definition of the maker of a cinematographic work: "the person or body corporate who has taken the initiative in, and responsibility for, the making of the work.

282. Several proposals were submitted to amend that definition or to delete it. New definitions were proposed by the United Kingdom (document S/42) and India (document S/73), while France (document S/27) and Hungary jointly with

Poland (document S/43) proposed the deletion of the paragraph in question.

283. Italy proposed an amendment (document S/168) according to which paragraph (6) should not contain a definition of the maker but only a presumption. The maker of the cinematographic work would be presumed to be the person indicated as such in the credit titles of the film.

284. The Working Group proposed (document S/190), like France, Hungary and Poland, the deletion of paragraph (6) from the text of the *Programme*. At the same time, however, it proposed the insertion in a suitable place of a provision reproducing in a slightly amended form the presumption suggested by Italy.

285. The Committee adopted the Working Group's proposal and the Drafting Committee then suggested inserting the new rule in Article 15(2). Thus, the draft would no longer contain a new paragraph (6) in Article 4.

Article 6(2) (Article 4(a))

286. The *Programme* proposed for paragraph (2) of Article 6 a new criterion of eligibility in respect of cinematographic works which were unpublished or which were first published outside the Union. The criterion would be the country of the Union of which the maker is a national or in which he has his domicile or headquarters (see Article 4(4)*(c)*(i) regarding country of origin).

287. France proposed (document S/28) deleting this paragraph. The United Kingdom proposed (document S/42) adding at the end of the paragraph a sentence to the effect that the countries of the Union should be free to treat the maker of a cinematographic work as its author.

288. The Working Group proposed (document S/190) the adoption of paragraph (2) of the *Programme* with amendments corresponding to those made to Article 4(4)*(c)*(i), namely, the deletion of the criterion of the nationality of the maker and the substitution of the words " habitual residence " for " domicile." As regards the United Kingdom proposal, it was agreed that it was not necessary to insert the proposed sentence, as it was generally admitted that the Convention had always been interpreted in the manner suggested in that proposal, and as the situation would be clarified in the proposed new Article 14bis.

289. The Committee adopted the Working Group's proposal and included this provision in Article 4*(a)* of the new draft. The wish was expressed that the Report should state that a cinematographic work which is the result of joint

making is protected in the Union if one of the joint makers has his headquarters or his habitual residence in a country of the Union.

Article 7(2)

290. The *Programme* proposed new rules for the term of protection of cinematographic works. In general, cinematographic works should be subject to the general term of protection provided in Article 7(1), that is to say, the author's life and fifty years after his death. According to paragraph (2), national legislation may however provide for a special term of protection in respect of this category of works, namely, that protection shall expire fifty years after the first publication, public performance or broadcast. Failing such an event within fifty years from the making of such a work, the term would expire fifty years after such making.

291. Hungary proposed (document S/91) that this paragraph should be deleted and that the term of protection of cinematographic works should be regulated in Article 7(4) in the same way as that proposed in the *Programme* in respect of works of applied art and photographic works.

292. Portugal proposed (document S/152) that the term of protection should be fixed by national legislation in such a way as to allow a fair return on the investment made, and suggested certain rules regarding the date from which the term should begin to run.

293. The United Kingdom proposed (document S/42) that the words " after the first publication, public performance or broadcast " should be replaced by the words " after the work has been made available to the public with the consent of the author."

294. The Working Group proposed the adoption of the text of the *Programme* as amended in accordance with the suggestion made in the draft proposal by the United Kingdom. The Committee adopted the Working Group's proposal.

Article 14 (Articles 14 and 14bis)

295. Article 14 of the Brussels text consists of five paragraphs. Paragraph (1) deals with the exclusive right of authors of so-called pre-existing works. Paragraph (2) deals with the protection of cinematographic works in the strict sense. The authors of such works as can be said to constitute contributions to the cinematographic work as a whole may be called " authors of contributions." Paragraph (3) deals with the right to adapt cinematographic works. Paragraph (4) excludes cinematographic adaptations of works from the compulsory license referred to in Article 13(2). Paragraph (5) provides

that Article 14 shall also apply to works effected by any other process analogous to cinematography.

296. The *Programme* deleted paragraph (5), which was considered superflous in view of what had been proposed in Article 2(2), and transferred paragraph (4) to a final sentence in paragraph (1). Some amendments were made to paragraphs (1) and (2), while paragraph (3) remained as it was. The *Programme* added to this Article paragraphs (4) to (7) concerning the " rules of interpretation for agreements," which refer to authors of both pre-existing works and contributions.

297. The Committee decided to deal only with the protection of authors of pre-existing works in Article 14 and to reserve for the authors of contributions Article 14bis containing the rules of interpretation or the " presumption of legitimation," to use the term generally employed in the Committee, as opposed to the term " presumption of assignment." At the same time, the scope of this presumption was reduced, to refer to authors of contributions only.

Article 14(1) (paragraphs (1) to (3))

298. Paragraph (1) of the Brussels text gives authors of pre-existing works the exclusive right of authorizing: (i) the cinematographic adaptation and reproduction of their works, and the distribution of the works thus adapted or reproduced; (ii) the public presentation and performance of the works thus adapted or reproduced.

299. The *Programme* proposed only two amendments. To the rights mentioned under (ii) it added the right of communication to the public by wire. In addition, it took over paragraph (4) of the Brussels text and incorporated it in a shorter form as the final sentence of paragraph (1), thus rendering the compulsory license inapplicable to the rights referred to in that paragraph.

300. The Federal Republic of Germany proposed (document S/92) that: (i) the right to broadcast the work should be mentioned among the rights provided in paragraph (1); (ii) the application of Article $11^{bis}(2)$ should be excluded while maintaining the application of Article $11^{bis}(3)$.

301. The Working Group on the régime of cinematographic works proposed (document S/195) the adoption of the text of the *Programme* with two amendments: (i) the last sentence, referring to the non-application of the compulsory license under Article 13(1), was to be the subject of a special paragraph (3); (ii) a limitation of the compulsory license under Article $11^{bis}(2)$, on the lines proposed by the Federal Republic of Germany in the above-mentioned proposal, should

be inserted in a new paragraph (4) of Article 11bis (see paragraph 222 above regarding Article 11bis).

302. The Committee adopted the text of the *Programme* amended in accordance with the first part of the Working Group's proposal and finally decided not to accept the second part of the proposal.

Article 14(2) (Article 14bis(1))

303. Paragraph (2) of the Brussels text provides in a single sentence that a cinematographic work, that is to say, the work of authors of contributions, shall be protected as an original work. The *Programme* retained the sentence but added a second one stating that authors of contributions were to enjoy the same rights as the author of an original work, including the right referred to in the previous paragraph. No proposal on this point was submitted to the Committee.

304. The Committee adopted the Working Group's proposal (document S/195) to accept the text of the *Programme*, but to place it in paragraph (1) of the new Article 14bis dealing with authors of contributions. On a suggestion by the Drafting Committee, some minor amendments were made to the text.

Article 14 (3) (paragraph (2))

305. The Brussels text of paragraph (3) provides that adaptations of cinematographic productions derived from pre-existing works shall, without prejudice to the authorization of the authors of contributions, remain subject to the authorization of the authors of pre-existing works. No changes were proposed in the *Programme* or in the Committee. On the suggestion of the Working Group, the Committee merely changed the number of this paragraph, which becomes paragraph (2) of Article 14.

Article 14(4) to (7) (Article 14 bis(2) and (3))

306. The *Programme* proposed the insertion, in paragraphs (4) to (7) of Article 14, of a rule concerning the interpretation of agreements between authors and makers on the exploitation of cinematographic works. This proposal was based on the following ideas:

(i) this rule would apply to both kinds of authors, but, according to paragraph (7), a country could exclude authors of pre-existing works from its application. This should be notified to the Director General of the new Organization intended to replace BIRPI;

(ii) this rule presupposed the author's agreement to assign certain rights to the maker. Authors of pre-existing works should have authorized the cinematographic adap-

tation and reproduction of their works, whereas authors of contributions should have undertaken to bring literary or artistic contributions to the making of the cinematographic work;

(iii) the authorization of the authors should concern the fixation of their works in some material form;

(iv) the authorization should have been given in the manner prescribed by the legislation of the country of origin;

(v) the countries of the Union could provide that the authorization should be given by a written agreement or something having the same force;

(vi) if the above conditions were fulfilled, the author might not, in the absence of any contrary or special stipulation, object to the exploitation of the cinematographic work, that is to say, to the reproduction, distribution, public performance, communication to the public by wire, broadcasting, any other communication to the public, subtitling and dubbing of the texts;

(vii) by "contrary or special stipulation" was meant any restrictive condition agreed between the maker and the authors;

(viii) unless national legislation provided otherwise, the interpretation rule should not, according to paragraph (6), apply to the rights in musical works, with or without words, used in the cinematographic work;

(ix) countries might, according to paragraph (5), provide, for the benefit of authors, a participation in the receipts resulting from the exploitation of the cinematographic work.

307. A number of proposals were submitted to the Committee.

308. (1) As to paragraphs (4) to (7) as a whole: Yugoslavia proposed (document S/107) deleting paragraphs (4) to (7) and therefore, in principle, maintaining the Brussels text. The United Kingdom proposed (document S/101) excluding from the application of the interpretation rule countries whose legislation grants copyright in a cinematographic work to its maker. Monaco proposed (document S/115), inter alia, reserving expressly the right of countries whose systems differ from that on which Article 14(4) was based, although their effects are similar to the interpretation rule, to maintain their systems: for example, the "film copyright" system in force in the United Kingdom and several other countries, and the "*cessio legis*" system in force in Italy and Austria.

309. (2) As to point (i) above: Japan proposed (document S/111) that only authors of contributions should be mentioned

in Article 14(4) and that paragraph (7) should be deleted, which would mean that authors of pre-existing works were excluded from the interpretation rule. Belgium proposed (document S/144) the exclusion of all pre-existing works from the interpretation rule, except for dialogues and scenarios, which could, however, also be excluded under certain conditions.

310. (3) As to points (iv) and (v) above: the Federal Republic of Germany proposed (document S/92) that countries of the Union should have the right to provide, with respect to cinematographic works of which they are the country of origin, that the authorization or undertaking shall be given by a written agreement or something having the same force.

311. (4) With regard to item (v) above: France proposed (document S/130) that a written contract should be an obligatory condition for the application of the interpretation rule. On the other hand, Japan proposed (document S/111) that the phrase dealing with the right to demand that the authorization or undertaking should be in writing be deleted.

312. (5) With regard to item (vi) above: Monaco proposed (document S/115) that the text should refer only to exploitation, instead of listing all the actions to which authors might not object. Moreover, the interpretation rule should apply notwithstanding any previous assignment of the author's right.

313. (6) With regard to item (viii) above: Monaco proposed (document S/115) that paragraph (6) should be deleted, so that musical works should also be subject to the interpretation rule.

314. (7) With regard to item (ix) above: Hungary proposed (document S/139) that the optional provision in paragraph (5) should be made obligatory in regard to participation in receipts, while Monaco proposed (document S/115) that this provision should be deleted.

315. (8) With regard to the insertion of new provisions: Monaco proposed (document S/115) that a new paragraph should be inserted, stating that authors could not, subject to the application of Article 6bis and in the absence of any contrary or special stipulation, oppose alterations that might become indispensable for the exploitation of the cinematographic work.

316. The Working Group proposed (document S/195) a more modest regulation than that of the *Programme*. It suggested that Article 14 should be kept exclusively for pre-existing works, and that these should be completely excluded from the "presumption of legitimation." Article 14bis would group all the provisions concerning the cinematographic work

itself and the authors of contributions. Paragraph (1) would take over paragraph (2) of the *Programme* without modification. Paragraph (2) would include, in a subparagraph *(a)*, a rule for determining the ownership of copyright, while a subparagraph *(b)* would deal with the presumption of legitimation, a subparagraph *(c)* would contain a provision dealing with written agreements, and a subparagraph *(d)* would contain a definition of the contrary or special stipulation. Paragraph (3) would contain provisions concerning authors constituting borderline cases between Articles 14 and 14bis.

317. The system proposed by the Working Group was based on the following ideas:

(i) the presumption should be limited to authors of contributions;

(ii) the presumption should not apply to authors of scenarios, dialogues and musical works created for the making of the cinematographic work, unless the national legislation provides to the contrary (paragraph (3)). It may be noted that musical works which are not specially created for a cinematographic work will come entirely under the régime of pre-existing works in Article 14;

(iii) the question who is the owner of copyright in a cinematographic work should (according to paragraph (2)*(a)*) be a matter for legislation in the country where protection is claimed. This means, for instance, that if protection is claimed in the United Kingdom it is British law which decides who is the owner of the copyright in a cinematographic work, and if protection is claimed in France it is French law which decides the question. It should be added that the provision in paragraph (2)*(a)* applies not only in cases where copyright as a whole belongs to one particular person but also in cases where only some of the elements of copyright are assigned. Consequently, "*cessio legis*" (legal assignment) is in harmony with the rules in Article 14bis;

(iv) the presumption would apply only in countries which regard authors of contributions as the owners of copyright in the cinematographic work. Hence those countries which use the system of "film copyright" or that of "legal assignment" would fall outside the scope of this application. Nevertheless, the effects of these systems are the same in their application, taken as a whole, as the presumption of legitimation provided for in paragraph (2)*(b)*. It may be added that cinematographic works from the latter countries can be affected by the presumption. If, for example, the cinemato-

graphic work of a British maker is exported to France, the maker will benefit in France from the presumption of legitimation, provided the necessary conditions are fulfilled;

(v) the authors should have undertaken to bring contributions to the making of the cinematographic work;

(vi) the legislation of the country where the maker has his headquarters or habitual residence should, according to paragraph (2)*(c)*, govern the form of the undertaking. That country may require a written agreement or a written act of the same effect.

(vii) if the conditions specified above are fulfilled, the authors of contributions may not, in the absence of any contrary or special stipulation, object to the reproduction, distribution, public performance, communication to the public by wire, broadcasting or any other communication to the public, or to the subtitling or dubbing of the texts, of the cinematographic work. The formula is the same as that used in the *Programme;*

(viii) by "contrary or special stipulation" should be understood, according to paragraph (2)*(d)*, any restrictive condition which may be relevant to the undertaking referred to in paragraph (2)*(b)*. This formula is the same, except for some amendments to the wording, as that used in the *Programme.*

318. The Committee began by adopting the proposal of the Working Group. After further discussions, however, it considered that the adopted text would not adequately meet the urgent demands of certain countries. The text of the Working Group was finally adopted but with amendments on two points.

319. The first amendment refers to point (ii) above. The principal director will be placed in the same situation as the authors of scenarios, dialogues and musical works, and will thus not be affected by the presumption, unless the national legislation provides otherwise. It is prescribed, however, that if the legislation of a country does not include the principal director among the authors to whom the presumption applies such country shall be obliged to notify the Director General of the Organization intended to take the place of BIRPI.

320. The second amendment refers to point (vi) above. The Committee started with the idea that the form of the undertaking should be governed by the legislation of the country where protection is claimed, instead of the legislation of the country where the maker has his headquarters or habitual residence. The final decision, reached at the last moment, consisted however in a compromise between the two principles

mentioned above: the form of the undertaking should be decided by the law of the country (i) where the maker of the cinematographic work has his headquarters or habitual residence, or (ii) where protection is claimed. The general rule is that the form of the undertaking is governed by the legislation of country (i). There is, however, an exception to that rule, which permits the legislation of country (ii) to make the application of the presumption conditional upon the existence of a written agreement or a written act of the same effect. Countries which avail themselves of such a possibility must notify the Director General of the Organization referred to above. The purpose of the notification is to enable all who are interested to know the countries in which the presumption is subject to a written agreement or a written act of the same effect. It should finally be pointed out that the question which arises concerns only the form of the agreement constituting the basis of the presumption and not the form as a condition of the validity of the agreement in general (authenticated by a notary or in any other form). In other words, the text adopted by the Committee concerns only the question whether or not the form of the undertaking should, for the application of the presumption of legitimation, be in a written agreement or a written act of the same effect.

321. It was further requested that the following clarifications be inserted in the Report. First, the presumption of legitimation prescribed in paragraph (2) is to be mandatory for the countries. It is not possible for those countries of the Union which regard authors of contributions as owners of copyright in the cinematographic work to maintain or introduce legislation that does not include a presumption of legitimation in accordance with Article $14^{bis}(2)$.

322. Secondly, by "written act of the same effect" is meant a legal instrument in writing defining sufficiently adequately the conditions of the engagement of persons bringing contributions to the making of the cinematographic work. This notion applies, for example, to a collective employment contract or to a general settlement to which those persons have agreed.

323. Thirdly, the presumption of legitimation does not affect the right of the author to obtain remuneration for the exploitation of the cinematographic work. The countries of the Union are therefore free to introduce any system of remuneration they wish: for example, to provide for the benefit of the authors a participation in the receipts resulting from the exploitation of the cinematographic work.

324. And, fourthly, the right of the maker to make, even without the authorization of the authors, changes in the cine-

matographic work is a matter for national legislation and subject to the interpretation of the agreement between the authors and the maker. The moral rights referred to in Article 6bis of the Convention must, however, be respected.

Article 15(2) (new)

325. As has already been stated above, the Committee decided to insert, on the basis of a proposal submitted by Italy (document S/168) and slightly amended by the Drafting Committee, a provision according to which the person or body corporate whose name appears on a cinematographic work in the customary manner shall, in the absence of proof to the contrary, be presumed to be the maker of the said work.

V. Joint Meetings with Other Committees

Article 25ter (Right of translation) (document S/9)

326. According to Article 8 of the Brussels text, the right of translation enjoyed by the author lasts throughout the term of protection of the original work. However, in accordance with Article 27(2), the countries of the Union could still retain the benefit of reservations formulated previously. One of these reservations maintained in favor of some countries was to apply Article 5 of the Paris text (1896) instead of Article 8 of the Brussels text; this made it possible in certain conditions to respect the right of translation only during a period of ten years from the publication of a work. Article 25(3) of the Brussels text permits countries outside the Union to benefit from this reservation on adhering to the Union.

327. The *Programme* (document S/9, Article 25ter) proposed the deletion of the reservation regarding the right of translation. Questions relating to reservations came within the province of Main Committee IV. A proposal was made by Japan (document S/98) to maintain this reservation. After asking the opinion of Main Committee I, the majority of whom voted, in conformity with the Japanese proposal, to maintain the reservation in favor not only of Union countries but also of countries acceding to the Stockholm Act, Main Committee IV took its decision on those lines.

328. A proposal having been submitted by Italy in respect of Article 25ter(2)*(b)* and *(c)* (documents S/245 and 259), Main Committees I and IV decided at a joint meeting to adopt, in accordance with that proposal, the principle that countries of the Union not availing themselves of the right of reservation in respect of the right of translation shall be entitled to apply the principle of equivalent protection in regard to works having as their country of origin a country which avails itself of that reservation. Nevertheless, this system applies only to

cases where the reservation is made by a country outside the Union at the time it adheres to the Union; the principle of reciprocity cannot be applied with regard to countries of the Union already availing themselves of the reservations in question.

VI. Recommendations Expressed by the Committee - Miscellaneous Proposals - Additional Protocols

Extension of the term of protection

329. The Federal Republic of Germany proposed that the Committee adopt the recommendation, for expression by the Conference, that negotiations should be continued between the countries concerned for the conclusion of a special agreement on the extension of the term of protection in countries parties to that agreement (document S/205). This proposal was at first rejected by the Committee, but was then reconsidered and adopted with some amendments proposed by the Drafting Committee (document S/269).

Article 6bis (Deposit of a facsimile of certain works)

330. Austria proposed (document S/147) the insertion in Article 6bis of a new paragraph (4) containing a provision whereby it would be incumbent on the publisher of literary, musical or dramatico-musical works published in a country of the Union to " deposit in the national library or archives of that country a facsimile copy of the earliest and most authentic text or score of the work in the form and version finished and approved by the author." The conditions of the deposit would be a matter for national legislation.

331. After lengthy discussion, the Committee decided to recommend that the International Bureau of the Union should undertake a study of the question in order that consideration may be given to the possibility of including provisions relating thereto in a future revision of the Convention.

Article 17 (Provisions regarding the accessibility of musical works to the public)

332. Israel proposed (document S/223) the insertion of a new paragraph (3) in Article 17 under which it would be a matter for legislation in the countries of the Union to take measures whereby, " when a musical or dramatico-musical work has been made available with the consent of the author thereof, the graphic copies of the work shall be made accessible to the public without restrictions contrary to fair practice."

333. On this matter the Committee made the same recommendation as it had done in the case of the Austrian proposal mentioned above.

Copyright in works created on commission or in fulfilment of the author's task as an employee

334. Hungary proposed (document S/196) the insertion in the Convention of a new provision whereby works created on commission or in fulfilment of the author's task as an employee can be used only "for purposes relevant to the employer's own functions and in a manner not prejudicial to the moral rights of the author."

335. After discussion, the Hungarian Delegation withdrew its proposal, provided that it was recorded in this Report.

Additional Protocol concerning the Protection of the Works of Stateless Persons and Refugees

336. The *Programme* proposed an Additional Protocol providing that any country of the Union may declare that stateless persons or refugees or both are assimilated to the nationals of that country. This proposal also referred to the provisions regarding ratification or accession.

337. After the Committee had adopted the proposal to provide in Article 4(2) that persons having their habitual residence in a country of the Union should be assimilated to nationals of that country, the proposal to establish an Additional Protocol in respect of stateless persons and refugees became superfluous. The Committee accordingly decided not to adopt the said Protocol.

Additional Protocol concerning the Application of the Convention to the Works of Certain International Organizations

338. Taking its inspiration from the idea underlying Protocol No. 2 annexed to the Universal Copyright Convention, the *Programme* proposed an Additional Protocol which would make Articles 4, 5 and 6 of the Convention applicable to works first published by the United Nations and by its Specialized Agencies.

339. A proposal submitted by Belgium, Luxembourg and the Netherlands (document S/237) was designed to extend the protection to the works of international intergovernmental organizations that have their headquarters in a country of the Union or whose members are for the greater part countries of the Union.

340. During the discussions in the Committee, it was pointed out that the introduction of such an Additional Protocol was not necessary, since the works of the organizations in question were in any case protected if they were first published in a country of the Union or if their authors were

nationals of a country of the Union. The Committee finally rejected the proposal to annex to the Convention an Additional Protocol concerning the works of certain international organizations.

341. The Rapporteur would here like to express his profound gratitude to the Committee's Secretary, Mr. Claude Masouyé (BIRPI), for the untiring assistance and collaboration afforded by him in the drafting of this Report. He would also like to draw attention to the notable spirit of international cooperation with which the deliberations of the Committee have been imbued and which has enabled it to accomplish work of importance for the future of the Convention.

[This Report was unanimously adopted by Main Committee I in its meeting on July 11, 1967.]

Report

on the Work of Main Committee II (Protocol Regarding Developing Countries)

by

Vojtěch STRNAD, Rapporteur
(Member of the Delegation of Czechoslovakia)

1. The protection of authors' rights in countries that have recently gained independence is one of the problems that have solicited the attention of the Swedish Government as the host country of the Revision Conference and that of BIRPI for several years. The history of the preparatory work and studies is to be found in document S/1 (pages 67 to 74).

2. After the publication of document S/1, there was an important event in this domain, whose influence has been apparent both on the discussion and on the results of the Conference. This was the East Asian Seminar on Copyright, which was held at New Delhi in January, 1967.

3. At the proposal of the Government of Sweden, a Main Committee was set up to produce a final text on the basis of document S/1. This Main Committee called Main Committee II in the Conference documents and hereinafter referred to as " the Committee " met ten times. It appointed two Working Groups for certain special problems, one to consider matters of substance (Chairman: Mr. Hesser (Sweden); members: Czechoslovakia, France, India, Ivory Coast, Tunisia, United Kingdom), and the other to consider the definition of the criterion of countries that would be entitled to avail themselves of this Protocol (Chairman: Mr. Lennon (Ireland); members: Brazil, Congo (Kinshasa), Czechoslovakia, France, India, Italy, Ivory Coast, Senegal, Sweden, Tunisia, United Kingdom).

4. Several amendments were submitted with respect to the *definition* of countries beneficiaries of the Protocol mentioned in the introduction to Article 1 of the Protocol with a view to the clarification of the general formula: the object of

a proposal by France (document S/176) was to make countries that adhered to the Berne Union only after the signing and entry into force of the Brussels Act beneficiaries of the provisions of the Protocol; a proposal by Italy (document S/213) introduced technical criteria (illiteracy, school attendance) into the idea of a developing country; two proposals, one by the United Kingdom (document S/149), and the other by Denmark, Finland, Norway and Sweden (document S/253), suggested as a solution an international authority competent to decide in each case (the Executive Committee of the Berne Union in the former and the General Assembly of the United Nations in the latter proposal). After discussion, the Working Group proposed to the Committee a text referring to Resolution No. 1897 (XVIII) adopted by the General Assembly of the United Nations at its eighteenth session on November 13, 1963, for application to any country subsequently designated as a developing country. A proposal by the Ivory Coast (document S/234) brought the list up to date by adding seven new African States to it.

5. The Committee dealt with the question and, while accepting the idea that the countries listed in the Annexes to document S/249 should be beneficiaries of the Protocol, it noted that simple reference to the decisions of the United Nations would entail a delay for countries that had recently gained their independence that would prevent them from acceding to the Convention and the Protocol immediately or at least before a decision by the United Nations. A more flexible wording was sought. A joint proposal by Denmark, Finland, Norway and Sweden submitted in document S/253 stipulated that a developing country would be considered to be any country designated as such under the established practice of the General Assembly of the United Nations, it being understood that the term " established practice " implies that the country concerned receives assistance from the United Nations Development Programme through the United Nations or its Specialized Agencies. The country which considers that it is in a position to have recourse to the Protocol shall notify the Director General of WIPO, who shall, if necessary, after consultation with the organs of the United Nations, communicate the notification to the other countries members of the Union together with his observations. The final text was produced by the Committee's Drafting Committee under the chairmanship of Mr. Essén (Sweden) (members: Mr. Abi-Sad (Brazil), Mr. Strnad (Czechoslovakia), Mr. Desbois (France), Mr. Krishnamurti (India), Mr. Ciampi (Italy), Mr. Amon d'Aby (Ivory Coast), Mr. Goundiam (Senegal), Mr. Fersi (Tunisia), Miss White (United Kingdom)). The text was adopted by the Committee at its last meeting.

6. The *substantive provisions* were also examined on the basis of document S/1 submitted by the Government of Sweden with the assistance of BIRPI. The order of the items included in the Protocol was altered by the Drafting Committee so that the provisions concerning the term of protection — following the system of the Convention itself — were mentioned first among the questions of substance, and the others were inserted thereafter. In the course of the proceedings of the Committee they underwent the following changes.

7. As an outcome of the insertion of Article 9, paragraph (2), of the Rome Act of 1928 and the Brussels Act of 1948 in a new draft of the text of the Convention itself, in which it appears as Article $10^{bis}(1)$, paragraph *(c)* of Article 1 in document S/1 became superfluous in the Protocol and was deleted.

8. A group of countries (Congo (Brazzaville), Congo (Kinshasa), Gabon, India, Ivory Coast, Madagascar, Morocco, Niger, Senegal and Tunisia) submitted a new drafting of the text of the Protocol (document S/160), stemming from document S/1 and adopting its scheme, but adding certain new features.

9. The *term of protection* has been decided without change in the manner proposed by the Government of Sweden with the assistance of BIRPI. The term of protection may therefore be fixed by domestic legislation at a period shorter than the compulsory term of fifty years referred to in Article 7 of the Convention.

10. The *translation license* combines the translation license referred to in Articles 25 and 27 of the Convention (Brussels text) and traditional in the Berne Union with certain elements of the license referred to in Article V of the Universal Copyright Convention; the definition of the languages into which the translation may be made has been clarified.

11. Several proposals were submitted for regulating the régime of published works on the basis of a statutory license (the proposals of Italy, document S/162; of Denmark, document S/146; of Greece, document S/181; and of Israel, document S/199). Japan made a proposal in document S/127 for simplification of the translation license by simply taking over the system as it exists in the Berne Convention.

12. The result of the proceedings of the Working Group and of the Committee, which is set out in document S/249, corresponds with certain slight alterations to the desire to replace the text of Article 5 of the Paris Act of 1896 quoted in paragraph *(b)* of Article 1 of the Protocol by an up-to-date wording without affecting the substance of the provisions concerned.

13. The principles of the Universal Copyright Convention (see Article V, paragraphs 2 and 5), which are incorporated in the system of the translation license provided for by the Protocol (Article 1, paragraph *(b)*(iv)) have also undergone modification: the compensation stipulated should be just and the explicit reference to international usage in this matter was deleted; the transmittal of such compensation, also referred to in the above Article of the Universal Copyright Convention, is made subject to national currency regulations by the text of the Protocol.

14. It should be noted that neither of the two International Conventions that might be regarded as having served as a model for paragraph *(b)* of Article 1 of the Protocol stipulates precisely where a translation must be published by the author himself if he does not wish a statutory license to come into force. Article 5 of the Paris Act of 1896 merely stipulates that the publication of such a translation must take place in a country of the Union. The Protocol adds an important clarification: the translation must be published in the country invoking the reservation concerning the translation license. Publication does not mean printing in the strict sense; this is an essential distinction for countries that do not possess even the technical means needed to publish translations or reproductions under the conditions laid down by the Protocol.

15. The proposals on the right of *reproduction* contained in Article 1*(e)* of document S/1, corresponding to Article 1*(c)* of the final text, have undergone profound modification. After discussion and examination of the various proposals (see the proposal of the United Kingdom, document S/149, paragraph 3, and the joint proposal of ten developing countries, document S/160), the Working Group proposed the text contained in document S/249, Article 1, paragraph *(d)*. The final solution adopted for the reproduction license is modeled on the translation license to the extent that the analogy is possible. It provides for the possibility of the introduction of a reproduction license for educational or cultural purposes — the wording should not be interpreted in a restrictive manner, given that the addition "for exclusively... purposes..." was intentionally deleted.

16. On the other hand, restriction of the right of reproduction to educational or cultural purposes excludes from the field of application of this reservation all works whose educational or cultural purpose is not evident; as an example, detective and adventure stories were mentioned in the discussion.

17. The procedure to be followed in order to obtain such a license, the conditions concerning payment of the compensation, the place of publication, respect for the right of the author to withdraw the work from circulation, and the possibility of having recourse to such a license even after the copies of the original edition of the work are out of print, have been established on the same basis as for translations.

18. Paragraph *(d)* of Article 1 of the Protocol, which concerns the *broadcasting* of literary and artistic works, permits the countries beneficiaries of the Protocol to substitute for paragraph (1) and paragraph (2) of Article 11bis of the Convention the text of the Rome Act of 1928 with two changes. The first, which represents a modernization of the text, is to replace the words "communication by radiodiffusion" of the Rome Act of 1928 by the word "broadcasting". The second change settles a basic matter: the public communication of broadcast works for profit-making purposes shall not be permitted except on payment of equitable remuneration fixed, in the absence of agreement, by competent authority. That addition takes over the wording of the proposal by the United Kingdom (document S/149, paragraph 2).

19. A new possibility for restriction open to domestic legislation has been adopted for uses destined *exclusively for teaching, study and research in all fields of education.* It should be noted that that reservation does not apply solely to the rights of translation and reproduction; it may also be invoked equally for the other uses of literary and artistic works. A new formula has been inserted for the determination of compensation, by which the latter shall "conform to standards of payment made to national authors". The addition of the words "in all fields of education" and the exclusivity of the purposes for which the reservation can be utilized indicate that industrial or commercial research or research of the same nature is outside the scope of this reservation.

20. In the case of copies of works translated and reproduced on the basis of the reservations in a country availing itself of the Protocol, the general principle adopted is that their export and sale are not permitted in a country not availing itself of these reservations. The prohibition does not apply if the legislation of a country which cannot avail itself of the Protocol, or the agreements concluded by that country, authorize such importation. The reference to domestic law and to agreements concluded has been replaced, in the case of the works mentioned in Article 1*(e)*, by the condition of the agreement of the author. In the same paragraph it has been made clear that only copies of a work published in a country for the said educational purposes may be imported

and sold in other countries availing themselves of the reservations; the effect, therefore, is that such copies will be in a language relevant to the educational needs of that country. An example quoted in the discussions was that of a translation made in India which could be imported into Ceylon but not into Japan.

21. The above reservations may be maintained for ten years from the time of ratification by the country concerned (see Article 1, introduction *in fine)*; countries that do not consider themselves in a position to withdraw the reservations made under this Protocol may continue to maintain them until they accede to the Act adopted by the next revision conference; the " maintaining of reservations " therefore implies that it will be essential for a declaration to that effect to be addressed to the Director General by the country concerned, and that in default thereof the reservations shall cease to be applicable. The country concerned would then be bound by the Convention itself.

Various proposals made in the course of the Conference by the Delegations present, and concerning one or other of the problems mentioned above, have either been incorporated in the final text or withdrawn (see, for example, publication of serials, abridgements or translations in newspapers or periodicals, document S/160, or the provisions for the institution of certain measures of control over the application of the Protocol submitted by Israel, document S/199), or have found their place in a resolution (for example, the creation of a fund intended for the authors of works affected by the reservations stipulated in the Protocol, as proposed by Israel, document S/228).

22. Article 6 was added to the text as the result of a proposal by the United Kingdom which was adopted by the Committee at its eighth meeting. Even a developing territory, judged by the same principles as sovereign countries, which has not acceded to independence by the day on which the Convention is signed may enjoy the benefits of the Protocol.

23. With regard to this Article, the Delegations of Tunisia, Czechoslovakia, India and Israel made statements evidencing their opposition in principle to clauses of this kind in conventions. Later on, in the Plenary of the Berne Union this Article was expanded to indicate that the declaration referred to in it could be made only by a country bound by the Protocol.

24. The reference to the practice established by the United Nations made it necessary to solve the problem of the legal consequences of a contrary situation, namely, to deal with the case of a country to which the status of developing country

ceases to be applicable. The solution proposed by the Drafting Committee is that such a country will no longer be able to avail itself of the Protocol at the expiry of a period of six years from the appropriate notification.

25. To provide a possibility for developing countries to benefit immediately from the Protocol, an Article 5 has been added to the text, offering this possibility even before the text of the Convention itself has been ratified within the meaning of Article 28(1)*(b)*(i).

26. Another question that was the subject of consideration by the developing countries in the course of the preparatory work, that of the protection of folklore, was resolved by Article 15, paragraph (3), of the Convention itself.

[This Report was unanimously adopted by Main Committee II in its meeting on July 8, 1967.]

Report
on the Work of Main Committee III (Paris Convention: Right of Priority [Inventors' Certificates])

by

Alfred C. KING, Rapporteur
(Member of the Delegation of Australia)

1. On Monday, June 12, 1967, the Plenary of the Paris Union established under the Paris Convention for the Protection of Industrial Property on March 20, 1883 (delegates of 55 member countries *) being in attendance), under the Presidency of Mr. J. E. Maksarev, head of the Delegation of the Union of Soviet Socialist Republics, accepted without objection the proposals of the Government of Sweden that a member of the Rumanian Delegation be Chairman of Main Committee III, that a member of the Netherlands Delegation be Vice-Chairman of that Committee, and that I be Rapporteur. This Committee began work on Tuesday, June 13, under the chairmanship of Mr. Lucian Marinete, the Vice-Chairman being Mr. van Benthem. Observers were present on behalf of the United Nations, the International Association for the Protection of Industrial Property (IAPIP), the International Chamber of Commerce (ICC), the International Federation of Patent Agents (FICPI), and the Union of European Patent Agents.

2. The function of this Committee was to consider the revision of the Paris Convention, as revised at Lisbon on October 31, 1958, so as to put applicants for inventors' certificates in those countries of the Union the laws of which make provision

*) Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Central African Republic, Congo (Brazzaville), Cuba, Czechoslovakia, Denmark, Dominican Republic, Finland, France, Federal Republic of Germany, Gabon, Greece, Holy See, Hungary, Iceland, Indonesia, Iran, Ireland, Israel, Italy, Ivory Coast, Japan, Kenya, Liechtenstein, Luxembourg, Madagascar, Mexico, Monaco, Morocco, Netherlands, Niger, Norway, Poland, Portugal, Rumania, Senegal, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, USSR, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Yugoslavia.

for the grant of such certificates as an alternative to the grant of patents in the same position in respect of priority rights under Article 4 of the Convention as if they were applicants for patents.

3. The basic proposals for discussion before the Committee were contained in a paper prepared by the Government of Sweden with the assistance of BIRPI, marked S/2 and bearing the date of April 15, 1966. Copies of this paper had been previously distributed to Union members. In addition to an explanation of the need for the above-mentioned revision of the Convention and a history of the work already done on such revision (which require no repetition here), this paper proposed that to Article 4 there be added a new Section, the English version of which was as follows:

" I. — (1) Applications for inventors' certificates, filed in a country in which applicants have a right to apply, at their own discretion, either for a patent or for an inventor's certificate, shall be treated in the same manner and have the same effects, for the purpose of the right of priority under this Article, as applications for patents.

(2) In a country in which applicants have the above option, the right of priority provided for under this Article shall be recognized also where the applicant seeks an inventor's certificate irrespective of whether the first application (Section A, paragraph (2)) was an application for a patent or a utility model, or for an inventor's certificate."

The French version of the above Section was as follows:

" (1) Les demandes de certificats d'auteur d'invention déposées dans un pays où les déposants ont le droit de demander, à leur choix, soit un brevet, soit un certificat d'auteur d'invention, seront traitées de la même façon et auront les mêmes effets que les demandes de brevets aux fins du droit de priorité prévu par le présent article.

(2) Dans un pays où les déposants peuvent exercer ce choix, le droit de priorité prévu par le présent article sera reconnu également dans le cas où le déposant demande un certificat d'auteur d'invention, indépendamment du fait que le premier dépôt (section A, alinéa 2) était une demande de brevet, de modèle d'utilité ou de certificat d'auteur d'invention."

4. Unqualified approval of the principle that applications for inventors' certificates in countries where applicants could if they wished apply either for patents or for inventors' certificates should give rise to the right of priority provided for by Article 4 of the Convention, and that the same priority right should attach to such applications for inventors' certificates, was expressed by the Delegations of the United States of America, the Federal Republic of Germany, France, the

Netherlands, the United Kingdom of Great Britain and Northern Ireland, Spain, Italy, Hungary, Yugoslavia, Switzerland, Bulgaria, Czechoslovakia, the Union of Soviet Socialist Republics, Austria, Poland, Sweden, Ireland, Belgium, Portugal, Rumania, Japan and Australia. The representatives of Ecuador, the United Nations and the IAPIP were also heard in its favor. No delegation objected to the incorporation of the above principle in the Convention.

5. During the course of the meeting references were made to proposals by the Delegations of France and Italy for amendment of the proposed new Section referred to in paragraph 3, above. The French proposal was to add several words to the first paragraph thereof so that it would take the following form:

> " Applications for inventors' certificates, filed in a country in which applicants have a right to apply, at their own discretion, either for a patent or for an inventor's certificate, shall be *admitted on the same conditions*, treated in the same manner and have the same effects, for the purpose of the right of priority under this Article, as applications for patents."

The Italian proposal was to amend the whole of the proposed Section to the following form:

> " I. — (1) The right of priority under this Article may also be based on applications for inventors' certificates filed in a country in which applicants have a right to apply, at their own discretion, either for a patent or for an inventor's certificate.
>
> (2) In countries in which applicants have the option between applying for a patent and applying for an inventor's certificate, the right of priority provided for under this Article shall be recognized also where the applicant seeks an inventor's certificate, irrespective of whether the first application (Section A, paragraph (2)) was an application for a patent or a utility model, or for an inventor's certificate."

The Netherlands Delegation referred to a draft Section which the Congress of the IAPIP held in Tokyo in 1966 wished to be substituted for the proposed new Section, namely:

> " Applications for inventors' certificates filed in a country in which applicants have the right to apply, at their own option and on the same substantive conditions either for a patent or for an inventor's certificate, shall engender the right of priority provided for by this article, under the same conditions and with the same effects as an application for a patent.
>
> Conversely, in the countries in which applicants have the above option between a patent and an inventor's certificate,

it shall be provided that an inventor's certificate can be applied for by claiming, pursuant to the present article, a priority founded on an application for a patent, utility model, or an inventor's certificate."

The representative of the IAPIP also referred to this proposal. As all these proposals differed from that of the Swedish Government and BIRPI only in form, the Committee agreed with the Chairman's view that they should be referred to the drafting committee which was to be set up.

6. The Delegation of the United Kingdom of Great Britain and Northern Ireland proposed that the Convention be further revised by inserting in Article 1(2), after the word "patents," the words "inventors' certificates." It was explained that this was not intended to be a far-reaching amendment, but that it was aimed at making the definition of "industrial property" consistent with Article 4 as proposed to be revised. The proposers thought that its only practical effect would be on the references to "industrial property" in Article 2. No delegation disapproved of this suggestion, and a number indicated their interest in it. However, all other delegations of member countries were opposed to the consideration of it in Stockholm for the reasons that it required further study and that they had come prepared to consider only the proposed revision of Article 4. Several delegations recommended that this problem be dealt with by the next revision conference after preparatory studies under the guidance of BIRPI, which BIRPI promised to undertake. The United Kingdom Delegation then withdrew its proposal.

7. A drafting committee was appointed, to consist of a member of each of the delegations: France, Italy, the Netherlands, the Union of Soviet Socialist Republics, the United States of America, Spain, the Federal Republic of Germany, Czechoslovakia, the United Kingdom of Great Britain and Northern Ireland, Sweden and Switzerland. It sat in the afternoon of Tuesday, June 13, and the morning of Wednesday, June 14, under the chairmanship of Mr. E. Brenner (United States of America). In the morning of Thursday, June 15, its proposed addition to the Convention was put before the Main Committee together with the information that the representatives of France and Sweden on the drafting committee had been appointed to the General Drafting Committee.

8. The drafting committee's recommended English text of the new Article 4(I) was as follows:

"I. — (1) Applications for inventors' certificates filed in a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate shall give rise to the right of priority provided

for by this Article, under the same conditions and with the same effects as applications for patents.

(2) In a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate, an applicant for an inventor's certificate shall, in accordance with the provisions of this Article relating to patent applications, enjoy a right of priority based on an application for a patent, a utility model, or an inventor's certificate."

The recommended French text was as follows:

"I. — (1) Les demandes de certificats d'auteur d'invention, déposées dans un pays où les déposants ont le droit de demander à leur choix soit un brevet, soit un certificat d'auteur d'invention, donneront naissance au droit de priorité institué par le présent article dans les mêmes conditions et avec les mêmes effets que les demandes de brevets d'invention.

(2) Dans un pays où les déposants ont le droit de demander à leur choix soit un brevet, soit un certificat d'auteur d'invention, le demandeur d'un certificat d'auteur d'invention bénéficiera, dans les termes du présent article applicables aux demandes de brevets, du droit de priorité basé sur le dépôt d'une demande de brevet d'invention, de modèle d'utilité ou de certificat d'auteur d'invention."

9. Approval of the above texts was expressed by the Delegations of Czechoslovakia, Union of Soviet Socialist Republics, Australia, Canada, Federal Republic of Germany, Austria, Yugoslavia, Sweden, Bulgaria, United Kingdom of Great Britain and Northern Ireland, Ireland, Italy, Denmark, United States of America, Switzerland, Portugal, the Netherlands, France, Spain, Norway, Brazil, Japan, Belgium, Finland, Iran, South Africa and Rumania, and no objections to them were raised.

10. The Secretary of the Committee (M. Magnin) proposed that in the second paragraph of the French version the words "selon les dispositions" be substituted for the words "dans les termes," and this drafting amendment was accepted without objection.

11. The Chairman announced that the texts proposed by the drafting committee, amended in the manner referred to in paragraph 10 above, were approved unanimously. He expressed the Committee's appreciation of the work done by the drafting committee and its Chairman, thanked the members of the Main Committee and announced that the Main Committee would meet again on the afternoon of Friday, June 16, to consider this Report.

[This Report was unanimously adopted by Main Committee III in its third meeting on June 16, 1967.]

Report
on the Work of Main Committee IV (Administrative Provisions and Final Clauses of the Paris and Berne Conventions and the Special Agreements)

by

Valerio De Sanctis, Rapporteur
(Member of the Delegation of Italy)

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1. The tasks assigned to Main Committee IV by the program and rules of procedure of the Conference were of a rather complex nature.

— It was not simply a matter of examining and discussing the proposals for revising the administrative and structural provisions of the Paris Convention for the Protection of Industrial Property (Document S/3), the Berne Convention for the Protection of Literary and Artistic Works (Document S/9), and the Special Agreements concerning industrial property: the Madrid Agreements (international registration of marks; repression of false or deceptive indications of source on goods), the Hague Agreement (international deposit of industrial designs), the Nice Agreement (international classification of goods and services for the purposes of the registration of marks), the Lisbon Agreement (protection of appellations of origin and their international registration), but also of examining the final clauses of the various Conventions and Agreements and the provisions relating to the adoption of possible transitional measures, as well as the decisions to be made with regard to the ceiling of contributions from the member countries of the Paris and Berne Unions.

— While the structural and administrative provisions concerning the Unions are tied in with the proposed new Intellectual Property Organization, the final clauses and transitional measures appear to be related to matters that are of interest also to other Main Committees of the Conference; therefore, constant coordination — particularly through the holding of joint meetings — was established with those Committees during the course of our work.

2. The Plenary Assembly of the Conference, which met at the time of the opening of the Conference, accepted the proposals of the Swedish Government to the effect that the chairmanship of Main Committee IV should be entrusted to France and the duties of Rapporteur to the writer of this Report.

3. The Committee began its work on June 13 under the chairmanship of Mr. François Savignon (Vice-Chairman: Mr. G. S. Lule, Uganda) and terminated it on July 10. During its meetings, the Committee set up a drafting committee composed of delegates from the following countries: Brazil, France, Germany (Federal Republic), Netherlands, South Africa, Soviet Union, Spain, Sweden, Tunisia, United Kingdom, United States of America. Mr. Roger Labry (France) was named Chairman of this committee and Miss Silvia Nilsen (United States), Vice-Chairman.

— As the work of the Main Committee progressed, working groups were set up to make a preliminary study of certain matters.

4. During the general discussion of the structural and administrative reform, opened by the Chairman at the first

meeting of the Committee, all delegations indicated their willingness to adopt, in principle, the suggested proposals which were the result of a long preparatory work, particularly in governmental Committees of Experts.

— The creation, for each Union, of new permanent organs representing the common will of the member countries and the autonomy of each Union, especially as regards its own budget, constituted the foundation of the new administrative structure elaborated by the Committee and proposed to the Conference.

— The Head of the Swiss Delegation made a statement in which he reminded the delegates that the Federal Council considered it an honor to be entrusted with the mandate of supervisory authority but was ready to accept its transfer to the Member States if they so desired; he added that the Swiss Government would, of course, continue to exercise its mandate on behalf of the States as long as they were not yet Members of the new Intellectual Property Organization. This statement was greatly appreciated by all delegations.

5. Also during the general discussion, it was agreed that the references to the new Organization appearing in the texts to be adopted by the Committee could be regarded as approved, subject to the decisions made by Main Committee V. Inasmuch as the program (Document S/3, Article 16; Document S/9, Article 25) reserved to the States the right to choose between several possibilities when ratifying or acceding to the Stockholm Acts (this idea was later accepted by the Committee, notwithstanding certain proposals intended to restrict the possibilities of choice), some delegations recommended that the references in question be limited to what was absolutely necessary; this suggestion was taken into account in the drafting of the new texts.

6. The examination of the provisions in the program concerning the composition and functions of each Union's Assembly and Executive Committee gave rise to many suggestions by several delegations. Even in cases where they were accepted by the Committee, however, these suggestions did not alter the structure of the new organs as they were proposed in the program. It should simply be noted that, here too, an effort was made to strengthen the existing parallelism among the different Unions but to avoid unduly complicating the organization of certain industrial property Agreements.

7. The Assembly thus remains the sovereign organ of each Union, due to the fact that it is composed of all Union countries, and the Committee endeavored to strengthen its powers. As in the program, the Executive Committee consists of coun-

tries elected by the Assembly from among countries members of the Assembly.

— The constitution of the Assembly is the essential feature of the administrative reform of the Unions, and this was the principle on which the Committee based its work. The Assembly permits the member countries of each Union, even though grouped in a Union, to exercise their sovereign powers. Furthermore, from the standpoint of the development of international cooperation in the field of intellectual property, it offers the possibility of an uninterrupted exchange of views, whereas the present organization of the Unions — especially that of the Berne Union — provides for meetings only at intervals sometimes more than twenty years apart, at a time when culture and technology are advancing at a pace never before attained.

8. As regards the composition and functions of each Union's new organs, I should merely like to call attention to a matter concerning the representation of the member countries within the Assembly, a matter that was raised, in connection with a specific case, by a proposal made by the Delegations of Madagascar and Senegal. Because of the very strong fears of certain delegations that the proposal might weaken a basic general principle — namely that each delegation to the Assembly may represent, and vote in the name of, one country only — a compromise solution was adopted, following long debates within both the Committee and an *ad hoc* working group. The solution restricts the provision to the Paris Convention and limits it to the benefit of certain Paris Union countries, namely those which, under an agreement, are grouped in a common office possessing for each of them the character of a special national service of industrial property (referred to in another provision of the same Convention) and all of which, in discussions in the Assembly, may be represented by one of them. It is also understood that, in such a case, a delegation may vote by proxy only for one country and only for exceptional reasons.

— A proposal put forward during the debates by the Delegations of Argentina, Brazil and Uruguay (Document S/189), supported by the Delegation of Spain, provided that the possibility of voting in the name of a second country would not be limited to countries having a common office but would be made general. However, this proposal was rejected by the majority of the members of the Committee, who were of the opinion that what was involved was an exception and, consequently, should not be generalized so as not to upset, as regards voting, the structure of the Assembly and of any other collegial organ of the Unions.

9. The question of the quorum of each Union's Assembly was examined by a working group, set up for that purpose by the Committee, which felt that the quorum of one-third provided in a paragraph of the draft was too low. The provisions adopted by the Committee in regard to this matter brought the quorum up to one-half, on the understanding, however, that the Assembly could make decisions even if the number of countries represented at a session was less than one-half, as long as it was equal to or more than one-half of the member countries. Decisions adopted in such cases would, however, not take effect until after having been communicated to the countries not represented in the Assembly, with a view to reaching the quorum by correspondence. The provision drawn up to this effect might appear to be somewhat complicated, but certain delegations pointed out that nothing prevented the application of the provision being clarified and simplified in the clauses of the Assembly's rules of procedure.

10. There is a certain interdependence between the matter of the quorum in the Assembly and that of the majority required in the Assembly to amend the administrative clauses of the two Conventions. In fact, only amendments to the administrative clauses are within the competence of the Assembly. Revision of the substantive provisions is, on the other hand, entrusted to conferences of the Union countries. Under the terms of the text adopted by the Committee, the majority required to amend the administrative clauses is three-fourths of the votes cast, except as regards the articles concerning the composition and functions of the Assembly, amendments of which require a four-fifths majority of the votes cast.

— The debates on these matters were rather lively, especially as concerns the conferences of revision of the substantive clauses. The requirement of unanimity was reaffirmed in respect of the Berne Convention, including the Protocol, which is an integral part of it. A proposal to substitute a qualified majority for unanimity was rejected by a vote of 24 to 11, with 9 abstentions. As to the substantive clauses of the Paris Convention, the existing situation has been maintained.

— A proposal to provide that the conferences of revision would always be held at the headquarters of the Organization was not adopted, but it was understood that the matter would be re-examined at the Conference of Revision of the Paris Union, scheduled to be held at Vienna in a few years' time.

11. The administrative tasks with respect to each Union will, on the basis of the new structural organization of the Unions, be performed by the International Bureau. The latter is a continuation of the Bureau of the Paris Union and the

Bureau of the Berne Union, united in 1892 pursuant to a Swiss Federal Council decree. The Committee made no important substantive amendments to the proposals contained in the program. The replacement of the wording (French text) appearing in the program by the expression "*Les tâches administratives incombant à l'Union sont assumées par le Bureau international qui succède au Bureau de l'Union*" does not alter the basic idea. What is concerned is, in fact, a continuation in the same functions, and, as a transitional measure, the new wording confirms that the International Bureau of the Organization will also act as the Bureau of each Union so long as all countries of the Unions have not become Members of the Organization.

— The International Bureau will provide the secretariat of the various organs of each Union.

— This combination of functions within a single organ, this two-faced Janus, is not only a characteristic of the new structural organization of the Unions as set up at Stockholm in regard to the International Bureau; it is also to be found in the person of the Director General. He is, in fact, the chief executive of the new Organization and, at the same time, the chief executive of each Union; in addition, he represents all of these different international bodies, which, by the way, have their own autonomy.

12. In the matter of finances, the text adopted by the Committee provides that each Union shall have its own budget. This provision also reflects the concept that each Union is autonomous, as is brought out in the Unions' new structural organization.

— On the basis of a joint proposal by France, Germany (Federal Republic), Italy, and the United States of America, the original text (Documents S/3 and S/9) was amended as concerns the financing of the Unions. The Committee reached agreement on a text which provides that the budget of the Union shall include the expenses proper to the Union, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization. Other draft provisions were altered accordingly. In connection with this provision, the Delegations of France, Germany (Federal Republic), Hungary, Italy, the Soviet Union, the United Kingdom, and the United States of America, put forth proposals to Main Committee V so as to have the words "...adopt the budget of expenses common to the Unions" (Documents S/62 and S/93) inserted in the list of powers belonging to the General Assembly of the Organization.

— Again on the subject of finances, the Delegation of Spain suggested (Document S/82) including among the sources

of income of the Paris Union a fee that would be collected on behalf of the International Bureau in respect of all applications relating to patents, marks, etc., for which claim — under the Paris Convention — is made to the right of priority. Another proposal (Document S/163) would merely have referred to the possibility of such a fee. Considering, however, that the proposal raised important practical and legal questions, the Committee preferred to adopt a draft resolution addressed to the Plenary of the Paris Union and requesting it to invite the International Bureau to make a study of the matter and submit the results of its work to the forthcoming Vienna Conference of Revision.

13. Still in connection with finances, the Committee adopted draft decisions concerning the maximun annual amount of ordinary contributions from the countries members of the Paris Union and of the Berne Union (ceiling of contributions) for the years 1968, 1969, and 1970. In regard to this matter, the Delegation of Argentina, supported by the Delegation of Brazil, observed that the ceiling-of-contributions system was no longer appropriate. It should be noted that the new Stockholm texts have abandoned this system.

14. At this point in my Report, I see that, if I were to attempt to deal in detail with each matter taken up by the Committee, this paper would become unnecessarily long, not only because of the existence of minutes and other Committee documents, but also and above all because of the fact that no really complex problems came up in connection with the administrative organization of the Unions. As a matter of fact, after carefully considering each matter, the Committee almost fully accepted the proposals, on these points, appearing in the draft texts contained in the program of the Conference. The work consisted primarily in resolving questions of a technical and editorial nature. In this respect, I should like to call attention to the really impressive accomplishments of the drafting committee which, in particular, undertook to draft the texts of the Special Agreements concerning industrial property that are in relationship with the Paris Convention, taking into account the parallelism that had to be achieved as far as possible in these different instruments.

I shall thus restrict myself to one or two matters concerning the final and transitional clauses.

15. In regard to the final provisions of the Paris Convention and Berne Convention, the Committee devoted special attention to the proposals of the program relating to the application of the earlier Acts of the Conventions of the Unions (Paris, Article 18; Berne, Article 27), which refer to the relations among countries of the Union that have acceded to

different earlier Acts, and above all to the relations between a country that has acceded solely to the Stockholm Act and the other Union countries that have not acceded to it.

— Since corrigenda (Documents S/3/Corr. 1 and S/9/Corr. 1) to the proposals regarding this matter contained in the original program had affected other provisions somewhat related to it (in particular, Article 25^{quater} (Berne), originally proposed concerning the anticipated application of the Protocol Regarding Developing Countries), these problems were also examined at joint meetings of Main Committees II and IV, where other problems too were examined, especially those raised by Article 20bis (Berne) concerning the Protocol Regarding Developing Countries. The joint meeting of the two Committees, under the chairmanship of Mr. Joseph Voyame (Switzerland), referred these matters to a working group, likewise chaired by Mr. Voyame, for preliminary examination; after a thorough debate, the working group presented its conclusions to the Committee. Moreover, once these conclusions had been approved, the subject — particularly as concerns Article 27(3) (Berne) — was again taken up by the Committee, at the proposal of the Delegation of Switzerland, after it had been decided to re-open discussion on this point.

16. The solution to the problems concerning the application of earlier Acts within the framework of a Union Convention may look different depending on the view held, as regards international public law, on the effects of international treaties on the reciprocal obligations of States deriving from successive Acts of a Union Convention. The debates on this reflected the various schools of legal thought that exist on the subject, and there were naturally differences of opinion as to how the question might be settled. Furthermore, the matter is also tied in with the basic principles of Article 2 of the Paris Convention and Article 4 of the Berne Convention, relating to the concept of equality of treatment (assimilation clause) and to the obligations of the States regarding the rights specially provided for by the Convention (minimum rights), as well as to the principle that the enjoyment and exercise of rights is independent of the existence of protection in the country of origin of the work. These problems of a general nature, which in the past had been the subject of a number of scholarly discussions, were once again raised in the Committee, particularly in the statements made by the Delegations of Australia, France, and the United Kingdom. Out of rather divergent views — one considering that the obligations among Union countries are governed by the most recent common Act, the other that the obligations of a Union country are governed by the provisions of the most recent Act to which it has acceded with regard to all other Union countries and,

therefore, even Union countries not parties to that Act — the view that emerged in the Committee, but only in respect to countries outside the Union which become parties to the Stockholm Act, is one which, in reciprocal relations, takes account of certain interests of any country that has not acceded to the Stockholm Act.

17. The solution envisaged by the Committee takes its inspiration from the following general principle: as this matter is not one of different treaties but of successive Acts of a Union of countries (see Article 1 of the Berne and Paris Conventions: "The countries ... constitute a Union ..."), all of the Union countries must always have some links with one another, even if they are not bound by a common Act. Moreover, the successive Acts of a Union Convention always contain more or less parallel provisions, so that, from a practical point of view, the question arises only with respect to provisions that differ from one another, especially when the more recent Act to which a Union country has not acceded contains provisions regarding minimum rights that are far removed from the level of protection guaranteed by the previous Act. Only in such a case did it seem reasonable and legally correct for the countries outside the Union but parties to the Stockholm Act, in conformity with the above-mentioned Swiss proposal, to apply that Act in their relations with all of the Union countries, even those that have not acceded to the Stockholm Act, while the latter countries, in their relations with the former, apply the provisions of the last Act to which they are party, with the possibility, however, of adapting its level of protection to the level guaranteed by the Stockholm Act. Texts based on these principles were adopted by the Committee.

— Consequently, as regards the relations between countries that accede only to the Stockholm Act and countries of the Union that do not accede to it, or that do so only later, both the Berne Convention and the Paris Convention provide that the former shall apply the Stockholm Act and that the latter shall apply the most recent Act to which they have acceded.

— Furthermore, I repeat, the Stockholm Act of the Berne Convention also provides that the countries of the second group mentioned above have the possibility of adjusting the level of protection they grant, on the basis of the most recent Act, to the level provided by the Stockholm Act. The Committee felt that this provision was justified because, in certain respects, the level of protection guaranteed by the Stockholm Act is not as high as that guaranteed by earlier Acts.

— Based on analogous principles, but having a different structure and content, is the provision, proposed during the joint meetings of Main Committees II and IV, according to which countries having, upon becoming parties to the Stock-

holm Act, made reservations permitted under the Protocol Regarding Developing Countries may apply such reservations in their relations with other countries of the Union not parties to the Stockholm Act, provided that the latter countries have accepted such application. A precedent for the legal institution of such acceptance is found in the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.

— The Committee did not feel it was necessary for the Paris Convention to include a provision similar to the one inserted in the Berne Convention, since the Stockholm Act of the Paris Convention in no way alters the level of protection afforded under the previous Act of that Convention. Consequently, there seemed to be no need to provide for the possibility of the kind of material reciprocity which is the basis of the new provision of the Berne Convention, and which, by the way, already existed in earlier Acts of that Convention — although in a less general form — in particular in regard to the term of protection and works of applied art.

18. Somewhat tied in with the views on the general question of the application of earlier Acts was the decision made by the Committee regarding the accession of a country outside the Union which accedes to the Stockholm Act and, by the same fact, to the earlier Acts. This decision extended to the Paris Convention the provision already found in Article 28(3) of the Berne Convention (Brussels Act). Consequently, after the entry into force of the Stockholm Act in its entirety, a country may not accede to earlier Acts of the Paris Convention. It was only after long debates that the Committee came to an agreement on this extension of the principle found in the text of the Berne Convention. As a matter of fact, as was pointed out in the Committee, a distinction must be made between *accession* to earlier Acts and *application* of such Acts. A country may not accede to earlier Acts of a Union Convention since they are replaced by the last Act; however, because of the relations existing between countries outside the Union that accede to the last Act and countries already belonging to the Union that do not accede to it, there do exist relations between these two categories of countries, which relations result also from the very contents of the earlier Acts. Besides, nothing prevents a country acceding for the first time to the Unions, in particular the Paris Union, from making an express declaration on the application of the earlier Acts.

— The new wording adopted by the Committee introduces a further element of parallelism between the texts of the two Conventions.

19. There was still another matter concerning the relations among Union countries within the framework of the unitary

system of the Unions, and that was the provision of Article 25[quater] (Document S/9) in the original text of the program which deals with the anticipated, voluntary application of the reservations made under the Protocol Regarding Developing Countries at any time after the date of signature of the Stockholm Act, by any Union country not yet bound by the substantive articles of that Act, including the Protocol which is an integral part of it. A provision debated at length in a working group and corresponding to Article 25[quater] was included in an article of the Protocol proposed to Main Committee II by its drafting committee.

20. Ratification of or accession to the Stockholm Act (Paris and Berne Conventions) entails acceptance of all the clauses and admission to all the advantages of that Act; however, as mentioned above (paragraph 5), there is the possibility of excluding from the effects of ratification or accession one of the two groups of Convention provisions (substantive and administrative).

— The general question of reservations (other than the reservations provided for in the Protocol Regarding Developing Countries), regarding certain provisions of the Berne Convention, that may be confirmed or formulated at the time of ratification of or accession to the Stockholm Act had been included in the program of the Conference (Article 25[ter] of Document S/9), and it was therefore within the province of the Committee to examine this matter. However, Main Committee I had examined, as to substance, the question posed by the reservation concerning the right of translation, and had been in favor of maintaining, in the Stockholm Act, the provision contained in Article 25(3) of the Brussels Act, namely that notifications of accession to the new Stockholm Act by countries outside the Union could specify that such countries wished to substitute, provisionally at least, the provisions of Article 5 of the Union Convention revised at Paris in 1896 for those relating to the exclusive right of translation.

— In this connection, a proposal was subsequently put to Main Committee I by the Delegation of Italy in order to combine the possible maintenance of the right of reservation in favor of countries outside the Union which accede to the Stockholm Act with the right of countries making no reservations to apply, in this matter, the principle of material reciprocity in their relations with countries wishing to benefit from such a right of reservation. The matter was again taken up at a joint meeting of Main Committees I and IV held under the chairmanship of Professor Ulmer (Federal Republic of Germany), the compromise proposal was accepted, and a provision to the said effect was added to Article 25[ter] of the program. On the other hand, as concerns Union countries which have

already made reservations (Article 27(2) of the Brussels Act of the Berne Convention and Article 25ter(2)*(a)* of the program) and which, when ratifying the Stockholm Act, wish to retain the benefit of such previously formulated reservations, the situation on reservations made in regard to the right of translation remains what it was before.

21. At the Brussels Conference of Revision of the Berne Convention, a clause on the settlement of disputes was inserted into the text of the Convention (Article 27bis) providing for the compulsory jurisdiction of the International Court of Justice in matters of disputes between two or more countries of the Union, concerning the interpretation or application of the Convention, not settled by negotiation. There was no similar clause, however, in the Paris Convention.

— It should be noted that, since the entry into force of the Brussels Act, no petition on such an issue has been made to the International Court by Union countries.

— The Committee examined this matter several times on the basis of the proposal of the program, reproducing the existing provision of the Berne Convention together with several variants. Certain delegations feared that this proposal — restricted, by the way, to the Berne Convention — might, in changing the existing provision, weaken the Convention as regards the compulsory jurisdictional protection obtained with such great effort at the Brussels Conference. Other delegations, on the other hand, expressed concern since, in their view, such a clause constituted an obstacle for several countries of the Union to the ratification even of the Brussels Act. Lastly, the Committee constantly endeavored to maintain a certain parallelism between the administrative clauses of the Berne and Paris Conventions, that is, between those clauses not touching upon the substantive provisions of the two Conventions. A compromise proposal, presented by the Delegations of the Netherlands and of Switzerland, whereby the same provision concerning the settlement of disputes could be inserted in both Conventions, was finally accepted by the Committee. This compromise provides for the insertion of the said jurisdictional clause in the texts of both Union Conventions, but each Union country would have the right, when signing or ratifying the Stockholm Act, to consider itself not bound by that clause, the principle of reciprocity applying for any Union country that has not availed itself of that right.

22. The provisions of the program relating to the denunciation of the Paris and Berne Conventions have not been altered.

— In regard to the interpretation of paragraph (4) relating to the minimum of five years from the date upon which

a country becomes a member of the Union that must elapse before such a country may exercise the right of denunciation, the drafting committee recommended that the Report of Main Committee IV should specify that denunciation may not be notified until after the expiration of the period concerned; it would thus go into effect six years, at the earliest, after the date mentioned in the said paragraph (4).

23. Draft resolutions on certain transitional measures regarding the proposed administrative reforms (Document S/11) — the first pertaining to the Paris Union, the second to the Berne Union, and the third to the General Assembly and the Coordination Committee of the proposed new Intellectual Property Organization as well as to related matters — were withdrawn by BIRPI. Mr. E. Braderman (United States of America), Chairman of Main Committee V, announced this at a joint meeting of that Committee and Main Committee IV that he had been called upon to chair. As no delegation brought up these proposals again, our Committee did not have an opportunity to pursue the debates on them. It is therefore understood that, until such time as the different Stockholm texts enter into force, the administrative situation of the Unions will —as it is at present — be governed by the Acts now in force and by the application of these Acts in practice. Once the new structural rules of the Union have entered into force, certain existing institutions of the Unions will cease to function — such as, for the Paris Convention, the Conferences of Representatives established by Article 14(5) of the Lisbon Act, and, for the Berne Convention, the Permanent Committee of the Union, set up by a resolution of the Brussels Conference of Revision.

24. As we have already indicated in this Report, the Swiss Government will continue to exercise its mandate of supervisory authority, not only until the entry into force of the various texts signed at Stockholm, but beyond that date in regard to Union countries that have not yet become Members of the new Intellectual Property Organization and the Assemblies of the Unions. In this connection, at the joint meeting, tribute was once again paid to Switzerland, which, for nearly a century, has carried out with dignity functions permitting the Unions to be administered wisely, and which, today, agrees to carry on — even though on a somewhat reduced scale — this function.

[This Report was unanimously adopted by Main Committee IV in its meeting on July 10, 1967.]

Report
on the Work of Main Committee V (World Intellectual Property Organization)

by

Joseph VOYAME, Rapporteur
(Member of the Delegation of Switzerland)

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I. Introduction

1. When the Unions of Paris and Berne were set up in 1883 and 1886, they were provided with Secretariats whose functions, however, were limited: all that was involved was gathering information, carrying out studies in the field of intellectual property, making the results of this work available to the members of the Unions, and preparing revision conferences. In accordance with the practice of that time, a Government, in this case the Government of the Swiss Confederation, assumed the duties of administering the Conventions. Further, the Secretariats were placed under its authority, and it was entrusted with regulating their organization and supervising their operations. The Swiss Government, wishing to make the administrative services of the Unions function as efficiently and economically as possible, later combined the two Secretariats, which thereafter became the " United International Bureaux for the Protection of Industrial, Literary and Artistic Property " (BIRPI), under the responsibility of one Director. That situation has continued until the present.

2. After the second World War, the member States of the Unions felt the legitimate desire to exercise a greater degree of influence on the development of the Unions and on the functioning of BIRPI. They, therefore, established advisory bodies, in particular the Permanent Bureau of the Paris Union and the Permanent Committee of the Berne Union, which have met jointly since 1967 as the " Interunion Coordination Committee."

3. It was this Coordination Committee that recommended in 1962 that a study be carried out with a view to reforming the Unions and BIRPI and adapting them to the system of present-day intergovernmental organizations. The plans drawn up by BIRPI were submitted in 1964 to a Working Party, and then to a Committee of Governmental Experts, which met in 1965 and 1966. It was the texts drafted by this Committee of Experts which, after having been amended on some points by BIRPI (whom the Swedish Government had entrusted with that task), were proposed to the Diplomatic Conference of Stockholm (Documents S/3 to S/10).

4. The general features of the proposed reform are as follows:

(i) The Unions retain their complete independence and their own tasks; between revision conferences each Union is placed under the exclusive authority of the Assembly of the member States of that Union.

(ii) A new Organization, the World Intellectual Property Organization (WIPO) is set up alongside the Unions; all States members of a Union, and States that satisfy certain conditions indicated in the Convention, may become Members of the Organization. The Organization is entrusted essentially with the coordination of the administrative activities of the Unions and the promotion of the protection of intellectual property throughout the world.

(iii) The Secretariat of the Unions and of the Organization is provided by a joint body, the International Bureau of Intellectual Property, which is a continuation of BIRPI. The Director General of the International Bureau is invested with new rights enabling him to represent the Organization and the Unions at the international level.

(iv) Depending on its various activities, the International Bureau is placed under the authority of the organs of the Unions or of the Organization. However, it is the General Assembly of the member States of the Unions that exercises the main supervision.

II. Terms of Reference and Work of Main Committee V

5. Carrying out the reform necessitated the establishment of a new Convention to lay down rules for the new Organization (WIPO Convention). This task was entrusted to Main Committee V. Furthermore, it was necessary to amend the administrative provisions and final clauses of all the Conventions and Agreements in force. This task was entrusted to Main Committee IV.

6. Main Committee V met under the chairmanship of Mr. Eugene M. Braderman (Head of the Delegation of the United States of America) on June 19, 20, 21, 23, and 28, and on July 4, 1967. It held a joint meeting with Main Committee IV on July 5, 1967, under the chairmanship of Mr. Braderman to settle a number of matters common to the two Committees. Main Committee V also set up a Working Group to study the conditions of admission to WIPO; this Working Group met on June 21, 22, and 27, 1967, under the chairmanship of Dr. Arpad Bogsch (Deputy Director of BIRPI). Lastly, the Drafting Committee of Main Committee V, under the chairmanship of Mr. Love Kellberg (member of the Delegation of Sweden), finalized the texts at its meetings of June 27, 28, 29, and July 3, 1967.

III. Establishment of the New Organization

7. Main Committee V started its work by a general discussion of the question of the establishment of the Organization.

8. A number of Delegations, namely those of Bulgaria, Cuba, Czechoslovakia, Germany (Federal Republic), Hungary, Ireland, Israel, Japan, the Netherlands, the Union of Soviet Socialist Republics, and the United States of America, said that their Governments welcomed the establishment of the new Organization, which would, in particular, make possible a better coordination of the activity of the Unions and a more efficient contribution to the economic prosperity of developing countries by assisting them in the creation of a system for the protection of intellectual property.

9. The Delegations of France and Italy said, however, that, in the view of their Governments, the modernization that was needed could be achieved within the framework of the Unions without the need of creating a complicated and costly new Organization; nevertheless, they would not oppose such a creation, which was justified by the fact that the great majority of the member States of the Unions desired it.

10. The representatives of several intergovernmental organizations also spoke in favor of the creation of the new Organization. The representative of UNESCO, however, noted that, within the framework of its duty of promoting education, science, and culture, UNESCO had to deal with copyright at a universal level and therefore had responsibilities that it could not decline.

11. As it was therefore apparent that there was no opposition or objection in principle to the establishment of the new Organization, Main Committee V was able to proceed to the examination of the various points of the draft Convention, submitted to the Conference of Stockholm.

IV. The Name of the Organization

12. The Committee was called upon to decide whether the Organization should be called "International" or "World." It preferred the latter term. An international organization can, in fact, have a restricted geographical area. But the new Organization has a universal calling, and the Unions already comprise the majority of the countries of the world and extend over all five continents. It did not therefore seem pretentious to choose as its name "World Intellectual Property Organization" (WIPO).

V. Objectives of the Organization

13. The Preamble and Article 3 of the Convention set out the objectives of WIPO and thereby determine the scope of

its activities at the international level. They distinguish clearly between the two essential objectives of the Organization.

14. The first of these objectives, the definition of which is based on a proposal of the Italian Delegation, is to promote the protection of intellectual property throughout the world in order to encourage creative activity in all countries. The expression "intellectual property" is to be understood in its widest sense. As defined in Article 2(viii), it includes all the rights relating to intellectual activity in the industrial, scientific, literary, and artistic fields, to which the commercial field may be added. The same provision contains a non-exhaustive list of the most important items to which these rights may relate; it is worth noting that one item is included which is not yet protected as intellectual property in the majority of countries: scientific discoveries, which obviously include medical discoveries.

15. Under the terms of Article 3(i), WIPO may cooperate, where appropriate, with other international organizations in order to achieve its first objective.

16. The second objective of the Organization is to ensure administrative cooperation among the Unions, without in any way prejudicing their independence.

17. Finally, on the proposal of the Delegation of Rumania, the Committee sought to express the idea that, in pursuing these objectives, the Contracting Parties were also inspired by a loftier purpose, namely by the desire to contribute to better understanding and cooperation among States. The Preamble of the Convention opens with the expression of that noble purpose.

VI. Functions of the Organization

18. In general, the Organization is to take all appropriate action to achieve its objectives. Its main functions are, however, listed in Article 4.

19. The first task of WIPO is to improve the protection of intellectual property throughout the world, particularly by encouraging the conclusion of international agreements for that purpose (Article 4(iv)) and by contributing to the harmonization of national legislations (Article 4(i)).

20. Furthermore, the Organization is to carry out various administrative tasks. It performs the administrative tasks of the existing Unions (Article 4(ii)) and, if so requested by competent bodies, it may agree to assume, either alone or in cooperation with other international organizations, the administration required for the implementation of any other treaty, convention or agreement in the field of intellectual property (Article 4(iii)). It maintains services facilitating the inter-

national protection of intellectual property at the administrative level, in particular international registration services (Article 4(vii)).

21. As BIRPI has done hitherto, the Organization is to serve as a center of documentation for intellectual property, and to carry out and promote legal and economic studies in this field (Article 4(vi)).

22. Last, but not least, it is to offer its cooperation to States requesting legal-technical assistance (Article 4(v)). This latter term gave rise to some discussion in Main Committee V. This term was intended, on the one hand, to call to mind the expression " technical assistance " which is normally used to describe the aid granted to developing countries, and, on the other, to specify that what is involved is legal assistance — either legislative or administrative — since WIPO is clearly not in a position to provide any other kind of aid to these countries. Such legal-technical assistance may consist, for example, in the organization of seminars and training courses, the supply of experts, the drafting of model laws for developing countries, etc.

VII. Membership of the Organization

23. The BIRPI Draft distinguished between " Full Members " and " Associate Members," depending upon whether the States in question were members of a Union or not. In order to avoid even the appearance of any discrimination, Main Committee V abandoned this terminology, on the proposal of the Delegations of Czechoslovakia, Hungary, the Netherlands, Poland, and the Soviet Union.

24. In regard to the conditions for admission, BIRPI had submitted a proposal to the Conference, while also mentioning other proposals originating from the 1965 Committee of Experts and the Italian Delegation to that Committee. Committee V also had before it a proposal by the United Kingdom Delegation, and the Delegation of Czechoslovakia took up, in a proposal, one of the alternatives referred to by BIRPI.

25. The question gave rise to a lengthy debate, in which two main opposing theories were put forward. Some delegations held that it was essential to avoid all discrimination, keep entirely to the principle of universality, and hence admit into the Organization any State applying for admission and prepared to accept the provisions of the Convention. Other delegations, while accepting the principle of universality, nevertheless thought it necessary to know whether the applicant was a State and considered that the question was essentially a political one, which a technical organization should not decide; they therefore thought that one should only admit States re-

cognized as such by other international organizations such as the United Nations and its specialized agencies.

26. Finally, the Committee accepted the compromise suggested to it by the Working Group that had been set up to consider the matter; the Working Group, in essence, took over the proposal of BIRPI. Under the terms of this text, which constitutes Article 5 of the Convention, any State which is a member of a Union may become a party to the Organization, and the same applies to any other State if it is invited by the General Assembly of WIPO to become a party or if it is a member of any of the international organizations indicated in Article 5(2)(i).

VIII. The Organs in General

27. The BIRPI Draft made provision for four different organs: the General Assembly of the Member States of the Organization and of a Union; the Conference, composed of all the Member States of WIPO; the Coordination Committee; the International Bureau of Intellectual Property. Certain objections were raised only as regards the establishment of the Conference.

28. The Delegations of Czechoslovakia, Hungary, the Netherlands, Poland, and the Soviet Union, proposed in fact that the organ called the " Conference " should not be established. The Delegation of Israel made a similar proposal. In their opinion, it would be simpler and more equitable if States outside any Union were admitted to the General Assembly, albeit solely in an advisory capacity as regards matters which concerned only the States members of a Union.

29. Other delegations opposed the proposal. They pointed out, in particular, that the two purposes of the Organization should be kept quite distinct from each other, and that each should be within the competence of a special organ: the General Assembly for administrative cooperation among the Unions and the supervision of the International Bureau of Intellectual Property, and the Conference for the promotion of intellectual property in the world and, in particular, for legal-technical assistance.

30. Finally, the Committee decided in favor of the establishment of the Conference, considering that that measure constituted an important element of a general compromise.

IX. The General Assembly

(a) Functions

31. Without prejudice to the powers and functions of the Conference, the General Assembly is the supreme organ of the Organization.

32. In particular, it appoints the Director General upon nomination by the Coordination Committee (Article 6(2)(i)). If it does not appoint the nominee of the Coordination Committee, the latter has to submit a new nomination, and so forth until an appointment is made. (Article 8(3)(v)).

33. The General Assembly reviews and approves the reports and activities of the Coordination Committee as well as the reports of the Director General concerning the Organization; it gives all necessary instructions to both of them (Article 6(2)(ii) and (iii)). This provision, added on the proposal of the Delegation of the Federal Republic of Germany, is intended to indicate more specifically the capacity of the General Assembly as the supreme organ.

34. As regards financial matters, Main Committee V supplemented, with two new provisions, the statement of the functions of the General Assembly. Upon the joint proposal of the Delegations of France, the Federal Republic of Germany, Hungary, Italy, the United Kingdom, the United States of America, and the Soviet Union, a provision was included, under the terms of which the General Assembly adopts the triennial budget of expenses common to the Unions (Article 6(2)(iv)). Further, the Committee adopted a proposal of the Delegation of Austria expressly stating that the General Assembly is competent to adopt the financial regulations of the Organization (Article 6(2)(vi)).

35. It is also the task of the General Assembly to agree to assume the administration of international agreements and to approve the measures taken to that end by the Director General (Article 6(2)(v)).

36. The General Assembly must admit to its meetings, as observers, States Members of the Organization which are not members of any of the Unions (Article 6(5)). It has, however, the right to admit to those meetings also other States and organizations in such a capacity (Article 6(2)(ix)).

37. Finally, Article 6(2)(vii) confers on the General Assembly the authority to determine the working languages of the Secretariat. This point gave rise to discussion. Under the terms of the BIRPI Draft, the General Assembly should decide what " in addition to English and French, the working languages of the Secretariat " should be. The Delegations of Argentina, Brazil, Spain, and Uruguay, proposed the alternative wording: " determine the working languages of the Secretariat, taking into consideration the practice of the United Nations." This was the text adopted by the Committee. It is obvious, however, that the omission of any specific mention of French and English does not mean that it is intended to abandon either of those languages as working languages. On the other hand, the

reference to the practice of the United Nations must not be understood as involving the automatic adoption of the working languages of that Organization. The General Assembly will determine the needs of WIPO and its financial possibilities. Only in cases where the use of a third or fourth working language is necessary, and the expenses thereby incurred are covered, will the General Assembly make them working languages of the Secretariat. These new languages may be introduced gradually as required. Meanwhile, as has been the case hitherto, the Secretariat may, in certain cases, prepare documents in, and arrange for interpretation into, languages other than French and English.

(b) Composition

38. The General Assembly consists of the States, members of any Union, which belong to the Organization (Article 6(1)*(a)*). Each State has one vote, irrespective of the number of Unions to which it belongs (Article 6(3)*(a)*).

39. Each State which is a member of the General Assembly is represented by one delegation consisting of one delegate, who may be assisted by alternate delegates, advisors, and experts (Article 6(1)*(b)*). On the proposal of the United Kingdom Delegation, it was provided that the expenses of all such representatives would be borne by the Governments which have appointed them (Article 6(1)*(c)*). This means that such expenses are not borne by WIPO. The question whether they are effectively borne by the Government concerned is an internal matter which is irrelevant to the Organization.

40. The Delegation of Madagascar proposed, as it had done with reference to the Assemblies of the Unions, that, if a number of countries had a single industrial property office, they should be able to be represented by a single delegation which would then have as many votes as the number of States taking part in that office. A compromise solution was found in respect of the Assembly of the Paris Union. Main Committee V, however, thought that the existence of a common industrial property office had a much more distant bearing on WIPO and that a special provision was not justified in this connection. It accordingly decided that, in the General Assembly, a delegate could represent only one State and vote only in its name (Article 6(3)*(i)*).

(c) Sessions, Quorum and Majority

41. The General Assembly meets every third calendar year in ordinary session; it is convened by the Director General (Article 6(4)*(a)*).

42. It meets in extraordinary session at the request of one-fourth of its members or at the request of the Coordination

Committee, made to the Director General, who then convenes the General Assembly (Article 6(4)*(b)*). It may not be convened in extraordinary session by the Director General on his own initiative.

43. The BIRPI Draft provided for a quorum of one-third of the members. On the proposal of the Delegation of Czechoslovakia, Main Committee V raised the quorum to one-half (Article 6(3)*(b)*), as Main Committee IV had done for the Assemblies of the Unions. The quorum is attained when the delegations recorded at the session represent at least one-half of the Member States, whether present at each vote or not.

44. In addition, for cases where the required quorum is not attained, but at least one-third of the Member States are represented, the Committee adopted a solution which is identical with the one adopted by Main Committee IV in respect of the Assemblies of the Unions: the General Assembly may, validly, discuss and, by the required majority, make provisional decisions; these decisions are then submitted in writing to the Member States not represented, which have a period of three months in which to express their vote or abstention; if the new votes cast within this period make up the required quorum, and provided that the necessary majority is not lost as a result of this supplementary vote, the decision becomes final (Article 6(3)*(c)*). This provision will be completed by the rules of procedure of the General Assembly, which will specify, for example, the form in which provisional decisions are to be submitted to the Member States not represented, the procedure for voting by correspondence, and the end of the three months' period.

45. As regards the required majority, the BIRPI Draft provided in principle for a simple majority, and for majorities of two-thirds, three-fourths, or nine-tenths, for certain decisions. Adopting a proposal made by the Delegation of Czechoslovakia, Main Committee V raised the majority normally required to two-thirds of the votes cast (Article 6(3)*(d)*), as Main Committee IV had done for the Assemblies of the Unions. In making this amendment, it took account of the great importance of the decisions devolving on the General Assembly. Accordingly, the draft proposals providing for a majority of two-thirds in certain cases could be deleted. On the other hand, those instituting even higher majorities were maintained: agreement to assume, or participate in, the administration of any international agreement, in accordance with Article 4(iii), requires a majority of three-fourths of the votes cast (Article 6(3)*(e)*), and the required majority is nine-tenths of the votes cast if it is a question of approving an agreement with the United Nations under Articles 57 and 63 of the Charter of the United Nations (Article 6(3)*(f)*).

46. Lastly, there are some decisions which, although within the competence of the General Assembly, are highly important for the Unions themselves: they concern the transfer of the headquarters of the Organization, the appointment of the Director General, and the administration of new international agreements. In these cases the required majority must be attained not only in the General Assembly but also in the Assembly of the Paris Union and the Assembly of the Berne Union (Article 6(3)*(g)*). In order to be valid, such decisions must accordingly be taken with the quorum and majority required under Article 6(3)*(d)* and *(e)* in each of the three Assemblies.

(d) Rules of Procedure

47. The Convention contains provisions only on the most important points. Details, in particular the procedure for discussions in the General Assembly, will be the subject of the rules of procedure to be adopted by that Assembly (Article 6(6)).

X. The Conference

(a) Functions

48. In general, the Conference, which consists of all States Members of the Organization, exercises the functions allocated to it by the Convention (Article 7(2)(vi)). The main functions are listed in Article 7(2)(i) to (v) and may be divided into five groups.

49. In the first place, the Conference constitutes a forum for exchanges of views in the field of intellectual property between all States Members of the Organization, whether or not they are members of any Union. In this context, the Conference can in particular make recommendations (Article 7(2)(i)). The BIRPI Draft provided that it could also adopt resolutions; but, on the proposal of the Delegation of the United States of America, this provision was deleted, in the belief that the role of the Conference would be better indicated by the single word "recommendations." On the other hand, a text submitted by the Delegation of South Africa to the effect that discussions should relate to "legal-technical questions of general interest in the field of intellectual property" was considered too restrictive by the Committee.

50. Secondly, the Conference is the supreme organ for all matters concerning legal-technical assistance. It accordingly establishes the triennial program of assistance to developing countries (Article 7(2)(iii)).

51. In order to exercise its functions, the Conference has a budget which it establishes every three years (Article 7(2)(ii)). The budget allocations are used to finance the program of

legal-technical assistance and to cover the other expenses of the Conference.

52. The Conference is also competent to adopt amendments to the Convention as provided in Article 17 (Article 7(2)(iv)).

53. Lastly, like the General Assembly, it can determine which States and organizations will be admitted to its meetings as observers (Article 7(2)(v)).

(b) Composition

54. The Conference consists of all States Members of the Organization, whether they are members of a Union or not (Article 7(1)*(a)*), and each has one vote (Article 7(3)*(a)*).

55. There is, however, one case in which, on the joint proposal of France, the Federal Republic of Germany, Hungary, Italy, the Soviet Union, the United Kingdom, and the United States of America, only States not members of any of the Unions are entitled to vote, namely when fixing the amounts of their contributions (Article 7(3)*(d)*). The quorum and the qualified majority required for the Conference must in this case be attained in this restricted assembly.

56. As in the case of the General Assembly, each Member State is represented in the Conference by a delegation, the expenses of which are normally borne by that State and are in no case borne by WIPO (Article 7(1)*(b)* and *(c)*).

57. The Delegation of Madagascar submitted the same proposal in respect of the Conference as it had submitted in respect of the General Assembly. But this proposal was again rejected and the rule that one delegate can represent only one State (Article 7(3)*(f)*) was thus left unchanged.

(c) Sessions, Quorum and Majority

58. The Conference meets every third year in ordinary session, upon convocation by the Director General. For reasons of economy, these meetings are to be held at the same time and place as the General Assembly (Article 7(4)*(a)*).

59. The Conference also meets in extraordinary session. But its convocation by the Director General is subject to stricter conditions than the convocation of the General Assembly: it must be requested by the majority of Member States (Article 7(4)*(b)*).

60. The BIRPI Draft provided that, if the agenda included questions exclusively concerning industrial property or copyright, the Conference would meet as the " Industrial Property Conference " or " Copyright Conference." In this way, it was desired to mark the distinction between the two main fields

of intellectual property. The Committee considered, however, that this distinction was of little practical interest and that it might give rise to confusion. Consequently, on the proposal of the United Kingdom Delegation, the provision was deleted; it was, however, remarked that the question might be reconsidered in connection with the rules of procedure of the Conference.

61. According to the BIRPI Draft, it was necessary, in order to attain a quorum, for one-third of the Union countries and one-third of the non-Union countries to be represented. The Committee rejected this distinction: it will accordingly be sufficient for one-third of all States Members of the Organization to be represented (Article 7(3)*(b)*). Moreover, as the quorum had thus been kept at a relatively low level, it was not necessary to provide, should it not be attained, for subsequent written consultation, as had been done for the General Assembly.

62. As in the case of the General Assembly, the required majority was raised to two-thirds of the votes cast (Article 7(3)*(c)*). It was therefore possible to delete the special provisions which, in the BIRPI Draft, required a qualified majority of two-thirds for certain decisions. The adoption of amendments to the Convention is, however, subject to the triple vote required by Article 17(2)).

(d) Rules of Procedure

63. Like the General Assembly, the Conference will adopt rules of procedure to determine points of detail, in particular procedural points not regulated by the Convention (Article 7(5)).

XI. The Coordination Committee

(a) Functions

64. The Coordination Committee is both an advisory organ on questions of general interest and the executive organ of the General Assembly and the Conference. In addition, it has some functions of its own. Its most important tasks are listed in Article 8(3) which, like the provisions relating to the General Assembly and the Conference, contains a general clause under which the Coordination Committee performs such other functions as are allocated to it under the Convention (see, for example, Article 11(6), (7) and (8)*(c)*).

65. The first of the functions listed in Article 8(3) is an advisory one: the Coordination Committee gives advice to the various organs of the Unions and the Organization on matters of common interest to two or more of the Unions or to one or more of the Unions and the Organization itself, in particular regarding the budget of expenses common to the Unions. To the list of organs receiving such advice, the Committee added

the Director General, on the proposal of the Delegation of the Federal Republic of Germany.

66. The Coordination Committee also prepares the draft agenda of the General Assembly and of the Conference, as well as the draft program and budget of the Conference (Article 8(3)(ii) and (iii)).

67. Like the Executive Committees of the Unions, the Coordination Committee is responsible for approving the annual budget and program, on the basis of the triennial programs and budgets drawn up by the General Assembly and the Conference (Article 8(3)(iv)). Details will be established in the financial regulations of the Organization.

68. Lastly, under Article 8(3)(v) and (vi), the Coordination Committee has certain functions in the event of a vacancy in the post of Director General or if the term of office of the Director General expires.

(b) Composition

69. The Coordination Committee consists of the States party to the WIPO Convention which are members of the Executive Committee of the Paris Union or the Executive Committee of the Berne Union or both Executive Committees. However, in order to ensure the maintenance of the desired equilibrium between the two Unions, this rule applies as such only as long as neither of the two Executive Committees consists of more than one-fourth of the number of the countries members of the Union which elected them (Article 8(1)*(a)*). In addition, the country on the territory of which the Organization has its headquarters is an *ex officio* member of the Coordination Committee as long as it is under the obligation to grant advances to the Organization in accordance with Article 11(9)*(a)*.

70. In order not to complicate the composition of the Coordination Committee excessively, the other Unions could not be given direct representation on that Committee. The interests of these Unions can, however, be safeguarded by their members on the Executive Committees of the Paris Union or the Berne Union (Article 8(2)). The Paris Convention (Article 14(4)) and the Berne Convention (Article 23(4)) prescribe that, in electing the members of the Executive Committees, the Assemblies should have due regard to the need for countries party to the Special Agreements to be among the countries constituting the Executive Committees. On the other hand, if the Organization subsequently agrees to administer international agreements unconnected with the Paris and Berne Unions, it will be necessary, where appropriate, to make special provision for the representation on the Coordination Committee of the countries party to those agreements.

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

72. The representation of States members of the Coordination Committee is governed in the same way as for the General Assembly and the Conference (Article 8(1)*(b)* and *(d)*, and (5)*(a)*). In particular, each member State has only one vote, even if it belongs to the two Executive Committees which constitute the Coordination Committee.

(c) Sessions, Quorum and Majority

73. The Coordination Committee meets once every year in ordinary session upon convocation by the Director General (Article 8(4)*(a)*). As in the case of the General Assembly and the Conference, the Committee added to this rule a provision that the Coordination Committee could meet in extraordinary session. The Director General can convene such sessions on his own initiative, and is obliged to do so at the request of the Chairman of the Coordination Committee or at least one-fourth of its members (Article 8(4)*(b)*).

74. A quorum is constituted when at least one-half of all member States of the Committee are validly represented at a session (Article 8(5)*(b)*).

75. The Coordination Committee is to express its opinions and make its decisions by a simple majority of the votes cast (Article 8(6)*(a)*). However, so that the independence of the Unions will be fully safeguarded, the members present of the Executive Committee of the Paris Union and those of the Executive Committee of the Berne Union will have something in the nature of a right of veto, the procedure for which is established in Article 8(6)*(b)*.

76. Any State Member of the Organization, which is not a member of the Coordination Committee, may be represented at the meetings of the Committee by observers. In accordance with custom, such observers may take part in the debates but have no right to vote (Article 8(7)).

(d) Rules of Procedure

77. Like the General Assembly and the Conference, the Coordination Committee is to settle various points of detail, especially concerning procedure, in rules of procedure which it will establish itself (Article 8(8)).

XII. The International Bureau of Intellectual Property

78. The International Bureau of Intellectual Property is to be the Secretariat of WIPO (Article 9(1)).

79. It is directed by a Director General, who is the chief executive of the Organization (Article 9(2) and (4)*(a)*). The Director General is appointed by the General Assembly under the conditions laid down by Article 6(2)(i) and (3)*(g)* and by Article 8(3)(v). The Delegation of France recalled that its Government would have liked to see acceptance of the principle that the Director General should be a national of a State member of the principal Unions of Paris and Berne. However, this principle was not accepted by the Committee so that it will not be necessary for the Director General to be a national of a State member of one or more of the Unions or Member of the Organization.

80. The Director General is empowered to represent the Organization in its relations with third parties (Article 9(4)*(b)*). He is to conform to the instructions of the General Assembly, to which he will report; he prepares the draft budgets and programs and periodical reports on activities and participates in all meetings of the organs of the Organization or of any other committee or working group; he or a staff member designated by him will be the secretary of all such organs, committees and working groups (Article 9(4)*(c)*, (5), and (6)). It is obvious that all these functions need not necessarily be carried out by the Director General in person; if, for example, he is unable to attend, he will be replaced by the deputy designated by him.

81. The Director General is assisted by two or more Deputy Directors General, whom he appoints himself after his choice has been approved by the Coordination Committee (Article 9(2) and (7)).

82. Furthermore, the Director General appoints the necessary staff. The conditions of employment are to be fixed by the staff regulations to be approved by the Coordination Committee (Article 9(7)).

83. In relation to the recruitment and the rights and duties of the staff of the Organization, the Convention contains provisions similar to those to be found in Articles 100 and 101(3) of the United Nations Charter (Article 9(7) and (8)).

XIII. The Headquarters of the Organization

84. Under Article 10 of the Convention, the headquarters of the Organization will be at Geneva. The General Assembly can decide to transfer it to another place. However, the two-thirds majority needed for this decision to be valid must be attained not only in the General Assembly but also in the Assembly of the Paris Union and in the Assembly of the Berne Union (Article 6(3)*(d)* and *(g)*). These provisions did not give rise to any discussion and were unanimously adopted.

XIV. Finances

(a) Budgets

85. Each Union has its own budget. With regard to the Organization, the BIRPI Draft provided that it should also have a separate budget. Nevertheless, on a proposal of the Delegations of France, the Federal Republic of Germany, Hungary, Italy, the Soviet Union, the United Kingdom, and the United States of America, Main Committee V decided that the Organization would have two separate budgets: the budget of expenses common to the Unions, and the budget of the Conference (Article 11(1)).

86. The budget of expenses common to the Unions, which is to be adopted by the General Assembly (Article 6(2)(iv)), will include provision for expenses affecting more than one Union. It will be financed from the contributions of the Unions, charges due for certain services performed by the International Bureau (Article 11(2)*(b)*(i) and (ii)), and other less important sources indicated in Article 11(2)*(b)*(iii) to (v).

87. The budget of the Conference will include provision only for the expenses occasioned by the sessions of the Conference and by legal-technical assistance (Article 11(3)*(a)*). The expenses appearing in the budget of the Conference will be covered by the contributions of members outside the Unions fixed in accordance with Article 11(4)*(a)* of the Convention, by the voluntary contributions of the Unions, by sums received by the International Bureau for services rendered in the field of legal-technical assistance, and also by possible gifts, bequests, and subventions (Article 11(3)*(b)*(i) to (iv)).

88. It may happen that a budget cannot be approved before the beginning of a new financial period. In such a case, the budget will be at the same level as that of the previous year, in accordance with the procedure which will be laid down in the financial regulations (Article 11(4)*(e)*).

(b) Contributions

89. In order to fix the contributions of Members outside the Unions, recourse is to be had to the traditional system of

classes, which has been retained by the Unions. It does not, however, seem necessary for contributions to the budget of the Conference to be as differentiated as contributions to the budgets of the Unions; consequently, only three classes were provided for (Article 11(4)*(a)*).

90. In other respects, contributions to the budget of the Conference are to be calculated in the same way as contributions to the budgets of the Unions. Contrary to what has been the case to date, contributions will be due from the first of January of the financial period for which they are payable and not only in the course of the following year (Article 11(4)*(d)*). It is thought that in this way the Organization will have appreciably more liquid assets than BIRPI has had hitherto.

91. Arrears in the payment of financial contributions due to the Conference or to one of the Unions can involve loss of the right to vote, in accordance with the provisions of Article 11(5).

(c) Other Provisions

92. Like the Unions, the Organization is to have a working capital fund which will be formed of payments by the Unions and by Member States outside the Unions. The payments of the latter will be proportional to their annual contributions. If the fund becomes insufficient, it should be increased (Article 11(8)).

93. As the Organization has two budgets, one of which is within the scope of the General Assembly while the other is the responsibility of the Conference, the question arises which of these two organs will be competent for matters relating to the working capital fund, and in particular for deciding to increase it if it is considered insufficient. The point will have to be settled by the financial regulations.

94. As contributions are payable at the beginning of the financial period and the Organization has a working capital fund, it may be assumed that in normal conditions it should have sufficient liquid funds. But it might run short in extraordinary circumstances. For this reason it was provided that, under the headquarters agreement, the State on whose territory the Organization has its headquarters would have to undertake to make advances to the Organization if the working capital fund were insufficient. On this point, the WIPO Convention contains provisions similar to those of the other Conventions (Article 11(9)).

95. The auditing of the accounts is provided for in the same manner as for the Unions (Article 11(10)).

96. The Paris and Berne Conventions provide that the Assembly of each Union will approve the final accounts. There

is no similar provision in the WIPO Convention. This point will therefore have to be dealt with in the financial regulations.

97. In addition to the few points mentioned above, the financial regulations to be drawn up by the General Assembly in accordance with Article 6(2)(vi) will settle the details of all administrative questions relating to the finances of the Organization.

XV. Legal Capacity; Privileges and Immunities

98. To attain its objectives and exercise its functions, the Organization must naturally enjoy, on the territory of each Member State, such legal capacity as may be necessary in accordance with the provisions of the laws of that State (Article 12(1)). On this point, the Delegations of the United Kingdom, the Netherlands, and Australia, stated that in their view the expression " territory of each Member State " referred, in those States in which such a distinction was made, to the metropolitan territory and any dependent territory to which any of the Conventions may have been declared to apply.

99. The Organization will have to conclude a headquarters agreement with the Swiss Confederation and, should the headquarters be transferred elsewhere, with the new headquarters country (Article 12(2)). These agreements will contain the usual clauses concerning the privileges and immunities guaranteed to the Organization, its officials, and the representatives of Member States. In addition, they will have to include the financial clauses provided for in Article 11(9) and in the parallel provisions of the Conventions of the Unions.

100. Various international agreements contain a general provision to ensure that the organization they create enjoys, on the territory of each Member State, such privileges and immunities as may be necessary for the fulfilment of its purposes and that the same will apply to representatives of Member States and to the officials of the organization to the extent that may be necessary to enable them to exercise their functions in complete independence (see, in particular, Article 105(1) and (2) of the United Nations Charter). The Delegation of Czechoslovakia proposed that a provision of this nature should be inserted in the WIPO Convention. Nevertheless, the Committee considered that the Organization did not require such a general clause in the immediate future and that it would be sufficient if it could, if necessary, secure the required privileges and immunities by means of bilateral or multilateral agreements. This is provided for in Article 12(3).

101. Headquarters agreements and bilateral and multilateral agreements concerning privileges and immunities are to be negotiated by the Director General, who will be able to

take the initiative freely in such negotiation. On the other hand, it was specified, on the proposal of the Delegations of France and Switzerland, that he will only be able to conclude them, that is to say sign them, after they have been approved by the Coordination Committee (Article 12(4)).

XVI. Relations with Other Organizations

102. In order to attain its objectives and exercise its functions, WIPO will no doubt have to cooperate with other international organizations. When general working agreements have to be concluded with such organizations, the Director General may take the initiative in negotiating them, but he will not be able to conclude them until he has secured the approval of the Coordination Committee (Article 13(1)). On the other hand, in the case of agreements concerning cooperation in particular cases (for example, to provide specific assistance to a given State), special approval by the Coordination Committee will not be required. But such actions will generally be mentioned in the Organization's program and, if they have financial implications, budget, so that the General Assembly, the Conference, or in any case the Coordination Committee, will have an opportunity to take a position on them.

103. Article 13(1) does not, of course, apply to any agreement which might be concluded with the United Nations under the provisions of Articles 57 and 63 of the United Nations Charter. It will be the prerogative of the General Assembly to approve such an agreement in accordance with the procedure indicated in Article 6(3)*(f)*. Similarly, Article 13(1) does not in any way alter Article 6(3)*(e)*, dealing with the approval of measures concerning the administration of international agreements.

104. The arrangements which the Organization may make for consultation and cooperation with organizations other than the intergovernmental organizations are governed by Article 13(2), which gave rise to no discussion.

XVII. Becoming Party to the Convention

105. Those States which can become party to the Convention in accordance with Article 5 will accept it by completing the formalities which are usual in international public law: signature without reservation as to ratification, signature subject to ratification followed by the deposit of an instrument of ratification, or deposit of an instrument of accession (Article 14(1)).

106. It would not be correct to permit a State member of a Union to accept the WIPO Convention without having ratified, or acceded to, the administrative provisions of the Stock-

holm Act of the Paris Convention or the Berne Convention. Moreover, such a possibility would not be in the interests of the States themselves, since a State member of a Union which had acceded only to the WIPO Convention would be unable to be a member of the Coordination Committee because it could not be a member of the Executive Committee of the Paris or the Berne Union. For this reason, Article 14(2) requires that, when accepting the WIPO Convention, States members of a Union must simultaneously accept or have already accepted the administrative provisions of the Stockholm Act of the Paris Convention or the Berne Convention. If they are parties to both Conventions, it is sufficient for them to have ratified or acceded to the administrative provisions of the Stockholm Act of one of them.

107. WIPO being a modern organization provided with organs capable of representing it internationally, it was possible to provide that the instruments of ratification and accession may be deposited with the Director General, and Article 14(3) so provides.

XVIII. Entry into Force of the Convention

108. As is customary, the Convention will enter into force when a certain number of States have ratified it or acceded to it. For this purpose, only ratifications or accessions by States members of a Union will be counted. The Convention will enter into force when ten States bound by the new administrative provisions of the Paris Convention and seven States bound by the new administrative provisions of the Berne Convention have completed one or the other of these formalities (Article 15(1)). The numbers correspond to the numbers required for the entry into force of the administrative provisions of the Stockholm Act of the Paris and Berne Conventions. Consequently, the entry into force of the WIPO Convention will coincide with the entry into force of the administrative provisions of the Paris Convention, or, if the administrative provisions of the Berne Convention enter into force later than those of the Paris Convention, then with the entry into force of the administrative provisions of the Berne Convention.

109. Arguing that the WIPO Convention would involve substantial changes of structure and that it should only enter into force after a substantial number of States have ratified or acceded to it, and also in order to avoid an excessively prolonged coexistence of two very different administrative systems, the Delegation of France proposed that the entry into force should be made dependent upon thirty ratifications or accessions by countries party to the Paris Convention, and twenty ratifications or accessions by countries party to the

Berne Convention. But this proposal was rejected by the Committee, which considered that the Convention should enter into force as early as possible.

XIX. Reservations

110. Article 16 states with commendable succinctness that " no reservations to this Convention are permitted." This text does not require lengthy comment: a State's ratification of or accession to the Convention implies acceptance of all its provisions.

XX. Amendments to the Convention

111. Hitherto, the Berne and Paris Conventions, and the Special Agreements, could be amended only by diplomatic conferences of revision. This rule is maintained in respect of their substantive provisions. On the other hand, like the Charter of the United Nations (Article 108 *et seq.*), and other conventions establishing international organizations, the WIPO Convention can be revised without the need for a diplomatic conference. A strict procedure must, however, guarantee that amendments are thoroughly studied and accepted by the great majority of Member States.

112. In the first place, the preparation of amendments is governed by Article 17(1). Amendment proposals, which may be initiated by any Member State, by the Coordination Committee, or by the Director General, will be communicated by the latter to the Member States at least six months before they are submitted to the Conference.

113. The adoption of amendments is governed by Article 17(2). Before being discussed by the Conference, the proposed amendments must be adopted by the Assemblies of the Paris and Berne Unions by a three-fourths majority. In the Conference, the decision is taken by a simple majority of the Member States. Non-Union countries take part in the vote only if the amendments are likely to affect their rights or obligations. It will be for the Conference to determine, in each case, whether this condition is fulfilled.

114. Lastly, entry into force is governed by Article 17(3). In this connection, it should be pointed out that, once the required number of acceptances is received, the amendment is binding on all Member States, unless it increases their financial obligations.

XXI. Denunciation of the Convention

115. Any Member State may denounce the WIPO Convention (Article 18(1)). If it is a Union country, it is not necessary for it also to leave the Union or Unions of which it is a

member. It may therefore remain party to the Berne Convention, the Paris Convention, and the Special Agreements. In taking this decision, the majority of delegations held the view that the link between the Unions and the Organization was not so close that it was impossible to leave the latter without at the same time leaving the former.

116. Such a State may, of course, remain a member of all the organs of the Unions to which it belongs. But it cannot belong to the General Assembly, the Conference or the Coordination Committee. If a number of States which are members of the Executive Committe of one of the principal Unions were in this situation, this would lead to a lack of balance in the membership of the Coordination Committee. But this risk is so slight that it can be disregarded.

117. Denunciation takes effect six months after the date on which the Director General has received the notification (Article 18(2)).

XXII. Notifications

118. Article 19 lists the notifications normally devolving on the Director General of an international organization. The list is not exhaustive. For instance, the Director General must also notify Member States of the class chosen by any new non-Union member for its contributions and of any change in class.

XXIII. Settlement of Disputes

119. The BIRPI Draft contained no provisions concerning the settlement of disputes. The Delegation of Japan proposed that the WIPO Convention include a provision according to which any dispute between Member States regarding the interpretation or application of the Convention could be referred, as a last resort, to the International Court of Justice, unless the States in question agreed on another method of settlement.

120. The Committee considered, however, that, as the WIPO Convention contained only administrative provisions, it was unlikely that any disputes would arise that would warrant intervention by the International Court of Justice. It was therefore considered preferable not to insert in the Convention any provision concerning the settlement of disputes.

XXIV. Final Provisions

121. Article 20 deals with those questions which normally form the subject of final provisions. It should be noted that the WIPO Convention is drawn up in English, French, Russian, and Spanish, the four texts being equally authentic (Article 20(1)*(a)*). In case of any discrepancy, it will therefore be necessary to ascertain which text expresses the meaning of the

Convention most accurately. In addition, official texts will be established by the Director General, after consultation with the interested Governments, in various languages, amongst which the Committee included Portuguese on the proposal of the Delegation of Portugal (Article 20(2)).

122. The original copy of the Convention is deposited with the Government of Sweden, but it is the Director General of the Organization who distributes the certified copies; he will also register the Convention with the Secretariat of the United Nations (Article 20(1)*(a)*, (3) and (4)).

XXV. Transitional Provisions

123. Article 21 distinguishes between several transitional periods. The first one lasts from the signing of the Convention until its entry into force. During that period various duties entrusted by the Convention to the Director General and the International Bureau will have to be carried out. For example, copies of the Convention will have to be distributed and translation into various languages arranged. As there will then be neither a Director General nor an International Bureau, those duties will be carried out by the Director and by BIRPI (Article 21(1)).

124. The entry into force of the WIPO Convention will start a second transitional period, undoubtedly a long one, that will last until all the States members of the Unions have ratified or acceded to the said Convention. During that period, the same office, with the same staff, will be the International Bureau of Intellectual Property for the States parties to the WIPO Convention, and the United International Bureaux for the Protection of Industrial, Literary and Artistic Property (BIRPI) for the others. Similarly, the Head of the Secretariat will be Director General for the former and Director for the latter (Article 21(3)).

125. The first five years of this second transitional period will themselves be a special transitional period concerning which Article 21(2) contains special rules. During this five-year period, the States members of the Unions that are not yet parties to the WIPO Convention may, if they announce the intention by notification to the Director General, exercise the same rights as if they had ratified the WIPO Convention or acceded to it. They will thus become members of the General Assembly and of the Conference and can also become members of the Coordination Committee. On the other hand, they will not have any of the obligations issuing from the WIPO Convention.

126. Lastly, when all the States members of the Paris Union have become Members of the Organization, the rights,

obligations and property of the Bureau of that Union will devolve upon the International Bureau; the same will apply to the Berne Union when the same condition has been fulfilled in its case (Article 21(4)). At that time, BIRPI will cease to exist and its rights and obligations will necessarily devolve on the International Bureau of Intellectual Property. Although provisions to this effect are already included in the Paris and Berne Conventions (Stockholm Act), it seemed advisable to repeat them in the WIPO Convention, so that the Organization expressly agrees that its organ shall be invested with the rights and obligations of BIRPI.

XXVI. Conclusion

127. The Convention creating WIPO, which has been prepared with great care by BIRPI, the Swedish Government, and various Committees of Experts, now appears to be as it should. The functioning of the new Organization will perhaps need a certain period of adjustment. However, even if the legitimate desire to safeguard the independence of each Union entailed the establishment of many organs, the Stockholm Conference has succeeded in clearly delimiting their respective fields of competence. Similarly, the financial machinery of the Unions and the Organization seems perfectly adapted to requirements. Of course, it may be that practical problems which cannot be foreseen at present will arise. There is reason to hope, however, that the spirit of international cooperation which was so manifest in the Stockholm Conference will continue to prevail in the new Organization and will allow any difficulties to be resolved. It is in this way that WIPO will be able to achieve the noble purpose which has been assigned to it and give effective encouragement to creative activity, thereby contributing to the spiritual enrichment and the material well-being of mankind as a whole.

[This report was unanimously adopted by Main Committee V in its eleventh meeting on July 10, 1967.]

SIGNED TEXTS

Convention
Establishing the World Intellectual Property Organization

КОНВЕНЦИЯ, УЧРЕЖДАЮЩАЯ ВСЕМИРНУЮ ОРГАНИЗАЦИЮ ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ

Convention Establishing the World Intellectual Property Organization

signed at Stockholm on July 14, 1967

The Contracting Parties,

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

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

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

Agree as follows:

Article 1
Establishment of the Organization

The World Intellectual Property Organization is hereby established.

Article 2
Definitions

For the purposes of this Convention:

(i) " Organization " shall mean the World Intellectual Property Organization (WIPO);

(ii) " International Bureau " shall mean the International Bureau of Intellectual Property;

(iii) " Paris Convention " shall mean the Convention for the Protection of Industrial Property signed on March 20, 1883, including any of its revisions;

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

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

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

Конвенция, учреждающая Всемирную Организацию Интеллектуальной Собственности

Подписана в Стокгольме 14 июля 1967 года.

Договаривающиеся стороны,

Желая внести вклад в лучшее взаимопонимание и сотрудничество между государствами в интересах их взаимной выгоды на основе уважения суверенитета и равенства,

Стремясь, в целях поощрения творческой деятельности, содействовать охране интеллектуальной собственности во всем мире,

Стремясь модернизировать и сделать более эффективной администрацию Союзов, образованных в области охраны промышленной собственности и в области охраны литературных и художественных произведений, при полном уважении самостоятельности каждого из Союзов,

Согласились о нижеследующем :

Статья 1
Учреждение организации

Настоящей Конвенцией учреждается Всемирная Организация Интеллектуальной Собственности.

Статья 2
Определения

В смысле настоящей Конвенции :

(i) « Организация » означает Всемирную Организацию Интеллектуальной Собственности (ВОИС) ;

(ii) « Международное бюро » означает Международное бюро по интеллектуальной собственности ;

(iii) « Парижская конвенция » означает Конвенцию по охране промышленной собственности, подписанную 20 марта 1883 года, включая любую из ее пересмотренных редакций ;

(iv) « Бернская конвенция » означает Конвенцию по охране литературных и художественных произведений, подписанную 9 сентября 1886 года, включая любую из ее пересмотренных редакций ;

(v) « Парижский союз » означает Международный союз, образованный Парижской конвенцией ;

(vi) « Бернский союз » означает Международный союз, образованный Бернской конвенцией ;

(vii) " Unions " shall mean the Paris Union, the Special Unions and Agreements established in relation with that Union, the Berne Union, and any other international agreement designed to promote the protection of intellectual property whose administration is assumed by the Organization according to Article 4 (iii);

(viii) " intellectual property " shall include the rights relating to:

- — literary, artistic and scientific works,
- — performances of performing artists, phonograms, and broadcasts,
- — inventions in all fields of human endeavor,
- — scientific discoveries,
- — industrial designs,
- — trademarks, service marks, and commercial names and designations,
- — protection against unfair competition,

and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Article 3

Objectives of the Organization

The objectives of the Organization are:

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

(ii) to ensure administrative cooperation among the Unions.

Article 4

Functions

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

(i) shall promote the development of measures designed to facilitate the efficient protection of intellectual property throughout the world and to harmonize national legislation in this field;

(ii) shall perform the administrative tasks of the Paris Union, the Special Unions established in relation with that Union, and the Berne Union;

(iii) may agree to assume, or participate in, the administration of any other international agreement designed to promote the protection of intellectual property;

(vii) « Союзы » означают Парижский союз, специальные Союзы и специальные Соглашения, заключенные в связи с этим Союзом, Бернский союз, а также любое другое международное соглашение, призванное содействовать охране интеллектуальной собственности, администрацию по осуществлению которого Организация приняла на себя в соответствии со статьей 4 (iii) ;

(viii) « интеллектуальная собственность » включает права, относящиеся к :

— литературным, художественным и научным произведениям,
— исполнительской деятельности артистов, звукозаписи, радио- и телевизионным передачам,
— изобретениям во всех областях человеческой деятельности,
— научным открытиям,
— промышленным образцам,
— товарным знакам, знакам обслуживания, фирменным наименованиям и коммерческим обозначениям,
— защите против недобросовестной конкуренции,

а также все другие права, относящиеся к интеллектуальной деятельности в производственной, научной, литературной и художественной областях.

Статья 3

Цели организации

Организация имеет цели :

(i) содействовать охране интеллектуальной собственности во всем мире путем сотрудничества государств и, в соответствующих случаях, во взаимодействии с любой другой международной организацией,

(ii) обеспечивать административное сотрудничество Союзов.

Статья 4

Функции

Для достижения целей, изложенных в статье 3, Организация через свои соответствующие органы и при уважении компетенции каждого из Союзов :

(i) содействует разработке мероприятий, рассчитанных на улучшение охраны интеллектуальной собственности во всем мире и на гармонизацию национальных законодательств в этой области ;

(ii) выполняет административные функции Парижского союза, специальных Союзов, образованных в связи с этим Союзом, и Бернского союза ;

(iii) может согласиться принять на себя администрацию по осуществлению любого другого международного соглашения, призванного содействовать охране интеллектуальной собственности, или участвовать в такой администрации ;

(iv) shall encourage the conclusion of international agreements designed to promote the protection of intellectual property;

(v) shall offer its cooperation to States requesting legal-technical assistance in the field of intellectual property;

(vi) shall assemble and disseminate information concerning the protection of intellectual property, carry out and promote studies in this field, and publish the results of such studies;

(vii) shall maintain services facilitating the international protection of intellectual property and, where appropriate, provide for registration in this field and the publication of the data concerning the registrations;

(viii) shall take all other appropriate action.

Article 5

Membership

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

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

(i) it is a member of the United Nations, any of the Specialized Agencies brought into relationship with the United Nations, or the International Atomic Energy Agency, or is a party to the Statute of the International Court of Justice, or

(ii) it is invited by the General Assembly to become a party to this Convention.

Article 6

General Assembly

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

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

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

(2) The General Assembly shall:

(i) appoint the Director General upon nomination by the Coordination Committee;

(iv) способствует заключению международных соглашений, призванных содействовать охране интеллектуальной собственности ;

(v) предлагает свое сотрудничество государствам, запрашивающим юридико-техническую помощь в области интеллектуальной собственности ;

(vi) собирает и распространяет информацию, относящуюся к охране интеллектуальной собственности, осуществляет и поощряет исследования в этой области и публикует результаты таких исследований ;

(vii) обеспечивает деятельность служб, облегчающих международную охрану интеллектуальной собственности и, в соответствующих случаях, осуществляет регистрацию в этой области, а также публикует сведения, касающиеся данной регистрации ;

(viii) предпринимает любые другие надлежащие действия.

Статья 5

Членство

(1) Любое государство, являющееся членом какого-либо из Союзов, как они определены в статье 2 (vii), может стать членом Организации ;

(2) Членом Организации может стать также любое государство, не являющееся членом какого-либо из Союзов, при условии, что :

(i) оно является членом Организации Объединенных Наций, какого-либо из специализированных учреждений, находящихся в связи с Организацией Объединенных Наций, или Международного агентства по атомной энергии, или является стороной Статута Международного суда, или

(ii) оно приглашено Генеральной Ассамблеей стать стороной настоящей Конвенции.

Статья 6

Генеральная Ассамблея

(1) (a) Учреждается Генеральная Ассамблея, состоящая из государств-сторон настоящей Конвенции, которые являются членами какого-либо из Союзов.

(b) Правительство каждого государства представлено одним делегатом, который может иметь заместителей, советников и экспертов.

(c) Расходы каждой делегации несет назначившее ее правительство.

(2) Генеральная Ассамблея :

(i) назначает Генерального Директора по представлению Координационного комитета ;

(ii) review and approve reports of the Director General concerning the Organization and give him all necessary instructions;

(iii) review and approve the reports and activities of the Coordination Committee and give instructions to such Committee;

(iv) adopt the triennial budget of expenses common to the Unions;

(v) approve the measures proposed by the Director General concerning the administration of the international agreements referred to in Article 4 (iii);

(vi) adopt the financial regulations of the Organization;

(vii) determine the working languages of the Secretariat, taking into consideration the practice of the United Nations;

(viii) invite States referred to under Article 5 (2) (ii) to become party to this Convention;

(ix) determine which States not Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;

(x) exercise such other functions as are appropriate under this Convention.

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

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

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

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

(ii) рассматривает и утверждает отчеты Генерального Директора, касающиеся Организации, и дает ему все необходимые инструкции ;

(iii) рассматривает и утверждает отчеты и одобряет деятельность Координационного комитета и дает ему инструкции ;

(iv) принимает трехгодичный бюджет расходов, общих для Союзов ;

(v) одобряет предлагаемые Генеральным Директором мероприятия, касающиеся администрации по осуществлению международных соглашений, предусмотренных в статье 4 (iii) ;

(vi) принимает финансовый регламент Организации ;

(vii) определяет рабочие языки Секретариата, принимая во внимание практику Организации Объединенных Наций ;

(viii) приглашает государства, предусмотренные статьей 5 (2) (ii), стать сторонами настоящей Конвенции ;

(ix) определяет, какие государства, не являющиеся членами Организации, и какие межправительственные или международные неправительственные организации могут быть допущены на ее заседания в качестве наблюдателей ;

(x) выполняет другие надлежащие функции в рамках настоящей Конвенции.

(3) (a) Каждое государство, независимо от того, является ли оно членом одного или более Союзов, имеет в Генеральной Ассамблее один голос.

(b) Половина государств-членов Генеральной Ассамблеи составляет кворум.

(c) Несмотря на положения подпараграфа (b), если на какой-либо сессии количество представленных государств составляет менее половины, но равно или превышает одну треть государств-членов Генеральной Ассамблеи, она может принимать решения ; однако, все решения Генеральной Ассамблеи за исключением решений, относящихся к ее собственным Правилам процедуры, вступают в силу лишь при соблюдении нижеследующих условий. Международное бюро направляет упомянутые решения государствам-членам Генеральной Ассамблеи, которые не были на ней представлены, и приглашает их сообщить в письменном виде в трехмесячный срок, считая с даты направления решений, голосуют ли они за эти решения, против них или воздерживаются. Если по истечении этого срока количество государств, таким образом проголосовавших или сообщивших, что они воздержались, достигнет того количества, которого недоставало для достижения кворума на самой сессии, такие решения вступают в силу при условии, что одновременно сохраняется необходимое большинство.

(d) При условии соблюдения положений подпараграфов (e) и (f) Генеральная Ассамблея принимает свои решения большинством в две трети поданных голосов.

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

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

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

(h) Abstentions shall not be considered as votes.

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

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

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

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

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

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

Article 7

Conference

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

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

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

(2) The Conference shall:

(i) discuss matters of general interest in the field of intellectual property and may adopt recommendations relating to such matters, having regard for the competence and autonomy of the Unions;

(ii) adopt the triennial budget of the Conference;

(e) Для одобрения мероприятий, касающихся администрации по осуществлению международных соглашений, предусмотренных в статье (4) (iii), требуется большинство в три четверти поданных голосов.

(f) Для одобрения соглашения с Организацией Объединенных Наций согласно положениям статей 57 и 63 Устава Организации Объединенных Наций требуется большинство в девять десятых поданных голосов.

(g) Для назначения Генерального Директора (параграф (2) (i)), одобрения предлагаемых Генеральным Директором мероприятий относительно администрации по осуществлению международных соглашений (параграф (2) (v)) и переноса штаб-квартиры (статья 10) необходимое большинство голосов должно быть достигнуто не только в Генеральной Ассамблее, но также в Ассамблее Парижского союза и Ассамблее Бернского союза.

(h) Голоса воздержавшихся в расчет не принимаются.

(i) Делегат может представлять только одно государство и голосовать лишь от его имени.

(4) (a) Генеральная Ассамблея собирается на очередную сессию каждый третий календарный год по созыву Генерального Директора.

(b) Генеральная Ассамблея собирается на чрезвычайную сессию, созываемую Генеральным Директором по требованию Координационного комитета или по требованию одной четверти государств-членов Генеральной Ассамблеи.

(c) Сессии проводятся в штаб-квартире Организации.

(5) Государства-стороны настоящей Конвенции, не являющиеся членами какого-либо из Союзов, допускаются на заседания Генеральной Ассамблеи в качестве наблюдателей.

(6) Генеральная Ассамблея принимает свои собственные Правила процедуры.

Статья 7

Конференция

(1) (a) Учреждается Конференция, состоящая из государств-сторон настоящей Конвенции, независимо от того, являются они членами какого-либо из Союзов или не являются.

(b) Правительство каждого государства представлено одним делегатом, который может иметь заместителей, советников и экспертов.

(c) Расходы каждой делегации несет назначившее ее правительство.

(2) Конференция :

(i) обсуждает вопросы, представляющие общий интерес в области интеллектуальной собственности, и может принимать рекомендации по таким вопросам с учетом компетенции и самостоятельности Союзов ;

(ii) принимает трехгодичный бюджет Конференции ;

(iii) within the limits of the budget of the Conference, establish the triennial program of legal-technical assistance;
(iv) adopt amendments to this Convention as provided in Article 17;
(v) determine which States not Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;
(vi) exercise such other functions as are appropriate under this Convention.

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

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

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

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

(e) Abstentions shall not be considered as votes.

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

(4) *(a)* The Conference shall meet in ordinary session, upon convocation by the Director General, during the same period and at the same place as the General Assembly.

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

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

Article 8

Coordination Committee

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

(iii) принимает в пределах бюджета Конференции трехгодичную программу юридико-технической помощи ;
(iv) принимает поправки к настоящей Конвенции в порядке, предусмотренном статьей 17 ;
(v) определяет, какие государства, не являющиеся членами Организации, и какие межправительственные и международные неправительственные организации могут быть допущены на ее заседания в качестве наблюдателей ;
(vi) выполняет другие надлежащие функции в рамках настоящей Конвенции.

(3) (a) Каждое государство-член имеет в Конференции один голос.

(b) Одна треть государств-членов составляет кворум.

(c) При соблюдении положений статьи 17 Конференция принимает решения большинством в две трети поданных голосов.

(d) Размер взносов государств-сторон настоящей Конвенции, не являющихся членами какого-либо из Союзов, определяется голосованием, в котором имеют право участвовать только делегаты упомянутых государств.

(e) Голоса воздержавшихся в расчет не принимаются.

(f) Делегат может представлять только одно государство и голосовать лишь от его имени.

(4) (a) Конференция собирается на очередную сессию по созыву Генерального Директора в то же самое время и в том же самом месте, что и Генеральная Ассамблея.

(b) Конференция собирается на чрезвычайную сессию- созываемую Генеральным Директором по требованию боль, шинства государств-членов.

(5) Конференция принимает свои собственные Правила процедуры.

Статья 8

Координационный Комитет

(1) (a) Учреждается Координационный комитет, состоящий из государств-сторон настоящей Конвенции, которые являются членами Исполнительного комитета Парижского союза, или Исполнительного комитета Бернского союза, или обоих этих Исполнительных комитетов. Однако, если какой-либо из этих Исполнительных комитетов состоит из более чем одной четверти количества стран-членов Ассамблеи, которая их избрала, то такой Исполнительный комитет назначает из числа своих членов государства, которые будут членами Координационного комитета, с таким расчетом чтобы их количество не превышало одной четверти, упомянутой выше ; при этом подразумевается, что страна, на территории которой Организация имеет свою штаб-квартиру, не включается в подсчет при определении упомянутой одной четверти.

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

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

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

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

(3) The Coordination Committee shall:

(i) give advice to the organs of the Unions, the General Assembly, the Conference, and the Director General, on all administrative, financial and other matters of common interest either to two or more of the Unions, or to one or more of the Unions and the Organization, and in particular on the budget of expenses common to the Unions;

(ii) prepare the draft agenda of the General Assembly;

(iii) prepare the draft agenda and the draft program and budget of the Conference;

(iv) on the basis of the triennial budget of expenses common to the Unions and the triennial budget of the Conference, as well as on the basis of the triennial program of legal-technical assistance, establish the corresponding annual budgets and programs;

(v) when the term of office of the Director General is about to expire, or when there is a vacancy in the post of the Director General, nominate a candidate for appointment to such position by the General Assembly; if the General Assembly does not appoint its nominee, the Coordination Committee shall nominate another candidate; this procedure shall be repeated until the latest nominee is appointed by the General Assembly;

(vi) if the post of the Director General becomes vacant between two sessions of the General Assembly, appoint an Acting Director General for the term preceding the assuming of office by the new Director General;

(b) Правительство каждого государства-члена Координационного комитета представлено в нем одним делегатом, который может иметь заместителей, советников и экспертов.

(c) Когда Координационный комитет рассматривает либо вопросы, имеющие прямое отношение к программе или бюджету Конференции и ее повестке дня, либо предложения о внесении поправок в Конвенцию, затрагивающих права или обязанности государств-сторон настоящей Конвенции, не являющихся членами какого-либо из Союзов, одна четверть таких государств участвует в заседаниях Координационного комитета с такими же правами, как и члены Координационного комитета. Конференция избирает на каждой ее очередной сессии государства для участия в таких заседаниях.

(d) Расходы каждой делегации несет назначившее ее правительство.

(2) Если другие Союзы, администрацию которых осуществляет Организация, желают быть представленными, как таковые, в Координационном комитете, их представители должны быть назначены из числа государств-членов Координационного комитета.

(3) Координационный комитет :

(i) дает советы органам Союзов, Генеральной Ассамблее, Конференции и Генеральному Директору по всем административным, финансовым и другим вопросам, представляющим общий интерес для двух или более Союзов, или одного или более Союзов и Организации, в частности, по бюджету расходов, общих для Союзов ;

(ii) подготавливает проект повестки дня Генеральной Ассамблеи ;

(iii) подготавливает проект повестки дня, а также проекты программы и бюджета Конференции ;

(iv) на основе трехгодичного бюджета расходов, общих для Союзов, и трехгодичного бюджета Конференции, а также на основе трехгодичной программы юридико-технической помощи, принимает соответствующие годовые бюджеты и программы ;

(v) до истечения срока полномочий Генерального Директора или когда пост Генерального Директора становится вакантным, представляет кандидата для назначения его на этот пост Генеральной Ассамблеей ; если Генеральная Ассамблея не назначит этого кандидата, Координационный комитет представляет другого кандидата ; эта процедура повторяется до тех пор, пока, наконец, кандидат не будет назначен Генеральной Ассамблеей ;

(vi) если пост Генерального Директора становится вакантным в период между двумя сессиями Генеральной Ассамблеи, назначает Исполняющего обязанности Генерального Директора на срок до вступления в должность нового Генерального Директора ;

(vii) perform such other functions as are allocated to it under this Convention.

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

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

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

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

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

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

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

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

(8) The Coordination Committee shall establish its own rules of procedure.

Article 9
International Bureau

(1) The International Bureau shall be the Secretariat of the Organization.

(2) The International Bureau shall be directed by the Director General, assisted by two or more Deputy Directors General.

(vii) выполняет все другие функции, возложенные на него в соответствии с настоящей Конвенцией.

(4) (a) Координационный комитет собирается на очередные сессии один раз в год по созыву Генерального Директора. Как правило, Комитет собирается в штаб-квартире Организации.

(b) Координационный комитет собирается на чрезвычайную сессию, созываемую Генеральным Директором либо по его собственной инициативе, либо по просьбе Председателя, либо по требованию одной четверти членов Координационного комитета.

(5) (a) Каждое государство, независимо от того, является ли оно членом одного или обоих Исполнительных комитетов, упомянутых в параграфе (1) (a), имеет в Координационном комитете один голос.

(b) Половина членов Координационного комитета составляет кворум.

(c) Делегат может представлять только одно государство и голосовать лишь от его имени.

(6) (a) Координационный комитет выражает свое мнение и принимает решения простым большинством поданных голосов. Голоса воздержавшихся в расчет не принимаются.

(b) Если даже достигнуто простое большинство, любой член Координационного комитета немедленно после голосования может потребовать, чтобы был проведен специальный подсчет голосов следующим образом : составляются два отдельных списка с указанием соответственно названий стран-членов Исполнительного комитета Парижского союза и Исполнительного комитета Бернского союза ; голос каждого государства вписывается против его названия в каждом списке, где оно занесено. Если этот специальный подсчет показывает, что простое большинство не достигнуто в каждом из этих списков, предложение не считается принятым.

(7) Любое государство-член Организации, которое не является членом Координационного комитета, может быть представлено на заседаниях Комитета наблюдателями с правом участвовать в обсуждении, но без права голоса.

(8) Координационный комитет принимает свои собственные Правила процедуры.

Статья 9

Международное бюро

(1) Международное бюро является Секретариатом Организации.

(2) Международное бюро возглавляется Генеральным Директором, который имеет двух или более Заместителей Генерального Директора.

(3) The Director General shall be appointed for a fixed term, which shall be not less than six years. He shall be eligible for reappointment for fixed terms. The periods of the initial appointment and possible subsequent appointments, as well as all other conditions of the appointment, shall be fixed by the General Assembly.

(4) *(a)* The Director General shall be the chief executive of the Organization.

(b) He shall represent the Organization.

(c) He shall report to, and conform to the instructions of, the General Assembly as to the internal and external affairs of the Organization.

(5) The Director General shall prepare the draft programs and budgets and periodical reports on activities. He shall transmit them to the Governments of the interested States and to the competent organs of the Unions and the Organization.

(6) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the General Assembly, the Conference, the Coordination Committee, and any other committee or working group. The Director General or a staff member designated by him shall be ex officio secretary of these bodies.

(7) The Director General shall appoint the staff necessary for the efficient performance of the tasks of the International Bureau. He shall appoint the Deputy Directors General after approval by the Coordination Committee. The conditions of employment shall be fixed by the staff regulations to be approved by the Coordination Committee on the proposal of the Director General. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

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

(3) Генеральный Директор назначается на определенный срок продолжительностью не менее 6 лет. Он может назначаться вновь на определенные сроки. Сроки первоначального назначения и возможных последующих назначений, а также все другие условия назначения определяются Генеральной Ассамблеей.

(4) (a) Генеральный Директор является главным должностным лицом Организации.

(b) Он представляет Организацию.

(c) Он отчитывается перед Генеральной Ассамблеей и выполняет ее директивы, касающиеся внутренних и внешних дел Организации.

(5) Генеральный Директор подготавливает проекты бюджетов и программ, а также периодические отчеты о деятельности. Он передает их правительствам заинтересованных государств, а также компетентным органам Союзов и Организации.

(6) Генеральный Директор и любой член персонала, назначенный им, участвуют без права голоса во всех заседаниях Генеральной Ассамблеи, Конференции, Координационного комитета и любого другого комитета или рабочей группы. Генеральный Директор или назначенный им член персонала является ex officio секретарем этих органов.

(7) Генеральный Директор назначает персонал, необходимый для эффективного выполнения задач Международного бюро. Он назначает Заместителей Генерального Директора после одобрения Координационного комитета. Условия назначения определяются регламентом о персонале, утверждаемым Координационным комитетом по предложению Генерального Директора. Важнейшим фактором в подборе персонала и определении условий службы является необходимость обеспечения высокого уровня работоспособности, компетентности и добросовестности. Должное внимание уделяется важности подбора персонала на возможно более широкой географической основе.

(8) Характер обязанностей Генерального Директора и персонала является исключительно международным. При исполнении своих обязанностей они не должны запрашивать или получать инструкции от какого бы то ни было правительства или власти за пределами Организации. Они должны воздерживаться от любого действия, которое могло бы поставить под сомнение их положение как международных должностных лиц. Каждое государство-член обязуется уважать исключительно международный характер обязанностей Генерального Директора и персонала и не пытаться влиять на них при исполнении ими своих обязанностей.

Article 10

Headquarters

(1) The headquarters of the Organization shall be at Geneva.

(2) Its transfer may be decided as provided for in Article 6(3)*(d)* and *(g)*.

Article 11

Finances

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

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

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

(i) contributions of the Unions, provided that the amount of the contribution of each Union shall be fixed by the Assembly of that Union, having regard to the interest the Union has in the common expenses;

(ii) charges due for services performed by the International Bureau not in direct relation with any of the Unions or not received for services rendered by the International Bureau in the field of legal-technical assistance;

(iii) sale of, or royalties on, the publications of the International Bureau not directly concerning any of the Unions;

(iv) gifts, bequests, and subventions, given to the Organization, except those referred to in paragraph (3)*(b)*(iv);

(v) rents, interests, and other miscellaneous income, of the Organization.

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

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

(i) contributions of States party to this Convention not members of any of the Unions;

(ii) any sums made available to this budget by the Unions, provided that the amount of the sum made available by each Union shall be fixed by the Assembly of that Union and that each Union shall be free to abstain from contributing to the said budget;

(iii) sums received for services rendered by the International Bureau in the field of legal-technical assistance;

(iv) gifts, bequests, and subventions, given to the Organization for the purposes referred to in subparagraph *(a)*.

Статья 10
Штаб-квартира

(1) Штаб-квартира Организации располагается в Женеве.

(2) Решение о ее переносе может быть принято Генеральной Ассамблеей, как это предусмотрено в статье 6 (3) (d) и (g).

Статья 11
Финансы

(1) Организация имеет два отдельных бюджета: бюджет расходов, общих для Союзов, и бюджет Конференции.

(2) (a) Бюджет расходов, общих для Союзов, предусматривает расходы, представляющие интерес для нескольких Союзов.

(b) Этот бюджет финансируется из следующих источников:

(i) взносов Союзов, причем размер взноса каждого Союза определяется Ассамблеей этого Союза с учетом той доли общих расходов, которые производятся в интересах данного Союза;

(ii) платежей за предоставляемые Международным бюро услуги, не относящиеся непосредственно ни к какому-либо из Союзов, ни к оказанию Международным бюро юридико-технической помощи;

(iii) поступлений от продажи публикаций Международного бюро, не относящихся непосредственно к какому-либо из Союзов, или поступлений от передачи прав на такие публикации;

(iv) даров, завещанных средств и субсидий в пользу Организации, за исключением случаев, предусмотренных в параграфе (3) (b) (iv);

(v) ренты, процентов и других различных доходов Организации.

(3) (a) Бюджет Конференции предусматривает расходы на проведение сессий Конференции и на осуществление программы юридико-технической помощи.

(b) Этот бюджет финансируется из следующих источников:

(i) взносов государств-сторон настоящей Конвенции, не являющихся членами какого-либо из Союзов;

(ii) отчислений Союзов в данный бюджет, причем размер отчисления каждого Союза определяется Ассамблеей этого Союза и любой Союз может воздержаться от отчисления в упомянутый бюджет;

(iii) средств, получаемых за услуги, оказываемые Международным бюро в области юридико-технической помощи;

(iv) даров, завещанных средств и субсидий в пользу Организации для целей, предусмотренных подпараграфом (a).

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

Class A	10
Class B	3
Class C	1

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

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

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

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

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

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

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

(4) (a) Для определения своего взноса в бюджет Конференции каждое государство-сторона настоящей Конвенции, не являющееся членом какого-либо из Союзов, относится к определенному классу и уплачивает свой годовой взнос на основе следующим образом установленного числа единиц :

Класс A 10
Класс B 3
Класс C 1

(b) Каждое такое государство одновременно с осуществлением действий, предусмотренных в статье 14 (1), указывает класс, к которому оно желает быть отнесенным. Любое такое государство может изменить класс. Если государство выбирает более низкий класс, оно должно заявить об этом на очередной сессии Конференции. Любое такое изменение вступает в действие с начала календарного года, следующего за сессией.

(c) Годовой взнос каждого такого государства равен сумме, относящейся так же к общей сумме подлежащих уплате в бюджет Конференции взносов всех таких государств, как количество его единиц относится к общему количеству единиц всех упомянутых государств.

(d) Взносы уплачиваются с первого января каждого года.

(e) Если бюджет не принят до начала нового финансового периода, то в соответствии с финансовым регламентом используется бюджет на уровне предыдущего года.

(5) Любое государство-сторона настоящей Конвенции, не являющееся членом какого-либо из Союзов, у которого имеется задолженность по уплате финансовых взносов, предусмотренных в настоящей статье, а также любое государство-сторона настоящей Конвенции, являющееся членом какого-либо из Союзов, у которого имеется задолженность по уплате своих взносов в любой из Союзов, утрачивает право голоса в органах Организации, членом которых оно является, если сумма его задолженности равна или превышает сумму причитающихся с него взносов за два полных предыдущих года. Однако, любой из этих органов может разрешить такому государству пользоваться правом голоса, если, и до тех пор пока, он убежден, что просрочка платежа произошла при исключительных и неизбежных обстоятельствах.

(6) Размер платежей, причитающихся за предоставляемые Международным бюро услуги в области юридико-технической помощи, устанавливается Генеральным Директором и докладывается Координационному комитету.

(7) Организация с одобрения Координационного комитета может получать дары, завещанные средства и субсидии непосредственно от правительств, государственных или частных организаций, ассоциаций или лиц.

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

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

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

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

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

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

Article 12

Legal Capacity; Privileges and Immunities

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

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

(8) (a) Организация имеет фонд оборотных средств, который составляется из разового платежа, осуществляемого Союзами и каждым государством-стороной настоящей Конвенции, которое не является членом какого-либо из Союзов. Если фонд оборотных средств становится недостаточным, решается вопрос о его увеличении.

(b) Размер разового платежа каждого Союза и его возможное участие в увеличении фонда определяется Ассамблеей Союза.

(c) Размер разового платежа каждого государства-стороны настоящей Конвенции, не являющегося членом какого-либо из Союзов, и его доля в любом увеличении фонда пропорциональны годовому взносу этого государства за тот год, в который образован фонд или принято решение о его увеличении. Эта пропорция и условия платежа устанавливаются по предложению Генерального Директора Конференцией после того, как она заслушает мнение Координационного комитета.

(9) (a) В соглашении о штаб-квартире, заключаемом с государством, на территории которого Организация имеет свою штаб-квартиру, предусматривается, что в случаях, когда фонд оборотных средств оказывается недостаточным, такое государство предоставляет авансы. Суммы этих авансов и условия, на которых они предоставляются, в каждом случае являются предметом особого соглашения между таким государством и Организацией. До тех пор, пока такое государство-сторона связано обязательством предоставлять авансы, оно имеет одно место ex officio в Координационном комитете.

(b) Как государство, упомянутое в подпараграфе (a), так и Организация имеют право путем письменного уведомления денонсировать обязательство о предоставлении авансов. Денонсация вступает в действие через три года после окончания того года, в который было сделано уведомление.

(10) Ревизия счетов осуществляется одним или более государствами-членами или внешними ревизорами, как предусмотрено в финансовом регламенте. Они назначаются, с их согласия, Генеральной Ассамблеей.

Статья 12

Правоспособность ; привилегии и иммунитеты

(1) Организация пользуется на территории каждого государства-члена в соответствии с законами этого государства такой правоспособностью, которая необходима для достижения целей Организации и осуществления ее функций.

(2) Организация заключает соглашения о штаб-квартире с Швейцарской Конфедерацией и с любым другим государством, в котором впоследствии может быть расположена штаб-квартира.

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

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

Article 13

Relations with Other Organizations

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

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

Article 14

Becoming Party to the Convention

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

(i) signature without reservation as to ratification, or

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

(iii) deposit of an instrument of accession.

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

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

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

(3) Организация может заключать двусторонние или многосторонние соглашения с другими государствами-членами с целью обеспечить Организации, ее официальным лицам и представителям всех государств-членов такие привилегии и иммунитеты, которые могут быть необходимы для достижения ее целей и осуществления функций.

(4) Генеральный Директор может вести переговоры и, после одобрения Координационного комитета, заключает и подписывает от имени Организации соглашения, упомянутые в параграфах (2) и (3).

Статья 13
Отношения с другими организациями

(1) Организация, если это целесообразно, устанавливает рабочие отношения и сотрудничает с другими межправительственными организациями. Любое генеральное соглашение об этом, достигнутое с такими организациями, заключается Генеральным Директором после одобрения Координационного комитета.

(2) Организация может по вопросам своей компетенции проводить соответствующие мероприятия по консультациям и сотрудничеству с международными неправительственными организациями, а также, с согласия заинтересованных правительств, с национальными организациями, правительственными или неправительственными. Такие мероприятия проводятся Генеральным Директором после одобрения Координационного комитета.

Статья 14
Подписание, ратификация Конвенции и присоединение к ней

(1) Государства, упомянутые в статье 5, могут стать сторонами настоящей Конвенции и членами Организации путем :

(i) подписания Конвенции без оговорки о ратификации,
(ii) подписания с оговоркой о ратификации, после которого последует депонирование ратификационной грамоты, или
(iii) депонирования акта о присоединении.

(2) Несмотря на любое другое положение настоящей Конвенции, государство-сторона Парижской конвенции, Бернской конвенции или обеих этих конвенций может стать стороной настоящей Конвенции только, если оно одновременно ратифицирует или присоединяется, или если оно уже ратифицировало или присоединилось :

— либо к Стокгольмскому акту Парижской конвенции в целом или только с изъятием, предусмотренным в его статье 20 (1) (b) (i) ;
— либо к Стокгольмскому акту Бернской конвенции в целом или только с изъятием, предусмотренным в его статье 28 (1) (b) (i).

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

Article 15
Entry into Force of the Convention

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

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

Article 16
Reservations

No reservations to this Convention are permitted.

Article 17
Amendments

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

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

(3) Any amendment shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been

(3) Ратификационные грамоты или акты о присоединении депонируются у Генерального Директора.

Статья 15
Вступление в силу Конвенции

(1) Настоящая Конвенция вступает в силу через три месяца после того, как десять государств-членов Парижского союза и семь государств-членов Бернского союза предприняли действия, предусмотренные в статье 14 (1) ; при этом понимается, что, если государство является членом обоих Союзов, оно будет засчитано в обеих группах. На эту же дату Конвенция вступает в силу также в отношении государств, которые, не являясь членами ни одного из двух Союзов, предприняли действия, предусмотренные в статье 14 (1), не позднее, чем за три месяца до этой даты.

(2) В отношении любого другого государства настоящая Конвенция вступает в силу через три месяца после даты, на которую такое государство предприняло действия, предусмотренные в статье 14 (1).

Статья 16
Оговорки

Никакие оговорки в отношении настоящей Конвенции не допускаются.

Статья 17
Поправки

(1) Предложения о внесении поправок в настоящую Конвенцию могут быть сделаны по инициативе любого государства-члена Организации, по инициативе Координационного комитета или Генерального Директора. Такие предложения направляются Генеральным Директором государствам-членам Организации по меньшей мере за шесть месяцев до рассмотрения их Конференцией.

(2) Поправки принимаются Конференцией. В случае, когда принятие поправки затронуло бы права и обязанности государств-сторон настоящей Конвенции, не являющихся членами какого-либо из Союзов, такие государства также участвуют в голосовании. По всем остальным предлагаемым поправкам голосуют только государства-стороны настоящей Конвенции, являющиеся членами какого-либо из Союзов. Поправки принимаются простым большинством голосов при условии, что Конференция голосует только по таким предложениям о поправках, которые предварительно были приняты Ассамблеей Парижского союза и Ассамблеей Бернского союза в соответствии с правилами, применяющимися в каждой из них в отношении принятия поправок к административным положениям их соответствующих конвенций.

(3) Любая поправка вступает в силу через месяц после того, как письменные уведомления о ее принятии, осуществленном в соответствии с конституционной процедурой каждого

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

Article 18
Denunciation

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

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

Article 19
Notifications

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

(i) the date of entry into force of the Convention,

(ii) signatures and deposits of instruments of ratification or accession,

(iii) acceptances of an amendment to this Convention, and the date upon which the amendment enters into force,

(iv) denunciations of this Convention.

Article 20
Final Provisions

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

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

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

(3) The Director General shall transmit two duly certified copies of this Convention and of each amendment adopted by the Conference to the Governments of the States members of

государства, получены Генеральным Директором от трех четвертей государств-членов Организации, имевших право голосовать по предложению о поправке согласно параграфу (2) во время принятия этой поправки Конференцией. Принятые таким образом поправки обязательны для всех государств, которые являются членами Организации в то время, когда поправка вступает в силу, или которые становятся ее членами после этой даты, при условии, что любая поправка, увеличивающая финансовые обязательства государств-членов, является обязательной только для тех государств, которые уведомили о принятии ими такой поправки.

Статья 18

Денонсация

(1) Любое государство-член может денонсировать настоящую Конвенцию путем нотификации, адресованной Генеральному Директору.

(2) Денонсация вступает в действие по истечении шести месяцев с даты получения такой нотификации Генеральным Директором.

Статья 19

Уведомления

Генеральный Директор уведомляет правительства всех государств-членов :

(i) о дате вступления в силу настоящей Конвенции,

(ii) о подписаниях или депонировании ратификационных грамот или актов о присоединении,

(iii) о принятии любой поправки к настоящей Конвенции и дате, на которую такая поправка вступает в силу,

(iv) о денонсациях настоящей Конвенции.

Статья 20

Заключительные положения

(1) (a) Настоящая Конвенция подписывается в единственном экземпляре на английском, испанском, русском и французском языках, причем каждый текст равно аутентичен, и сдается на хранение Правительству Швеции.

(b) Настоящая Конвенция открыта для подписания в Стокгольме до 13 января 1968 года.

(2) Тексты официальных переводов будут выработаны Генеральным Директором, после консультаций с заинтересованными правительствами, на немецком, итальянском и португальском языках и таких других языках, какие определит Конференция.

(3) Генеральный Директор высылает две должным образом заверенные копии настоящей Конвенции и каждой поправки, принятой Конференцией, правительствам государств-

the Paris or Berne Unions, to the Government of any other State when it accedes to this Convention, and, on request, to the Government of any other State. The copies of the signed text of the Convention transmitted to the Governments shall be certified by the Government of Sweden.

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

Article 21
Transitional Provisions

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

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

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

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

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

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

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

членов Парижского или Бернского союзов, правительству каждого государства, когда оно присоединяется к настоящей Конвенции, а также, по запросу, правительству любого другого государства. Копии подписанного текста Конвенции, высылаемые правительствам, заверяются Правительством Швеции.

(4) Генеральный Директор зарегистрирует настоящую Конвенцию в Секретариате Организации Объединенных Наций.

Статья 21

Переходные положения

(1) До вступления в должность первого Генерального Директора ссылки в настоящей Конвенции на Международное бюро или на Генерального Директора считаются ссылками на Объединенные Международные бюро по охране промышленной, литературной и художественной собственности (называемые также Объединенными международными бюро по охране интеллектуальной собственности (БИРПИ), или на их Директора, соответственно.

(2) (a) Государства, которые являются членами какого-либо из Союзов, но не стали сторонами настоящей Конвенции, могут в течение пяти лет с даты вступления в силу настоящей Конвенции, если они этого пожелают, пользоваться такими же правами, как если бы они были сторонами настоящей Конвенции. Любое государство, желающее пользоваться такими правами, уведомляет об этом Генерального Директора в письменном виде; такое уведомление действует с даты его получения. Такие государства считаются членами Генеральной Ассамблеи и Конференции до истечения упомянутого периода.

(b) По истечении этого пятилетнего периода такие государства утрачивают право голоса в Генеральной Ассамблее, Конференции и Координационном комитете.

(c) Став сторонами настоящей Конвенции, такие государства вновь получают право голоса.

(3) (a) До тех пор, пока имеются государства-члены Парижского или Бернского союзов, которые еще не стали сторонами настоящей Конвенции, Международное бюро и Генеральный Директор функционируют также в качестве Объединенных международных бюро по охране промышленной, литературной и художественной собственности, и их Директора, соответственно.

(b) Персонал, занятый в указанных Бюро на дату вступления в силу настоящей Конвенции, во время переходного периода, упомянутого в подпараграфе (a), считается также занятым в Международном бюро.

(4) (a) Как только все государства-члены Парижского союза становятся членами Организации, права, обязанности и имущество Бюро этого Союза переходят к Международному бюро Организации.

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

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Convention.

DONE at Stockholm, on July 14, 1967.

Algeria (A. Hacene); Austria (Gottfried H. Thaler, Dr. Robert Dittrich); Belgium (B[on] F. Cogels); Bulgaria (V. Chivarov); Byelorussian Soviet Socialist Republic (Maltsev); Cameroon (D. Ekani); Central African Republic (L. P. Gamba); Congo, Democratic Republic (G. Mulenda); Denmark (J. Paludan); Ecuador (E. Sanchez); Finland (Paul Gustafsson); France (B. de Menthon); Gabon (J. F. Oyoué); Germany, Federal Republic (Kurt Haertel, Eugen Ulmer); Greece (J. A. Dracoulis); Holy See (Gunnar Sterner); Hungary (Esztergályos); Iceland (Arni Tryggvason); Indonesia (Ibrahim Jasin); Iran (A. Daraï); Ireland (Valentin Iremonger); Israel (G. Gavrieli, Z. Sher); Italy (Cippico, Giorgio Ranzi); Ivory Coast (Bilé); Japan (M. Takahashi, C. Kawade, K. Adachi); Kenya (M. K. Mwendwa); Liechtenstein (Marianne Marxer); Luxembourg (J. P. Hoffmann); Madagascar (Ratovondriaka); Mexico (E. Rojas y Benavides); Monaco (J. M. Notari); Morocco (H'ssaine); Netherlands (Gerbrandy, W. G. Belinfante); Niger (A. Wright); Norway (Jens Evensen, B. Stuevold Lassen); Peru (J. Fernandez Dávila); Philippines (Lauro Baja); Poland (M. Kajzer); Portugal (Adriano de Carvalho, José de Oliveira Ascensão, Ruy Álvaro Costa de Morais Serrão); Rumania (C. Stanescu, L. Marinete, T. Preda); Senegal (A. Seck); South Africa (T. Schoeman); Spain (J. F. Alcover, Electo J. Garcia Tejedor); Sweden (Herman Kling); Switzerland (Hans Morf, Joseph Voyame); Tunisia (M. Kedadi); Ukrainian Soviet Socialist Republic (Maltsev); Union of Soviet Socialist Republics (Maltsev); United Kingdom of Great Britain and Northern Ireland (Gordon Grant, William Wallace); United States of America (Eugene M. Braderman); Yugoslavia (A. Jelić).

(b) Как только все государства-члены Бернского союза становятся членами Организации, права, обязанности и имущество Бюро этого Союза переходят к Международному бюро Организации.

В УДОСТОВЕРЕНИЕ ЧЕГО нижеподписавшиеся, должным образом на то уполномоченные, подписали настоящую Конвенцию.

СОВЕРШЕНО в Стокгольме четырнадцатого июля тысяча девятьсот шестьдесят седьмого года.

Berne Convention for the Protection of Literary and Artistic Works

(Stockholm Act)

Berne Convention for the Protection of Literary and Artistic Works

of September 9, 1886,
completed at PARIS on May 4, 1896, revised at BERLIN on November 13, 1908, completed at BERNE on March 20, 1914, revised at ROME on June 2, 1928, revised at BRUSSELS on June 26, 1948,
and revised at STOCKHOLM on July 14, 1967

The countries of the Union, being equally animated by the desire to protect, in as effective and uniform a manner as possible, the rights of authors in their literary and artistic works,

Have resolved to revise and to complete the Act signed at Berne on September 9, 1886, completed at Paris on May 4, 1896, revised at Berlin on November 13, 1908, completed at Berne on March 20, 1914, revised at Rome on June 2, 1928, and revised at Brussels on June 26, 1948.

Consequently, the undersigned Plenipotentiaries, having presented their full powers, recognized as in good and due form, have agreed as follows:

Article 1

The countries to which this Convention applies constitute a Union for the protection of the rights of authors in their literary and artistic works.

Article 2

(1) The expression " literary and artistic works " shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of

applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

(2) It shall, however, be a matter for legislation in the countries of the Union to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form.

(3) Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work.

(4) It shall be a matter for legislation in the countries of the Union to determine the protection to be granted to official texts of a legislative, administrative and legal nature, and to official translations of such texts.

(5) Collections of literary or artistic works such as encyclopaedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections.

(6) The works mentioned in this Article shall enjoy protection in all countries of the Union. This protection shall operate for the benefit of the author and his successors in title.

(7) Subject to the provisions of Article 7(4) of this Convention, it shall be a matter for legislation in the countries of the Union to determine the extent of the application of their laws to works of applied art and industrial designs and models, as well as the conditions under which such works, designs and models shall be protected. Works protected in the country of origin solely as designs and models shall be entitled in another country of the Union only to such special protection as is granted in that country to designs and models; however, if no such special protection is granted in that country, such works shall be protected as artistic works.

(8) The protection of this Convention shall not apply to news of the day nor to miscellaneous facts having the character of mere items of press information.

Article 2bis

(1) It shall be a matter for legislation in the countries of the Union to exclude, wholly or in part, from the protection provided by the preceding Article political speeches and speeches delivered in the course of legal proceedings.

(2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which lectures,

addresses and other works of the same nature which are delivered in public may be reproduced by the press, broadcast, communicated to the public by wire and made the subject of public communication as envisaged in Article 11bis(1) of this Convention, when such use is justified by the informatory purpose.

(3) Nevertheless, the author shall enjoy the exclusive right of making a collection of his works mentioned in the preceding paragraphs.

Article 3

(1) The protection of this Convention shall apply to:

(a) authors who are nationals of one of the countries of the Union, for their works, whether published or not;

(b) authors who are not nationals of one of the countries of the Union, for their works first published in one of those countries, or simultaneously in a country outside the Union and in a country of the Union.

(2) Authors who are not nationals of one of the countries of the Union but who have their habitual residence in one of them shall, for the purposes of this Convention, be assimilated to nationals of that country.

(3) The expression " published works " means works published with the consent of their authors, whatever may be the means of manufacture of the copies, provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work. The performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication.

(4) A work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication.

Article 4

The protection of this Convention shall apply, even if the conditions of Article 3 are not fulfilled, to:

(a) authors of cinematographic works the maker of which has his headquarters or habitual residence in one of the countries of the Union;

(b) authors of works of architecture erected in a country of the Union or of other artistic works incorporated in a building or other structure located in a country of the Union.

Article 5

(1) Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.

(2) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.

(3) Protection in the country of origin is governed by domestic law. However, when the author is not a national of the country of origin of the work for which he is protected under this Convention, he shall enjoy in that country the same rights as national authors.

(4) The country of origin shall be considered to be:

(a) in the case of works first published in a country of the Union, that country; in the case of works published simultaneously in several countries of the Union which grant different terms of protection, the country whose legislation grants the shortest term of protection;

(b) in the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country;

(c) in the case of unpublished works or of works first published in a country outside the Union, without simultaneous publication in a country of the Union, the country of the Union of which the author is a national, provided that:

(i) when these are cinematographic works the maker of which has his headquarters or his habitual residence in a country of the Union, the country of origin shall be that country, and

(ii) when these are works of architecture erected in a country of the Union or other artistic works incorporated in a building or other structure located in a country of the Union, the country of origin shall be that country.

Article 6

(1) Where any country outside the Union fails to protect in an adequate manner the works of authors who are nationals of one of the countries of the Union, the latter country may

restrict the protection given to the works of authors who are, at the date of the first publication thereof, nationals of the other country and are not habitually resident in one of the countries of the Union. If the country of first publication avails itself of this right, the other countries of the Union shall not be required to grant to works thus subjected to special treatment a wider protection than that granted to them in the country of first publication.

(2) No restrictions introduced by virtue of the preceding paragraph shall affect the rights which an author may have acquired in respect of a work published in a country of the Union before such restrictions were put into force.

(3) The countries of the Union which restrict the grant of copyright in accordance with this Article shall give notice thereof to the Director General of the World Intellectual Property Organization (hereinafter designated as "the Director General") by a written declaration specifying the countries in regard to which protection is restricted, and the restrictions to which rights of authors who are nationals of those countries are subjected. The Director General shall immediately communicate this declaration to all the countries of the Union.

Article 6bis

(1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.

(2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.

(3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed.

Article 7

(1) The term of protection granted by this Convention shall be the life of the author and fifty years after his death.

(2) However, in the case of cinematographic works, the countries of the Union may provide that the term of protection shall expire fifty years after the work has been made available to the public with the consent of the author, or, failing such an event within fifty years from the making of such a work, fifty years after the making.

(3) In the case of anonymous or pseudonymous works, the term of protection granted by this Convention shall expire fifty years after the work has been lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, the term of protection shall be that provided in paragraph (1). If the author of an anonymous or pseudonymous work discloses his identity during the above-mentioned period, the term of protection applicable shall be that provided in paragraph (1). The countries of the Union shall not be required to protect anonymous or pseudonymous works in respect of which it is reasonable to presume that their author has been dead for fifty years.

(4) It shall be a matter for legislation in the countries of the Union to determine the term of protection of photographic works and that of works of applied art in so far as they are protected as artistic works; however, this term shall last at least until the end of a period of twenty-five years from the making of such a work.

(5) The term of protection subsequent to the death of the author and the terms provided by paragraphs (2), (3) and (4) shall run from the date of death or of the event referred to in those paragraphs, but such terms shall always be deemed to begin on the first of January of the year following the death or such event.

(6) The countries of the Union may grant a term of protection in excess of those provided by the preceding paragraphs.

(7) Those countries of the Union bound by the Rome Act of this Convention which grant, in their national legislation in force at the time of signature of the present Act, shorter terms of protection than those provided for in the preceding paragraphs shall have the right to maintain such terms when ratifying or acceding to the present Act.

(8) In any case, the term shall be governed by the legislation of the country where protection is claimed; however, unless the legislation of that country otherwise provides, the term shall not exceed the term fixed in the country of origin of the work.

Article 7bis

The provisions of the preceding Article shall also apply in the case of a work of joint authorship, provided that the terms

measured from the death of the author shall be calculated from the death of the last surviving author.

Article 8

Authors of literary and artistic works protected by this Convention shall enjoy the exclusive right of making and of authorizing the translation of their works throughout the term of protection of their rights in the original works.

Article 9

(1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.

(2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.

(3) Any sound or visual recording shall be considered as a reproduction for the purposes of this Convention.

Article 10

(1) It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.

(2) It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice.

(3) Where use is made of works in accordance with the preceding paragraphs of this Article, mention shall be made of the source, and of the name of the author if it appears thereon.

Article 10bis

(1) It shall be a matter for legislation in the countries of the Union to permit the reproduction by the press, the broadcasting or the communication to the public by wire of articles published in newspapers or periodicals on current economic, political or religious topics, and of broadcast works of the same

character, in cases in which the reproduction, broadcasting or such communication thereof is not expressly reserved. Nevertheless, the source must always be clearly indicated; the legal consequences of a breach of this obligation shall be determined by the legislation of the country where protection is claimed.

(2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which, for the purpose of reporting current events by means of photography, cinematography, broadcasting or communication to the public by wire, literary or artistic works seen or heard in the course of the event may, to the extent justified by the informatory purpose, be reproduced and made available to the public.

Article 11

(1) Authors of dramatic, dramatico-musical and musical works shall enjoy the exclusive right of authorizing:

(i) the public performance of their works, including such public performance by any means or process;

(ii) any communication to the public of the performance of their works.

(2) Authors of dramatic or dramatico-musical works shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof.

Article 11bis

(1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing:

(i) the broadcasting of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images;

(ii) any communication to the public by wire or by rebroadcasting of the broadcast of the work, when this communication is made by an organization other than the original one;

(iii) the public communication by loudspeaker or any other analogous instrument transmitting, by signs, sounds or images, the broadcast of the work.

(2) It shall be a matter for legislation in the countries of the Union to determine the conditions under which the rights mentioned in the preceding paragraph may be exercised, but these conditions shall apply only in the countries where they have been prescribed. They shall not in any circumstances be prejudicial to the moral rights of the author, nor to his right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

(3) In the absence of any contrary stipulation, permission granted in accordance with paragraph (1) of this Article shall not imply permission to record, by means of instruments recording sounds or images, the work broadcast. It shall, however, be a matter for legislation in the countries of the Union to determine the regulations for ephemeral recordings made by a broadcasting organization by means of its own facilities and used for its own broadcasts. The preservation of these recordings in official archives may, on the ground of their exceptional documentary character, be authorized by such legislation.

Article 11ter

(1) Authors of literary works shall enjoy the exclusive right of authorizing:

(i) the public recitation of their works, including such public recitation by any means or process;

(ii) any communication to the public of the recitation of their works.

(2) Authors of literary works shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof.

Article 12

Authors of literary or artistic works shall enjoy the exclusive right of authorizing adaptations, arrangements and other alterations of their works.

Article 13

(1) Each country of the Union may impose for itself reservations and conditions on the exclusive right granted to the author of a musical work and to the author of any words, the recording of which together with the musical work has already been authorized by the latter, to authorize the sound recording of that musical work, together with such words, if any; but all such reservations and conditions shall apply only in the countries which have imposed them and shall not, in any circumstances, be prejudicial to the rights of these authors to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

(2) Recordings of musical works made in a country of the Union in accordance with Article 13(3) of the Conventions signed at Rome on June 2, 1928, and at Brussels on June 26, 1948, may be reproduced in that country without the permission of the author of the musical work until a date two years after that country becomes bound by this Act.

(3) Recordings made in accordance with paragraphs (1) and (2) of this Article and imported without permission from the parties concerned into a country where they are treated as infringing recordings shall be liable to seizure.

Article 14

(1) Authors of literary or artistic works shall have the exclusive right of authorizing:

(i) the cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced;

(ii) the public performance and communication to the public by wire of the works thus adapted or reproduced.

(2) The adaptation into any other artistic form of a cinematographic production derived from literary or artistic works shall, without prejudice to the authorization of the author of the cinematographic production, remain subject to the authorization of the authors of the original works.

(3) The provisions of Article 13(1) shall not apply.

Article 14bis

(1) Without prejudice to the copyright in any work which may have been adapted or reproduced, a cinematographic work shall be protected as an original work. The owner of copyright in a cinematographic work shall enjoy the same rights as the author of an original work, including the rights referred to in the preceding Article.

(2) *(a)* Ownership of copyright in a cinematographic work shall be a matter for legislation in the country where protection is claimed.

(b) However, in the countries of the Union which, by legislation, include among the owners of copyright in a cinematographic work authors who have brought contributions to the making of the work, such authors, if they have undertaken to bring such contributions, may not, in the absence of any contrary or special stipulation, object to the reproduction, distribution, public performance, communication to the public by wire, broadcasting or any other communication to the public, or to the subtitling or dubbing of texts, of the work.

(c) The question whether or not the form of the undertaking referred to above should, for the application of the preceding subparagraph *(b)*, be in a written agreement or a written act of the same effect shall be a matter for the legislation of the country where the maker of the cinematographic work has his headquarters or habitual residence. However, it shall be a matter for the legislation of the country of the

Union where protection is claimed to provide that the said undertaking shall be in a written agreement or a written act of the same effect. The countries whose legislation so provides shall notify the Director General by means of a written declaration, which will be immediately communicated by him to all the other countries of the Union.

(d) By "contrary or special stipulation" is meant any restrictive condition which is relevant to the aforesaid undertaking.

(3) Unless the national legislation provides to the contrary, the provisions of paragraph (2)*(b)* above shall not be applicable to authors of scenarios, dialogues and musical works created for the making of the cinematographic work, nor to the principal director thereof. However, those countries of the Union whose legislation does not contain rules providing for the application of the said paragraph (2)*(b)* to such director shall notify the Director General by means of a written declaration, which will be immediately communicated by him to all the other countries of the Union.

Article 14ter

(1) The author, or after his death the persons or institutions authorized by national legislation, shall, with respect to original works of art and original manuscripts of writers and composers, enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work.

(2) The protection provided by the preceding paragraph may be claimed in a country of the Union only if legislation in the country to which the author belongs so permits, and to the extent permitted by the country where this protection is claimed.

(3) The procedure for collection and the amounts shall be matters for determination by national legislation.

Article 15

(1) In order that the author of a literary or artistic work protected by this Convention shall, in the absence of proof to the contrary, be regarded as such, and consequently be entitled to institute infringement proceedings in the countries of the Union, it shall be sufficient for his name to appear on the work in the usual manner. This paragraph shall be applicable even if this name is a pseudonym, where the pseudonym adopted by the author leaves no doubt as to his identity.

(2) The person or body corporate whose name appears on a cinematographic work in the usual manner shall, in the

absence of proof to the contrary, be presumed to be the maker of the said work.

(3) In the case of anonymous and pseudonymous works, other than those referred to in paragraph (1) above, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be deemed to represent the author, and in this capacity he shall be entitled to protect and enforce the author's rights. The provisions of this paragraph shall cease to apply when the author reveals his identity and establishes his claim to authorship of the work.

(4) *(a)* In the case of unpublished works where the identity of the author is unknown, but where there is every ground to presume that he is a national of a country of the Union, it shall be a matter for legislation in that country to designate the competent authority who shall represent the author and shall be entitled to protect and enforce his rights in the countries of the Union.

(b) Countries of the Union which make such designation under the terms of this provision shall notify the Director General by means of a written declaration giving full information concerning the authority thus designated. The Director General shall at once communicate this declaration to all other countries of the Union.

Article 16

(1) Infringing copies of a work shall be liable to seizure in any country of the Union where the work enjoys legal protection.

(2) The provisions of the preceding paragraph shall also apply to reproductions coming from a country where the work is not protected, or has ceased to be protected.

(3) The seizure shall take place in accordance with the legislation of each country.

Article 17

The provisions of this Convention cannot in any way affect the right of the Government of each country of the Union to permit, to control, or to prohibit by legislation or regulation, the circulation, presentation, or exhibition of any work or production in regard to which the competent authority may find it necessary to exercise that right.

Article 18

(1) This Convention shall apply to all works which, at the moment of its coming into force, have not yet fallen into the public domain in the country of origin through the expiry of the term of protection.

(2) If, however, through the expiry of the term of protection which was previously granted, a work has fallen into the public domain of the country where protection is claimed, that work shall not be protected anew.

(3) The application of this principle shall be subject to any provisions contained in special conventions to that effect existing or to be concluded between countries of the Union. In the absence of such provisions, the respective countries shall determine, each in so far as it is concerned, the conditions of application of this principle.

(4) The preceding provisions shall also apply in the case of new accessions to the Union and to cases in which protection is extended by the application of Article 7 or by the abandonment of reservations.

Article 19

The provisions of this Convention shall not preclude the making of a claim to the benefit of any greater protection which may be granted by legislation in a country of the Union.

Article 20

The Governments of the countries of the Union reserve the right to enter into special agreements among themselves, in so far as such agreements grant to authors more extensive rights than those granted by the Convention, or contain other provisions not contrary to this Convention. The provisions of existing agreements which satisfy these conditions shall remain applicable.

Article 21

(1) Special provisions regarding developing countries are included in a protocol entitled " Protocol Regarding Developing Countries."

(2) Subject to the provisions of Article 28(1)*(b)*(i) and *(c)*, the Protocol Regarding Developing Countries forms an integral part of the present Act.

Article 22

(1) *(a)* The Union shall have an Assembly consisting of those countries of the Union which are bound by Articles 22 to 26.

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

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

(2) *(a)* The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Union and the implementation of this Convention;

(ii) give directions concerning the preparation for conferences of revision to the International Bureau of Intellectual Property (hereinafter designated as "the International Bureau") referred to in the Convention establishing the World Intellectual Property Organization (hereinafter designated as "the Organization"), due account being taken of any comments made by those countries of the Union which are not bound by Articles 22 to 26;

(iii) review and approve the reports and activities of the Director General of the Organization concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union;

(iv) elect the members of the Executive Committee of the Assembly;

(v) review and approve the reports and activities of its Executive Committee, and give instructions to such Committee;

(vi) determine the program and adopt the triennial budget of the Union, and approve its final accounts;

(vii) adopt the financial regulations of the Union;

(viii) establish such committees of experts and working groups as may be necessary for the work of the Union;

(ix) determine which countries not members of the Union and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;

(x) adopt amendments to Articles 22 to 26;

(xi) take any other appropriate action designed to further the objectives of the Union;

(xii) exercise such other functions as are appropriate under this Convention;

(xiii) subject to its acceptance, exercise such rights as are given to it in the Convention establishing the Organization.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3) *(a)* Each country member of the Assembly shall have one vote.

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

(c) Notwithstanding the provisions of subparagraph *(b)*, if, in any session, the number of countries represented is less than

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

(d) Subject to the provisions of Article 26(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(e) Abstentions shall not be considered as votes.

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

(g) Countries of the Union not members of the Assembly shall be admitted to its meetings as observers.

(4) *(a)* The Assembly shall meet once in every third calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

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

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

Article 23

(1) The Assembly shall have an Executive Committee.

(2) *(a)* The Executive Committee shall consist of countries elected by the Assembly from among countries members of the Assembly. Furthermore, the country on whose territory the Organization has its headquarters shall, subject to the provisions of Article 25(7)*(b)*, have an *ex officio* seat on the Committee.

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

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

(3) The number of countries members of the Executive Committee shall correspond to one-fourth of the number of countries members of the Assembly. In establishing the number of seats to be filled, remainders after division by four shall be disregarded.

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

(5) *(a)* Each member of the Executive Committee shall serve from the close of the session of the Assembly which elected it to the close of the next ordinary session of the Assembly.

(b) Members of the Executive Committee may be re-elected, but not more than two-thirds of them.

(c) The Assembly shall establish the details of the rules governing the election and possible re-election of the members of the Executive Committee.

(6) *(a)* The Executive Committee shall:

(i) prepare the draft agenda of the Assembly;

(ii) submit proposals to the Assembly respecting the draft program and triennial budget of the Union prepared by the Director General;

(iii) approve, within the limits of the program and the triennial budget, the specific yearly budgets and programs prepared by the Director General;

(iv) submit, with appropriate comments, to the Assembly the periodical reports of the Director General and the yearly audit reports on the accounts;

(v) in accordance with the decisions of the Assembly and having regard to circumstances arising between two ordinary sessions of the Assembly, take all necessary measures to ensure the execution of the program of the Union by the Director General;

(vi) perform such other functions as are allocated to it under this Convention.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Executive Committee shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(7) *(a)* The Executive Committee shall meet once a year in ordinary session upon convocation by the Director General, preferably during the same period and at the same place as the Coordination Committee of the Organization.

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

(8) *(a)* Each country member of the Executive Committee shall have one vote.

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

(c) Decisions shall be made by a simple majority of the votes cast.

(d) Abstentions shall not be considered as votes.

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

(9) Countries of the Union not members of the Executive Committee shall be admitted to its meetings as observers.

(10) The Executive Committee shall adopt its own rules of procedure.

Article 24

(1) *(a)* The administrative tasks with respect to the Union shall be performed by the International Bureau, which is a continuation of the Bureau of the Union united with the Bureau of the Union established by the International Convention for the Protection of Industrial Property.

(b) In particular, the International Bureau shall provide the secretariat of the various organs of the Union.

(c) The Director General of the Organization shall be the chief executive of the Union and shall represent the Union.

(2) The International Bureau shall assemble and publish information concerning the protection of copyright. Each country of the Union shall promptly communicate to the International Bureau all new laws and official texts concerning the protection of copyright.

(3) The International Bureau shall publish a monthly periodical.

(4) The International Bureau shall, on request, furnish information to any country of the Union on matters concerning the protection of copyright.

(5) The International Bureau shall conduct studies, and shall provide services, designed to facilitate the protection of copyright.

(6) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the Executive Committee, and any other committee of experts or working group. The Director General, or a staff member designated by him, shall be *ex officio* secretary of these bodies.

(7) *(a)* The International Bureau shall, in accordance with the directions of the Assembly and in cooperation with the Executive Committee, make the preparations for the conferences of revision of the provisions of the Convention other than Articles 22 to 26.

(b) The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for conferences of revision.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at these conferences.

(8) The International Bureau shall carry out any other tasks assigned to it.

Article 25

(1) *(a)* The Union shall have a budget.

(b) The budget of the Union shall include the income and expenses proper to the Union, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization.

(c) Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Union in such common expenses shall be in proportion to the interest the Union has in them.

(2) The budget of the Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

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

(i) contributions of the countries of the Union;

(ii) fees and charges due for services performed by the International Bureau in relation to the Union;

(iii) sale of, or royalties on, the publications of the International Bureau concerning the Union;

(iv) gifts, bequests, and subventions;

(v) rents, interests, and other miscellaneous income.

(4) *(a)* For the purpose of establishing its contribution towards the budget, each country of the Union shall belong to a class, and shall pay its annual contributions on the basis of a number of units fixed as follows:

Class I 25
Class II 20
Class III 15
Class IV 10

Class V 5
Class VI 3
Class VII 1

(b) Unless it has already done so, each country shall indicate, concurrently with depositing its instrument of ratification or accession, the class to which it wishes to belong. Any country may change class. If it chooses a lower class, the country must announce it to the Assembly at one of its ordinary sessions. Any such change shall take effect at the beginning of the calendar year following the session.

(c) The annual contribution of each country shall be an amount in the same proportion to the total sum to be contributed to the annual budget of the Union by all countries as the number of its units is to the total of the units of all contributing countries.

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

(e) A country which is in arrears in the payment of its contributions shall have no vote in any of the organs of the Union of which it is a member if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any organ of the Union may allow such a country to continue to exercise its vote in that organ if, and as long as, it is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

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

(5) The amount of the fees and charges due for services rendered by the International Bureau in relation to the Union shall be established, and shall be reported to the Assembly and the Executive Committee, by the Director General.

(6) *(a)* The Union shall have a working capital fund which shall be constituted by a single payment made by each country of the Union. If the fund becomes insufficient, an increase shall be decided by the Assembly.

(b) The amount of the initial payment of each country to the said fund or of its participation in the increase thereof shall be a proportion of the contribution of that country for the year in which the fund is established or the increase decided.

(c) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee of the Organization.

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

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

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

Article 26

(1) Proposals for the amendment of Articles 22, 23, 24, 25, and the present Article, may be initiated by any country member of the Assembly, by the Executive Committee, or by the Director General. Such proposals shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.

(2) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided that any amendment of Article 22, and of the present paragraph, shall require four-fifths of the votes cast.

(3) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the countries members of the Assembly at the time it adopted the amendment. Any amendment to the said Articles thus accepted shall bind all the countries which are members of the Assembly at the time the amendment enters into force, or which become members thereof at a subsequent date, provided that any amendment increasing the financial obligations of countries of the Union shall bind only those countries which have notified their acceptance of such amendment.

Article 27

(1) This Convention shall be submitted to revision with a view to the introduction of amendments designed to improve the system of the Union.

(2) For this purpose, conferences shall be held successively in one of the countries of the Union among the delegates of the said countries.

(3) Subject to the provisions of Article 26 which apply to the amendment of Articles 22 to 26, any revision of this Convention, including the Protocol Regarding Developing Countries, shall require the unanimity of the votes cast.

Article 28

(1) *(a)* Any country of the Union which has signed this Act may ratify it, and, if it has not signed it, may accede to it. Instruments of ratification and accession shall be deposited with the Director General.

(b) Any country of the Union may declare in its instrument of ratification or accession that its ratification or accession shall not apply:

(i) to Articles 1 to 21 and the Protocol Regarding Developing Countries, or

(ii) to Articles 22 to 26.

(c) If a country of the Union has already separately accepted the Protocol Regarding Developing Countries in accordance with Article 5 of such Protocol, its declaration under item (i) of the preceding subparagraph may relate only to Articles 1 to 20.

(d) Any country of the Union which, in accordance with subparagraphs *(b)* and *(c)*, has excluded from the effects of its ratification or accession one of the two groups of provisions referred to in those subparagraphs may at any later time declare that it extends the effects of its ratification or accession to that group of provisions. Such declaration shall be deposited with the Director General.

(2) *(a)* Subject to the provisions of Article 5 of the Protocol Regarding Developing Countries, Articles 1 to 21 and the said Protocol shall enter into force, with respect to the first five countries of the Union which have deposited instruments of ratification or accession without making the declaration permitted by paragraph (1)*(b)*(i), three months after the deposit of the fifth such instrument of ratification or accession.

(b) Articles 22 to 26 shall enter into force, with respect to the first seven countries of the Union which have deposited instruments of ratification or accession without making the

declaration permitted by paragraph (1)*(b)*(ii), three months after the deposit of the seventh such instrument of ratification or accession.

(c) Subject to the initial entry into force, pursuant to the provisions of subparagraphs *(a)* and *(b)*, of each of the two groups of provisions referred to in paragraph (1)*(b)*(i) and (ii), and subject to the provisions of paragraph (1)*(b)*, Articles 1 to 26 and the Protocol Regarding Developing Countries shall, with respect to any country of the Union, other than those referred to in subparagraphs *(a)* and *(b)*, which deposits an instrument of ratification or accession or any country of the Union which deposits a declaration pursuant to paragraph (1)*(d)*, enter into force three months after the date of notification by the Director General of such deposit, unless a subsequent date has been indicated in the instrument or declaration deposited. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.

(d) The Protocol Regarding Developing Countries may be applied, pursuant to Article 5 thereof, prior to the entry into force of this Act, from the date of its signature.

(3) With respect to any country of the Union which deposits an instrument of ratification or accession, Articles 27 to 38 shall enter into force on the earlier of the dates on which any of the groups of provisions referred to in paragraph (1)*(b)* enters into force with respect to that country pursuant to paragraph (2)*(a)*, *(b)* or *(c)*.

Article 29

(1) Any country outside the Union may accede to this Act and thereby become a member of the Union. Instruments of accession shall be deposited with the Director General.

(2) *(a)* With respect to any country outside the Union which deposits its instrument of accession one month or more before the date of entry into force of any provisions of the present Act, this Act shall enter into force, unless a subsequent date has been indicated in the instrument of accession, on the date upon which provisions first enter into force pursuant to Article 28(2)*(a)* or *(b)*; provided that:

(i) if Articles 1 to 21 do not enter into force on that date, such country shall, during the interim period before the entry into force of such provisions, and in substitution therefor, be bound by Articles 1 to 20 of the Brussels Act;

(ii) if Articles 22 to 26 do not enter into force on that date, such country shall, during the interim period before the entry into force of such provisions, and in substitution therefor, be bound by Articles 21 to 24 of the Brussels Act.

If a country indicates a subsequent date in its instrument of accession, this Act shall enter into force with respect to that country on the date thus indicated.

(b) With respect to any country outside the Union which deposits its instrument of accession on a date which is subsequent to, or precedes by less than one month, the entry into force of one group of provisions of the present Act, this Act shall, subject to the proviso of subparagraph *(a)*, enter into force three months after the date on which its accession has been notified by the Director General, unless a subsequent date has been indicated in the instrument of accession. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.

(3) With respect to any country outside the Union which deposits its instrument of accession after the date of entry into force of the present Act in its entirety, or less than one month before such date, this Act shall enter into force three months after the date on which its accession has been notified by the Director General, unless a subsequent date has been indicated in the instrument of accession. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.

Article 30

(1) Subject to the possibilities of exceptions provided for in the following paragraph, in Articles 28(1)*(b)* and 33(2), and in the Protocol Regarding Developing Countries, ratification or accession shall automatically entail acceptance of all the clauses and admission to all the advantages of this Act.

(2) *(a)* Any country of the Union ratifying or acceding to this Act may retain the benefit of the reservations it has previously formulated on condition that it makes a declaration to that effect at the time of the deposit of its instrument of ratification or accession.

(b) Any country outside the Union may, in acceding to this Act, declare that it intends to substitute, temporarily at least, for Article 8 concerning the right of translation, the provisions of Article 5 of the Union Convention of 1886, as revised in Paris in 1896, on the clear understanding that the said provisions are applicable only to translation into the language or languages of the said country. Any country of the Union has the right to apply, in relation to the right of translation of works whose country of origin is a country availing itself of such a reservation, a protection which is equivalent to the protection granted by the latter country.

(c) Any country may withdraw such reservations at any time by notification addressed to the Director General.

Article 31

(1) Any country may declare in its instrument of ratification or accession, or may inform the Director General by written notification any time thereafter, that this Convention shall be applicable to all or part of those territories, designated in the declaration or notification, for the external relations of which it is responsible.

(2) Any country which has made such a declaration or given such a notification may, at any time, notify the Director General that this Convention shall cease to be applicable to all or part of such territories.

(3) *(a)* Any declaration made under paragraph (1) shall take effect on the same date as the ratification or accession in which it was included, and any notification given under such paragraph shall take effect three months after its notification by the Director General.

(b) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Director General.

Article 32

(1) The present Act shall, as regards the relations between the countries of the Union, and to the extent that it applies, replace the Berne Convention of September 9, 1886, and the subsequent Acts of revision. The Acts previously in force shall continue to be applicable, in their entirety or to the extent that the present Act does not replace them by virtue of the preceding sentence, in relations with countries of the Union which do not ratify or accede to this Act.

(2) Countries outside the Union which become party to this Act shall, subject to the provisions of paragraph (3), apply it with respect to any country of the Union not party to this Act or which, although party to this Act, has made a declaration pursuant to Article 28(1)*(b)*(i). Such countries recognize that the said country of the Union, in its relations with them:

(i) may apply the provisions of the most recent Act to which it is party, and

(ii) has the right to adapt the protection to the level provided for by this Act.

(3) Any country which, in ratifying or acceding to the present Act, has made any or all of the reservations permitted under the Protocol Regarding Developing Countries may apply them in its relations with other countries of the Union which are not party to this Act or which, although party to this Act, have made a declaration as permitted by Article 28(1)*(b)*(i), provided that the latter countries have accepted the application of the said reservations.

Article 33

(1) Any dispute between two or more countries of the Union concerning the interpretation or application of this Convention, not settled by negotiation, may, by any one of the countries concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the countries concerned agree on some other method of settlement. The country bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other countries of the Union.

(2) Each country may, at the time it signs this Act or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of paragraph (1). With regard to any dispute between such country and any other country of the Union, the provisions of paragraph (1) shall not apply.

(3) Any country having made a declaration in accordance with the provisions of paragraph (2) may, at any time, withdraw its declaration by notification addressed to the Director General.

Article 34

After the entry into force of this Act in its entirety, a country may not accede to earlier Acts of this Convention.

Article 35

(1) This Convention shall remain in force without limitation as to time.

(2) Any country may denounce this Act by notification addressed to the Director General. Such denunciation shall constitute also denunciation of all earlier Acts and shall affect only the country making it, the Convention remaining in full force and effect as regards the other countries of the Union.

(3) Denunciation shall take effect one year after the day on which the Director General has received the notification.

(4) The right of denunciation provided by this Article shall not be exercised by any country before the expiration of five years from the date upon which it becomes a member of the Union.

Article 36

(1) Any country party to this Convention undertakes to adopt, in accordance with its constitution, the measures necessary to ensure the application of this Convention.

(2) It is understood that, at the time a country deposits its instrument of ratification or accession, it will be in a position

under its domestic law to give effect to the provisions of this Convention.

Article 37

(1) *(a)* This Act shall be signed in a single copy in the French and English languages and shall be deposited with the Government of Sweden.

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

(c) In case of differences of opinion on the interpretation of the various texts, the French text shall prevail.

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

(3) The Director General shall transmit two copies, certified by the Government of Sweden, of the signed text of this Act to the Governments of all countries of the Union and, on request, to the Government of any other country.

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

(5) The Director General shall notify the Governments of all countries of the Union of signatures, deposits of instruments of ratification or accession and any declarations included in such instruments or made pursuant to Article 28(1)*(d)*, entry into force of any provisions of this Act, notifications of denunciation, and notifications pursuant to Article 31.

Article 38

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

(2) Countries of the Union not bound by Articles 22 to 26 may, until five years after the entry into force of the Convention establishing the Organization, exercise, if they so desire, the rights provided under Articles 22 to 26 of this Act as if they were bound by those Articles. Any country desiring to exercise such rights shall give written notification to this effect to the Director General; this notification shall be effective on the date of its receipt. Such countries shall be deemed to be members of the Assembly until the expiration of the said period.

(3) As long as all the countries of the Union have not become Members of the Organization, the International Bureau of the Organization shall also function as the Bureau of the

Union, and the Director General as the Director of the said Bureau.

(4) Once all the countries of the Union have become Members of the Organization, the rights, obligations, and property, of the Bureau of the Union shall devolve on the International Bureau of the Organization.

Protocol Regarding Developing Countries

Article 1

Any country regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations which ratifies or accedes to the Act of this Convention of which this Protocol forms an integral part and which, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights as provided in the Act may, by a notification deposited with the Director General, at the time of making a ratification or accession which includes Article 21 of the Act, declare that it will, for a period of the first ten years during which it is a party thereto, avail itself of any or all of the following reservations:

(a) substitute for the term of fifty years referred to in paragraphs (1), (2) and (3) of Article 7 of this Convention a different term, provided that it shall not be less than twenty-five years; and substitute for the term of twenty-five years referred to in paragraph (4) of the said Article a different term, provided that it shall not be less than ten years;

(b) substitute for Article 8 of this Convention the following provisions:

(i) authors of literary and artistic works protected by this Convention shall enjoy in countries other than the country of origin of their works the exclusive right of making and of authorizing the translation of their works throughout the term of protection of their rights in the original works. Nevertheless, the exclusive right of translation shall cease to exist if the author shall not have availed himself of it, during a term of ten years from the date of the first publication of the original work, by publishing or causing to be published, in one of the countries of the Union, a translation in the language for which protection is to be claimed;

(ii) if, after the expiration of a period of three years from the date of the first publication of a literary

or artistic work, or of any longer period determined by national legislation of the developing country concerned, a translation of such work has not been published in that country into the national or official or regional language or languages of that country by the owner of the right of translation or with his authorization, any national of such country may obtain a non-exclusive license from the competent authority to translate the work and publish the work so translated in any of the national or official or regional languages in which it has not been published; provided that such national, in accordance with the procedure of the country concerned, establishes either that he has requested, and been denied, authorization by the proprietor of the right to make and publish the translation, or that, after due diligence on his part, he was unable to find the owner of the right. A license may also be granted on the same conditions if all previous editions of a translation in such language in that country are out of print;

(iii) if the owner of the right of translation cannot be found, then the applicant for a license shall send copies of his application to the publisher whose name appears on the work and, if the nationality of the owner of the right of translation is known, to the diplomatic or consular representative of the country of which such owner is a national, or to the organization which may have been designated by the Government of that country. The license shall not be granted before the expiration of a period of two months from the date of the dispatch of the copies of the application;

(iv) due provision shall be made by domestic legislation to assure to the owner of the right of translation a just compensation, to assure payment and transmittal of such compensation, subject to national currency regulations, and to assure a correct translation of the work;

(v) the original title and the name of the author of the work shall be printed on all copies of the published translation. The license shall be valid only for publication of the translation in the territory of the country of the Union where it has been applied for. Copies so published may be imported and sold in another country of the Union if one of the national or official or regional languages of such other country is the same language as that into which the work

has been so translated, and if the domestic law in such other country makes provision for such licenses and does not prohibit such importation and sale. Where the foregoing conditions do not exist, the importation and sale of such copies in a country of the Union shall be governed by its domestic law and its agreements. The license shall not be transferable by the licensee;

(vi) the license shall not be granted when the author has withdrawn from circulation all copies of the work;

(vii) should, however, the author avail himself of the right under subparagraph (i) above during the term of ten years from the date of first publication, the license shall terminate from the date on which the author publishes or causes to be published his translation in the country where the license has been granted, provided, however, that any copies of the translation already made before the license is terminated may continue to be sold;

(viii) should, however, the author not avail himself of the right under subparagraph (i) above during the said term of ten years, compensation under the non-exclusive license referred to above shall cease to be due for any uses made after the expiry of such term;

(ix) should the author be entitled to exclusive translation rights in a country by having published or caused to be published a translation of the work in that country within ten years from the date of first publication, but should thereafter during the term of the author's copyright in the work all editions of the authorized translation in that country be out of print, then a non-exclusive license to translate the work may be obtained from the competent authority in the same manner and subject to the same conditions as are provided with respect to the non-exclusive license referred to in subparagraphs (ii) to (vi) above, but subject to the provisions of subparagraph (vii) above;

(c) apply the provisions of Article 9(1) of this Convention subject to the following provisions:

(i) if, after the expiration of a period of three years from the date of the first publication of a literary or artistic work, or of any longer period determined by national legislation of the developing country concerned, such work has not been published in that country in the original form in which it was created, by the owner of the right of reproduction or with

his authorization, any national of such country may obtain a non-exclusive license from the competent authority to reproduce and publish such work for educational or cultural purposes; provided that such national, in accordance with the procedure of the country concerned, establishes either that he has requested, and been denied, authorization by the proprietor of the right to reproduce and publish such work for educational or cultural purposes, or that, after due diligence on his part, he was unable to find the owner of the right. A license may also be granted on the same conditions if all previous editions of such work in its said original form in that country are out of print;

(ii) if the owner of the right of reproduction cannot be found, then the applicant for a license shall send copies of his application to the publisher whose name appears on the work and, if the nationality of the owner of the right of reproduction is known, to the diplomatic or consular representative of the country of which such owner is a national, or to the organization which may have been designated by the Government of that country. The license shall not be granted before the expiration of a period of two months from the date of the dispatch of the copies of the application;

(iii) due provision shall be made by domestic legislation to assure to the owner of the right of reproduction a just compensation, to assure payment and transmittal of such compensation, subject to national currency regulations, and to assure an accurate reproduction of the work;

(iv) the original title and the name of the author of the work shall be printed on all copies of the published reproduction. The license shall be valid only for publication in the territory of the country of the Union where it has been applied for. Copies so published may be imported and sold in another country of the Union for educational or cultural purposes if the domestic law in such other country makes provision for such licenses and does not prohibit such importation and sale. Where the foregoing conditions do not exist, the importation and sale of such copies in a country of the Union shall be governed by its domestic law and its agreements. The license shall not be transferable by the licensee;

(v) the license shall not be granted when the author has withdrawn from circulation all copies of the work;

(vi) should, however, the author avail himself of the right to reproduce the work, the license shall terminate from the date on which the author publishes or causes to be published his work in its said original form in the country where the license has been granted, provided, however, that any copies of the work already made before the license is terminated may continue to be sold;

(vii) should the author publish or cause to be published his work in its said original form in a country, but should thereafter during the term of the author's copyright in the work all authorized editions in such original form in that country be out of print, then a non-exclusive license to reproduce and publish the work may be obtained from the competent authority in the same manner and subject to the same conditions as are provided with respect to the non-exclusive license referred to in subparagraphs (i) to (v) above, but subject to the provisions of subparagraph (vi) above;

(d) substitute for paragraphs (1) and (2) of Article 11bis of this Convention the following provisions:

(i) authors of literary and artistic works shall enjoy the exclusive right of authorizing the broadcasting of their works and the communication to the public of the broadcast of the works if such communication is made for profit-making purposes;

(ii) the national legislation of the countries of the Union may regulate the conditions under which the right mentioned in the preceding subparagraph shall be exercised, but the effect of those conditions will be strictly limited to the countries which have put them in force. Such conditions shall not in any case prejudice the moral rights of the author, nor the right which belongs to the author to obtain an equitable remuneration which shall be fixed, failing agreement, by the competent authority;

(e) reserve the right, exclusively for teaching, study and research in all fields of education, to restrict the protection of literary and artistic works, provided due provision shall be made by domestic legislation to assure to the author a compensation which conforms to standards of payment made to national authors; the payment and transmittal of such compensation shall be subject to national currency regulations. Copies of a work published pursuant to reservations under this paragraph may be imported and sold in another country of the Union for purposes as aforesaid if that country has invoked the said reservations and does

not prohibit such importation and sale. Where the foregoing conditions do not exist, the importation and sale of such copies in a country of the Union which cannot take advantage of this Protocol are prohibited in the absence of agreement of the author or his successors in title.

Article 2

Any country which no longer needs to maintain any or all of the reservations made in accordance with Article 1 of this Protocol shall withdraw such reservation or reservations by notification deposited with the Director General.

Article 3

Any country which has made reservations in accordance with Article 1 of this Protocol, and which at the end of the period of ten years prescribed therein, having regard to its economic situation and its social or cultural needs, still does not consider itself in a position to withdraw the reservations under the said Article 1, may continue to maintain any or all of the reservations until it ratifies or accedes to the Act adopted by the next revision conference of this Convention.

Article 4

If, in conformity with the established practice of the General Assembly of the United Nations, a country should cease to be regarded as a developing country, the Director General shall give notification of such cessation to the country concerned and to all of the other countries of the Union. At the expiry of a period of six years from the date of such notification the said country shall no longer have the right to maintain any of the reservations under this Protocol.

Article 5

(1) Any country of the Union may declare, as from the signature of this Convention, and at any time before becoming bound by Articles 1 to 21 of this Convention and by this Protocol,

(a) in the case of a country referred to in Article 1 of this Protocol, that it intends to apply the provisions of this Protocol to works whose country of origin is a country of the Union which admits the application of the reservations under the Protocol, or

(b) that it admits the application of the provisions of the Protocol to works of which it is the country of origin by countries which, on becoming bound by Articles 1 to 21 of this Convention and by this Protocol, or on making a declaration of application of this Protocol by virtue of

the provision of subparagraph *(a)*, have made reservations permitted under this Protocol.

(2) The declaration shall be made in writing and shall be deposited with the Director General. The declaration shall become effective from the date it is deposited.

Article 6

Any country which is bound by the provisions of this Protocol and which has made a declaration or notification under Article 31(1) of this Convention in respect of territories which, on the date of the signature of this Convention, are not responsible for their external relations, and the situation of which can be regarded as analogous to that of the countries referred to in Article 1 of this Protocol, may notify the Director General that the provisions of this Protocol shall apply to all or part of those territories and may in such notification declare that any such territory will avail itself of any or all of the reservations permitted by this Protocol.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Act.

DONE at Stockholm, on July 14, 1967.

Austria (Dr. Robert Dittrich); Belgium (B[on] F. Cogels); Bulgaria (V. Chivarov); Cameroon (Ekani); Congo, Democratic Republic of (G. Mulenda); Denmark (W. Weincke); Finland (Paul Gustafsson); France (B. de Menthon); Gabon (J. F. Oyoué); Germany, Federal Republic (Eugen Ulmer); Greece (J. A. Dracoulis); Holy See (Gunnar Sterner); Hungary (Esztergályos); Iceland (Arni Tryggvason); India (Sher Singh, R. Gae); Ireland (Valentin Iremonger); Israel (Z. Sher, G. Gavrieli); Italy (Cippico); Ivory Coast (Bilé); Japan (M. Takahashi, K. Adachi); Liechtenstein (Marianne Marxer); Luxembourg (J. P. Hoffmann); Madagascar (Ratovondriaka); Mexico (E. Rojas y Benavides); Monaco (J. M. Notari, G. Straschnov); Morocco (H'ssaine); Niger (A. Wright); Norway (Jens Evensen, B. Stuevold Lassen); Philippines (Lauro Baja); Poland (M. Kajzer); Portugal (Adriano de Carvalho, José de Oliveira Ascensão, Ruy Álvaro Costa de Morais Serrão); Rumania (C. Stanescu, T. Preda); Senegal (A. Seck); South Africa (T. Schoeman); Spain (J. F. Alcover, Electo J. Garcia Tejedor); Sweden (Herman Kling); Switzerland (Hans Morf, Joseph Voyame); Tunisia (M. Kedadi); Yugoslavia (A. Jelić).

Paris Convention
for the
Protection of Industrial Property
(Stockholm Act)

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Convention de Paris
pour la protection
de la propriété industrielle
(Acte de Stockholm)

Paris Convention for the Protection of Industrial Property

of March 20, 1883,
as revised
at BRUSSELS on December 14, 1900, at WASHINGTON on June 2, 1911,
at THE HAGUE on November 6, 1925, at LONDON on June 2, 1934,
at LISBON on October 31, 1958,
and at STOCKHOLM on July 14, 1967

Article 1

(1) The countries to which this Convention applies constitute a Union for the protection of industrial property.

(2) The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition.

(3) Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour.

(4) Patents shall include the various kinds of industrial patents recognized by the laws of the countries of the Union, such as patents of importation, patents of improvement, patents and certificates of addition, etc.

Article 2

(1) Nationals of any country of the Union shall, as regards the protection of industrial property, enjoy in all the other countries of the Union the advantages that their respective laws now grant, or may hereafter grant, to nationals; all without prejudice to the rights specially provided for by this Convention. Consequently, they shall have the same protection as the latter, and the same legal remedy against any infringe-

Convention de Paris
pour la protection de la propriété industrielle

du 20 mars 1883
revisée
à BRUXELLES le 14 décembre 1900, à WASHINGTON le 2 juin 1911,
à LA HAYE le 6 novembre 1925, à LONDRES le 2 juin 1934,
à LISBONNE le 31 octobre 1958
et à STOCKHOLM le 14 juillet 1967

Article premier

1) Les pays auxquels s'applique la présente Convention sont constitués à l'état d'Union pour la protection de la propriété industrielle.

2) La protection de la propriété industrielle a pour objet les brevets d'invention, les modèles d'utilité, les dessins ou modèles industriels, les marques de fabrique ou de commerce, les marques de service, le nom commercial et les indications de provenance ou appellations d'origine, ainsi que la répression de la concurrence déloyale.

3) La propriété industrielle s'entend dans l'acception la plus large et s'applique non seulement à l'industrie et au commerce proprement dits, mais également au domaine des industries agricoles et extractives et à tous produits fabriqués ou naturels, par exemple: vins, grains, feuilles de tabac, fruits, bestiaux, minéraux, eaux minérales, bières, fleurs, farines.

4) Parmi les brevets d'invention sont comprises les diverses espèces de brevets industriels admises par les législations des pays de l'Union, telles que brevets d'importation, brevets de perfectionnement, brevets et certificats d'addition, etc.

Article 2

1) Les ressortissants de chacun des pays de l'Union jouiront dans tous les autres pays de l'Union, en ce qui concerne la protection de la propriété industrielle, des avantages que les lois respectives accordent actuellement ou accorderont par la suite aux nationaux, le tout sans préjudice des droits spécialement prévus par la présente Convention. En conséquence, ils auront la même protection que ceux-ci et le même recours

ment of their rights, provided that the conditions and formalities imposed upon nationals are complied with.

(2) However, no requirement as to domicile or establishment in the country where protection is claimed may be imposed upon nationals of countries of the Union for the enjoyment of any industrial property rights.

(3) The provisions of the laws of each of the countries of the Union relating to judicial and administrative procedure and to jurisdiction, and to the designation of an address for service or the appointment of an agent, which may be required by the laws on industrial property are expressly reserved.

Article 3

Nationals of countries outside the Union who are domiciled or who have real and effective industrial or commercial establishments in the territory of one of the countries of the Union shall be treated in the same manner as nationals of the countries of the Union.

Article 4

A. — (1) Any person who has duly filed an application for a patent, or for the registration of a utility model, or of an industrial design, or of a trademark, in one of the countries of the Union, or his successor in title, shall enjoy, for the purpose of filing in the other countries, a right of priority during the periods hereinafter fixed.

(2) Any filing that is equivalent to a regular national filing under the domestic legislation of any country of the Union or under bilateral or multilateral treaties concluded between countries of the Union shall be recognized as giving rise to the right of priority.

(3) By a regular national filing is meant any filing that is adequate to establish the date on which the application was filed in the country concerned, whatever may be the subsequent fate of the application.

B. — Consequently, any subsequent filing in any of the other countries of the Union before the expiration of the periods referred to above shall not be invalidated by reason of any acts accomplished in the interval, in particular, another filing, the publication or exploitation of the invention, the putting on sale of copies of the design, or the use of the mark, and such acts cannot give rise to any third-party right or any right of personal possession. Rights acquired by third parties before the date of the first application that serves as the basis for the right of priority are reserved in accordance with the domestic legislation of each country of the Union.

légal contre toute atteinte portée à leurs droits, sous réserve de l'accomplissement des conditions et formalités imposées aux nationaux.

2) Toutefois, aucune condition de domicile ou d'établissement dans le pays où la protection est réclamée ne peut être exigée des ressortissants de l'Union pour la jouissance d'aucun des droits de propriété industrielle.

3) Sont expressément réservées les dispositions de la législation de chacun des pays de l'Union relatives à la procédure judiciaire et administrative et à la compétence, ainsi qu'à l'élection de domicile ou à la constitution d'un mandataire, qui seraient requises par les lois sur la propriété industrielle.

Article 3

Sont assimilés aux ressortissants des pays de l'Union les ressortissants des pays ne faisant pas partie de l'Union qui sont domiciliés ou ont des établissements industriels ou commerciaux effectifs et sérieux sur le territoire de l'un des pays de l'Union.

Article 4

A. — 1) Celui qui aura régulièrement fait le dépôt d'une demande de brevet d'invention, d'un modèle d'utilité, d'un dessin ou modèle industriel, d'une marque de fabrique ou de commerce, dans l'un des pays de l'Union, ou son ayant cause, jouira, pour effectuer le dépôt dans les autres pays, d'un droit de priorité pendant les délais déterminés ci-après.

2) Est reconnu comme donnant naissance au droit de priorité tout dépôt ayant la valeur d'un dépôt national régulier, en vertu de la législation nationale de chaque pays de l'Union ou de traités bilatéraux ou multilatéraux conclus entre des pays de l'Union.

3) Par dépôt national régulier on doit entendre tout dépôt qui suffit à établir la date à laquelle la demande a été déposée dans le pays en cause, quel que soit le sort ultérieur de cette demande.

B. — En conséquence, le dépôt ultérieurement opéré dans l'un des autres pays de l'Union, avant l'expiration de ces délais, ne pourra être invalidé par des faits accomplis dans l'intervalle, soit, notamment, par un autre dépôt, par la publication de l'invention ou son exploitation, par la mise en vente d'exemplaires du dessin ou du modèle, par l'emploi de la marque, et ces faits ne pourront faire naître aucun droit de tiers ni aucune possession personnelle. Les droits acquis par des tiers avant le jour de la première demande qui sert de base au droit de priorité sont réservés par l'effet de la législation intérieure de chaque pays de l'Union.

C. — (1) The periods of priority referred to above shall be twelve months for patents and utility models, and six months for industrial designs and trademarks.

(2) These periods shall start from the date of filing of the first application; the day of filing shall not be included in the period.

(3) If the last day of the period is an official holiday, or a day when the Office is not open for the filing of applications in the country where protection is claimed, the period shall be extended until the first following working day.

(4) A subsequent application concerning the same subject as a previous first application within the meaning of paragraph (2), above, filed in the same country of the Union, shall be considered as the first application, of which the filing date shall be the starting point of the period of priority, if, at the time of filing the subsequent application, the said previous application has been withdrawn, abandoned, or refused, without having been laid open to public inspection and without leaving any rights outstanding, and if it has not yet served as a basis for claiming a right of priority. The previous application may not thereafter serve as a basis for claiming a right of priority.

D. — (1) Any person desiring to take advantage of the priority of a previous filing shall be required to make a declaration indicating the date of such filing and the country in which it was made. Each country shall determine the latest date on which such declaration must be made.

(2) These particulars shall be mentioned in the publications issued by the competent authority, and in particular in the patents and the specifications relating thereto.

(3) The countries of the Union may require any person making a declaration of priority to produce a copy of the application (description, drawings, etc.) previously filed. The copy, certified as correct by the authority which received such application, shall not require any authentication, and may in any case be filed, without fee, at any time within three months of the filing of the subsequent application. They may require it to be accompanied by a certificate from the same authority showing the date of filing, and by a translation.

(4) No other formalities may be required for the declaration of priority at the time of filing the application. Each country of the Union shall determine the consequences of failure to comply with the formalities prescribed by this Article, but such consequences shall in no case go beyond the loss of the right of priority.

C. — 1) Les délais de priorité mentionnés ci-dessus seront de douze mois pour les brevets d'invention et les modèles d'utilité, et de six mois pour les dessins ou modèles industriels et pour les marques de fabrique ou de commerce.

2) Ces délais commencent à courir de la date du dépôt de la première demande; le jour du dépôt n'est pas compris dans le délai.

3) Si le dernier jour du délai est un jour férié légal, ou un jour où le Bureau n'est pas ouvert pour recevoir le dépôt des demandes dans le pays où la protection est réclamée, le délai sera prorogé jusqu'au premier jour ouvrable qui suit.

4) Doit être considérée comme première demande dont la date de dépôt sera le point de départ du délai de priorité, une demande ultérieure ayant le même objet qu'une première demande antérieure au sens de l'alinéa 2) ci-dessus, déposée dans le même pays de l'Union, à la condition que cette demande antérieure, à la date du dépôt de la demande ultérieure, ait été retirée, abandonnée, ou refusée, sans avoir été soumise à l'inspection publique et sans laisser subsister de droits, et qu'elle n'ait pas encore servi de base pour la revendication du droit de priorité. La demande antérieure ne pourra plus alors servir de base pour la revendication du droit de priorité.

D. — 1) Quiconque voudra se prévaloir de la priorité d'un dépôt antérieur sera tenu de faire une déclaration indiquant la date et le pays de ce dépôt. Chaque pays déterminera à quel moment, au plus tard, cette déclaration devra être effectuée.

2) Ces indications seront mentionnées dans les publications émanant de l'Administration compétente, notamment sur les brevets et les descriptions y relatives.

3) Les pays de l'Union pourront exiger de celui qui fait une déclaration de priorité la production d'une copie de la demande (description, dessins, etc.) déposée antérieurement. La copie, certifiée conforme par l'Administration qui aura reçu cette demande, sera dispensée de toute légalisation et elle pourra en tout cas être déposée, exempte de frais, à n'importe quel moment dans le délai de trois mois à dater du dépôt de la demande ultérieure. On pourra exiger qu'elle soit accompagnée d'un certificat de la date du dépôt émanant de cette Administration et d'une traduction.

4) D'autres formalités ne pourront être requises pour la déclaration de priorité au moment du dépôt de la demande. Chaque pays de l'Union déterminera les conséquences de l'omission des formalités prévues par le présent article, sans que ses conséquences puissent excéder la perte du droit de priorité.

(5) Subsequently, further proof may be required.

Any person who avails himself of the priority of a previous application shall be required to specify the number of that application; this number shall be published as provided for by paragraph (2), above.

E. — (1) Where an industrial design is filed in a country by virtue of a right of priority based on the filing of a utility model, the period of priority shall be the same as that fixed for industrial designs.

(2) Furthermore, it is permissible to file a utility model in a country by virtue of a right of priority based on the filing of a patent application, and vice versa.

F. — No country of the Union may refuse a priority or a patent application on the ground that the applicant claims multiple priorities, even if they originate in different countries, or on the ground that an application claiming one or more priorities contains one or more elements that were not included in the application or applications whose priority is claimed, provided that, in both cases, there is unity of invention within the meaning of the law of the country.

With respect to the elements not included in the application or applications whose priority is claimed, the filing of the subsequent application shall give rise to a right of priority under ordinary conditions.

G. — (1) If the examination reveals that an application for a patent contains more than one invention, the applicant may divide the application into a certain number of divisional applications and preserve as the date of each the date of the initial application and the benefit of the right of priority, if any.

(2) The applicant may also, on his own initiative, divide a patent application and preserve as the date of each divisional application the date of the initial application and the benefit of the right of priority, if any. Each country of the Union shall have the right to determine the conditions under which such division shall be authorized.

H. — Priority may not be refused on the ground that certain elements of the invention for which priority is claimed do not appear among the claims formulated in the application in the country of origin, provided that the application documents as a whole specifically disclose such elements.

I. — (1) Applications for inventors' certificates filed in a country in which applicants have the right to apply at their

5) Ultérieurement, d'autres justifications pourront être demandées.

Celui qui se prévaut de la priorité d'un dépôt antérieur sera tenu d'indiquer le numéro de ce dépôt; cette indication sera publiée dans les conditions prévues par l'alinéa 2) ci-dessus.

E. — 1) Lorsqu'un dessin ou modèle industriel aura été déposé dans un pays en vertu d'un droit de priorité basé sur le dépôt d'un modèle d'utilité, le délai de priorité ne sera que celui fixé pour les dessins ou modèles industriels.

2) En outre, il est permis de déposer dans un pays un modèle d'utilité en vertu d'un droit de priorité basé sur le dépôt d'une demande de brevet et inversement.

F. — Aucun pays de l'Union ne pourra refuser une priorité ou une demande de brevet pour le motif que le déposant revendique des priorités multiples, même provenant de pays différents, ou pour le motif qu'une demande revendiquant une ou plusieurs priorités contient un ou plusieurs éléments qui n'étaient pas compris dans la ou les demandes dont la priorité est revendiquée, à la condition, dans les deux cas, qu'il y ait unité d'invention, au sens de la loi du pays.

En ce qui concerne les éléments non compris dans la ou les demandes dont la priorité est revendiquée, le dépôt de la demande ultérieure donne naissance à un droit de priorité dans les conditions ordinaires.

G. — 1) Si l'examen révèle qu'une demande de brevet est complexe, le demandeur pourra diviser la demande en un certain nombre de demandes divisionnaires, en conservant comme date de chacune la date de la demande initiale et, s'il y a lieu, le bénéfice du droit de priorité.

2) Le demandeur pourra aussi, de sa propre initiative, diviser la demande de brevet, en conservant comme date de chaque demande divisionnaire la date de la demande initiale et, s'il y a lieu, le bénéfice du droit de priorité. Chaque pays de l'Union aura la faculté de déterminer les conditions auxquelles cette division sera autorisée.

H. — La priorité ne peut être refusée pour le motif que certains éléments de l'invention pour lesquels on revendique la priorité ne figurent pas parmi les revendications formulées dans la demande au pays d'origine, pourvu que l'ensemble des pièces de la demande révèle d'une façon précise lesdits éléments.

I. — 1) Les demandes de certificats d'auteur d'invention, déposées dans un pays où les déposants ont le droit de deman-

own option either for a patent or for an inventor's certificate shall give rise to the right of priority provided for by this Article, under the same conditions and with the same effects as applications for patents.

(2) In a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate, an applicant for an inventor's certificate shall, in accordance with the provisions of this Article relating to patent applications, enjoy a right of priority based on an application for a patent, a utility model, or an inventor's certificate.

Article 4bis

(1) Patents applied for in the various countries of the Union by nationals of countries of the Union shall be independent of patents obtained for the same invention in other countries, whether members of the Union or not.

(2) The foregoing provision is to be understood in an unrestricted sense, in particular, in the sense that patents applied for during the period of priority are independent, both as regards the grounds for nullity and forfeiture, and as regards their normal duration.

(3) The provision shall apply to all patents existing at the time when it comes into effect.

(4) Similarly, it shall apply, in the case of the accession of new countries, to patents in existence on either side at the time of accession.

(5) Patents obtained with the benefit of priority shall, in the various countries of the Union, have a duration equal to that which they would have, had they been applied for or granted without the benefit of priority.

Article 4ter

The inventor shall have the right to be mentioned as such in the patent.

Article 4quater

The grant of a patent shall not be refused and a patent shall not be invalidated on the ground that the sale of the patented product or of a product obtained by means of a patented process is subject to restrictions or limitations resulting from the domestic law.

Article 5

A. — (1) Importation by the patentee into the country where the patent has been granted of articles manufactured in any of the countries of the Union shall not entail forfeiture of the patent.

der à leur choix soit un brevet, soit un certificat d'auteur d'invention, donneront naissance au droit de priorité institué par le présent article dans les mêmes conditions et avec les mêmes effets que les demandes de brevets d'invention.

2) Dans un pays où les déposants ont le droit de demander à leur choix soit un brevet, soit un certificat d'auteur d'invention, le demandeur d'un certificat d'auteur d'invention bénéficiera, selon les dispositions du présent article applicables aux demandes de brevets, du droit de priorité basé sur le dépôt d'une demande de brevet d'invention, de modèle d'utilité ou de certificat d'auteur d'invention.

Article 4bis

1) Les brevets demandés dans les différents pays de l'Union par des ressortissants de l'Union seront indépendants des brevets obtenus pour la même invention dans les autres pays, adhérents ou non à l'Union.

2) Cette disposition doit s'entendre d'une façon absolue, notamment en ce sens que les brevets demandés pendant le délai de priorité sont indépendants, tant au point de vue des causes de nullité et de déchéance qu'au point de vue de la durée normale.

3) Elle s'applique à tous les brevets existant au moment de sa mise en vigueur.

4) Il en sera de même, en cas d'accession de nouveaux pays, pour les brevets existant de part et d'autre au moment de l'accession.

5) Les brevets obtenus avec le bénéfice de la priorité jouiront, dans les différents pays de l'Union, d'une durée égale à celle dont ils jouiraient s'ils étaient demandés ou délivrés sans le bénéfice de la priorité.

Article 4ter

L'inventeur a le droit d'être mentionné comme tel dans le brevet.

Article 4^{quater}

La délivrance d'un brevet ne pourra être refusée et un brevet ne pourra être invalidé pour le motif que la vente du produit breveté ou obtenu par un procédé breveté est soumise à des restrictions ou limitations résultant de la législation nationale.

Article 5

A. — 1) L'introduction, par le breveté, dans le pays où le brevet a été délivré, d'objets fabriqués dans l'un ou l'autre des pays de l'Union, n'entraînera pas la déchéance.

(2) Each country of the Union shall have the right to take legislative measures providing for the grant of compulsory licenses to prevent the abuses which might result from the exercise of the exclusive rights conferred by the patent, for example, failure to work.

(3) Forfeiture of the patent shall not be provided for except in cases where the grant of compulsory licenses would not have been sufficient to prevent the said abuses. No proceedings for the forfeiture or revocation of a patent may be instituted before the expiration of two years from the grant of the first compulsory license.

(4) A compulsory license may not be applied for on the ground of failure to work or insufficient working before the expiration of a period of four years from the date of filing of the patent application or three years from the date of the grant of the patent, whichever period expires last; it shall be refused if the patentee justifies his inaction by legitimate reasons. Such a compulsory license shall be non-exclusive and shall not be transferable, even in the form of the grant of a sub-license, except with that part of the enterprise or goodwill which exploits such license.

(5) The foregoing provisions shall be applicable, mutatis mutandis, to utility models.

B. — The protection of industrial designs shall not, under any circumstance, be subject to any forfeiture, either by reason of failure to work or by reason of the importation of articles corresponding to those which are protected.

C. — (1) If, in any country, use of the registered mark is compulsory, the registration may be cancelled only after a reasonable period, and then only if the person concerned does not justify his inaction.

(2) Use of a trademark by the proprietor in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered in one of the countries of the Union shall not entail invalidation of the registration and shall not diminish the protection granted to the mark.

(3) Concurrent use of the same mark on identical or similar goods by industrial or commercial establishments considered as co-proprietors of the mark according to the provisions of the domestic law of the country where protection is claimed shall not prevent registration or diminish in any way the protection granted to the said mark in any country

2) Chacun des pays de l'Union aura la faculté de prendre des mesures législatives prévoyant la concession de licences obligatoires, pour prévenir les abus qui pourraient résulter de l'exercice du droit exclusif conféré par le brevet, par exemple faute d'exploitation.

3) La déchéance du brevet ne pourra être prévue que pour le cas où la concession de licences obligatoires n'aurait pas suffi pour prévenir ces abus. Aucune action en déchéance ou en révocation d'un brevet ne pourra être introduite avant l'expiration de deux années à compter de la concession de la première licence obligatoire.

4) Une licence obligatoire ne pourra pas être demandée pour cause de défaut ou d'insuffisance d'exploitation avant l'expiration d'un délai de quatre années à compter du dépôt de la demande de brevet, ou de trois années à compter de la délivrance du brevet, le délai qui expire le plus tard devant être appliqué; elle sera refusée si le breveté justifie son inaction par des excuses légitimes. Une telle licence obligatoire sera non exclusive et ne pourra être transmise, même sous la forme de concession de sous-licence, qu'avec la partie de l'entreprise ou du fonds de commerce exploitant cette licence.

5) Les dispositions qui précèdent seront applicables, sous réserve des modifications nécessaires, aux modèles d'utilité.

B. — La protection des dessins et modèles industriels ne peut être atteinte par une déchéance quelconque, soit pour défaut d'exploitation, soit pour introduction d'objets conformes à ceux qui sont protégés.

C. — 1) Si, dans un pays, l'utilisation de la marque enregistrée est obligatoire, l'enregistrement ne pourra être annulé qu'après un délai équitable et si l'intéressé ne justifie pas des causes de son inaction.

2) L'emploi d'une marque de fabrique ou de commerce, par le propriétaire, sous une forme qui diffère, par des éléments n'altérant pas le caractère distinctif de la marque dans la forme sous laquelle celle-ci a été enregistrée dans l'un des pays de l'Union, n'entraînera pas l'invalidation de l'enregistrement et ne diminuera pas la protection accordée à la marque.

3) L'emploi simultané de la même marque sur des produits identiques ou similaires, par des établissements industriels ou commerciaux considérés comme copropriétaires de la marque d'après les dispositions de la loi nationale du pays où la protection est réclamée, n'empêchera pas l'enregistrement, ni ne diminuera d'aucune façon la protection accordée à ladite

of the Union, provided that such use does not result in misleading the public and is not contrary to the public interest.

D. — No indication or mention of the patent, of the utility model, of the registration of the trademark, or of the deposit of the industrial design, shall be required upon the goods as a condition of recognition of the right to protection.

Article 5bis

(1) A period of grace of not less than six months shall be allowed for the payment of the fees prescribed for the maintenance of industrial property rights, subject, if the domestic legislation so provides, to the payment of a surcharge.

(2) The countries of the Union shall have the right to provide for the restoration of patents which have lapsed by reason of non-payment of fees.

Article 5ter

In any country of the Union the following shall not be considered as infringements of the rights of a patentee:

1. the use on board vessels of other countries of the Union of devices forming the subject of his patent in the body of the vessel, in the machinery, tackle, gear and other accessories, when such vessels temporarily or accidentally enter the waters of the said country, provided that such devices are used there exclusively for the needs of the vessel;
2. the use of devices forming the subject of the patent in the construction or operation of aircraft or land vehicles of other countries of the Union, or of accessories of such aircraft or land vehicles, when those aircraft or land vehicles temporarily or accidentally enter the said country.

Article 5quater

When a product is imported into a country of the Union where there exists a patent protecting a process of manufacture of the said product, the patentee shall have all the rights, with regard to the imported product, that are accorded to him by the legislation of the country of importation, on the basis of the process patent, with respect to products manufactured in that country.

Article 5quinquies

Industrial designs shall be protected in all the countries of the Union.

marque dans n'importe quel pays de l'Union, pourvu que ledit emploi n'ait pas pour effet d'induire le public en erreur et qu'il ne soit pas contraire à l'intérêt public.

D. — Aucun signe ou mention du brevet, du modèle d'utilité, de l'enregistrement de la marque de fabrique ou de commerce, ou du dépôt du dessin ou modèle industriel ne sera exigé sur le produit pour la reconnaissance du droit.

Article 5bis

1) Un délai de grâce, qui devra être au minimum de six mois, sera accordé pour le paiement des taxes prévues pour le maintien des droits de propriété industrielle, moyennant le versement d'une surtaxe, si la législation nationale en impose une.

2) Les pays de l'Union ont la faculté de prévoir la restauration des brevets d'invention tombés en déchéance par suite de non-paiement de taxes.

Article 5ter

Dans chacun des pays de l'Union ne seront pas considérés comme portant atteinte aux droits du breveté:

1° l'emploi, à bord des navires des autres pays de l'Union, des moyens faisant l'objet de son brevet dans le corps du navire, dans les machines, agrès, apparaux et autres accessoires, lorsque ces navires pénétreront temporairement ou accidentellement dans les eaux du pays, sous réserve que ces moyens y soient employés exclusivement pour les besoins du navire;

2° l'emploi des moyens faisant l'objet du brevet dans la construction ou le fonctionnement des engins de locomotion aérienne ou terrestre des autres pays de l'Union ou des accessoires de ces engins, lorsque ceux-ci pénétreront temporairement ou accidentellement dans ce pays.

Article 5quater

Lorsqu'un produit est introduit dans un pays de l'Union où il existe un brevet protégeant un procédé de fabrication dudit produit, le breveté aura, à l'égard du produit introduit, tous les droits que la législation du pays d'importation lui accorde, sur la base du brevet de procédé, à l'égard des produits fabriqués dans le pays même.

Article 5quinquies

Les dessins et modèles industriels seront protégés dans tous les pays de l'Union.

Article 6

(1) The conditions for the filing and registration of trademarks shall be determined in each country of the Union by its domestic legislation.

(2) However, an application for the registration of a mark filed by a national of a country of the Union in any country of the Union may not be refused, nor may a registration be invalidated, on the ground that filing, registration, or renewal, has not been effected in the country of origin.

(3) A mark duly registered in a country of the Union shall be regarded as independent of marks registered in the other countries of the Union, including the country of origin.

Article 6bis

(1) The countries of the Union undertake, ex officio if their legislation so permits, or at the request of an interested party, to refuse or to cancel the registration, and to prohibit the use, of a trademark which constitutes a reproduction, an imitation, or a translation, liable to create confusion, of a mark considered by the competent authority of the country of registration or use to be well known in that country as being already the mark of a person entitled to the benefits of this Convention and used for identical or similar goods. These provisions shall also apply when the essential part of the mark constitutes a reproduction of any such well-known mark or an imitation liable to create confusion therewith.

(2) A period of at least five years from the date of registration shall be allowed for requesting the cancellation of such a mark. The countries of the Union may provide for a period within which the prohibition of use must be requested.

(3) No time limit shall be fixed for requesting the cancellation or the prohibition of the use of marks registered or used in bad faith.

Article 6ter

(1) *(a)* The countries of the Union agree to refuse or to invalidate the registration, and to prohibit by appropriate measures the use, without authorization by the competent authorities, either as trademarks or as elements of trademarks, of armorial bearings, flags, and other State emblems, of the countries of the Union, official signs and hallmarks indicating control and warranty adopted by them, and any imitation from a heraldic point of view.

(b) The provisions of subparagraph *(a)*, above, shall apply equally to armorial bearings, flags, other emblems, abbrevia-

Article 6

1) Les conditions de dépôt et d'enregistrement des marques de fabrique ou de commerce seront déterminées dans chaque pays de l'Union par sa législation nationale.

2) Toutefois, une marque déposée par un ressortissant d'un pays de l'Union dans un quelconque des pays de l'Union ne pourra être refusée ou invalidée pour le motif qu'elle n'aura pas été déposée, enregistrée ou renouvelée au pays d'origine.

3) Une marque régulièrement enregistrée dans un pays de l'Union sera considérée comme indépendante des marques enregistrées dans les autres pays de l'Union, y compris le pays d'origine.

Article 6bis

1) Les pays de l'Union s'engagent, soit d'office si la législation du pays le permet, soit à la requête de l'intéressé, à refuser ou à invalider l'enregistrement et à interdire l'usage d'une marque de fabrique ou de commerce qui constitue la reproduction, l'imitation ou la traduction, susceptibles de créer une confusion, d'une marque que l'autorité compétente du pays de l'enregistrement ou de l'usage estimera y être notoirement connue comme étant déjà la marque d'une personne admise à bénéficier de la présente Convention et utilisée pour des produits identiques ou similaires. Il en sera de même lorsque la partie essentielle de la marque constitue la reproduction d'une telle marque notoirement connue ou une imitation susceptible de créer une confusion avec celle-ci.

2) Un délai minimum de cinq années à compter de la date de l'enregistrement devra être accordé pour réclamer la radiation d'une telle marque. Les pays de l'Union ont la faculté de prévoir un délai dans lequel l'interdiction d'usage devra être réclamée.

3) Il ne sera pas fixé de délai pour réclamer la radiation ou l'interdiction d'usage des marques enregistrées ou utilisées de mauvaise foi.

Article 6ter

1) *a)* Les pays de l'Union conviennent de refuser ou d'invalider l'enregistrement et d'interdire, par des mesures appropriées, l'utilisation, à défaut d'autorisation des pouvoirs compétents, soit comme marque de fabrique ou de commerce, soit comme élément de ces marques, des armoiries, drapeaux et autres emblèmes d'Etat des pays de l'Union, signes et poinçons officiels de contrôle et de garantie adoptés par eux, ainsi que toute imitation au point de vue héraldique.

b) Les dispositions figurant sous la lettre *a)* ci-dessus s'appliquent également aux armoiries, drapeaux et autres

tions, and names, of international intergovernmental organizations of which one or more countries of the Union are members, with the exception of armorial bearings, flags, other emblems, abbreviations, and names, that are already the subject of international agreements in force, intended to ensure their protection.

(c) No country of the Union shall be required to apply the provisions of subparagraph *(b)*, above, to the prejudice of the owners of rights acquired in good faith before the entry into force, in that country, of this Convention. The countries of the Union shall not be required to apply the said provisions when the use or registration referred to in subparagraph *(a)*, above, is not of such a nature as to suggest to the public that a connection exists between the organization concerned and the armorial bearings, flags, emblems, abbreviations, and names, or if such use or registration is probably not of such a nature as to mislead the public as to the existence of a connection between the user and the organization.

(2) Prohibition of the use of official signs and hallmarks indicating control and warranty shall apply solely in cases where the marks in which they are incorporated are intended to be used on goods of the same or a similar kind.

(3) *(a)* For the application of these provisions, the countries of the Union agree to communicate reciprocally, through the intermediary of the International Bureau, the list of State emblems, and official signs and hallmarks indicating control and warranty, which they desire, or may hereafter desire, to place wholly or within certain limits under the protection of this Article, and all subsequent modifications of such list. Each country of the Union shall in due course make available to the public the lists so communicated.

Nevertheless such communication is not obligatory in respect of flags of States.

(b) The provisions of subparagraph *(b)* of paragraph (1) of this Article shall apply only to such armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations as the latter have communicated to the countries of the Union through the intermediary of the International Bureau.

(4) Any country of the Union may, within a period of twelve months from the receipt of the notification, transmit its objections, if any, through the intermediary of the International Bureau, to the country or international intergovernmental organization concerned.

(5) In the case of State flags, the measures prescribed by paragraph (1), above, shall apply solely to marks registered after November 6, 1925.

emblèmes, sigles ou dénominations des organisations internationales intergouvernementales dont un ou plusieurs pays de l'Union sont membres, à l'exception des armoiries, drapeaux et autres emblèmes, sigles ou dénominations qui ont déjà fait l'objet d'accords internationaux en vigueur destinés à assurer leur protection.

c) Aucun pays de l'Union ne pourra être tenu d'appliquer des dispositions figurant sous la lettre *b)* ci-dessus au détriment des titulaires de droits acquis de bonne foi avant l'entrée en vigueur, dans ce pays, de la présente Convention. Les pays de l'Union ne sont pas tenus d'appliquer lesdites dispositions lorsque l'utilisation ou l'enregistrement visé sous la lettre *a)* ci-dessus n'est pas de nature à suggérer, dans l'esprit du public, un lien entre l'organisation en cause et les armoiries, drapeaux, emblèmes, sigles ou dénominations, ou si cette utilisation ou enregistrement n'est vraisemblablement pas de nature à abuser le public sur l'existence d'un lien entre l'utilisateur et l'organisation.

2) L'interdiction des signes et poinçons officiels de contrôle et de garantie s'appliquera seulement dans les cas où les marques qui les comprendront seront destinées à être utilisées sur des marchandises du même genre ou d'un genre similaire.

3) *a)* Pour l'application de ces dispositions, les pays de l'Union conviennent de se communiquer réciproquement, par l'intermédiaire du Bureau international, la liste des emblèmes d'Etat, signes et poinçons officiels de contrôle et de garantie, qu'ils désirent ou désireront placer, d'une façon absolue ou dans certaines limites, sous la protection du présent article, ainsi que toutes modifications ultérieures apportées à cette liste. Chaque pays de l'Union mettra à la disposition du public, en temps utile, les listes notifiées.

Toutefois, cette notification n'est pas obligatoire en ce qui concerne les drapeaux des Etats.

b) Les dispositions figurant sous la lettre *b)* de l'alinéa 1) du présent article ne sont applicables qu'aux armoiries, drapeaux et autres emblèmes, sigles ou dénominations des organisations internationales intergouvernementales que celles-ci ont communiqués aux pays de l'Union par l'intermédiaire du Bureau international.

4) Tout pays de l'Union pourra, dans un délai de douze mois à partir de la réception de la notification, transmettre, par l'intermédiaire du Bureau international, au pays ou à l'organisation internationale intergouvernementale intéressés, ses objections éventuelles.

5) Pour les drapeaux de l'Etat, les mesures prévues à l'alinéa 1) ci-dessus s'appliqueront seulement aux marques enregistrées après le 6 novembre 1925.

(6) In the case of State emblems other than flags, and of official signs and hallmarks of the countries of the Union, and in the case of armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations, these provisions shall apply only to marks registered more than two months after receipt of the communication provided for in paragraph (3), above.

(7) In cases of bad faith, the countries shall have the right to cancel even those marks incorporating State emblems, signs, and hallmarks, which were registered before November 6, 1925.

(8) Nationals of any country who are authorized to make use of the State emblems, signs, and hallmarks, of their country may use them even if they are similar to those of another country.

(9) The countries of the Union undertake to prohibit the unauthorized use in trade of the State armorial bearings of the other countries of the Union, when the use is of such a nature as to be misleading as to the origin of the goods.

(10) The above provisions shall not prevent the countries from exercising the right given in paragraph (3) of Article 6quinquies, Section B, to refuse or to invalidate the registration of marks incorporating, without authorization, armorial bearings, flags, other State emblems, or official signs and hallmarks adopted by a country of the Union, as well as the distinctive signs of international intergovernmental organizations referred to in paragraph (1), above.

Article 6quater

(1) When, in accordance with the law of a country of the Union, the assignment of a mark is valid only if it takes place at the same time as the transfer of the business or goodwill to which the mark belongs, it shall suffice for the recognition of such validity that the portion of the business or goodwill located in that country be transferred to the assignee, together with the exclusive right to manufacture in the said country, or to sell therein, the goods bearing the mark assigned.

(2) The foregoing provision does not impose upon the countries of the Union any obligation to regard as valid the assignment of any mark the use of which by the assignee would, in fact, be of such a nature as to mislead the public, particularly as regards the origin, nature, or essential qualities, of the goods to which the mark is applied.

Article 6quinquies

A. — (1) Every trademark duly registered in the country of origin shall be accepted for filing and protected as is in

6) Pour les emblèmes d'Etat autres que les drapeaux, pour les signes et poinçons officiels des pays de l'Union et pour les armoiries, drapeaux et autres emblèmes, sigles ou dénominations des organisations internationales intergouvernementales, ces dispositions ne seront applicables qu'aux marques enregistrées plus de deux mois après réception de la notification prévue à l'alinéa 3) ci-dessus.

7) En cas de mauvaise foi, les pays auront la faculté de faire radier même les marques enregistrées avant le 6 novembre 1925 et comportant des emblèmes d'Etat, signes et poinçons.

8) Les nationaux de chaque pays qui seraient autorisés à faire usage des emblèmes d'Etat, signes et poinçons de leur pays, pourront les utiliser, même s'il y avait similitude avec ceux d'un autre pays.

9) Les pays de l'Union s'engagent à interdire l'usage non autorisé, dans le commerce, des armoiries d'Etat des autres pays de l'Union, lorsque cet usage sera de nature à induire en erreur sur l'origine des produits.

10) Les dispositions qui précèdent ne font pas obstacle à l'exercice, par les pays, de la faculté de refuser ou d'invalider, par application du chiffre 3 de la lettre B de l'article $6^{quinquies}$, les marques contenant, sans autorisation, des armoiries, drapeaux et autres emblèmes d'Etat, ou des signes et poinçons officiels adoptés par un pays de l'Union, ainsi que des signes distinctifs des organisations internationales intergouvernementales mentionnés à l'alinéa 1) ci-dessus.

Article 6^{quater}

1) Lorsque, conformément à la législation d'un pays de l'Union, la cession d'une marque n'est valable que si elle a lieu en même temps que le transfert de l'entreprise ou du fonds de commerce auquel la marque appartient, il suffira, pour que cette validité soit admise, que la partie de l'entreprise ou du fonds de commerce située dans ce pays soit transmise au cessionnaire avec le droit exclusif d'y fabriquer ou d'y vendre les produits portant la marque cédée.

2) Cette disposition n'impose pas aux pays de l'Union l'obligation de considérer comme valable le transfert de toute marque dont l'usage par le cessionnaire serait, en fait, de nature à induire le public en erreur, notamment en ce qui concerne la provenance, la nature ou les qualités substantielles des produits auxquels la marque est appliquée.

Article $6^{quinquies}$

A. — 1) Toute marque de fabrique ou de commerce régulièrement enregistrée dans le pays d'origine sera admise au

the other countries of the Union, subject to the reservations indicated in this Article. Such countries may, before proceeding to final registration, require the production of a certificate of registration in the country of origin, issued by the competent authority. No authentication shall be required for this certificate.

(2) Shall be considered the country of origin the country of the Union where the applicant has a real and effective industrial or commercial establishment, or, if he has no such establishment within the Union, the country of the Union where he has his domicile, or, if he has no domicile within the Union but is a national of a country of the Union, the country of which he is a national.

B. — Trademarks covered by this Article may be neither denied registration nor invalidated except in the following cases:

1. when they are of such a nature as to infringe rights acquired by third parties in the country where protection is claimed;
2. when they are devoid of any distinctive character, or consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, place of origin, of the goods, or the time of production, or have become customary in the current language or in the bona fide and established practices of the trade of the country where protection is claimed;
3. when they are contrary to morality or public order and, in particular, of such a nature as to deceive the public. It is understood that a mark may not be considered contrary to public order for the sole reason that it does not conform to a provision of the legislation on marks, except if such provision itself relates to public order.

This provision is subject, however, to the application of Article 10bis.

C. — (1) In determining whether a mark is eligible for protection, all the factual circumstances must be taken into consideration, particularly the length of time the mark has been in use.

(2) No trademark shall be refused in the other countries of the Union for the sole reason that it differs from the mark protected in the country of origin only in respect of elements that do not alter its distinctive character and do not affect its identity in the form in which it has been registered in the said country of origin.

dépôt et protégée telle quelle dans les autres pays de l'Union, sous les réserves indiquées au présent article. Ces pays pourront, avant de procéder à l'enregistrement définitif, exiger la production d'un certificat d'enregistrement au pays d'origine, délivré par l'autorité compétente. Aucune légalisation ne sera requise pour ce certificat.

2) Sera considéré comme pays d'origine le pays de l'Union où le déposant a un établissement industriel ou commercial effectif et sérieux, et, s'il n'a pas un tel établissement dans l'Union, le pays de l'Union où il a son domicile, et, s'il n'a pas de domicile dans l'Union, le pays de sa nationalité, au cas où il est ressortissant d'un pays de l'Union.

B. — Les marques de fabrique ou de commerce, visées par le présent article, ne pourront être refusées à l'enregistrement ou invalidées que dans les cas suivants:

1° lorsqu'elles sont de nature à porter atteinte à des droits acquis par des tiers dans le pays où la protection est réclamée;

2° lorsqu'elles sont dépourvues de tout caractère distinctif, ou bien composées exclusivement de signes ou d'indication pouvant servir, dans le commerce, pour désigner l'espèce, la qualité, la quantité, la destination, la valeur, le lieu d'origine des produits ou l'époque de production, ou devenus usuels dans le langage courant ou les habitudes loyales et constantes du commerce du pays où la protection est réclamée;

3° lorsqu'elles sont contraires à la morale ou à l'ordre public et notamment de nature à tromper le public. Il est entendu qu'une marque ne pourra être considérée comme contraire à l'ordre public pour la seule raison qu'elle n'est pas conforme à quelque disposition de la législation sur les marques, sauf le cas où cette disposition elle-même concerne l'ordre public.

Est toutefois réservée l'application de l'article 10bis.

C. — 1) Pour apprécier si la marque est susceptible de protection, on devra tenir compte de toutes les circonstances de fait, notamment de la durée de l'usage de la marque.

2) Ne pourront être refusées dans les autres pays de l'Union les marques de fabrique ou de commerce pour le seul motif qu'elles ne diffèrent des marques protégées dans le pays d'origine que par des éléments n'altérant pas le caractère distinctif et ne touchant pas à l'identité des marques, dans la forme sous laquelle celles-ci ont été enregistrées audit pays d'origine.

D. — No person may benefit from the provisions of this Article if the mark for which he claims protection is not registered in the country of origin.

E. — However, in no case shall the renewal of the registration of the mark in the country of origin involve an obligation to renew the registration in the other countries of the Union in which the mark has been registered.

F. — The benefit of priority shall remain unaffected for applications for the registration of marks filed within the period fixed by Article 4, even if registration in the country of origin is effected after the expiration of such period.

Article 6^{sexies}

The countries of the Union undertake to protect service marks. They shall not be required to provide for the registration of such marks.

Article 6^{septies}

(1) If the agent or representative of the person who is the proprietor of a mark in one of the countries of the Union applies, without such proprietor's authorization, for the registration of the mark in his own name, in one or more countries of the Union, the proprietor shall be entitled to oppose the registration applied for or demand its cancellation or, if the law of the country so allows, the assignment in his favor of the said registration, unless such agent or representative justifies his action.

(2) The proprietor of the mark shall, subject to the provisions of paragraph (1), above, be entitled to oppose the use of his mark by his agent or representative if he has not authorized such use.

(3) Domestic legislation may provide an equitable time limit within which the proprietor of a mark must exercise the rights provided for in this Article.

Article 7

The nature of the goods to which a trademark is to be applied shall in no case form an obstacle to the registration of the mark.

Article 7bis

(1) The countries of the Union undertake to accept for filing and to protect collective marks belonging to associations the existence of which is not contrary to the law of the country of origin, even if such associations do not possess an industrial or commercial establishment.

(2) Each country shall be the judge of the particular conditions under which a collective mark shall be protected

D. — Nul ne pourra bénéficier des dispositions du présent article si la marque dont il revendique la protection n'est pas enregistrée au pays d'origine.

E. — Toutefois, en aucun cas, le renouvellement de l'enregistrement d'une marque dans le pays d'origine n'entraînera l'obligation de renouveler l'enregistrement dans les autres pays de l'Union où la marque aura été enregistrée.

F. — Le bénéfice de la priorité reste acquis aux dépôts de marques effectués dans le délai de l'article 4, même lorsque l'enregistrement dans le pays d'origine n'intervient qu'après l'expiration de ce délai.

Article 6^sexies

Les pays de l'Union s'engagent à protéger les marques de service. Ils ne sont pas tenus de prévoir l'enregistrement de ces marques.

Article 6^septies

1) Si l'agent ou le représentant de celui qui est titulaire d'une marque dans un des pays de l'Union demande, sans l'autorisation de ce titulaire, l'enregistrement de cette marque en son propre nom, dans un ou plusieurs de ces pays, le titulaire aura le droit de s'opposer à l'enregistrement demandé ou de réclamer la radiation ou, si la loi du pays le permet, le transfert à son profit dudit enregistrement, à moins que cet agent ou représentant ne justifie de ses agissements.

2) Le titulaire de la marque aura, sous les réserves de l'alinéa 1) ci-dessus, le droit de s'opposer à l'utilisation de sa marque par son agent ou représentant, s'il n'a pas autorisé cette utilisation.

3) Les législations nationales ont la faculté de prévoir un délai équitable dans lequel le titulaire d'une marque devra faire valoir les droits prévus au présent article.

Article 7

La nature du produit sur lequel la marque de fabrique ou de commerce doit être apposée ne peut, dans aucun cas, faire obstacle à l'enregistrement de la marque.

Article 7bis

1) Les pays de l'Union s'engagent à admettre au dépôt et à protéger les marques collectives appartenant à des collectivités dont l'existence n'est pas contraire à la loi du pays d'origine, même si ces collectivités ne possèdent pas un établissement industriel ou commercial.

2) Chaque pays sera juge des conditions particulières sous lesquelles une marque collective sera protégée, et il pourra

and may refuse protection if the mark is contrary to the public interest.

(3) Nevertheless, the protection of these marks shall not be refused to any association the existence of which is not contrary to the law of the country of origin, on the ground that such association is not established in the country where protection is sought or is not constituted according to the law of the latter country.

Article 8

A trade name shall be protected in all the countries of the Union without the obligation of filing or registration, whether or not it forms part of a trademark.

Article 9

(1) All goods unlawfully bearing a trademark or trade name shall be seized on importation into those countries of the Union where such mark or trade name is entitled to legal protection.

(2) Seizure shall likewise be effected in the country where the unlawful affixation occurred or in the country into which the goods were imported.

(3) Seizure shall take place at the request of the public prosecutor, or any other competent authority, or any interested party, whether a natural person or a legal entity, in conformity with the domestic legislation of each country.

(4) The authorities shall not be bound to effect seizure of goods in transit.

(5) If the legislation of a country does not permit seizure on importation, seizure shall be replaced by prohibition of importation or by seizure inside the country.

(6) If the legislation of a country permits neither seizure on importation nor prohibition of importation nor seizure inside the country, then, until such time as the legislation is modified accordingly, these measures shall be replaced by the actions and remedies available in such cases to nationals under the law of such country.

Article 10

(1) The provisions of the preceding Article shall apply in cases of direct or indirect use of a false indication of the source of the goods or the identity of the producer, manufacturer, or merchant.

(2) Any producer, manufacturer, or merchant, whether a natural person or a legal entity, engaged in the production or manufacture of or trade in such goods and established either in the locality falsely indicated as the source, or in the

refuser la protection si cette marque est contraire à l'intérêt public.

3) Cependant, la protection de ces marques ne pourra être refusée à aucune collectivité dont l'existence n'est pas contraire à la loi du pays d'origine, pour le motif qu'elle n'est pas établie dans le pays où la protection est requise ou qu'elle n'est pas constituée conformément à la législation de ce pays.

Article 8

Le nom commercial sera protégé dans tous les pays de l'Union sans obligation de dépôt ou d'enregistrement, qu'il fasse ou non partie d'une marque de fabrique ou de commerce.

Article 9

1) Tout produit portant illicitement une marque de fabrique ou de commerce ou un nom commercial, sera saisi à l'importation dans ceux des pays de l'Union dans lesquels cette marque ou ce nom commercial ont droit à la protection légale.

2) La saisie sera également effectuée dans le pays où l'apposition illicite aura eu lieu, ou dans les pays où aura été importé le produit.

3) La saisie aura lieu à la requête soit du Ministère public, soit de toute autre autorité compétente, soit d'une partie intéressée, personne physique ou morale, conformément à la législation intérieure de chaque pays.

4) Les autorités ne seront pas tenues d'effectuer la saisie en cas de transit.

5) Si la législation d'un pays n'admet pas la saisie à l'importation, la saisie sera remplacée par la prohibition d'importation ou la saisie à l'intérieur.

6) Si la législation d'un pays n'admet ni la saisie à l'importation, ni la prohibition d'importation, ni la saisie à l'intérieur, et en attendant que cette législation soit modifiée en conséquence, ces mesures seront remplacées par les actions et moyens que la loi de ce pays assurerait en pareil cas aux nationaux.

Article 10

1) Les dispositions de l'article précédent seront applicables en cas d'utilisation directe ou indirecte d'une indication fausse concernant la provenance du produit ou l'identité du producteur, fabricant ou commerçant.

2) Sera en tout cas reconnu comme partie intéressée, que ce soit une personne physique ou morale, tout producteur, fabricant ou commerçant engagé dans la production, la fabrication ou le commerce de ce produit et établi soit dans la

region where such locality is situated, or in the country falsely indicated, or in the country where the false indication of source is used, shall in any case be deemed an interested party.

Article 10bis

(1) The countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition.

(2) Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.

(3) The following in particular shall be prohibited:

1. all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;
2. false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;
3. indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

Article 10ter

(1) The countries of the Union undertake to assure to nationals of the other countries of the Union appropriate legal remedies effectively to repress all the acts referred to in Articles 9, 10, and 10bis.

(2) They undertake, further, to provide measures to permit federations and associations representing interested industrialists, producers, or merchants, provided that the existence of such federations and associations is not contrary to the laws of their countries, to take action in the courts or before the administrative authorities, with a view to the repression of the acts referred to in Articles 9, 10, and 10bis, in so far as the law of the country in which protection is claimed allows such action by federations and associations of that country.

Article 11

(1) The countries of the Union shall, in conformity with their domestic legislation, grant temporary protection to patentable inventions, utility models, industrial designs, and trademarks, in respect of goods exhibited at official or offi-

localité faussement indiquée comme lieu de provenance, soit dans la région où cette localité est située, soit dans le pays faussement indiqué, soit dans le pays où la fausse indication de provenance est employée.

Article 10bis

1) Les pays de l'Union sont tenus d'assurer aux ressortissants de l'Union une protection effective contre la concurrence déloyale.

2) Constitue un acte de concurrence déloyale tout acte de concurrence contraire aux usages honnêtes en matière industrielle ou commerciale.

3) Notamment devront être interdits:

1° tous faits quelconques de nature à créer une confusion par n'importe quel moyen avec l'établissement, les produits ou l'activité industrielle ou commerciale d'un concurrent;

2° les allégations fausses, dans l'exercice du commerce, de nature à discréditer l'établissement, les produits ou l'activité industrielle ou commerciale d'un concurrent;

3° les indications ou allégations dont l'usage, dans l'exercice du commerce, est susceptible d'induire le public en erreur sur la nature, le mode de fabrication, les caractéristiques, l'aptitude à l'emploi ou la quantité des marchandises.

Article 10ter

1) Les pays de l'Union s'engagent à assurer aux ressortissants des autres pays de l'Union des recours légaux appropriés pour réprimer efficacement tous les actes visés aux articles 9, 10 et 10bis.

2) Ils s'engagent, en outre, à prévoir des mesures pour permettre aux syndicats et associations représentant les industriels, producteurs ou commerçants intéressés et dont l'existence n'est pas contraire aux lois de leurs pays, d'agir en justice ou auprès des autorités administratives, en vue de la répression des actes prévus par les articles 9, 10 et 10bis, dans la mesure où la loi du pays dans lequel la protection est réclamée le permet aux syndicats et associations de ce pays.

Article 11

1) Les pays de l'Union accorderont, conformément à leur législation intérieure, une protection temporaire aux inventions brevetables, aux modèles d'utilité, aux dessins ou modèles industriels ainsi qu'aux marques de fabrique ou de commerce,

cially recognized international exhibitions held in the territory of any of them.

(2) Such temporary protection shall not extend the periods provided by Article 4. If, later, the right of priority is invoked, the authorities of any country may provide that the period shall start from the date of introduction of the goods into the exhibition.

(3) Each country may require, as proof of the identity of the article exhibited and of the date of its introduction, such documentary evidence as it considers necessary.

Article 12

(1) Each country of the Union undertakes to establish a special industrial property service and a central office for the communication to the public of patents, utility models, industrial designs, and trademarks.

(2) This service shall publish an official periodical journal. It shall publish regularly:

(a) the names of the proprietors of patents granted, with a brief designation of the inventions patented;

(b) the reproductions of registered trademarks.

Article 13

(1) *(a)* The Union shall have an Assembly consisting of those countries of the Union which are bound by Articles 13 to 17.

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

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

(2) *(a)* The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Union and the implementation of this Convention;

(ii) give directions concerning the preparation for conferences of revision to the International Bureau of Intellectual Property (hereinafter designated as " the International Bureau ") referred to in the Convention establishing the World Intellectual Property Organization (hereinafter designated as " the Organization "), due account being taken of any comments made by those countries of the Union which are not bound by Articles 13 to 17;

pour les produits qui figureront aux expositions internationales officielles ou officiellement reconnues organisées sur le territoire de l'un deux.

2) Cette protection temporaire ne prolongera pas les délais de l'article 4. Si, plus tard, le droit de priorité est invoqué, l'Administration de chaque pays pourra faire partir le délai de la date de l'introduction du produit dans l'exposition.

3) Chaque pays pourra exiger, comme preuve de l'identité de l'objet exposé et de la date d'introduction, les pièces justificatives qu'il jugera nécessaire.

Article 12

1) Chacun des pays de l'Union s'engage à établir un service spécial de la propriété industrielle et un dépôt central pour la communication au public des brevets d'invention des modèles d'utilité, des dessins ou modèles industriels et des marques de fabrique ou de commerce.

2) Ce service publiera une feuille périodique officielle. Il publiera régulièrement:

a) les noms des titulaires des brevets délivrés, avec une brève désignation des inventions brevetées;

b) les reproductions des marques enregistrées.

Article 13

1) *a)* L'Union a une Assemblée composée des pays de l'Union liés par les articles 13 à 17.

b) Le Gouvernement de chaque pays est représenté par un délégué, qui peut être assisté de suppléants, de conseillers et d'experts.

c) Les dépenses de chaque délégation sont supportées par le Gouvernement qui l'a désignée.

2) *a)* L'Assemblée:

i) traite de toutes les questions concernant le maintien et le développement de l'Union et l'application de la présente Convention;

ii) donne au Bureau international de la Propriété intellectuelle (ci-après dénommé « le Bureau international ») visé dans la Convention instituant l'Organisation Mondiale de la Propriété Intellectuelle (ci-après dénommée «l'Organisation ») des directives concernant la préparation des conférences de revision, compte étant dûment tenu des observations des pays de l'Union qui ne sont pas liés par les articles 13 à 17;

(iii) review and approve the reports and activities of the Director General of the Organization concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union;
(iv) elect the members of the Executive Committee of the Assembly;
(v) review and approve the reports and activities of its Executive Committee, and give instructions to such Committee;
(vi) determine the program and adopt the triennial budget of the Union, and approve its final accounts;
(vii) adopt the financial regulations of the Union;
(viii) establish such committees of experts and working groups as it deems appropriate to achieve the objectives of the Union;
(ix) determine which countries not members of the Union and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;
(x) adopt amendments to Articles 13 to 17;
(xi) take any other appropriate action designed to further the objectives of the Union;
(xii) perform such other functions as are appropriate under this Convention;
(xiii) subject to its acceptance, exercise such rights as are given to it in the Convention establishing the Organization.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3) *(a)* Subject to the provisions of subparagraph *(b)*, a delegate may represent one country only.

(b) Countries of the Union grouped under the terms of a special agreement in a common office possessing for each of them the character of a special national service of industrial property as referred to in Article 12 may be jointly represented during discussions by one of their number.

(4) *(a)* Each country member of the Assembly shall have one vote.

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

(c) Notwithstanding the provisions of subparagraph *(b)*, if, in any session, the number of countries represented is less than one-half but equal to or more than one-third of the countries members of the Assembly, the Assembly may make deci-

iii) examine et approuve les rapports et les activités du Directeur général de l'Organisation relatifs à l'Union et lui donne toutes directives utiles concernant les questions de la compétence de l'Union;

iv) élit les membres du Comité exécutif de l'Assemblée;

v) examine et approuve les rapports et les activités de son Comité exécutif et lui donne des directives;

vi) arrête le programme, adopte le budget triennal de l'Union et approuve ses comptes de clôture;

vii) adopte le règlement financier de l'Union;

viii) crée les comités d'experts et groupes de travail qu'elle juge utiles à la réalisation des objectifs de l'Union;

ix) décide quels sont les pays non membres de l'Union et quelles sont les organisations intergouvernementales et internationales non gouvernementales qui peuvent être admis à ses réunions en qualité d'observateurs;

x) adopte les modifications des articles 13 à 17;

xi) entreprend toute autre action appropriée en vue d'atteindre les objectifs de l'Union;

xii) s'acquitte de toutes autres tâches qu'implique la présente Convention;

xiii) exerce, sous réserve qu'elle les accepte, les droits qui lui sont conférés par la Convention instituant l'Organisation.

b) Sur les questions qui intéressent également d'autres Unions administrées par l'Organisation, l'Assemblée statue connaissance prise de l'avis du Comité de Coordination de l'Organisation.

3) *a)* Sous réserve des dispositions du sous-alinéa *b)*, un délégué ne peut représenter qu'un seul pays.

b) Des pays de l'Union groupés en vertu d'un arrangement particulier au sein d'un office commun ayant pour chacun d'eux le caractère de service national spécial de la propriété industrielle visé à l'article 12 peuvent être, au cours des discussions, représentés dans leur ensemble par l'un d'eux.

4) *a)* Chaque pays membre de l'Assemblée dispose d'une voix.

b) La moitié des pays membres de l'Assemblée constitue le quorum.

c) Nonobstant les dispositions du sous-alinéa *b)*, si, lors d'une session, le nombre des pays représentés est inférieur à la moitié mais égal ou supérieur au tiers des pays membres de l'Assemblée, celle-ci peut prendre des décisions; toutefois, les

sions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fufilled. The International Bureau shall communicate the said decisions to the countries members of the Assembly which were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of countries having thus expressed their vote or abstention attains the number of countries which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(d) Subject to the provisions of Article 17(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(e) Abstentions shall not be considered as votes.

(5) *(a)* Subject to the provisions of subparagraph *(b)*, a delegate may vote in the name of one country only.

(b) The countries of the Union referred to in paragraph (3)*(b)* shall, as a general rule, endeavor to send their own delegations to the sessions of the Assembly. If, however, for exceptional reasons, any such country cannot send its own delegation, it may give to the delegation of another such country the power to vote in its name, provided that each delegation may vote by proxy for one country only. Such power to vote shall be granted in a document signed by the Head of State or the competent Minister.

(6) Countries of the Union not members of the Assembly shall be admitted to the meetings of the latter as observers.

(7) *(a)* The Assembly shall meet once in every third calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

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

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

Article 14

(1) The Assembly shall have an Executive Committee.

(2) *(a)* The Executive Committee shall consist of countries elected by the Assembly from among countries members of the Assembly. Furthermore, the country on whose territory

décisions de l'Assemblée, à l'exception de celles qui concernent sa procédure, ne deviennent exécutoires que lorsque les conditions énoncées ci-après sont remplies. Le Bureau international communique lesdites décisions aux pays membres de l'Assemblée qui n'étaient pas représentés, en les invitant à exprimer par écrit, dans un délai de trois mois à compter de la date de ladite communication, leur vote ou leur abstention. Si, à l'expiration de ce délai, le nombre des pays ayant ainsi exprimé leur vote ou leur abstention est au moins égal au nombre de pays qui faisait défaut pour que le quorum fût atteint lors de la session, lesdites décisions deviennent exécutoires, pourvu qu'en même temps la majorité nécessaire reste acquise.

d) Sous réserve des dispositions de l'article 17.2), les décisions de l'Assemblée sont prises à la majorité des deux tiers des votes exprimés.

e) L'abstention n'est pas considérée comme un vote.

5) *a)* Sous réserve du sous-alinéa *b)*, un délégué ne peut voter qu'au nom d'un seul pays.

b) Les pays de l'Union visés à l'alinéa 3)*b)* s'efforcent, en règle générale, de se faire représenter aux sessions de l'Assemblée par leurs propres délégations. Toutefois, si, pour des raisons exceptionnelles, l'un desdits pays ne peut se faire représenter par sa propre délégation, il peut donner à la délégation d'un autre de ces pays le pouvoir de voter en son nom, étant entendu qu'une délégation ne peut voter par procuration que pour un seul pays. Tout pouvoir à cet effet doit faire l'objet d'un acte signé par le chef de l'Etat ou par le ministre compétent.

6) Les pays de l'Union qui ne sont pas membres de l'Assemblée sont admis à ses réunions en qualité d'observateurs.

7) *a)* L'Assemblée se réunit une fois tous les trois ans en session ordinaire sur convocation du Directeur général et, sauf cas exceptionnels, pendant la même période et au même lieu que l'Assemblée générale de l'Organisation.

b) L'Assemblée se réunit en session extraordinaire sur convocation adressée par le Directeur général, à la demande du Comité exécutif ou à la demande d'un quart des pays membres de l'Assemblée.

8) L'Assemblée adopte son règlement intérieur.

Article 14

1) L'Assemblée a un Comité exécutif.

2) *a)* Le Comité exécutif est composé des pays élus par l'Assemblée parmi les pays membres de celle-ci. En outre, le pays sur le territoire duquel l'Organisation a son siège dispose,

the Organization has its headquarters shall, subject to the provisions of Article 16(7)*(b)*, have an ex officio seat on the Committee.

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

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

(3) The number of countries members of the Executive Committee shall correspond to one-fourth of the number of countries members of the Assembly. In establishing the number of seats to be filled, remainders after division by four shall be disregarded.

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

(5) *(a)* Each member of the Executive Committee shall serve from the close of the session of the Assembly which elected it to the close of the next ordinary session of the Assembly.

(b) Members of the Executive Committee may be re-elected, but only up to a maximum of two-thirds of such members.

(c) The Assembly shall establish the details of the rules governing the election and possible re-election of the members of the Executive Committee.

(6) *(a)* The Executive Committee shall:

(i) prepare the draft agenda of the Assembly;

(ii) submit proposals to the Assembly in respect of the draft program and triennial budget of the Union prepared by the Director General;

(iii) approve, within the limits of the program and the triennial budget, the specific yearly budgets and programs prepared by the Director General;

(iv) submit, with appropriate comments, to the Assembly the periodical reports of the Director General and the yearly audit reports on the accounts;

(v) take all necessary measures to ensure the execution of the program of the Union by the Director General, in accordance with the decisions of the Assembly and having regard to circumstances arising between two ordinary sessions of the Assembly;

(vi) perform such other functions as are allocated to it under this Convention.

ex officio, d'un siège au Comité, sous réserve des dispositions de l'article 16.7)*b)*.

b) Le Gouvernement de chaque pays membre du Comité exécutif est représenté par un délégué, qui peut être assisté de suppléants, de conseillers et d'experts.

c) Les dépenses de chaque délégation sont supportées par le Gouvernement qui l'a désignée.

3) Le nombre des pays membres du Comité exécutif correspond au quart du nombre des pays membres de l'Assemblée. Dans le calcul des sièges à pourvoir, le reste subsistant après la division par quatre n'est pas pris en considération.

4) Lors de l'élection des membres du Comité exécutif, l'Assemblée tient compte d'une répartition géographique équitable et de la nécessité pour tous les pays parties aux Arrangements particuliers établis en relation avec l'Union d'être parmi les pays constituant le Comité exécutif.

5) *a)* Les membres du Comité exécutif restent en fonctions à partir de la clôture de la session de l'Assemblée au cours de laquelle ils ont été élus jusqu'au terme de la session ordinaire suivante de l'Assemblée.

b) Les membres du Comité exécutif sont rééligibles dans la limite maximale des deux tiers d'entre eux.

c) L'Assemblée réglemente les modalités de l'élection et de la réélection éventuelle des membres du Comité exécutif.

6) *a)* Le Comité exécutif:

i) prépare le projet d'ordre du jour de l'Assemblée;

ii) soumet à l'Assemblée des propositions relatives aux projets de programme et de budget triennal de l'Union préparés par le Directeur général;

iii) se prononce, dans les limites du programme et du budget triennal, sur les programmes et budgets annuels préparés par le Directeur général;

iv) soumet à l'Assemblée, avec les commentaires appropriés, les rapports périodiques du Directeur général et les rapports annuels de vérification des comptes;

v) prend toutes mesures utiles en vue de l'exécution du programme de l'Union par le Directeur général, conformément aux décisions de l'Assemblée et en tenant compte des circonstances survenant entre deux sessions ordinaires de ladite Assemblée;

vi) s'acquitte de toutes autres tâches qui lui sont attribuées dans le cadre de la présente Convention.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Executive Committee shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(7) *(a)* The Executive Committee shall meet once a year in ordinary session upon convocation by the Director General, preferably during the same period and at the same place as the Coordination Committee of the Organization.

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

(8) *(a)* Each country member of the Executive Committee shall have one vote.

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

(c) Decisions shall be made by a simple majority of the votes cast.

(d) Abstentions shall not be considered as votes.

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

(9) Countries of the Union not members of the Executive Committee shall be admitted to its meetings as observers.

(10) The Executive Committee shall adopt its own rules of procedure.

Article 15

(1) *(a)* Administrative tasks concerning the Union shall be performed by the International Bureau, which is a continuation of the Bureau of the Union united with the Bureau of the Union established by the International Convention for the Protection of Literary and Artistic Works.

(b) In particular, the International Bureau shall provide the secretariat of the various organs of the Union.

(c) The Director General of the Organization shall be the chief executive of the Union and shall represent the Union.

(2) The International Bureau shall assemble and publish information concerning the protection of industrial property. Each country of the Union shall promptly communicate to the International Bureau all new laws and official texts concerning the protection of industrial property. Furthermore, it shall furnish the International Bureau with all the publications of its industrial property service of direct concern to the protection of industrial property which the International Bureau may find useful in its work.

b) Sur les questions qui intéressent également d'autres Unions administrées par l'Organisation, le Comité exécutif statue connaissance prise de l'avis du Comité de coordination de l'Organisation.

7) *a)* Le Comité exécutif se réunit une fois par an en session ordinaire, sur convocation du Directeur général, autant que possible pendant la même période et au même lieu que le Comité de coordination de l'Organisation.

b) Le Comité exécutif se réunit en session extraordinaire sur convocation adressée par le Directeur général soit à l'initiative de celui-ci, soit à la demande de son président ou d'un quart de ses membres.

8) *a)* Chaque pays membre du Comité exécutif dispose d'une voix.

b) La moitié des pays membres du Comité exécutif constitue le quorum.

c) Les décisions sont prises à la majorité simple des votes exprimés.

d) L'abstention n'est pas considérée comme un vote.

e) Un délégué ne peut représenter qu'un seul pays et ne peut voter qu'au nom de celui-ci.

9) Les pays de l'Union qui ne sont pas membres du Comité exécutif sont admis à ses réunions en qualité d'observateurs.

10) Le Comité exécutif adopte son règlement intérieur.

Article 15

1) *a)* Les tâches administratives incombant à l'Union sont assurées par le Bureau international, qui succède au Bureau de l'Union réuni avec le Bureau de l'Union institué par la Convention internationale pour la protection des œuvres littéraires et artistiques.

b) Le Bureau international assure notamment le secrétariat des divers organes de l'Union.

c) Le Directeur général de l'Organisation est le plus haut fonctionnaire de l'Union et la représente.

2) Le Bureau international rassemble et publie les informations concernant la protection de la propriété industrielle. Chaque pays de l'Union communique aussitôt que possible au Bureau international le texte de toute nouvelle loi ainsi que tous textes officiels concernant la protection de la propriété industrielle. Il fournit, en outre, au Bureau international toutes publications de ses services compétents en matière de propriété industrielle qui touchent directement la protection de la propriété industrielle et sont jugées par le Bureau international comme présentant un intérêt pour ses activités.

(3) The International Bureau shall publish a monthly periodical.

(4) The International Bureau shall, on request, furnish any country of the Union with information on matters concerning the protection of industrial property.

(5) The International Bureau shall conduct studies, and shall provide services, designed to facilitate the protection of industrial property.

(6) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the Executive Committee, and any other committee of experts or working group. The Director General, or a staff member designated by him, shall be ex officio secretary of these bodies.

(7) *(a)* The International Bureau shall, in accordance with the directions of the Assembly and in cooperation with the Executive Committee, make the preparations for the conferences of revision of the provisions of the Convention other than Articles 13 to 17.

(b) The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for conferences of revision.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at these conferences.

(8) The International Bureau shall carry out any other tasks assigned to it.

Article 16

(1) *(a)* The Union shall have a budget.

(b) The budget of the Union shall include the income and expenses proper to the Union, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization.

(c) Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Union in such common expenses shall be in proportion to the interest the Union has in them.

(2) The budget of the Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

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

3) Le Bureau international publie un périodique mensuel.

4) Le Bureau international fournit, à tout pays de l'Union, sur sa demande, des renseignements sur les questions relatives à la protection de la propriété industrielle.

5) Le Bureau international procède à des études et fournit des services destinés à faciliter la protection de la propriété industrielle.

6) Le Directeur général et tout membre du personnel désigné par lui prennent part, sans droit de vote, à toutes les réunions de l'Assemblée, du Comité exécutif et de tout autre comité d'experts ou groupe de travail. Le Directeur général ou un membre du personnel désigné par lui est d'office secrétaire de ces organes.

7) *a)* Le Bureau international, selon les directives de l'Assemblée et en coopération avec le Comité exécutif, prépare les conférences de revision des dispositions de la Convention autres que les articles 13 à 17.

b) Le Bureau international peut consulter des organisations intergouvernementales et internationales non gouvernementales sur la préparation des conférences de revision.

c) Le Directeur général et les personnes désignées par lui prennent part, sans droit de vote, aux délibérations dans ces conférences.

8) Le Bureau international exécute toutes autres tâches qui lui sont attribuées.

Article 16

1) *a)* L'Union a un budget.

b) Le budget de l'Union comprend les recettes et les dépenses propres à l'Union, sa contribution au budget des dépenses communes aux Unions, ainsi que, le cas échéant, la somme mise à la disposition du budget de la Conférence de l'Organisation.

c) Sont considérées comme dépenses communes aux Unions les dépenses qui ne sont pas attribuées exclusivement à l'Union, mais également à une ou plusieurs autres Unions administrées par l'Organisation. La part de l'Union dans ces dépenses communes est proportionnelle à l'intérêt que ces dépenses présentent pour elle.

2) Le budget de l'Union est arrêté compte tenu des exigences de coordination avec les budgets des autres Unions administrées par l'Organisation.

3) Le budget de l'Union est financé par les ressources suivantes:

(i) contributions of the countries of the Union;

(ii) fees and charges due for services rendered by the International Bureau in relation to the Union;

(iii) sale of, or royalties on, the publications of the International Bureau concerning the Union;

(iv) gifts, bequests, and subventions;

(v) rents, interests, and other miscellaneous income.

(4) *(a)* For the purpose of establishing its contribution towards the budget, each country of the Union shall belong to a class, and shall pay its annual contributions on the basis of a number of units fixed as follows:

Class I	25
Class II	20
Class III	15
Class IV	10
Class V	5
Class VI	3
Class VII	1

(b) Unless it has already done so, each country shall indicate, concurrently with depositing its instrument of ratification or accession, the class to which it wishes to belong. Any country may change class. If it chooses a lower class, the country must announce such change to the Assembly at one of its ordinary sessions. Any such change shall take effect at the beginning of the calendar year following the said session.

(c) The annual contribution of each country shall be an amount in the same proportion to the total sum to be contributed to the budget of the Union by all countries as the number of its units is to the total of the units of all contributing countries.

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

(e) A country which is in arrears in the payment of its contributions may not exercise its right to vote in any of the organs of the Union of which it is a member if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any organ of the Union may allow such a country to continue to exercise its right to vote in that organ if, and as long as, it is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

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

i) les contributions des pays de l'Union;
ii) les taxes et sommes dues pour les services rendus par le Bureau international au titre de l'Union;
iii) le produit de la vente des publications du Bureau international concernant l'Union et les droits afférents à ces publications;
iv) les dons, legs et subventions;
v) les loyers, intérêts et autres revenus divers.

4) *a)* Pour déterminer sa part contributive dans le budget, chaque pays de l'Union est rangé dans une classe et paie ses contributions annuelles sur la base d'un nombre d'unités fixé comme suit:

Classe I	25
Classe II	20
Classe III	15
Classe IV	10
Classe V	5
Classe VI	3
Classe VII. . . .	1

b) A moins qu'il ne l'ait fait précédemment, chaque pays indique, au moment du dépôt de son instrument de ratification ou d'adhésion, la classe dans laquelle il désire être rangé. Il peut changer de classe. S'il choisit une classe inférieure, le pays doit en faire part à l'Assemblée lors d'une de ses sessions ordinaires. Un tel changement prend effet au début de l'année civile suivant ladite session.

c) La contribution annuelle de chaque pays consiste en un montant dont le rapport à la somme totale des contributions annuelles au budget de l'Union de tous les pays est le même que le rapport entre le nombre des unités de la classe dans laquelle il est rangé et le nombre total des unités de l'ensemble des pays.

d) Les contributions sont dues au premier janvier de chaque année.

e) Un pays en retard dans le paiement de ses contributions ne peut exercer son droit de vote, dans aucun des organes de l'Union dont il est membre, si le montant de son arriéré est égal ou supérieur à celui des contributions dont il est redevable pour les deux années complètes écoulées. Cependant, un tel pays peut être autorisé à conserver l'exercice de son droit de vote au sein dudit organe aussi longtemps que ce dernier estime que le retard résulte de circonstances exceptionnelles et inévitables.

f) Dans le cas où le budget n'est pas adopté avant le début d'un nouvel exercice, le budget de l'année précédente est reconduit selon les modalités prévues par le règlement financier.

(5) The amount of the fees and charges due for services rendered by the International Bureau in relation to the Union shall be established, and shall be reported to the Assembly and the Executive Committee, by the Director General.

(6) *(a)* The Union shall have a working capital fund which shall be constituted by a single payment made by each country of the Union. If the fund becomes insufficient, the Assembly shall decide to increase it.

(b) The amount of the initial payment of each country to the said fund or of its participation in the increase thereof shall be a proportion of the contribution of that country for the year in which the fund is established or the decision to increase it is made.

(c) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee of the Organization.

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

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

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

Article 17

(1) Proposals for the amendment of Articles 13, 14, 15, 16, and the present Article, may be initiated by any country member of the Assembly, by the Executive Committee, or by the Director General. Such proposals shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.

(2) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly. Adoption shall require

5) Le montant des taxes et sommes dues pour des services rendus par le Bureau international au titre de l'Union est fixé par le Directeur général, qui en fait rapport à l'Assemblée et au Comité exécutif.

6) *a)* L'Union possède un fonds de roulement constitué par un versement unique effectué par chaque pays de l'Union. Si le fonds devient insuffisant, l'Assemblée décide de son augmentation.

b) Le montant du versement initial de chaque pays au fonds précité ou de sa participation à l'augmentation de celui-ci est proportionnel à la contribution de ce pays pour l'année au cours de laquelle le fonds est constitué ou l'augmentation décidée.

c) La proportion et les modalités de versement sont arrêtées par l'Assemblée sur proposition du Directeur général et après avis du Comité de coordination de l'Organisation.

7) *a)* L'Accord de siège conclu avec le pays sur le territoire duquel l'Organisation a son siège prévoit que, si le fonds de roulement est insuffisant, ce pays accorde des avances. Le montant de ces avances et les conditions dans lesquelles elles sont accordées font l'objet, dans chaque cas, d'accords séparés entre le pays en cause et l'organisation. Aussi longtemps qu'il est tenu d'accorder des avances, ce pays dispose *ex officio* d'un siège au Comité exécutif.

b) Le pays visé au sous-alinéa *a)* et l'Organisation ont chacun le droit de dénoncer l'engagement d'accorder des avances moyennant notification par écrit. La dénonciation prend effet trois ans après la fin de l'année au cours de laquelle elle a été notifiée.

8) La vérification des comptes est assurée, selon les modalités prévues par le règlement financier, par un ou plusieurs pays de l'Union ou par des contrôleurs extérieurs, qui sont, avec leur consentement, désignés par l'Assemblée.

Article 17

1) Des propositions de modification des articles 13, 14, 15, 16 et du présent article peuvent être présentées par tout pays membre de l'Assemblée, par le Comité exécutif ou par le Directeur général. Ces propositions sont communiquées par ce dernier aux pays membres de l'Assemblée six mois au moins avant d'être soumises à l'examen de l'Assemblée.

2) Toute modification des articles visés à l'alinéa 1) est adoptée par l'Assemblée. L'adoption requiert les trois quarts

three-fourths of the votes cast, provided that any amendment to Article 13, and to the present paragraph, shall require four-fifths of the votes cast.

(3) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the countries members of the Assembly at the time it adopted the amendment. Any amendment to the said Articles thus accepted shall bind all the countries which are members of the Assembly at the time the amendment enters into force, or which become members thereof at a subsequent date, provided that any amendment increasing the financial obligations of countries of the Union shall bind only those countries which have notified their acceptance of such amendment.

Article 18

(1) This Convention shall be submitted to revision with a view to the introduction of amendments designed to improve the system of the Union.

(2) For that purpose, conferences shall be held successively in one of the countries of the Union among the delegates of the said countries.

(3) Amendments to Articles 13 to 17 are governed by the provisions of Article 17.

Article 19

It is understood that the countries of the Union reserve the right to make separately between themselves special agreements for the protection of industrial property, in so far as these agreements do not contravene the provisions of this Convention.

Article 20

(1) *(a)* Any country of the Union which has signed this Act may ratify it, and, if it has not signed it, may accede to it. Instruments of ratification and accession shall be deposited with the Director General.

(b) Any country of the Union may declare in its instrument of ratification or accession that its ratification or accession shall not apply:

(i) to Articles 1 to 12, or

(ii) to Articles 13 to 17.

(c) Any country of the Union which, in accordance with subparagraph *(b)*, has excluded from the effects of its ratification or accession one of the two groups of Articles referred to

des votes exprimés; toutefois, toute modification de l'article 13 et du présent alinéa requiert les quatre cinquièmes des votes exprimés.

3) Toute modification des articles visés à l'alinéa 1) entre en vigueur un mois après la réception par le Directeur général des notifications écrites d'acceptation, effectuée en conformité avec leurs règles constitutionnelles respectives, de la part des trois quarts des pays qui étaient membres de l'Assemblée au moment où la modification a été adoptée. Toute modification desdits articles ainsi acceptée lie tous les pays qui sont membres de l'Assemblée au moment où la modification entre en vigueur ou qui en deviennent membres à une date ultérieure; toutefois, toute modification qui augmente les obligations financières des pays de l'Union ne lie que ceux d'entre eux qui ont notifié leur acceptation de ladite modification.

Article 18

1) La présente Convention sera soumise à des revisions en vue d'y introduire les améliorations de nature à perfectionner le système de l'Union.

2) A cet effet, des conférences auront lieu, successivement, dans l'un des pays de l'Union, entre les délégués desdits pays.

3) Les modifications des articles 13 à 17 sont régies par les dispositions de l'article 17.

Article 19

Il est entendu que les pays de l'Union se réservent le droit de prendre séparément, entre eux, des arrangements particuliers pour la protection de la propriété industrielle, en tant que ces arrangements ne contreviendraient pas aux dispositions de la présente Convention.

Article 20

1) *a)* Chacun des pays de l'Union qui a signé le présent Acte peut le ratifier et, s'il ne l'a pas signé, peut y adhérer. Les instruments de ratification et d'adhésion sont déposés auprès du Directeur général.

b) Chacun des pays de l'Union peut déclarer, dans son instrument de ratification ou d'adhésion, que sa ratification ou son adhésion n'est pas applicable:

i) aux articles 1 à 12 ou

ii) aux articles 13 à 17.

c) Chacun des pays de l'Union qui, conformément au sous-alinéa *b)*, a exclu des effets de sa ratification ou de son adhésion l'un des deux groupes d'articles visés dans ledit sous-

in that subparagraph may at any later time declare that it extends the effects of its ratification or accession to that group of Articles. Such declaration shall be deposited with the Director General.

(2) *(a)* Articles 1 to 12 shall enter into force, with respect to the first ten countries of the Union which have deposited instruments of ratification or accession without making the declaration permitted under paragraph (1)*(b)*(i), three months after the deposit of the tenth such instrument of ratification or accession.

(b) Articles 13 to 17 shall enter into force, with respect to the first ten countries of the Union which have deposited instruments of ratification or accession without making the declaration permitted under paragraph (1)*(b)*(ii), three months after the deposit of the tenth such instrument of ratification or accession.

(c) Subject to the initial entry into force, pursuant to the provisions of subparagraphs *(a)* and *(b)*, of each of the two groups of Articles referred to in paragraph (1)*(b)*(i) and (ii), and subject to the provisions of paragraph (1)*(b)*, Articles 1 to 17 shall, with respect to any country of the Union, other than those referred to in subparagraphs *(a)* and *(b)*, which deposits an instrument of ratification or accession or any country of the Union which deposits a declaration pursuant to paragraph (1)*(c)*, enter into force three months after the date of notification by the Director General of such deposit, unless a subsequent date has been indicated in the instrument or declaration deposited. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.

(3) With respect to any country of the Union which deposits an instrument of ratification or accession, Articles 18 to 30 shall enter into force on the earlier of the dates on which any of the groups of Articles referred to in paragraph (1)*(b)* enters into force with respect to that country pursuant to paragraph (2)*(a)*, *(b)*, or *(c)*.

Article 21

(1) Any country outside the Union may accede to this Act and thereby become a member of the Union. Instruments of accession shall be deposited with the Director General.

(2) *(a)* With respect to any country outside the Union which deposits its instrument of accession one month or more before the date of entry into force of any provisions of the present Act, this Act shall enter into force, unless a subsequent date has been indicated in the instrument of accession, on the date upon which provisions first enter into force pursuant to Article 20(2) *(a)* or *(b)*; provided that:

alinéa peut, à tout moment ultérieur, déclarer qu'il étend les effets de sa ratification ou de son adhésion à ce groupe d'articles. Une telle déclaration est déposée auprès du Directeur général.

2) *a)* Les articles 1 à 12 entrent en vigueur, à l'égard des dix premiers pays de l'Union qui ont déposé des instruments de ratification ou d'adhésion sans faire une déclaration comme le permet l'alinéa 1)*b)*i) trois mois après le dépôt du dixième de ces instruments de ratification ou d'adhésion.

b) Les articles 13 à 17 entrent en vigueur, à l'égard des dix premiers pays de l'Union qui ont déposé des instruments de ratification ou d'adhésion sans faire une déclaration comme le permet l'alinéa 1)*b)*ii), trois mois après le dépôt du dixième de ces instruments de ratification ou d'adhésion.

c) Sous réserve de l'entrée en vigueur initiale, conformément aux dispositions des sous-alinéas *a)* et *b)*, de chacun des deux groupes d'articles visés à l'alinéa 1)*b)*i) et ii), et sous réserve des dispositions de l'alinéa 1)*b)*, les articles 1 à 17 entrent en vigueur à l'égard de tout pays de l'Union, autres que ceux visés aux sous-alinéas *a)* et *b)*, qui dépose un instrument de ratification ou d'adhésion, ainsi qu'à l'égard de tout pays de l'Union qui dépose une déclaration en application de l'alinéa 1)*c)*, trois mois après la date de la notification, par le Directeur général, d'un tel dépôt, à moins qu'une date postérieure n'ait été indiquée dans l'instrument ou la déclaration déposés. Dans ce dernier cas, le présent Acte entre en vigueur à l'égard de ce pays à la date ainsi indiquée.

3) A l'égard de chaque pays de l'Union qui dépose un instrument de ratification ou d'adhésion, les articles 18 à 30 entrent en vigueur à la première date à laquelle l'un quelconque des groupes d'articles visés à l'alinéa 1)*b)* entre en vigueur à l'égard de ce pays conformément à l'alinéa 2)*a)*, *b)*, ou *c)*.

Article 21

1) Tout pays étranger à l'Union peut adhérer au présent Acte et devenir, de ce fait, membre de l'Union. Les instruments d'adhésion sont déposés auprès du Directeur général.

2) *a)* A l'égard de tout pays étranger à l'Union qui a déposé son instrument d'adhésion un mois ou plus avant la date d'entrée en vigueur des dispositions du présent Acte, celui-ci entre en vigueur à la date à laquelle les dispositions sont entrées en vigueur pour la première fois en application de l'article 20.2)*a)* ou *b)*, à moins qu'une date postérieure n'ait été indiquée dans l'instrument d'adhésion; toutefois:

(i) if Articles 1 to 12 do not enter into force on that date, such country shall, during the interim period before the entry into force of such provisions, and in substitution therefor, be bound by Articles 1 to 12 of the Lisbon Act,

(ii) if Articles 13 to 17 do not enter into force on that date, such country shall, during the interim period before the entry into force of such provisions, and in substitution therefor, be bound by Articles 13 and 14(3), (4), and (5), of the Lisbon Act.

If a country indicates a subsequent date in its instrument of accession, this Act shall enter into force with respect to that country on the date thus indicated.

(b) With respect to any country outside the Union which deposits its instrument of accession on a date which is subsequent to, or precedes by less than one month, the entry into force of one group of Articles of the present Act, this Act shall, subject to the proviso of subparagraph *(a)*, enter into force threee months after the date on which its accession has been notified by the Director General, unless a subsequent date has been indicated in the instrument of accession. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.

(3) With respect to any country outside the Union which deposits its instrument of accession after the date of entry into force of the present Act in its entirety, or less than one month before such date, this Act shall enter into force three months after the date on which its accession has been notified by the Director General, unless a subsequent date has been indicated in the instrument of accession. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.

Article 22

Subject to the possibilities of exceptions provided for in Articles 20(1)*(b)* and 28(2), ratification or accession shall automatically entail acceptance of all the clauses and admission to all the advantages of this Act.

Article 23

After the entry into force of this Act in its entirety, a country may not accede to earlier Acts of this Convention.

Article 24

(1) Any country may declare in its instrument of ratification or accession, or may inform the Director General by written notification any time thereafter, that this Convention shall be applicable to all or part of those territories, designated

i) si les articles 1 à 12 ne sont pas entrés en vigueur à cette date, un tel pays sera lié, durant la période intérimaire avant l'entrée en vigueur de ces dispositions, et en remplacement de celles-ci, par les articles 1 à 12 de l'Acte de Lisbonne,

ii) si les articles 13 à 17 ne sont pas entrés en vigueur à cette date, un tel pays sera lié, durant la période intérimaire avant l'entrée en vigueur de ces dispositions, et en remplacement de celles-ci, par les articles 13 et 14.3), 4) et 5) de l'Acte de Lisbonne.

Si un pays indique une date postérieure dans son instrument d'adhésion, le présent Acte entre en vigueur à l'égard de ce pays à la date ainsi indiquée.

b) A l'égard de tout pays étranger à l'Union qui a déposé son instrument d'adhésion à une date postérieure à l'entrée en vigueur d'un seul groupe d'articles du présent Acte ou à une date qui la précède de moins d'un mois, le présent Acte entre en vigueur, sous réserve de ce qui est prévu au sous-alinéa *a)*, trois mois après la date à laquelle son adhésion a été notifiée par le Directeur général, à moins qu'une date postérieure n'ait été indiquée dans l'instrument d'adhésion. Dans ce dernier cas, le présent Acte entre en vigueur à l'égard de ce pays à la date ainsi indiquée.

3) A l'égard de tout pays étranger à l'Union qui a déposé son instrument d'adhésion après la date d'entrée en vigueur du présent Acte dans sa totalité, ou moins d'un mois avant cette date, le présent Acte entre en vigueur trois mois après la date à laquelle son adhésion a été notifiée par le Directeur général, à moins qu'une date postérieure n'ait été indiquée dans l'instrument d'adhésion. Dans ce dernier cas, le présent Acte entre en vigueur à l'égard de ce pays à la date ainsi indiquée.

Article 22

Sous réserve des exceptions possibles prévues aux articles 20.1)*b)* et 28.2), la ratification ou l'adhésion emporte de plein droit accession à toutes les clauses et admission à tous les avantages stipulés par le présent Acte.

Article 23

Après l'entrée en vigueur du présent Acte dans sa totalité, un pays ne peut adhérer à des Actes antérieurs de la présente Convention.

Article 24

1) Tout pays peut déclarer dans son instrument de ratification ou d'adhésion, ou peut informer le Directeur général par écrit à tout moment ultérieur, que la présente Convention est applicable à tout ou partie des territoires, désignés dans la

in the declaration or notification, for the external relations of which it is responsible.

(2) Any country which has made such a declaration or given such a notification may, at any time, notify the Director General that this Convention shall cease to be applicable to all or part of such territories.

(3) *(a)* Any declaration made under paragraph (1) shall take effect on the same date as the ratification or accession in the instrument of which it was included, and any notification given under such paragraph shall take effect three months after its notification by the Director General.

(b) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Director General.

Article 25

(1) Any country party to this Convention undertakes to adopt, in accordance with its constitution, the measures necessary to ensure the application of this Convention.

(2) It is understood that, at the time a country deposits its instrument of ratification or accession, it will be in a position under its domestic law to give effect to the provisions of this Convention.

Article 26

(1) This Convention shall remain in force without limitation as to time.

(2) Any country may denounce this Act by notification addressed to the Director General. Such denunciation shall constitute also denunciation of all earlier Acts and shall affect only the country making it, the Convention remaining in full force and effect as regards the other countries of the Union.

(3) Denunciation shall take effect one year after the day on which the Director General has received the notification.

(4) The right of denunciation provided by this Article shall not be exercised by any country before the expiration of five years from the date upon which it becomes a member of the Union.

Article 27

(1) The present Act shall, as regards the relations between the countries to which it applies, and to the extent that it applies, replace the Convention of Paris of March 20, 1883, and the subsequent Acts of revision.

(2) *(a)* As regards the countries to which the present Act does not apply, or does not apply in its entirety, but to which

déclaration ou la notification, pour lesquels il assume la responsabilité des relations extérieures.

2) Tout pays qui a fait une telle déclaration ou effectué une telle notification peut, à tout moment, notifier au Directeur général que la présente Convention cesse d'être applicable à tout ou partie de ces territoires.

3) *a)* Toute déclaration faite en vertu de l'alinéa 1) prend effet à la même date que la ratification ou l'adhésion dans l'instrument de laquelle elle a été incluse, et toute notification effectuée en vertu de cet alinéa prend effet trois mois après sa notification par le Directeur général.

b) Toute notification effectuée en vertu de l'alinéa 2) prend effet douze mois après sa réception par le Directeur général.

Article 25

1) Tout pays partie à la présente Convention s'engage à adopter, conformément à sa constitution, les mesures nécessaires pour assurer l'application de la présente Convention.

2) Il est entendu qu'au moment où un pays dépose son instrument de ratification ou d'adhésion, il sera en mesure, conformément à sa législation interne, de donner effet aux dispositions de la présente Convention.

Article 26

1) La présente Convention demeure en vigueur sans limitation de durée.

2) Tout pays peut dénoncer le présent Acte par notification adressée au Directeur général. Cette dénonciation emporte aussi dénonciation de tous les Actes antérieurs et ne produit son effet qu'à l'égard du pays qui l'a faite, la Convention restant en vigueur et exécutoire à l'égard des autres pays de l'Union.

3) La dénonciation prend effet un an après le jour où le Directeur général a reçu la notification.

4) La faculté de dénonciation prévue par le présent article ne peut être exercé par un pays avant l'expiration d'un délai de cinq ans à compter de la date à laquelle il est devenu membre de l'Union.

Article 27

1) Le présent Acte remplace, dans les rapports entre les pays auxquels il s'applique, et dans la mesure où il s'applique, la Convention de Paris du 20 mars 1883 et les Actes de revision subséquents.

2) *a)* A l'égard des pays auxquels le présent Acte n'est pas applicable, ou n'est pas applicable dans sa totalité, mais

the Lisbon Act of October 31, 1958, applies, the latter shall remain in force in its entirety or to the extent that the present Act does not replace it by virtue of paragraph (1).

(b) Similarly, as regards the countries to which neither the present Act, nor portions thereof, nor the Lisbon Act applies, the London Act of June 2, 1934, shall remain in force in its entirety or to the extent that the present Act does not replace it by virtue of paragraph (1).

(c) Similarly, as regards the countries to which neither the present Act, nor portions thereof, nor the Lisbon Act, nor the London Act applies, the Hague Act of November 6, 1925, shall remain in force in its entirety or to the extent that the present Act does not replace it by virtue of paragraph (1).

(3) Countries outside the Union which become party to this Act shall apply it with respect to any country of the Union not party to this Act or which, although party to this Act, has made a declaration pursuant to Article 20(1)*(b)*(i). Such countries recognize that the said country of the Union may apply, in its relations with them, the provisions of the most recent Act to which it is party.

Article 28

(1) Any dispute between two or more countries of the Union concerning the interpretation or application of this Convention, not settled by negotiation, may, by any one of the countries concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the countries concerned agree on some other method of settlement. The country bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other countries of the Union.

(2) Each country may, at the time it signs this Act or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of paragraph (1). With regard to any dispute between such country and any other country of the Union, the provisions of paragraph (1) shall not apply.

(3) Any country having made a declaration in accordance with the provisions of paragraph (2) may, at any time, withdraw its declaration by notification addressed to the Director General.

Article 29

(1) *(a)* This Act shall be signed in a single copy in the French language and shall be deposited with the Government of Sweden.

auxquels l'Acte de Lisbonne du 31 octobre 1958 est applicable, ce dernier reste en vigueur dans sa totalité, ou dans la mesure où le présent Acte ne le remplace pas en vertu de l'alinéa 1).

b) De même, à l'égard des pays auxquels ni le présent Acte, ni des parties de celui-ci, ni l'Acte de Lisbonne ne sont applicables, l'Acte de Londres du 2 juin 1934 reste en vigueur dans sa totalité, ou dans la mesure où le présent Acte ne le remplace pas en vertu de l'alinéa 1).

c) De même, à l'égard des pays auxquels ni le présent Acte, ni des parties de celui-ci, ni l'Acte de Lisbonne, ni l'Acte de Londres ne sont applicables, l'Acte de La Haye du 6 novembre 1925 reste en vigueur dans sa totalité, ou dans la mesure où le présent Acte ne le remplace pas en vertu de l'alinéa 1).

3) Les pays étrangers à l'Union qui deviennent parties au présent Acte l'appliquent à l'égard de tout pays de l'Union qui n'est pas partie à cet Acte ou qui, bien qu'y étant partie, a fait la déclaration prévue à l'article 20.1)*b)*i). Lesdits pays admettent que le pays de l'Union considéré applique dans ses relations avec eux les dispositions de l'Acte le plus récent auquel il est partie.

Article 28

1) Tout différend entre deux ou plusieurs pays de l'Union concernant l'interprétation ou l'application de la présente Convention qui ne sera pas réglé par voie de négociation peut être porté par l'un quelconque des pays en cause devant la Cour internationale de Justice par voie de requête conforme au Statut de la Cour, à moins que les pays en cause ne conviennent d'un autre mode de règlement. Le Bureau international sera informé par le pays requérant du différend soumis à la Cour; il en donnera connaissance aux autres pays de l'Union.

2) Tout pays peut, au moment où il signe le présent Acte ou dépose son instrument de ratification ou d'adhésion, déclarer qu'il ne se considère pas lié par les dispositions de l'alinéa 1). En ce qui concerne tout différend entre un tel pays et tout autre pays de l'Union, les dispositions de l'alinéa 1) ne sont pas applicables.

3) Tout pays qui a fait une déclaration conformément aux dispositions de l'alinéa 2) peut, à tout moment, la retirer par une notification adressée au Directeur général.

Article 29

1) *a)* Le présent Acte est signé en un seul exemplaire en langue française et déposé auprès du Gouvernement de la Suède.

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

(c) In case of differences of opinion on the interpretation of the various texts, the French text shall prevail.

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

(3) The Director General shall transmit two copies, certified by the Government of Sweden, of the signed text of this Act to the Governments of all countries of the Union and, on request, to the Government of any other country.

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

(5) The Director General shall notify the Governments of all countries of the Union of signatures, deposits of instruments of ratification or accession and any declarations included in such instruments or made pursuant to Article 20(1)*(c)*, entry into force of any provisions of this Act, notifications of denunciation, and notifications pursuant to Article 24.

Article 30

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

(2) Countries of the Union not bound by Articles 13 to 17 may, until five years after the entry into force of the Convention establishing the Organization, exercise, if they so desire, the rights provided under Articles 13 to 17 of this Act as if they were bound by those Articles. Any country desiring to exercise such rights shall give written notification to that effect to the Director General; such notification shall be effective from the date of its receipt. Such countries shall be deemed to be members of the Assembly until the expiration of the said period.

(3) As long as all the countries of the Union have not become Members of the Organization, the International Bureau of the Organization shall also function as the Bureau of the Union, and the Director General as the Director of the said Bureau.

(4) Once all the countries of the Union have become Members of the Organization, the rights, obligations, and

b) Des textes officiels sont établis par le Directeur général, après consultation des Gouvernements intéressés, dans les langues allemande, anglaise, espagnole, italienne, portugaise et russe, et dans les autres langues que l'Assemblée pourra indiquer.

c) En cas de contestation sur l'interprétation des divers textes, le texte français fait foi.

2) Le présent Acte reste ouvert à la signature, à Stockholm, jusqu'au 13 janvier 1968.

3) Le Directeur général transmet deux copies, certifiées conformes par le Gouvernement de la Suède, du texte signé du présent Acte aux Gouvernements de tous les pays de l'Union et, sur demande, au Gouvernement de tout autre pays.

4) Le Directeur général fait enregistrer le présent Acte auprès du Secrétariat de l'Organisation des Nations Unies.

5) Le Directeur général notifie aux Gouvernements de tous les pays de l'Union les signatures, les dépôts d'instruments de ratification ou d'adhésion et de déclarations comprises dans ces instruments ou faites en application de l'article 20.1)*c)*, l'entrée en vigueur de toutes dispositions du présent Acte, les notifications de dénonciation et les notifications faites en application de l'article 24.

Article 30

1) Jusqu'à l'entrée en fonction du premier Directeur général, les références, dans le présent Acte, au Bureau international de l'Organisation ou au Directeur général sont considérées comme se rapportant respectivement au Bureau de l'Union ou à son Directeur.

2) Les pays de l'Union qui ne sont pas liés par les articles 13 à 17 peuvent, pendant cinq ans après l'entrée en vigueur de la Convention instituant l'Organisation, exercer, s'ils le désirent, les droits prévus par les articles 13 à 17 du présent Acte, comme s'ils étaient liés par ces articles. Tout pays qui désire exercer lesdits droits dépose à cette fin auprès du Directeur général une notification écrite qui prend effet à la date de sa réception. De tels pays sont réputés être membres de l'Assemblée jusqu'à l'expiration de ladite période.

3) Aussi longtemps que tous les pays de l'Union ne sont pas devenus membres de l'Organisation, le Bureau international de l'Organisation agit également en tant que Bureau de l'Union, et le Directeur général en tant que Directeur de ce Bureau.

4) Lorsque tous les pays de l'Union sont devenus membres de l'Organisation, les droits, obligations et biens du Bureau de

property, of the Bureau of the Union shall devolve on the International Bureau of the Organization.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Convention.

DONE at Stockholm, on July 14, 1967.

Algeria (A. Hacene); Austria (Gottfried H. Thaler); Belgium (B^on F. Cogels); Bulgaria (V. Chivarov); Cameroon (Ekani); Central African Republic (L. P. Gamba); Cuba (A. M. González); Denmark Julie Olsen); Finland (Paul Gustafsson); France (B. de Menthon); Gabon (J. F. Oyoué); Germany, Federal Republic (Kurt Haertel); Greece (J. A. Dracoulis); Holy See (Gunnar Sterner); Hungary (Esztergályos); Iceland (Arni Tryggvason); Indonesia (Ibrahim Jasin); Iran (A. Daraï); Ireland (Valentin Iremonger); Israel (Z. Sher, G. Gavrieli); Italy (Cippico, Giorgio Ranzi); Ivory Coast (Bilé); Japan (M. Takahashi, C. Kawade); Kenya (M. K. Mwendwa); Liechtenstein (Marianne Marxer); Luxembourg (J. P. Hoffmann); Madagascar (Ratovondriaka); Monaco (J. M. Notari); Morocco (H'ssaine); Netherlands (Gerbrandy, W. G. Belinfante); Niger (A. Wright); Norway (Jens Evensen, B. Stuevold Lassen); Philippines (Lauro Baja); Poland (M. Kajzer); Portugal (Adriano de Carvalho, José de Oliveira Ascensão, Ruy Álvaro Costa de Morais Serrão); Rumania (C. Stanescu, Marinete); Senegal (A. Seck); South Africa (T. Schoeman); Spain (J. F. Alcover, Electo J. García Tejedor); Sweden (Herman Kling, Åke v. Zweigbergk); Switzerland (Hans Morf, Joseph Voyame); Tunisia (M. Kedadi); Union of Soviet Socialist Republics (Maltsev); United Kingdom of Great Britain and Northern Ireland (Gordon Grant, William Wallace); United States of America (Eugene M. Braderman); Yugoslavia (A. Jelić).

l'Union sont dévolus au Bureau international de l'Organisation.

EN FOI DE QUOI, les soussignés, dûment autorisés à cet effet, ont signé le présent Acte.

FAIT à Stockholm, le 14 juillet 1967.

Afrique du Sud (T. Schoeman); Algérie (A. Hacene); Autriche (Gottfried H. Thaler); Belgique (B[on] F. Cogels); Bulgarie (V. Chivarov); Cameroun (Ekani); Côte d'Ivoire (Bilé); Cuba (A. M. González); Danemark (Julie Olsen); Espagne (J. F. Alcover, Electo J. Garcia Tejedor); Etats-Unis d'Amérique (Eugene M. Braderman); Finlande (Paul Gustafsson); France (B. de Menthon); Gabon (J. F. Oyoué); Grèce (J. A. Dracoulis); Hongrie (Esztergályos); Indonésie (Ibrahim Jasin); Iran (A. Daraï); Irlande (Valentin Iremonger); Islande (Arni Tryggvason); Israël (Z. Sher, G. Gavrieli); Italie (Cippico, Giorgio Ranzi); Japon (M. Takahashi, C. Kawade); Kenya (M. K. Mwendwa); Liechtenstein (Marianne Marxer); Luxembourg (J. P. Hoffmann); Madagascar (Ratovondriaka); Maroc (H'ssaine); Monaco (J. M. Notari); Niger (A. Wright); Norvège (Jens Evensen, B. Stuevold Lassen); Pays-Bas (Gerbrandy, W. G. Belinfante); Philippines (Lauro Baja); Pologne (M. Kajzer); Portugal (Adriano de Carvalho, José de Oliveira Ascensão, Ruy Alvaro Costa de Morais Serrão); République Centrafricaine (L. P. Gamba); République Fédérale d'Allemagne (Kurt Haertel); Roumanie (C. Stanescu, Marinete); Royaume-Uni de Grande-Bretagne et d'Irlande du Nord (Gordon Grant, William Wallace); Saint-Siège (Gunnar Sterner); Sénégal (A. Seck); Suède (Herman Kling, Åke v. Zweigbergk); Suisse (Hans Morf, Joseph Voyame); Tunisie (M. Kedadi); Union des Républiques Socialistes Soviétiques (Maltsev); Yougoslavie (A. Jelić).

Madrid Agreement
Concerning the International Registration of Marks
(Stockholm Act)

Arrangement de Madrid
concernant l'enregistrement international des marques
(Acte de Stockholm)

Madrid Agreement concerning the International Registration of Marks

of April 14, 1891,
as revised
at BRUSSELS on December 14, 1900, at WASHINGTON on June 2, 1911,
at THE HAGUE on November 6, 1925, at LONDON on June 2, 1934,
at NICE on June 15, 1957,

and at STOCKHOLM on July 14, 1967

Article 1

(1) The countries to which this Agreement applies constitute a Special Union for the international registration of marks.

(2) Nationals of any of the contracting countries may, in all the other countries party to this Agreement, secure protection for their marks applicable to goods or services, registered in the country of origin, by filing the said marks at the International Bureau of Intellectual Property (hereinafter designated as " the International Bureau ") referred to in the Convention establishing the World Intellectual Property Organization (hereinafter designated as " the Organization "), through the intermediary of the Office of the said country of origin.

(3) Shall be considered the country of origin the country of the Special Union where the applicant has a real and effective industrial or commercial establishment; if he has no such establishment in a country of the Special Union, the country of the Special Union where he has his domicile; if he has no domicile within the Special Union but is a national of a country of the Special Union, the country of which he is a national.

Article 2

Nationals of countries not having acceded to this Agreement who, within the territory of the Special Union constituted by the said Agreement, satisfy the conditions specified in Article 3 of the Paris Convention for the Protection of Industrial Property shall be treated in the same manner as nationals of the contracting countries.

Arrangement de Madrid concernant l'enregistrement international des marques

du 14 avril 1891,
revisé à BRUXELLES le 14 décembre 1900, à WASHINGTON le 2 juin 1911,
à LA HAYE le 6 novembre 1925, à LONDRES le 2 juin 1934,
à NICE le 15 juin 1957
et à STOCKHOLM le 14 juillet 1967

Article 1

1) Les pays auxquels s'applique le présent Arrangement sont constitués à l'état d'Union particulière pour l'enregistrement international des marques.

2) Les ressortissants de chacun des pays contractants pourront s'assurer, dans tous les autres pays parties au présent Arrangement, la protection de leurs marques applicables aux produits ou services enregistrés dans le pays d'origine, moyennant le dépôt desdites marques au Bureau international de la propriété intellectuelle (ci-après dénommé « Le Bureau international ») visé dans la Convention instituant l'Organisation Mondiale de la Propriété Intellectuelle (ci-après dénommée « l'Organisation »), fait par l'entremise de l'Administration dudit pays d'origine.

3) Sera considéré comme pays d'origine le pays de l'Union particulière où le déposant a un établissement industriel ou commercial effectif et sérieux; s'il n'a pas un tel établissement dans un pays de l'Union particulière, le pays de l'Union particulière où il a son domicile; s'il n'a pas de domicile dans l'Union particulière, le pays de sa nationalité s'il est ressortissant d'un pays de l'Union particulière.

Article 2

Sont assimilés aux ressortissants des pays contractants les ressortissants des pays n'ayant pas adhéré au présent Arrangement qui, sur le territoire de l'Union particulière constituée par ce dernier, satisfont aux conditions établies par l'article 3 de la Convention de Paris pour la protection de la propriété industrielle.

Article 3

(1) Every application for international registration must be presented on the form prescribed by the Regulations; the Office of the country of origin of the mark shall certify that the particulars appearing in such application correspond to the particulars in the national register, and shall mention the dates and numbers of the filing and registration of the mark in the country of origin and also the date of the application for international registration.

(2) The applicant must indicate the goods or services in respect of which protection of the mark is claimed and also, if possible, the corresponding class or classes according to the classification established by the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks. If the applicant does not give such indication, the International Bureau shall classify the goods or services in the appropriate classes of the said classification. The indication of classes given by the applicant shall be subject to control by the International Bureau, which shall exercise the said control in association with the national Office. In the event of disagreement between the national Office and the International Bureau, the opinion of the latter shall prevail.

(3) If the applicant claims color as a distinctive feature of his mark, he shall be required:

1. to state the fact, and to file with his application a notice specifying the color or the combination of colors claimed;
2. to append to his application copies in color of the said mark, which shall be attached to the notification given by the International Bureau. The number of such copies shall be fixed by the Regulations.

(4) The International Bureau shall register immediately the marks filed in accordance with Article 1. The registration shall bear the date of the application for international registration in the country of origin, provided that the application has been received by the International Bureau within a period of two months from that date. If the application has not been received within that period, the International Bureau shall record it as at the date on which it received the said application. The International Bureau shall notify such registration without delay to the Offices concerned. Registered marks shall be published in a periodical journal issued by the International Bureau, on the basis of the particulars contained in the application for registration. In the case of marks comprising a figurative element or a special form of writing, the Regulations shall determine whether a printing block must be supplied by the applicant.

Article 3

1) Toute demande d'enregistrement international devra être présentée sur le formulaire prescrit par le Règlement d'exécution; l'Administration du pays d'origine de la marque certifiera que les indications qui figurent sur cette demande correspondent à celles du registre national et mentionnera les dates et les numéros du dépôt et de l'enregistrement de la marque au pays d'origine ainsi que la date de la demande d'enregistrement international.

2) Le déposant devra indiquer les produits ou les services pour lesquels la protection de la marque est revendiquée, ainsi que, si possible, la ou les classes correspondantes, d'après la classification établie par l'Arrangement de Nice concernant la classification internationale des produits et services aux fins de l'enregistrement des marques. Si le déposant ne donne pas cette indication, le Bureau international classera les produits ou les services dans les classes correspondantes de ladite classification. Le classement indiqué par le déposant sera soumis au contrôle du Bureau international, qui l'exercera en liaison avec l'Administration nationale. En cas de désaccord entre l'Administration nationale et le Bureau international, l'avis de ce dernier sera déterminant.

3) Si le déposant revendique la couleur à titre d'élément distinctif de sa marque, il sera tenu:

1° de le déclarer et d'accompagner son dépôt d'une mention indiquant la couleur ou la combinaison de couleurs revendiquée;

2° de joindre à sa demande des exemplaires en couleur de ladite marque, qui seront annexés aux notifications faites par le Bureau international. Le nombre de ces exemplaires sera fixé par le Règlement d'exécution.

4) Le Bureau international enregistrera immédiatement les marques déposées conformément à l'article 1. L'enregistrement portera la date de la demande d'enregistrement international au pays d'origine pourvu que la demande ait été reçue par le Bureau international dans le délai de deux mois à compter de cette date. Si la demande n'a pas été reçue dans ce délai, le Bureau international l'inscrira à la date à laquelle il l'a reçue. Le Bureau international notifiera cet enregistrement sans retard aux Administrations intéressées. Les marques enregistrées seront publiées dans une feuille périodique éditée par le Bureau international, au moyen des indications contenues dans la demande d'enregistrement. En ce qui concerne les marques comportant un élément figuratif ou un graphisme spécial, le Règlement d'exécution déterminera si un cliché doit être fourni par le déposant.

(5) With a view to the publicity to be given in the contracting countries to registered marks, each Office shall receive from the International Bureau a number of copies of the said publication free of charge and a number of copies at a reduced price, in proportion to the number of units mentioned in Article 16(4)*(a)* of the Paris Convention for the Protection of Industrial Property, under the conditions fixed by the Regulations. Such publicity shall be deemed in all the contracting countries to be sufficient, and no other publicity may be required of the applicant.

Article 3bis

(1) Any contracting country may, at any time, notify the Director General of the Organization (hereinafter designated as "the Director General") in writing that the protection resulting from the international registration shall extend to that country only at the express request of the proprietor of the mark.

(2) Such notification shall not take effect until six months after the date of the communication thereof by the Director General to the other contracting countries.

Article 3ter

(1) Any request for extension of the protection resulting from the international registration to a country which has availed itself of the right provided for in Article 3bis must be specially mentioned in the application referred to in Article 3(1).

(2) Any request for territorial extension made subsequently to the international registration must be presented through the intermediary of the Office of the country of origin on a form prescribed by the Regulations. It shall be immediately registered by the International Bureau, which shall notify it without delay to the Office or Offices concerned. It shall be published in the periodical journal issued by the International Bureau. Such territorial extension shall be effective from the date on which it has been recorded in the International Register; it shall cease to be valid on the expiration of the international registration of the mark to which it relates.

Article 4

(1) From the date of the registration so effected at the International Bureau in accordance with the provisions of Articles 3 and 3ter, the protection of the mark in each of the contracting countries concerned shall be the same as if the mark had been filed therein direct. The indication of classes of

5) En vue de la publicité à donner dans les pays contractants aux marques enregistrées, chaque Administration recevra du Bureau international un nombre d'exemplaires gratuits et un nombre d'exemplaires à prix réduit de la susdite publication proportionnels au nombre d'unités mentionnés à l'article 16.4)*a)* de la Convention de Paris pour la protection de la propriété industrielle dans les conditions fixées par le Règlement d'exécution. Cette publicité sera considérée dans tous les pays contractants comme pleinement suffisante et aucune autre ne pourra être exigée du déposant.

Article 3bis

1) Chaque pays contractant peut, en tout temps, notifier par écrit au Directeur général de l'Organisation (ci-après dénommé « le Directeur général ») que la protection résultant de l'enregistrement international ne s'étendra à ce pays que si le titulaire de la marque le demande expressément.

2) Cette notification ne prendra effet que six mois après la date de la communication qui en sera faite par le Directeur général aux autres pays contractants.

Article 3ter

1) La demande d'extension à un pays ayant fait usage de la faculté ouverte par l'article 3bis de la protection résultant de l'enregistrement international devra faire l'objet d'une mention spéciale dans la demande visée à l'article 3, alinéa 1).

2) La demande d'extension territoriale formulée postérieurement à l'enregistrement international devra être présentée par l'entremise de l'Administration du pays d'origine sur un formulaire prescrit par le Règlement d'exécution. Elle sera immédiatement enregistrée par le Bureau international qui la notifiera sans retard à la ou aux Administrations intéressées. Elle sera publiée dans la feuille périodique éditée par le Bureau international. Cette extension territoriale produira ses effets à partir de la date à laquelle elle aura été inscrite sur le Registre international; elle cessera d'être valable à l'échéance de l'enregistrement international de la marque à laquelle elle se rapporte.

Article 4

1) A partir de l'enregistrement ainsi fait au Bureau international selon les dispositions des articles 3 et 3ter, la protection de la marque dans chacun des pays contractants intéressés sera la même que si cette marque y avait été directement déposée. Le classement des produits ou des services prévu à l'ar-

goods or services provided for in Article 3 shall not bind the contracting countries with regard to the determination of the scope of the protection of the mark.

(2) Every mark which has been the subject of an international registration shall enjoy the right of priority provided for by Article 4 of the Paris Convention for the Protection of Industrial Property, without requiring compliance with the formalities prescribed in Section D of that Article.

Article 4bis

(1) When a mark already filed in one or more of the contracting countries is later registered by the International Bureau in the name of the same proprietor or his successor in title, the international registration shall be deemed to have replaced the earlier national registrations, without prejudice to any rights acquired by reason of such earlier registrations.

(2) The national Office shall, upon request, be required to take note in its registers of the international registration.

Article 5

(1) In countries where the legislation so authorizes, Offices notified by the International Bureau of the registration of a mark or of a request for extension of protection made in accordance with Article 3ter shall have the right to declare that protection cannot be granted to such mark in their territory. Any such refusal can be based only on the grounds which would apply, under the Paris Convention for the Protection of Industrial Property, in the case of a mark filed for national registration. However, protection may not be refused, even partially, by reason only that national legislation would not permit registration except in a limited number of classes or for a limited number of goods or services.

(2) Offices wishing to exercise such right must give notice of their refusal to the International Bureau, together with a statement of all grounds, within the period prescribed by their domestic law and, at the latest, before the expiration of one year from the date of the international registration of the mark or of the request for extension of protection made in accordance with Article 3ter.

(3) The International Bureau shall, without delay, transmit to the Office of the country of origin and to the proprietor of the mark, or to his agent if an agent has been mentioned to the Bureau by the said Office, one of the copies of the declaration of refusal so notified. The interested party shall have the same remedies as if the mark had been filed by him direct in the country where protection is refused.

ticle 3 ne lie pas les pays contractants quant à l'appréciation de l'étendue de la protection de la marque.

2) Toute marque qui a été l'objet d'un enregistrement international jouira du droit de priorité établi par l'article 4 de la Convention de Paris pour la protection de la propriété industrielle sans qu'il soit nécessaire d'accomplir les formalités prévues dans la lettre D de cet article.

Article 4bis

1) Lorsqu'une marque, déjà déposée dans un ou plusieurs des pays contractants, a été postérieurement enregistrée par le Bureau international au nom du même titulaire ou de son ayant cause, l'enregistrement international sera considéré comme substitué aux enregistrements nationaux antérieurs, sans préjudice des droits acquis par le fait de ces derniers.

2) L'Administration nationale est, sur demande, tenue de prendre acte, dans ses registres, de l'enregistrement international.

Article 5

1) Dans les pays où leur législation les y autorise, les Administrations auxquelles le Bureau international notifiera l'enregistrement d'une marque, ou la demande d'extension de protection formulée conformément à l'article 3ter, auront la faculté de déclarer que la protection ne peut être accordée à cette marque sur leur territoire. Un tel refus ne pourra être opposé que dans les conditions qui s'appliqueraient, en vertu de la Convention de Paris pour la protection de la propriété industrielle, à une marque déposée à l'enregistrement national. Toutefois, la protection ne pourra être refusée, même partiellement, pour le seul motif que la législation nationale n'autoriserait l'enregistrement que dans un nombre limité de classes ou pour un nombre limité de produits ou de services.

2) Les Administrations qui voudront exercer cette faculté devront notifier leur refus avec indication de tous les motifs, au Bureau international, dans le délai prévu par leur loi nationale et, au plus tard, avant la fin d'une année comptée à partir de l'enregistrement international de la marque ou de la demande d'extension de protection formulée conformément à l'article 3ter.

3) Le Bureau international transmettra sans retard à l'Administration du pays d'origine et au titulaire de la marque ou à son mandataire, si celui-ci a été indiqué au Bureau par ladite Administration, un des exemplaires de la déclaration de refus ainsi notifiée. L'intéressé aura les mêmes moyens de recours que si la marque avait été par lui directement déposée dans le pays où la protection est refusée.

(4) The grounds for refusing a mark shall be communicated by the International Bureau to any interested party who may so request.

(5) Offices which, within the aforesaid maximum period of one year, have not communicated to the International Bureau any provisional or final decision of refusal with regard to the registration of a mark or a request for extension of protection shall lose the benefit of the right provided for in paragraph (1) of this Article with respect to the mark in question.

(6) Invalidation of an international mark may not be pronounced by the competent authorities without the proprietor of the mark having, in good time, been afforded the opportunity of defending his rights. Invalidation shall be notified to the International Bureau.

Article 5bis

Documentary evidence of the legitimacy of the use of certain elements incorporated in a mark, such as armorial bearings, escutcheons, portraits, honorary distinctions, titles, trade names, names of persons other than the name of the applicant, or other like inscriptions, which might be required by the Offices of the contracting countries shall be exempt from any legalization or certification other than that of the Office of the country of origin.

Article 5ter

(1) The International Bureau shall issue to any person applying therefor, subject to a fee fixed by the Regulations, a copy of the entries in the Register relating to a specific mark.

(2) The International Bureau may also, upon payment, undertake searches for anticipation among international marks.

(3) Extracts from the International Register requested with a view to their production in one of the contracting countries shall be exempt from all legalization.

Article 6

(1) Registration of a mark at the International Bureau is effected for twenty years, with the possibility of renewal under the conditions specified in Article 7.

(2) Upon expiration of a period of five years from the date of the international registration, such registration shall become independent of the national mark registered earlier in the country of origin, subject to the following provisions.

(3) The protection resulting from the international registration, whether or not it has been the subject of a transfer,

4) Les motifs de refus d'une marque devront être communiqués par le Bureau international aux intéressés qui lui en feront la demande.

5) Les Administrations qui, dans le délai maximum susindiqué d'un an, n'auront communiqué au sujet d'un enregistrement de marque ou d'une demande d'extension de protection aucune décision de refus provisoire ou définitif au Bureau international, perdront le bénéfice de la faculté prévue à l'alinéa 1) du présent article concernant la marque en cause.

6) L'invalidation d'une marque internationale ne pourra être prononcée par les autorités compétentes sans que le titulaire de la marque ait été mis en mesure de faire valoir ses droits en temps utile. Elle sera notifiée au Bureau international.

Article 5bis

Les pièces justificatives de la légitimité d'usage de certains éléments contenus dans les marques, tels que armoiries, écussons, portraits, distinctions honorifiques, titres, noms commerciaux ou noms de personnes autres que celui du déposant, ou autres inscriptions analogues, qui pourraient être réclamées par les Administrations des pays contractants, seront dispensées de toute légalisation, ainsi que de toute certification autre que celle de l'Administration du pays d'origine.

Article 5ter

1) Le Bureau international délivrera à toute personne qui en fera la demande, moyennant une taxe fixée par le Règlement d'exécution, une copie des mentions inscrites dans le Registre relativement à une marque déterminée.

2) Le Bureau international pourra aussi, contre rémunération, se charger de faire des recherches d'antériorité parmi les marques internationales.

3) Les extraits du Registre international demandés en vue de leur production dans un des pays contractants seront dispensés de toute légalisation.

Article 6

1) L'enregistrement d'une marque au Bureau international est effectué pour vingt ans, avec possibilité de renouvellement dans les conditions fixées à l'article 7.

2) A l'expiration d'un délai de cinq ans à dater de l'enregistrement international, celui-ci devient indépendant de la marque nationale préalablement enregistrée au pays d'origine, sous réserve des dispositions suivantes.

3) La protection résultant de l'enregistrement international, ayant on non fait l'objet d'une transmission, ne pourra

may no longer be invoked, in whole or in part, if, within five years from the date of the international registration, the national mark, registered earlier in the country of origin in accordance with Article 1, no longer enjoys, in whole or in part, legal protection in that country. This provision shall also apply when legal protection has later ceased as the result of an action begun before the expiration of the period of five years.

(4) In the case of voluntary or ex officio cancellation, the Office of the country of origin shall request the cancellation of the mark at the International Bureau, and the latter shall effect the cancellation. In the case of judicial action, the said Office shall send to the International Bureau, ex officio or at the request of the plaintiff, a copy of the complaint or any other documentary evidence that an action has begun, and also of the final decision of the court; the Bureau shall enter notice thereof in the International Register.

Article 7

(1) Any registration may be renewed for a period of twenty years from the expiration of the preceding period, by payment only of the basic fee and, where necessary, of the supplementary and complementary fees provided for in Article 8(2).

(2) Renewal may not include any change in relation to the previous registration in its latest form.

(3) The first renewal effected under the provisions of the Nice Act of June 15, 1957, or of this Act, shall include an indication of the classes of the International Classification to which the registration relates.

(4) Six months before the expiration of the term of protection, the International Bureau shall, by sending an unofficial notice, remind the proprietor of the mark and his agent of the exact date of expiration.

(5) Subject to the payment of a surcharge fixed by the Regulations, a period of grace of six months shall be granted for renewal of the international registration.

Article 8

(1) The Office of the country of origin may fix, at its own discretion, and collect, for its own benefit, a national fee which it may require from the proprietor of the mark in respect of which international registration or renewal is applied for.

(2) Registration of a mark at the International Bureau shall be subject to the advance payment of an international fee which shall include:

plus être invoquée en tout ou partie lorsque, dans les cinq ans de la date de l'enregistrement international, la marque nationale, préalablement enregistrée au pays d'origine selon l'article 1er, ne jouira plus en tout ou partie de la protection légale dans ce pays. Il en sera de même lorsque cette protection légale aura cessé ultérieurement par suite d'une action introduite avant l'expiration du délai de cinq ans.

4) En cas de radiation volontaire ou d'office, l'Administration du pays d'origine demandera la radiation de la marque au Bureau international, lequel procédera à cette opération. En cas d'action judiciaire, l'Administration susdite communiquera au Bureau international, d'office ou à la requête du demandeur, copie de l'acte d'introduction de l'instance ou de tout autre document justifiant cette introduction, ainsi que du jugement définitif; le Bureau en fera mention au Registre international.

Article 7

1) L'enregistrement pourra toujours être renouvelé pour une période de vingt ans, à compter de l'expiration de la période précédente, par le simple versement de l'émolument de base et, le cas échéant, des émoluments supplémentaires et des compléments d'émoluments prévus par l'article 8, alinéa 2).

2) Le renouvellement ne pourra comporter aucune modification par rapport au précédent enregistrement en son dernier état.

3) Le premier renouvellement effectué conformément aux dispositions de l'Acte de Nice du 15 juin 1957 ou du présent Acte devra comporter l'indication des classes de la classification internationale auxquelles se rapporte l'enregistrement.

4) Six mois avant l'expiration du terme de protection, le Bureau international rappellera au titulaire de la marque et à son mandataire, par l'envoi d'un avis officieux, la date exacte de cette expiration.

5) Moyennant le versement d'une surtaxe fixée par le Règlement d'exécution, un délai de grâce de six mois sera accordé pour le renouvellement de l'enregistrement international.

Article 8

1) L'Administration du pays d'origine aura la faculté de fixer à son gré et de percevoir à son profit une taxe nationale qu'elle réclamera du titulaire de la marque dont l'enregistrement international ou le renouvellement est demandé.

2) L'enregistrement d'une marque au Bureau international sera soumis au règlement préalable d'un émolument international qui comprendra:

(a) a basic fee;
(b) a supplementary fee for each class of the International Classification, beyond three, into which the goods or services to which the mark is applied will fall;
(c) a complementary fee for any request for extension of protection under Article 3ter.

(3) However, the supplementary fee specified in paragraph (2)*(b)* may, without prejudice to the date of registration, be paid within a period fixed by the Regulations if the number of classes of goods or services has been fixed or disputed by the International Bureau. If, upon expiration of the said period, the supplementary fee has not been paid or the list of goods or services has not been reduced to the required extent by the applicant, the application for international registration shall be deemed to have been abandoned.

(4) The annual returns from the various receipts from international registration, with the exception of those provided for under *(b)* and *(c)* of paragraph (2), shall be divided equally among the countries party to this Act by the International Bureau, after deduction of the expenses and charges necessitated by the implementation of the said Act. If, at the time this Act enters into force, a country has not yet ratified or acceded to the said Act, it shall be entitled, until the date on which its ratification or accession becomes effective, to a share of the excess receipts calculated on the basis of that earlier Act which is applicable to it.

(5) The amounts derived from the supplementary fees provided for in paragraph (2)*(b)* shall be divided at the expiration of each year among the countries party to this Act or to the Nice Act of June 15, 1957, in proportion to the number of marks for which protection has been applied for in each of them during that year, this number being multiplied, in the case of countries which make a preliminary examination, by a coefficient which shall be determined by the Regulations. If, at the time this Act enters into force, a country has not yet ratified or acceded to the said Act, it shall be entitled, until the date on which its ratification or accession becomes effective, to a share of the amounts calculated on the basis of the Nice Act.

(6) The amounts derived from the complementary fees provided for in paragraph (2)*(c)* shall be divided according to the requirements of paragraph (5) among the countries availing themselves of the right provided for in Article 3bis. If, at the time this Act enters into force, a country has not yet ratified or acceded to the said Act, it shall be entitled, until the date on which its ratification or accession becomes effec-

a) un émolument de base;

b) un émolument supplémentaire pour toute classe de la classification internationale en sus de la troisième dans laquelle seront rangés les produits ou services auxquels s'applique la marque;

c) un complément d'émolument pour toute demande d'extension de protection conformément à l'article 3ter.

3) Toutefois, l'émolument supplémentaire spécifié à l'alinéa 2), lettre *b)*, pourra être réglé dans un délai à fixer par le Réglement d'exécution, si le nombre des classes de produits ou services a été fixé ou contesté par le Bureau international et sans qu'il soit porté préjudice à la date de l'enregistrement. Si, à l'expiration du délai susdit, l'émolument supplémentaire n'a pas été payé ou si la liste des produits ou services n'a pas été réduite par le déposant dans la mesure nécessaire, la demande d'enregistrement international sera considérée comme abandonnée.

4) Le produit annuel des diverses recettes de l'enregistrement international, à l'exception de celles prévues sous *b)* et *c)* de l'alinéa 2), sera réparti par parts égales entre les pays parties au présent Acte par les soins du Bureau international, après déduction des frais et charges nécessités par l'exécution dudit Acte. Si, au moment de l'entrée en vigueur du présent Acte, un pays ne l'a pas encore ratifié ou n'y a pas encore adhéré, il aura droit, jusqu'à la date d'effet de sa ratification ou de son adhésion, à une répartition de l'excédent de recettes calculé sur la base de l'Acte antérieur qui lui est applicable.

5) Les sommes provenant des émoluments supplémentaires visés à l'alinéa 2), lettre *b)*, seront réparties à l'expiration de chaque année entre les pays parties au présent Acte ou à l'Acte de Nice du 15 juin 1957 proportionnellement au nombre de marques pour lesquelles la protection aura été demandée dans chacun d'eux durant l'année écoulée, ce nombre étant affecté, en ce qui concerne les pays à examen préalable, d'un coefficient qui sera déterminé par le Règlement d'exécution. Si, au moment de l'entrée en vigueur du présent Acte, un pays ne l'a pas encore ratifié ou n'y a pas encore adhéré, il aura droit, jusqu'à la date d'effet de sa ratification ou de son adhésion, à une répartition des sommes calculées sur la base de l'Acte de Nice.

6) Les sommes provenant des compléments d'émoluments visés à l'alinéa 2), lettre *c)*, seront réparties selon les règles de l'alinéa 5) entre les pays ayant fait usage de la faculté prévue à l'article 3bis. Si, au moment de l'entrée en vigueur du présent Acte, un pays ne l'a pas encore ratifié ou n'y a pas encore adhéré, il aura droit, jusqu'à la date d'effet de sa

tive, to a share of the amounts calculated on the basis of the Nice Act.

Article 8bis

The person in whose name the international registration stands may at any time renounce protection in one or more of the contracting countries by means of a declaration filed with the Office of his own country, for communication to the International Bureau, which shall notify accordingly the countries in respect of which renunciation has been made. Renunciation shall not be subject to any fee.

Article 9

(1) The Office of the country of the person in whose name the international registration stands shall likewise notify the International Bureau of all annulments, cancellations, renunciations, transfers, and other changes made in the entry of the mark in the national register, if such changes also affect the international registration.

(2) The Bureau shall record those changes in the International Register, shall notify them in turn to the Offices of the contracting countries, and shall publish them in its journal.

(3) A similar procedure shall be followed when the person in whose name the international registration stands requests a reduction of the list of goods or services to which the registration applies.

(4) Such transactions may be subject to a fee, which shall be fixed by the Regulations.

(5) The subsequent addition of new goods or services to the said list can be obtained only by filing a new application as prescribed in Article 3.

(6) The substitution of one of the goods or services for another shall be treated as an addition.

Article 9bis

(1) When a mark registered in the International Register is transferred to a person established in a contracting country other than the country of the person in whose name the international registration stands, the transfer shall be notified to the International Bureau by the Office of the latter country. The International Bureau shall record the transfer, shall notify the other Offices thereof, and shall publish it in its journal. If the transfer has been effected before the expiration of a period of five years from the international registration, the International Bureau shall seek the consent of the Office of the country of the new proprietor, and shall publish, if possible, the date and registration number of the mark in the country of the new proprietor.

ratification ou de son adhésion, à une répartition des sommes calculées sur la base de l'Acte de Nice.

Article 8bis

Le titulaire de l'enregistrement international peut toujours renoncer à la protection dans un ou plusieurs des pays contractants, au moyen d'une déclaration remise à l'Administration de son pays, pour être communiquée au Bureau international, qui la notifiera aux pays que cette renonciation concerne. Celle-ci n'est soumise à aucune taxe.

Article 9

1) L'Administration du pays du titulaire notifiera également au Bureau international les annulations, radiations, renonciations, transmissions et autres changements apportés à l'inscription de la marque dans le registre national, si ces changements affectent aussi l'enregistrement international.

2) Le Bureau inscrira ces changements dans le Registre international, les notifiera à son tour aux Administrations des pays contractants et les publiera dans son journal.

3) On procédera de même lorsque le titulaire de l'enregistrement international demandera à réduire la liste des produits ou services auxquels il s'applique.

4) Ces opérations peuvent être soumises à une taxe qui sera fixée par le Règlement d'exécution.

5) L'addition ultérieure d'un nouveau produit ou service à la liste ne peut être obtenue que par un nouveau dépôt effectué conformément aux prescriptions de l'article 3.

6) A l'addition est assimilée la substitution d'un produit ou service à un autre.

Article 9bis

1) Lorsqu'une marque inscrite dans le Registre international sera transmise à une personne établie dans un pays contractant autre que le pays du titulaire de l'enregistrement international, la transmission sera notifiée au Bureau international par l'Administration de ce même pays. Le Bureau international enregistrera la transmission, la notifiera aux autres Administrations et la publiera dans son journal. Si la transmission a été effectuée avant l'expiration du délai de cinq ans à compter de l'enregistrement international, le Bureau international demandera l'assentiment de l'Administration du pays du nouveau titulaire et publiera, si possible, la date et le numéro d'enregistrement de la marque dans le pays du nouveau titulaire.

(2) No transfer of a mark registered in the International Register for the benefit of a person who is not entitled to file an international mark shall be recorded.

(3) When it has not been possible to record a transfer in the International Register, either because the country of the new proprietor has refused its consent or because the said transfer has been made for the benefit of a person who is not entitled to apply for international registration, the Office of the country of the former proprietor shall have the right to demand that the International Bureau cancel the mark in its Register.

Article 9ter

(1) If the assignment of an international mark for part only of the registered goods or services is notified to the International Bureau, the Bureau shall record it in its Register. Each of the contracting countries shall have the right to refuse to recognize the validity of such assignment if the goods or services included in the part so assigned are similar to those in respect of which the mark remains registered for the benefit of the assignor.

(2) The International Bureau shall likewise record the assignment of an international mark in respect of one or several of the contracting countries only.

(3) If, in the above cases, a change occurs in the country of the proprietor, the Office of the country to which the new proprietor belongs shall, if the international mark has been transferred before the expiration of a period of five years from the international registration, give its consent as required by Article 9bis.

(4) The provisions of the foregoing paragraphs shall apply subject to Article 6^{quater} of the Paris Convention for the Protection of Industrial Property.

Article 9^{quater}

(1) If several countries of the Special Union agree to effect the unification of their domestic legislations on marks, they may notify the Director General:

(a) that a common Office shall be substituted for the national Office of each of them, and

(b) that the whole of their respective territories shall be deemed to be a single country for the purposes of the application of all or part of the provisions preceding this Article.

(2) Such notification shall not take effect until six months after the date of the communication thereof by the Director General to the other contracting countries.

2) Nulle transmission de marque inscrite dans le Registre international faite au profit d'une personne non admise à déposer une marque internationale ne sera enregistrée.

3) Lorsqu'une transmission n'aura pu être inscrite dans le Registre international, soit par suite du refus d'assentiment du pays du nouveau titulaire, soit parce qu'elle a été faite au profit d'une personne non admise à demander un enregistrement international, l'Administration du pays de l'ancien titulaire aura le droit de demander au Bureau international de procéder à la radiation de la marque sur son Registre.

Article 9ter

1) Si la cession d'une marque internationale pour une partie seulement des produits ou services enregistrés est notifiée au Bureau international, celui-ci l'inscrira dans son Registre. Chacun des pays contractants aura la faculté de ne pas admettre la validité de cette cession si les produits ou services compris dans la partie ainsi cédée sont similaires à ceux pour lesquels la marque reste enregistrée au profit du cédant.

2) Le Bureau international inscrira également une cession de la marque internationale pour un ou plusieurs des pays contractants seulement.

3) Si, dans les cas précédents, il intervient un changement du pays du titulaire, l'Administration à laquelle ressortit le nouveau titulaire devra, si la marque internationale a été transmise avant l'expiration du délai de cinq ans à compter de l'enregistrement international, donner l'assentiment requis conformément à l'article 9bis.

4) Les dispositions des alinéas précédents ne sont applicables que sous la réserve de l'article 6^{quater} de la Convention de Paris pour la protection de la propriété industrielle.

Article 9^{quater}

1) Si plusieurs pays de l'Union particulière conviennent de réaliser l'unification de leurs lois nationales en matière de marques, ils pourront notifier au Directeur général:

a) qu'une Administration commune se substituera à l'Administration nationale de chacun d'eux, et

b) que l'ensemble de leurs territoires respectifs devra être considéré comme un seul pays pour l'application de tout ou partie des dispositions qui précèdent le présent article.

2) Cette notification ne prendra effet que six mois après la date de la communication qui en sera faite par le Directeur général aux autres pays contractants.

Article 10

(1) *(a)* The Special Union shall have an Assembly consisting of those countries which have ratified or acceded to this Act.

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

(c) The expenses of each delegation shall be borne by the Government which has appointed it, except for the travel expenses and the subsistence allowance of one delegate for each member country, which shall be paid from the funds of the Special Union.

(2) *(a)* The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Special Union and the implementation of this Agreement;

(ii) give directions to the International Bureau concerning the preparation for conferences of revision, due account being taken of any comments made by those countries of the Special Union which have not ratified or acceded to this Act;

(iii) modify the Regulations, including the fixation of the amounts of the fees referred to in Article 8(2) and other fees relating to international registration;

(iv) review and approve the reports and activities of the Director General concerning the Special Union, and give him all necessary instructions concerning matters within the competence of the Special Union;

(v) determine the program and adopt the triennial budget of the Special Union, and approve its final accounts;

(vi) adopt the financial regulations of the Special Union;

(vii) establish such committees of experts and working groups as it may deem necessary to achieve the objectives of the Special Union;

(viii) determine which countries not members of the Special Union and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;

(ix) adopt amendments to Articles 10 to 13;

(x) take any other appropriate action designed to further the objectives of the Special Union;

(xi) perform such other functions as are appropriate under this Agreement.

(2) *(b)* With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

Article 10

1) *a)* L'Union particulière a une Assemblée composée des pays qui ont ratifié le présent Acte ou y ont adhéré.

b) Le Gouvernement de chaque pays est représenté par un délégué, qui peut être assisté de suppléants, de conseillers et d'experts.

c) Les dépenses de chaque délégation sont supportées par le Gouvernement qui l'a désignée, à l'exception des frais de voyage et des indemnités de séjour pour un délégué de chaque pays membre qui sont à la charge de l'Union particulière.

2) *a)* L'Assemblée:

i) traite de toutes les questions concernant le maintien et le développement de l'Union particulière et l'application du présent Arrangement;

ii) donne au Bureau international des directives concernant la préparation des conférences de revision, compte étant dûment tenu des observations des pays de l'Union particulière qui n'ont pas ratifié le présent Acte ou n'y ont pas adhéré;

iii) modifie le Règlement d'exécution et fixe le montant des émoluments mentionnés à l'article 8.2) et des autres taxes relatives à l'enregistrement international;

iv) examine et approuve les rapports et les activités du Directeur général relatifs à l'Union particulière et lui donne toutes directives utiles concernant les questions de la compétence de l'Union particulière;

v) arrête le programme, adopte le budget triennal de l'Union particulière et approuve ses comptes de clôture;

vi) adopte le Règlement financier de l'Union particulière;

vii) crée les comités d'experts et groupes de travail qu'elle juge utiles à la réalisation des objectifs de l'Union particulière;

viii) décide quels sont les pays non membres de l'Union particulière et quelles sont les organisations intergouvernementales et internationales non gouvernementales qui peuvent être admis à ses réunions en qualité d'observateurs;

ix) adopte les modifications des articles 10 à 13;

x) entreprend toute autre action appropriée en vue d'atteindre les objectifs de l'Union particulière;

xi) s'acquitte de toutes autres tâches qu'implique le présent Arrangement.

2) *b)* Sur les questions qui intéressent également d'autres Unions administrées par l'Organisation, l'Assemblée statue connaissance prise de l'avis du Comité de coordination de l'Organisation.

(3) *(a)* Each country member of the Assembly shall have one vote.

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

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

(d) Subject to the provisions of Article 13(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(e) Abstentions shall not be considered as votes.

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

(g) Countries of the Special Union not members of the Assembly shall be admitted to the meetings of the latter as observers.

(4) *(a)* The Assembly shall meet once in every third calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of one-fourth of the countries members of the Assembly.

(c) The agenda of each session shall be prepared by the Director General.

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

Article 11

(1) *(a)* International registration and related duties, as well as all other administrative tasks concerning the Special Union, shall be performed by the International Bureau.

3) *a)* Chaque pays membre de l'Assemblée dispose d'une voix.

b) La moitié des pays membres de l'Assemblée constitue le quorum.

c) Nonobstant les dispositions du sous-alinéa *b)*, si, lors d'une session, le nombre des pays représentés est inférieur à la moitié mais égal ou supérieur au tiers des pays membres de l'Assemblée, celle-ci peut prendre des décisions; toutefois, les décisions de l'Assemblée, à l'exception de celles qui concernent sa procédure, ne deviennent exécutoires que lorsque les conditions énoncées ci-après sont remplies. Le Bureau international communique lesdites décisions aux pays membres de l'Assemblée qui n'étaient pas représentés, en les invitant à exprimer par écrit, dans un délai de trois mois à compter de la date de ladite communication, leur vote ou leur abstention. Si, à l'expiration de ce délai, le nombre des pays ayant ainsi exprimé leur vote ou leur abstention est au moins égal au nombre de pays qui faisait défaut pour que le quorum fût atteint lors de la session, lesdites décisions deviennent exécutoires, pourvu qu'en même temps la majorité nécessaire reste acquise.

d) Sous réserve des dispositions de l'article 13.2), les décisions de l'Assemblée sont prises à la majorité des deux tiers des votes exprimés.

e) L'abstention n'est pas considérée comme un vote.

f) Un délégué ne peut représenter qu'un seul pays et ne peut voter qu'au nom de celui-ci.

g) Les pays de l'Union particulière qui ne sont pas membres de l'Assemblée sont admis à ses réunions en qualité d'observateurs.

4) *a)* L'Assemblée se réunit une fois tous les trois ans en session ordinaire sur convocation du Directeur général et, sauf cas exceptionnels, pendant la même période et au même lieu que l'Assemblée générale de l'Organisation.

b) L'Assemblée se réunit en session extraordinaire sur convocation adressée par le Directeur général, à la demande d'un quart des pays membres de l'Assemblée.

c) L'ordre du jour de chaque session est préparé par le Directeur général.

5) L'Assemblée adopte son règlement intérieur.

Article 11

1) *a)* Les tâches relatives à l'enregistrement international ainsi que les autres tâches administratives incombant à l'Union particulière sont assurées par le Bureau international.

(b) In particular, the International Bureau shall prepare the meetings and provide the secretariat of the Assembly and of such committees of experts and working groups as may have been established by the Assembly.

(c) The Director General shall be the chief executive of the Special Union and shall represent the Special Union.

(2) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly and of such committees of experts or working groups as may have been established by the Assembly. The Director General, or a staff member designated by him, shall be ex officio secretary of those bodies.

(3) *(a)* The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for the conferences of revision of the provisions of the Agreement other than Articles 10 to 13.

(b) The International Bureau may consult with inter-governmental and international non-governmental organizations concerning preparations for conferences of revision.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at those conferences.

(4) The International Bureau shall carry out any other tasks assigned to it.

Article 12

(1) *(a)* The Special Union shall have a budget.

(b) The budget of the Special Union shall include the income and expenses proper to the Special Union, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization.

(c) Expenses not attributable exclusively to the Special Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Special Union in such common expenses shall be in proportion to the interest the Special Union has in them.

(2) The budget of the Special Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

(3) The budget of the Special Union shall be financed from the following sources:

(i) international registration fees and other fees and charges due for other services rendered by the International Bureau in relation to the Special Union;

b) En particulier, le Bureau international prépare les réunions et assure le secrétariat de l'Assemblée et des comités d'experts et groupes de travail qu'elle peut créer.

c) Le Directeur général est le plus haut fonctionnaire de l'Union particulière et la représente.

2) Le Directeur général et tout membre du personnel désigné par lui prennent part, sans droit de vote, à toutes les réunions de l'Assemblée et de tout comité d'experts ou groupe de travail qu'elle peut créer. Le Directeur général ou un membre du personnel désigné par lui est d'office secrétaire de ces organes.

3) *a)* Le Bureau international, selon les directives de l'Assemblée, prépare les conférences de revision des dispositions de l'Arrangement autres que les articles 10 à 13.

b) Le Bureau international peut consulter des organisations intergouvernementales et internationales non gouvernementales sur la préparation des conférences de revision.

c) Le Directeur général et les personnes désignées par lui prennent part, sans droit de vote, aux délibérations dans ces conférences.

4) Le Bureau international exécute toutes autres tâches qui lui sont attribuées.

Article 12

1) *a)* L'Union particulière a un budget.

b) Le budget de l'Union particulière comprend les recettes et les dépenses propres à l'Union particulière, sa contribution au budget des dépenses communes aux Unions, ainsi que, le cas échéant, la somme mise à la disposition du budget de la Conférence de l'Organisation.

c) Sont considérées comme dépenses communes aux Unions les dépenses qui ne sont pas attribuées exclusivement à l'Union particulière mais également à une ou plusieurs autres Unions administrées par l'Organisation. La part de l'Union particulière dans ces dépenses communes est proportionnelle à l'intérêt que ces dépenses présentent pour elle.

2) Le budget de l'Union particulière est arrêté compte tenu des exigences de coordination avec les budgets des autres Unions administrées par l'Organisation.

3) Le budget de l'Union particulière est financé par les ressources suivantes:

i) les émoluments et autres taxes relatifs à l'enregistrement international et les taxes et sommes dues pour les autres services rendus par le Bureau international au titre de l'Union particulière;

(ii) sale of, or royalties on, the publications of the International Bureau concerning the Special Union;
(iii) gifts, bequests, and subventions;
(iv) rents, interests, and other miscellaneous income.

(4) *(a)* The amounts of the fees referred to in Article 8(2) and other fees relating to international registration shall be fixed by the Assembly on the proposal of the Director General.

(b) The amounts of such fees shall be so fixed that the revenues of the Special Union from fees, other than the supplementary and complementary fees referred to in Article 8(2)*(b)* and *(c)*, and other sources shall be at least sufficient to cover the expenses of the International Bureau concerning the Special Union.

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

(5) Subject to the provisions of paragraph (4)*(a)*, the amount of fees and charges due for other services rendered by the International Bureau in relation to the Special Union shall be established, and shall be reported to the Assembly, by the Director General.

(6) *(a)* The Special Union shall have a working capital fund which shall be constituted by a single payment made by each country of the Special Union. If the fund becomes insufficient, the Assembly shall decide to increase it.

(b) The amount of the initial payment of each country to the said fund or of its participation in the increase thereof shall be a proportion of the contribution of that country as a member of the Paris Union for the Protection of Industrial Property to the budget of the said Union for the year in which the fund is established or the decision to increase it is made.

(c) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee of the Organization.

(d) As long as the Assembly authorizes the use of the reserve fund of the Special Union as a working capital fund, the Assembly may suspend the application of the provisions of subparagraphs *(a)*, *(b)*, and *(c)*.

(7) *(a)* In the headquarters agreement concluded with the country on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such country shall grant advances. The amount of those advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such country and the Organization.

ii) le produit de la vente des publications du Bureau international concernant l'Union particulière et les droits afférents à ces publications;

iii) les dons, legs et subventions;

iv) les loyers, intérêts et autres revenus divers.

4) *a)* Le montant des émoluments mentionnés à l'article 8.2) et des autres taxes relatives à l'enregistrement international est fixé par l'Assemblée, sur proposition du Directeur général.

b) Ce montant est fixé de manière à ce que les recettes de l'Union particulière provenant des émoluments, autres que les émoluments supplémentaires et les compléments d'émoluments visés à l'article 8.2)*b)* et *c)*, des taxes et des autres sources de revenus permettent au moins de couvrir les dépenses du Bureau international intéressant l'Union particulière.

c) Dans le cas où le budget n'est pas adopté avant le début d'un nouvel exercice, le budget de l'année précédente est reconduit selon les modalités prévues par le règlement financier.

5) Sous réserve des dispositions de l'alinéa 4)*a)*, le montant des taxes et sommes dues pour les autres services rendus par le Bureau international au titre de l'Union particulière est fixé par le Directeur général, qui fait rapport à l'Assemblée.

6) *a)* L'Union particulière possède un fonds de roulement constitué par un versement unique effectué par chaque pays de l'Union particulière. Si le fonds devient insuffisant, l'Assemblée décide de son augmentation.

b) Le montant du versement initial de chaque pays au fonds précité ou de sa participation à l'augmentation de celuici est proportionnel à la contribution de ce pays, en tant que membre de l'Union de Paris pour la protection de la propriété industrielle, au budget de ladite Union pour l'année au cours de laquelle le fonds est constitué ou l'augmentation décidée.

c) La proportion et les modalités de versement sont arrêtées par l'Assemblée, sur proposition du Directeur général et après avis du Comité de coordination de l'Organisation.

d) Aussi longtemps que l'Assemblée autorise que le fonds de réserve de l'Union particulière soit utilisé en tant que fonds de roulement, l'Assemblée peut suspendre l'application des dispositions des sous-alinéas *a)*, *b)* et *c)*.

7) *a)* L'Accord de siège conclu avec le pays sur le territoire duquel l'Organisation a son siège prévoit que, si le fonds de roulement est insuffisant, ce pays accorde des avances. Le montant de ces avances et les conditions dans lesquelles elles sont accordées font l'objet, dans chaque cas, d'accords séparés entre le pays en cause et l'Organisation.

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

(8) The auditing of the accounts shall be effected by one or more of the countries of the Special Union or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

Article 13

(1) Proposals for the amendment of Articles 10, 11, 12, and the present Article, may be initiated by any country member of the Assembly, or by the Director General. Such proposals shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.

(2) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided that any amendment to Article 10, and to the present paragraph, shall require four-fifths of the votes cast.

(3) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the countries members of the Assembly at the time it adopted the amendment. Any amendment to the said Articles thus accepted shall bind all the countries which are members of the Assembly at the time the amendment enters into force, or which become members thereof at a subsequent date.

Article 14

(1) Any country of the Special Union which has signed this Act may ratify it, and, if it has not signed it, may accede to it.

(2) *(a)* Any country outside the Special Union which is party to the Paris Convention for the Protection of Industrial Property may accede to this Act and thereby become a member of the Special Union.

(b) As soon as the International Bureau is informed that such a country has acceded to this Act, it shall address to the Office of that country, in accordance with Article 3, a collective notification of the marks which, at that time, enjoy international protection.

b) Le pays visé au sous-alinéa *a)* et l'Organisation ont chacun le droit de dénoncer l'engagement d'accorder des avances moyennant notification par écrit. La dénonciation prend effet trois ans après la fin de l'année au cours de laquelle elle a été notifiée.

8) La vérification des comptes est assurée, selon les modalités prévues par le règlement financier, par un ou plusieurs pays de l'Union particulière ou par des contrôleurs extérieurs, qui sont, avec leur consentement, désignés par l'Assemblée.

Article 13

1) Des propositions de modification des articles 10, 11, 12 et du présent article peuvent être présentées par tout pays membre de l'Assemblée ou par le Directeur général. Ces propositions sont communiquées par ce dernier aux pays membres de l'Assemblée six mois au moins avant d'être soumises à l'examen de l'Assemblée.

2) Toute modification des articles visés à l'alinéa 1) est adoptée par l'Assemblée. L'adoption requiert les trois quarts des votes exprimés; toutefois, toute modification de l'article 10 et du présent alinéa requiert les quatre cinquièmes des votes exprimés.

3) Toute modification des articles visés à l'alinéa 1) entre en vigueur un mois après la réception par le Directeur général des notifications écrites d'acceptation, effectuée en conformité avec leurs règles constitutionnelles respectives, de la part des trois quarts des pays qui étaient membres de l'Assemblée au moment où la modification a été adoptée. Toute modification desdits articles ainsi acceptée lie tous les pays qui sont membres de l'Assemblée au moment où la modification entre en vigueur ou qui en deviennent membres à une date ultérieure.

Article 14

1) Chacun des pays de l'Union particulière qui a signé le présent Acte peut le ratifier et, s'il ne l'a pas signé, peut y adhérer.

2) *a)* Tout pays étranger à l'Union particulière, partie à la Convention de Paris pour la protection de la propriété industrielle, peut adhérer au présent Acte et devenir, de ce fait, membre de l'Union particulière.

b) Dès que le Bureau international est informé qu'un tel pays a adhéré au présent Acte, il adresse à l'Administration de ce pays, conformément à l'article 3, une notification collective des marques qui, à ce moment, jouissent de la protection internationale.

(c) Such notification shall, of itself, ensure to the said marks the benefits of the foregoing provisions in the territory of the said country, and shall mark the commencement of the period of one year during which the Office concerned may make the declaration provided for in Article 5.

(d) However, any such country may, in acceding to this Act, declare that, except in the case of international marks which have already been the subject in that country of an earlier identical national registration still in force, and which shall be immediately recognized upon the request of the interested parties, application of this Act shall be limited to marks registered from the date on which its accession enters into force.

(e) Such declaration shall dispense the International Bureau from making the collective notification referred to above. The International Bureau shall notify only those marks in respect of which it receives, within a period of one year from the accession of the new country, a request, with the necessary particulars, to take advantage of the exception provided for in subparagraph *(d)*.

(f) The International Bureau shall not make the collective notification to such countries as declare, in acceding to this Act, that they are availing themselves of the right provided for in Article 3bis. The said countries may also declare at the same time that the application of this Act shall be limited to marks registered from the day on which their accessions enter into force; however, such limitation shall not affect international marks which have already been the subject of an earlier identical national registration in those countries, and which could give rise to requests for extension of protection made and notified in accordance with Articles 3ter and 8(2)*(c)*.

(g) Registrations of marks which have been the subject of one of the notifications provided for in this paragraph shall be regarded as replacing registrations effected direct in the new contracting country before the date of entry into force of its accession.

(3) Instruments of ratification and accession shall be deposited with the Director General.

(4) *(a)* With respect to the first five countries which have deposited their instruments of ratification or accession, this Act shall enter into force three months after the deposit of the fifth such instrument.

(b) With respect to any other country, this Act shall enter into force three months after the date on which its ratification or accession has been notified by the Director General, unless a subsequent date has been indicated in the instrument of ratification or accession. In the latter case, this Act shall enter

c) Cette notification assure, par elle-même, auxdites marques, le bénéfice des précédentes dispositions sur le territoire dudit pays et fait courir le délai d'un an pendant lequel l'Administration intéressée peut faire la déclaration prévue par l'article 5.

d) Toutefois, un tel pays, en adhérant au présent Acte, peut déclarer que, sauf en ce qui concerne les marques internationales ayant déjà fait antérieurement dans ce pays l'objet d'un enregistrement national identique encore en vigueur et qui sont immédiatement reconnues sur la demande des intéressés, l'application de cet Acte est limitée aux marques qui sont enregistrées à partir du jour où cette adhésion devient effective.

e) Cette déclaration dispense le Bureau international de faire la notification collective susindiquée. Il se borne à notifier les marques en faveur desquelles la demande d'être mis au bénéfice de l'exception prévue au sous-alinéa *d)* lui parvient, avec les précisions nécessaires, dans le délai d'une année à partir de l'accession du nouveau pays.

f) Le Bureau international ne fait pas de notification collective à de tels pays qui, en adhérant au présent Acte, déclarent user de la faculté prévue à l'article 3bis. Ces pays peuvent en outre déclarer simultanément que l'application de cet Acte est limitée aux marques qui sont enregistrées à partir du jour où leur adhésion devient effective; cette limitation n'atteint toutefois pas les marques internationales ayant déjà fait antérieurement, dans ce pays, l'objet d'un enregistrement national identique et qui peuvent donner lieu à des demandes d'extension de protection formulées et notifiées conformément aux articles 3ter et 8.2)*c)*.

g) Les enregistrements de marques qui ont fait l'objet d'une des notifications prévues par cet alinéa sont considérés comme substitués aux enregistrements effectués directement dans le nouveau pays contractant avant la date effective de son adhésion.

3) Les instruments de ratification et d'adhésion sont déposés auprès du Directeur général.

4) *a)* A l'égard des cinq pays qui ont, les premiers, déposé leurs instruments de ratification ou d'adhésion, le présent Acte entre en vigueur trois mois après le dépôt du cinquième de ces instruments.

b) A l'égard de tout autre pays, le présent Acte entre en vigueur trois mois après la date à laquelle sa ratification ou son adhésion a été notifiée par le Directeur général, à moins qu'une date postérieure n'ait été indiquée dans l'instrument de ratification ou d'adhésion. Dans ce dernier cas, le présent Acte

into force with respect to that country on the date thus indicated.

(5) Ratification or accession shall automatically entail acceptance of all the clauses and admission to all the advantages of this Act.

(6) After the entry into force of this Act, a country may accede to the Nice Act of June 15, 1957, only in conjunction with ratification of, or accession to, this Act. Accession to Acts earlier than the Nice Act shall not be permitted, not even in conjunction with ratification of, or accession to, this Act.

(7) The provisions of Article 24 of the Paris Convention for the Protection of Industrial Property shall apply to this Agreement.

Article 15

(1) This Agreement shall remain in force without limitation as to time.

(2) Any country may denounce this Act by notification addressed to the Director General. Such denunciation shall constitute also denunciation of all earlier Acts and shall affect only the country making it, the Agreement remaining in full force and effect as regards the other countries of the Special Union.

(3) Denunciation shall take effect one year after the day on which the Director General has received the notification.

(4) The right of denunciation provided for by this Article shall not be exercised by any country before the expiration of five years from the date upon which it becomes a member of the Special Union.

(5) International marks registered up to the date on which denunciation becomes effective, and not refused within the period of one year provided for in Article 5, shall continue, throughout the period of international protection, to enjoy the same protection as if they had been filed direct in the denouncing country.

Article 16

(1) *(a)* This Act shall, as regards the relations between the countries of the Special Union by which it has been ratified or acceded to, replace, as from the day on which it enters into force with respect to them, the Madrid Agreement of 1891, in its texts earlier than this Act.

(b) However, any country of the Special Union which has ratified or acceded to this Act shall remain bound by the earlier texts which it has not previously denounced by virtue

entre en vigueur, à l'égard de ce pays, à la date ainsi indiquée.

5) La ratification ou l'adhésion emporte de plein droit accession à toutes les clauses et admission à tous les avantages stipulés par le présent Acte.

6) Après l'entrée en vigueur du présent Acte, un pays ne peut adhérer à l'Acte de Nice du 15 juin 1957 que conjointement avec la ratification du présent Acte ou l'adhésion à celuici. L'adhésion à des Actes antérieurs à l'Acte de Nice n'est pas admise, même conjointement avec la ratification du présent Acte ou l'adhésion à celui-ci.

7) Les dispositions de l'article 24 de la Convention de Paris pour la protection de la propriété industrielle s'appliquent au présent Arrangement.

Article 15

1) Le présent Arrangement demeure en vigueur sans limitation de durée.

2) Tout pays peut dénoncer le présent Acte par notification adressée au Directeur général. Cette dénonciation emporte aussi dénonciation de tous les Actes antérieurs et ne produit son effet qu'à l'égard du pays qui l'a faite, l'Arrangement restant en vigueur et exécutoire à l'égard des autres pays de l'Union particulière.

3) La dénonciation prend effet un an après le jour où le Directeur général a reçu la notification.

4) La faculté de dénonciation prévue par le présent article ne peut être exercée par un pays avant l'expiration d'un délai de cinq ans à compter de la date à laquelle il est devenu membre de l'Union particulière.

5) Les marques internationales enregistrées avant la date à laquelle la dénonciation devient effective, et non refusées dans l'année prévue à l'article 5, continuent, pendant la durée de la protection internationale, à bénéficier de la même protection que si elles avaient été directement déposées dans ce pays.

Article 16

1) *a)* Le présent Acte remplace, dans les rapports entre les pays de l'Union particulière au nom desquels il a été ratifié ou qui y ont adhéré, à partir du jour où il entre en vigueur à leur égard, l'Arrangement de Madrid de 1891, dans ses textes antérieurs au présent Acte.

b) Toutefois, chaque pays de l'Union particulière qui a ratifié le présent Acte ou qui y a adhéré, reste soumis aux textes antérieurs qu'il n'a pas antérieurement dénoncés en

of Article 12(4) of the Nice Act of June 15, 1957, as regards its relations with countries which have not ratified or acceded to this Act.

(2) Countries outside the Special Union which become party to this Act shall apply it to international registrations effected at the International Bureau through the intermediary of the national Office of any country of the Special Union not party to this Act, provided that such registrations satisfy, with respect to the said countries, the requirements of this Act. With regard to international registrations effected at the International Bureau through the intermediary of the national Offices of the said countries outside the Special Union which become party to this Act, such countries recognize that the aforesaid country of the Special Union may demand compliance with the requirements of the most recent Act to which it is party.

Article 17

(1) *(a)* This Act shall be signed in a single copy in the French language and shall be deposited with the Government of Sweden.

(b) Official texts shall be established by the Director General, after consultation with the interested Governments, in such other languages as the Assembly may designate.

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

(3) The Director General shall transmit two copies, certified by the Government of Sweden, of the signed text of this Act to the Governments of all countries of the Special Union and, on request, to the Government of any other country.

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

(5) The Director General shall notify the Governments of all countries of the Special Union of signatures, deposits of instruments of ratification or accession and any declarations included in such instruments, entry into force of any provisions of this Act, notifications of denunciation, and notifications pursuant to Articles 3bis, 9^{quater}, 13, 14(7), and 15(2).

Article 18

(1) Until the first Director General assumes office, references in this Act to the International Bureau of the Organization or to the Director General shall be construed as references to the Bureau of the Union established by the Paris

vertu de l'article 12.4) de l'Acte de Nice du 15 juin 1957 dans ses rapports avec les pays qui n'ont pas ratifié le présent Acte ou qui n'y ont pas adhéré.

2) Les pays étrangers à l'Union particulière qui deviennent parties au présent Acte l'appliquent aux enregistrements internationaux effectués au Bureau international par l'entremise de l'Administration nationale de tout pays de l'Union particulière qui n'est pas partie au présent Acte pourvu que ces enregistrements satisfassent, quant auxdits pays, aux conditions prescrites par le présent Acte. Quant aux enregistrements internationaux effectués au Bureau international par l'entremise des Administrations nationales desdits pays étrangers à l'Union particulière qui deviennent parties au présent Acte, ceux-ci admettent que le pays visé ci-dessus exige l'accomplissement des conditions prescrites par l'Acte le plus récent auquel il est partie.

Article 17

1) *a)* Le présent Acte est signé en un seul exemplaire en langue française et déposé auprès du Gouvernement de la Suède.

b) Des textes officiels sont établis par le Directeur général, après consultation des Gouvernements intéressés, dans les autres langues que l'Assemblée pourra indiquer.

2) Le présent Acte reste ouvert à la signature, à Stockholm, jusqu'au 13 janvier 1968.

3) Le Directeur général transmet deux copies, certifiées conformes par le Gouvernement de la Suède, du texte signé du présent Acte aux Gouvernements de tous les pays de l'Union particulière et, sur demande, au Gouvernement de tout autre pays.

4) Le Directeur général fait enregistrer le présent Acte auprès du Secrétariat de l'Organisation des Nations Unies.

5) Le Directeur général notifie aux Gouvernements de tous les pays de l'Union particulière les signatures, les dépôts d'instruments de ratification ou d'adhésion et de déclarations comprises dans ces instruments, l'entrée en vigueur de toutes dispositions du présent Acte, les notifications de dénonciation et les notifications faites en application des articles 3bis, 9^{quater}, 13, 14.7) et 15.2).

Article 18

1) Jusqu'à l'entrée en fonction du premier Directeur général, les références, dans le présent Acte, au Bureau international de l'Organisation ou au Directeur général sont considérées comme se rapportant respectivement au Bureau de

Convention for the Protection of Industrial Property or its Director, respectively.

(2) Countries of the Special Union not having ratified or acceded to this Act may, until five years after the entry into force of the Convention establishing the Organization, exercise, if they so desire, the rights provided for under Articles 10 to 13 of this Act as if they were bound by those Articles. Any country desiring to exercise such rights shall give written notification to that effect to the Director General; such notification shall be effective from the date of its receipt. Such countries shall be deemed to be members of the Assembly until the expiration of the said period.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Act.

DONE at Stockholm, on July 14, 1967.

Austria (Gottfried H. Thaler); Belgium (B[on] F. Cogels); France (B. de Menthon); Germany, Federal Republic (Kurt Haertel); Hungary (Esztergályos); Italy (Cippico, Giorgio Ranzi); Liechtenstein (Marianne Marxer); Luxembourg (J. P. Hoffmann); Monaco (J. M. Notari); Morocco (H'ssaine); Netherlands (S. Gerbrandy, W. G. Belinfante); Portugal (Adriano de Carvalho, José de Oliveira Ascensão, Ruy Alvaro Costa de Morais Serrão); Rumania (C. Stanescu, Marinete); Spain (J. F. Alcover, Electo J. Garcia Tejedor); Switzerland (Hans Morf, Joseph Voyame); Tunisia (M. Kedadi); Yugoslavia (A. Jelić).

l'Union établie par la Convention de Paris pour la protection de la propriété industrielle ou à son Directeur.

2) Les pays de l'Union particulière qui n'ont pas ratifié le présent Acte ou n'y ont pas adhéré peuvent, pendant cinq ans après l'entrée en vigueur de la Convention instituant l'Organisation, exercer, s'ils le désirent, les droits prévus par les articles 10 à 13 du présent Acte, comme s'ils étaient liés par ces articles. Tout pays qui désire exercer lesdits droits dépose à cette fin auprès du Directeur général une notification écrite qui prend effet à la date de sa réception. De tels pays sont réputés être membres de l'Assemblée jusqu'à l'expiration de ladite période.

EN FOI DE QUOI, les soussignés, dûment autorisés à cet effet, ont signé le présent Acte.

FAIT à Stockholm, le 14 juillet 1967.

Autriche (Gottfried H. Thaler); Belgique (B^on F. Cogels); Espagne (J. F. Alcover, Electo J. Garcia Tejedor); France (B. de Menthon); Hongrie (Esztergályos); Italie (Cippico, Giorgio Ranzi); Liechtenstein (Marianne Marxer); Luxembourg (J. P. Hoffmann); Maroc (H'ssaine); Monaco (J. M. Notari); Pays-Bas (S. Gerbrandy, W. G. Belinfante); Portugal (Adriano de Carvalho, José de Oliveira Ascensão, Ruy Álvaro Costa de Morais Serrão); République Fédérale d'Allemagne (Kurt Haertel); Roumanie (C. Stanescu, Marinete); Suisse (Hans Morf, Joseph Voyame); Tunisie (M. Kedadi); Yougoslavie (A. Jelić).

Madrid Agreement
for the Repression of False or Deceptive Indications of Source on Goods
(Additional Act of Stockholm)

Arrangement de Madrid
concernant la répression des indications de provenance fausses ou fallacieuses sur les produits
(Acte additionnel de Stockholm)

Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods

of April 14, 1891,
as revised
at WASHINGTON on June 2, 1911, at THE HAGUE on November 6, 1925,
at LONDON on June 2, 1934, and at LISBON on October 31, 1958

Additional Act of Stockholm of July 14, 1967

Article 1

Instruments of accession to the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, of April 14, 1891 (hereinafter designated as "the Madrid Agreement"), as revised at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, and at Lisbon on October 31, 1958 (hereinafter designated as "the Lisbon Act"), shall be deposited with the Director General of the World Intellectual Property Organization (hereinafter designated as "the Director General"), who shall notify such deposits to the countries party to the Agreement.

Article 2

References in Articles 5 and 6(2) of the Lisbon Act to Articles 16, 16bis, and 17bis, of the General Convention shall be construed as references to those provisions of the Stockholm Act of the Paris Convention for the Protection of Industrial Property which correspond to the said Articles.

Article 3

(1) This Additional Act may be signed by any country party to the Madrid Agreement and may be ratified or acceded to by any country which has ratified or acceded to the Lisbon Act.

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

Arrangement de Madrid concernant la répression des indications de provenance fausses ou fallacieuses sur les produits

du 14 avril 1891,
revisé à WASHINGTON le 2 juin 1911, à LA HAYE le 6 novembre 1925, à LONDRES le 2 juin 1934 et à LISBONNE le 31 octobre 1958

Acte additionnel de Stockholm du 14 juillet 1967

Article 1

Les instruments d'adhésion à l'Arrangement de Madrid concernant la répression des indications de provenance fausses ou fallacieuses sur les produits du 14 avril 1891 (ci-après dénommé « l'Arrangement de Madrid »), tel que revisé à Washington le 2 juin 1911, à La Haye le 6 novembre 1925, à Londres le 2 juin 1934 et à Lisbonne le 31 octobre 1958 (ci-après dénommé « l'Acte de Lisbonne »), seront déposés auprès du Directeur général de l'Organisation Mondiale de la Propriété Intellectuelle (ci-après dénommé « le Directeur général »), qui notifiera ces dépôts aux pays parties à l'Arrangement.

Article 2

La référence, dans les articles 5 et 6.2) de l'Acte de Lisbonne, aux articles 16, 16bis et 17bis de la Convention générale sera considérée comme une référence aux dispositions de l'Acte de Stockholm de la Convention de Paris pour la protection de la propriété industrielle qui correspondent auxdits articles.

Article 3

1) Tout pays partie à l'Arrangement de Madrid peut signer le présent Acte additionnel et tout pays qui a ratifié l'Acte de Lisbonne ou y a adhéré peut ratifier le présent Acte additionnel ou y adhérer.

2) Les instruments de ratification ou d'adhésion sont déposés auprès du Directeur général.

Article 4

Any country which has not ratified or acceded to the Lisbon Act shall become bound also by Articles 1 and 2 of this Additional Act from the date on which its accession to the Lisbon Act enters into force, provided, however, that, if on the said date this Additional Act has not yet entered into force pursuant to Article 5(1), then, such country shall become bound by Articles 1 and 2 of this Additional Act only from the date of entry into force of this Additional Act pursuant to Article 5(1).

Article 5

(1) This Additional Act shall enter into force on the date on which the Stockholm Convention of July 14, 1967, establishing the World Intellectual Property Organization has entered into force, provided, however, that, if by that date at least two ratifications or accessions to this Additional Act have not been deposited, then, this Additional Act shall enter into force on the date on which two ratifications or accessions to this Additional Act have been deposited.

(2) With respect to any country which deposits its instrument of ratification or accession after the date on which this Additional Act has entered into force pursuant to the foregoing paragraph, this Additional Act shall enter into force three months after the date on which its ratification or accession has been notified by the Director General.

Article 6

(1) This Additional Act shall be signed in a single copy in the French language and shall be deposited with the Government of Sweden.

(2) This Additional Act shall remain open for signature at Stockholm until the date of its entry into force pursuant to Article 5(1).

(3) The Director General shall transmit two copies, certified by the Government of Sweden, of the signed text of this Additional Act to the Governments of all countries party to the Madrid Agreement and, on request, to the Government of any other country.

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

(5) The Director General shall notify the Governments of all countries party to the Madrid Agreement of signatures, deposits of instruments of ratification or accession, entry into force, and other relevant notifications.

Article 4

Tout pays qui n'a pas ratifié l'Acte de Lisbonne ou n'y a pas adhéré sera également lié par les articles 1 et 2 du présent Acte additionnel à compter de la date à laquelle son adhésion à l'Acte de Lisbonne entrera en vigueur, sous réserve, toutefois, que si, à ladite date, le présent Acte additionnel n'est pas encore entré en vigueur en application de l'article 5.1), ce pays sera alors lié par les articles 1 et 2 du présent Acte additionnel seulement à compter de la date d'entrée en vigueur du présent Acte additionnel en application de l'article 5.1).

Article 5

1) Le présent Acte additionnel entre en vigueur à la date à laquelle la Convention de Stockholm du 14 juillet 1967, instituant l'Organisation Mondiale de la Propriété Intellectuelle, sera entrée en vigueur, sous réserve, toutefois, que si, à cette date, au moins deux ratifications du présent Acte additionnel ou deux adhésions à celui-ci n'ont pas été déposées, le présent Acte additionnel entrera alors en vigueur à la date à laquelle deux ratifications du présent Acte additionnel ou deux adhésions à celui-ci auront été déposées.

2) A l'égard de tout pays qui dépose son instrument de ratification ou d'adhésion après la date à laquelle le présent Acte additionnel entre en vigueur en application de l'alinéa précédent, le présent Acte additionnel entre en vigueur trois mois après la date à laquelle sa ratification ou son adhésion a été notifiée par le Directeur général.

Article 6

1) Le présent Acte additionnel est signé en un exemplaire. en langue française, et déposé auprès du Gouvernement de la Suède.

2) Le présent Acte additionnel reste ouvert à la signature, à Stockholm, jusqu'à la date de son entrée en vigueur en application de l'article 5.1).

3) Le Directeur général transmet deux copies, certifiées conformes par le Gouvernement de la Suède, du texte signé du présent Acte additionnel aux Gouvernements de tous les pays parties à l'Arrangement de Madrid et, sur demande, au Gouvernement de tout autre pays.

4) Le Directeur général fait enregistrer le présent Acte additionnel auprès du Secrétariat des Nations Unies.

5) Le Directeur général notifie aux Gouvernements de tous les pays parties à l'Arrangement de Madrid les signatures, les dépôts d'instruments de ratification ou d'adhésion, l'entrée en vigueur et les autres notifications requises.

Article 7

Until the first Director General assumes office, references in this Additional Act to him shall be construed as references to the Director of the United International Bureaux for the Protection of Intellectual Property.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Act.

DONE at Stockholm, on July 14, 1967.

Cuba (A. M. González); France (B. de Menthon); Germany, Federal Republic (Kurt Haertel); Hungary (Esztergályos); Ireland (Valentin Iremonger); Israel (Z. Sher, G. Gavrieli); Italy (Cippico, Giorgio Ranzi); Japan (M. Takahashi, C. Kawade); Liechtenstein (Marianne Marxer); Monaco (J. M. Notari); Morocco (H'ssaine); Poland (M. Kajzer); Portugal (Adriano de Carvalho, José de Oliveira Ascensão, Ruy Alvaro Costa de Morais Serrão); Spain (J. F. Alcover, Electo J. Garcia Tejedor); Sweden (Herman Kling); Switzerland (Hans Morf, Joseph Voyame); Tunisia (M. Kedadi;) United Kingdom of Great Britain and Northern Ireland (Gordon Grant, William Wallace).

Article 7

Jusqu'à l'entrée en fonction du premier Directeur général, les références, dans le présent Acte additionnel, au Directeur général sont considérées comme se rapportant au Directeur des Bureaux internationaux réunis pour la protection de la propriété intellectuelle.

EN FOI DE QUOI, les soussignés, dûment autorisés à cet effet, ont signé le présent Acte additionnel.

FAIT à Stockholm, le 14 juillet 1967.

Cuba (A. M. González); Espagne (J. F. Alcover, Electo J. Garcia Tejedor); France (B. de Menthon); Hongrie (Esztergályos); Irlande (Valentin Iremonger); Israël (Z. Sher, G. Gavrieli); Italie (Cippico, Giorgio Ranzi); Japon (M. Takahashi, C. Kawade); Liechtenstein (Marianne Marxer); Maroc (H'ssaine); Monaco (J. M. Notari); Pologne (M. Kajzer); Portugal (Adriano de Carvalho, José de Oliveira Ascensão, Ruy Álvaro Costa de Morais Serrão); République Fédérale d'Allemagne (Kurt Haertel); Royaume-Uni de Grande-Bretagne et d'Irlande du Nord (Gordon Grant, William Wallace); Suède (Herman Kling); Suisse (Hans Morf, Joseph Voyame); Tunisie (M. Kedadi).

The Hague Agreement
Concerning the
International Deposit of Industrial Designs
(Complementary Act of Stockholm)

Arrangement de La Haye
concernant le dépôt international des dessins
et modèles industriels
(Acte complémentaire de Stockholm)

The Hague Agreement concerning the International Deposit of Industrial Designs

of November 6, 1925,
as revised
at LONDON on June 2, 1934, and at THE HAGUE on November 28, 1960,
and completed by the
Additional Act of MONACO on November 18, 1961

Complementary Act of Stockholm of July 14, 1967

Article 1

For the purposes of this Complementary Act:

"1934 Act" shall mean the Act signed at London on June 2, 1934, of the Hague Agreement concerning the International Deposit of Industrial Designs;

"1960 Act" shall mean the Act signed at The Hague on November 28, 1960, of the Hague Agreement concerning the International Deposit of Industrial Designs;

"1961 Additional Act" shall mean the Act signed at Monaco on November 18, 1961, additional to the 1934 Act;

"Organization" shall mean the World Intellectual Property Organization;

"International Bureau" shall mean the International Bureau of Intellectual Property;

"Director General" shall mean the Director General of the Organization;

"Special Union" shall mean the Hague Union established by the Hague Agreement of November 6, 1925, concerning the International Deposit of Industrial Designs, and maintained by the 1934 and 1960 Acts, by the 1961 Additional Act, and by this Complementary Act.

Article 2

(1) *(a)* The Special Union shall have an Assembly consisting of those countries of the Union which have ratified or acceded to this Complementary Act.

Arrangement de la Haye concernant le dépôt international des dessins et modèles industriels

du 6 novembre 1925,
revisé à LONDRES le 2 juin 1934 et à LA HAYE le 28 novembre 1960
et complété par l'Acte additionnel de MONACO le 18 novembre 1961

Acte complémentaire de Stockhlom du 14 juillet 1967

Article 1

Au sens du présent Acte complémentaire, il faut entendre par:

« Acte de 1934 », l'Acte signé à Londres le 2 juin 1934 de l'Arrangement de La Haye concernant le dépôt international des dessins et modèles industriels;

« Acte de 1960 », l'Acte signé à La Haye le 28 novembre 1960 de l'Arrangement de La Haye concernant le dépôt international des dessins et modèles industriels;

« Acte additionnel de 1961 », l'Acte signé à Monaco le 18 novembre 1961, additionnel à l'Acte de 1934;

« Organisation », l'Organisation Mondiale de la Propriété Intellectuelle;

« Bureau international », le Bureau international de la propriété intellectuelle;

« Directeur général », le Directeur général de l'Organisation;

« Union particulière », l'Union de La Haye, créée par l'Arrangement de la Haye du 6 novembre 1925 concernant le dépôt international des dessins et modèles industriels, et maintenue par les Actes de 1934 et de 1960, et par l'Acte additionnel de 1961, ainsi que par le présent Acte complémentaire.

Article 2

1) *a)* L'Union particulière a une Assemblée composée des pays qui ont ratifié le présent Acte ou y ont adhéré.

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

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

(2) *(a)* The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Special Union and the implementation of this Agreement;

(ii) give directions to the International Bureau concerning the preparation for conferences of revision, due account being taken of any comments made by those countries of the Special Union which have not ratified or acceded to this Complementary Act;

(iii) modify the Regulations, including the fixation of the amounts of the fees relating to the international deposit of industrial designs;

(iv) review and approve the reports and activities of the Director General concerning the Special Union, and give him all necessary instructions concerning matters within the competence of the Special Union;

(v) determine the program and adopt the triennial budget of the Special Union, and approve its final accounts;

(vi) adopt the financial regulations of the Special Union;

(vii) establish such committees of experts and working groups as it may deem necessary to achieve the objectives of the Special Union;

(viii) determine which countries not members of the Special Union and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;

(ix) adopt amendments to Articles 2 to 5;

(x) take any other appropriate action designed to further the objectives of the Special Union;

(xi) perform such other functions as are appropriate under this Complementary Act.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3) *(a)* Each country member of the Assembly shall have one vote.

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

(c) Notwithstanding the provisions of subparagraph *(b)*, if, in any session, the number of countries represented is less

b) Le Gouvernement de chaque pays est représenté par un délégué, qui peut être assisté de suppléants, de conseillers et d'experts.

c) Les dépenses de chaque délégation sont supportées par le Gouvernement qui l'a désignée.

2) *a)* L'Assemblée:

i) traite de toutes les questions concernant le maintien et le développement de l'Union particulière et l'application de son Arrangement;

ii) donne au Bureau international des directives concernant la préparation des conférences de revision, compte étant dûment tenu des observations des pays de l'Union particulière qui n'ont pas ratifié le présent Acte ou n'y ont pas adhéré;

iii) modifie le règlement d'exécution et fixe le montant des taxes relatives au dépôt international des dessins et modèles industriels;

iv) examine et approuve les rapports et les activités du Directeur général relatifs à l'Union particulière et lui donne toutes directives utiles concernant les questions de la compétence de l'Union particulière;

v) arrête le programme, adopte le budget triennal de l'Union particulière et approuve ses comptes de clôture;

vi) adopte le Règlement financier du l'Union particulière;

vii) crée les comités d'experts et groupes de travail qu'elle juge utiles à la réalisation des objectifs de l'Union particulière;

viii) décide quels sont les pays non membres de l'Union particulière et quelles sont les organisations intergouvernementales et internationales non gouvernementales qui peuvent être admis à ses réunions en qualité d'observateurs;

ix) adopte les modifications des articles 2 à 5;

x) entreprend toute autre action appropriée en vue d'atteindre les objectifs de l'Union particulière;

xi) s'acquitte de toutes autres tâches qu'impliquent le présent Acte complémentaire.

b) Sur les questions qui intéressent également d'autres Unions administrées par l'Organisation, l'Assemblée statue connaissance prise de l'avis du Comité de coordination de l'Organisation.

3) *a)* Chaque pays membre de l'Assemblée dispose d'une voix.

b) La moitié des pays membres de l'Assemblée constitue le quorum.

c) Nonobstant les dispositions du sous-alinéa *b)*, si, lors d'une session, le nombre des pays représentés est inférieur à

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

(d) Subject to the provisions of Article 5 (2), the decisions of the Assembly shall require two-thirds of the votes cast.

(e) Abstentions shall not be considered as votes.

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

(g) Countries of the Special Union not members of the Assembly shall be admitted to the meetings of the latter as observers.

(4) *(a)* The Assembly shall meet once in every third calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of one-fourth of the countries members of the Assembly.

(c) The agenda of each session shall be prepared by the Director General.

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

Article 3

(1) *(a)* International deposit of industrial designs and related duties, as well as other administrative tasks concerning the Special Union, shall be performed by the International Bureau.

(b) In particular, the International Bureau shall prepare the meetings and provide the secretariat of the Assembly and of such committees of experts and working groups as may have been established by the Assembly.

(c) The Director General shall be the chief executive of the Special Union and shall represent the Special Union.

la moitié mais égal ou supérieur au tiers des pays membres de l'Assemblée, celle-ci peut prendre des décisions; toutefois, les décisions de l'Assemblée, à l'exception de celles qui concernent sa procédure, ne deviennent exécutoires que lorsque les conditions énoncées ci-après sont remplies. Le Bureau international communique lesdites décisions aux pays membres de l'Assemblée qui n'étaient pas représentés, en les invitant à exprimer par écrit, dans un délai de trois mois à compter de la date de ladite communication, leur vote ou leur abstention. Si, à l'expiration de ce délai, le nombre des pays ayant ainsi exprimé leur vote ou leur abstention est au moins égal au nombre de pays qui faisait défaut pour que le quorum fût atteint lors de la session, lesdites décisions deviennent exécutoires, pourvu qu'en même temps la majorité nécessaire reste acquise.

d) Sous réserve des dispositions de l'article 5.2), les décisions de l'Assemblée sont prises à la majorité des deux tiers des votes exprimés.

e) L'abstention n'est pas considérée comme un vote.

f) Un délégué ne peut représenter qu'un seul pays et ne peut voter qu'au nom de celui-ci.

g) Les pays de l'Union particulière qui ne sont pas membres de l'Assemblée sont admis à ses réunions en qualité d'observateurs.

4) *a)* L'Assemblée se réunit une fois tous les trois ans en session ordinaire, sur convocation du Directeur général et, sauf cas exceptionnels, pendant la même période et au même lieu que l'Assemblée générale de l'Organisation.

b) L'Assemblée se réunit en session extraordinaire sur convocation adressée par le Directeur général, à la demande d'un quart des pays membres de l'Assemblée.

c) L'ordre du jour de chaque session est préparé par le Directeur général.

5) L'Assemblée adopte son règlement intérieur.

Article 3

1) *a)* Les tâches relatives au dépôt international des dessins et modèles industriels ainsi que les autres tâches administratives incombant à l'Union particulière sont assurées par le Bureau international.

b) En particulier, le Bureau international prépare les réunions et assure le secrétariat de l'Assemblée et des comités d'experts et groupes de travail qu'elle peut créer.

c) Le Directeur général est le plus haut fonctionnaire de l'Union particulière et la représente.

(2) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly and of such committees of experts or working groups as may have been established by the Assembly. The Director General, or a staff member designated by him, shall be ex officio secretary of those bodies.

(3) *(a)* The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for the conferences of revision of the provisions of the Agreement.

(b) The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for conferences of revision.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at those conferences.

(4) The International Bureau shall carry out any other tasks assigned to it.

Article 4

(1) *(a)* The Special Union shall have a budget.

(b) The budget of the Special Union shall include the income and expenses proper to the Special Union, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization.

(c) Expenses not attributable exclusively to the Special Union but also to one or more other Unions administered by the Organization shall be deemed to be expenses common to the Unions. The share of the Special Union in such common expenses shall be in proportion to the interest the Special Union has in them.

(2) The budget of the Special Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

(3) The budget of the Special Union shall be financed from the following sources:

(i) international deposit fees and other fees and charges due for other services rendered by the International Bureau in relation to the Special Union;

(ii) sale of, or royalties on, the publications of the International Bureau concerning the Special Union;

(iii) gifts, bequests, and subventions;

(iv) rents, interests, and other miscellaneous income.

(4) *(a)* The amounts of the fees referred to in paragraph (3)(i) shall be fixed by the Assembly on the proposal of the Director General.

2) Le Directeur général et tout membre du personnel désigné par lui prennent part, sans droit de vote, à toutes les réunions de l'Assemblée et de tout comité d'experts ou groupe de travail qu'elle peut créer. Le Directeur général ou un membre du personnel désigné par lui est d'office secrétaire de ces organes.

3) *a)* Le Bureau international, selon les directives de l'Assemblée, prépare les conférences de revision des dispositions de l'Arrangement.

b) Le Bureau international peut consulter des organisations intergouvernementales et internationales non gouvernementales sur la préparation des conférences de revision.

c) Le Directeur général et les personnes désignées par lui prennent part, sans droit de vote, aux délibérations dans ces conférences.

4) Le Bureau international exécute toutes autres tâches qui lui sont attribuées.

Article 4

1) *a)* L'Union particulière a un budget.

b) Le budget de l'Union particulière comprend les recettes et les dépenses propres à l'Union particulière, sa contribution au budget des dépenses communes aux Unions, ainsi que, le cas échéant, la somme mise à la disposition du budget de la Conférence de l'Organisation.

c) Sont considérées comme dépenses communes aux Unions, les dépenses qui ne sont pas attribuées exclusivement à l'Union particulière, mais également à une ou plusieurs autres Unions administrées par l'Organisation. La part de l'Union particulière dans ces dépenses communes est proportionnelle à l'intérêt que ces dépenses présentent pour elle.

2) Le budget de l'Union particulière est arrêté compte tenu des exigences de coordination avec les budgets des autres Unions administrées par l'Organisation.

3) Le budget de l'Union particulière est financé par les ressources suivantes:

i) les taxes relatives au dépôt international et les taxes et sommes dues pour les autres services rendus par le Bureau international au titre de l'Union particulière;

ii) le produit de la vente des publications du Bureau international concernant l'Union particulière et les droits afférents à ces publications;

iii) les dons, legs et subventions;

iv) les loyers, intérêts et autres revenus divers.

4) *a)* Le montant des taxes mentionnées à l'alinéa 3)i) est fixé par l'Assemblée, sur proposition du Directeur général.

(b) The amounts of such fees shall be so fixed that the revenues of the Special Union from fees and other sources shall be at least sufficient to cover the expenses of the International Bureau concerning the Special Union.

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

(5) Subject to the provisions of paragraph (4)*(a)*, the amount of the fees and charges due for other services rendered by the International Bureau in relation to the Special Union shall be established, and shall be reported to the Assembly, by the Director General.

(6) *(a)* The Special Union shall have a working capital fund which shall be constituted by the excess receipts and, if such excess does not suffice, by a single payment made by each country of the Special Union. If the fund becomes insufficient, the Assembly shall decide to increase it.

(b) The amount of the initial payment of each country to the said fund or of its participation in the increase thereof shall be a proportion of the contribution of that country as a member of the Paris Union for the Protection of Industrial Property to the budget of the said Union for the year in which the fund is established or the decision to increase it is made.

(c) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee of the Organization.

(7) *(a)* In the headquarters agreement concluded with the country on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such country shall grant advances. The amount of those advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such country and the Organization.

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

(8) The auditing of the accounts shall be effected by one or more of the countries of the Special Union or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

b) Ce montant est fixé de manière à ce que les recettes de l'Union particulière provenant des taxes et des autres sources de revenus permettent au moins de couvrir les dépenses du Bureau international intéressant l'Union particulière.

c) Dans le cas où le budget n'est pas adopté avant le début d'un nouvel exercice, le budget de l'année précédente est reconduit selon les modalités prévues par le règlement financier.

5) Sous réserve des dispositions de l'alinéa 4)*a)*, le montant des taxes et sommes dues pour les autres services rendus par le Bureau international au titre de l'Union particulière est fixé par le Directeur général, qui en fait rapport à l'Assemblée.

6) *a)* L'Union particulière possède un fonds de roulement constitué par les excédents de recettes et, si de tels excédents ne suffisent pas, par un versement unique effectué par chaque pays de l'Union particulière. Si le fonds devient insuffisant, l'Assemblée décide de son augmentation.

b) Le montant du versement initial de chaque pays au fonds précité ou de sa participation à l'augmentation de celui-ci est proportionnel à la contribution de ce pays, en tant que membre de l'Union de Paris pour la protection de la propriété industrielle, au budget de ladite Union pour l'année au cours de laquelle le fonds est constitué ou l'augmentation décidée.

c) La proportion et les modalités de versement sont arrêtées par l'Assemblée, sur proposition du Directeur général et après avis du Comité de coordination de l'Organisation.

7) *a)* L'Accord de siège conclu avec le pays sur le territoire duquel l'Organisation a son siège prévoit que, si le fonds de roulement est insuffisant, ce pays accorde des avances. Le montant de ces avances et les conditions dans lesquelles elles sont accordées font l'objet, dans chaque cas, d'accords séparés entre le pays en cause et l'Organisation.

b) Le pays visé au sous-alinéa *a)* et l'Organisation ont chacun le droit de dénoncer l'engagement d'accorder des avances moyennant notification par écrit. La dénonciation prend effet trois ans après la fin de l'année au cours de laquelle elle a été notifiée.

8) La vérification des comptes est assurée, selon les modalités prévues par le règlement financier, par un ou plusieurs pays de l'Union particulière ou par des contrôleurs extérieurs, qui sont, avec leur consentement, désignés par l'Assemblée.

Article 5

(1) Proposals for the amendment of this Complementary Act may be initiated by any country member of the Assembly, or by the Director General. Such proposals shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.

(2) Amendments referred to in paragraph (1) shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided that any amendment to Article 2 and to the present paragraph, shall require four-fifths of the votes cast.

(3) Any amendment referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the countries members of the Assembly at the time it adopted the amendment. Any amendment thus accepted shall bind all the countries which are members of the Assembly at the time the amendment enters into force, or which become members thereof at a subsequent date.

Article 6

(1) *(a)* References in the 1934 Act to " the International Bureau of Industrial Property at Berne," to " the Berne International Bureau," or to " the International Bureau," shall be construed as references to the International Bureau as defined in Article 1 of this Complementary Act.

(b) Article 15 of the 1934 Act is repealed.

(c) Any amendment of the Regulations referred to in Article 20 of the 1934 Act shall be effected in accordance with the procedure prescribed under Article 2(2)*(a)*(iii) and (3)*(d)*.

(d) In Article 21 of the 1934 Act, for the words " revised in 1928 " there shall be substituted the words " for the Protection of Literary and Artistic Works."

(e) References in Article 22 of the 1934 Act to Articles 16, 16bis, and 17bis, of " the General Convention " shall be construed as references to those provisions of the Stockholm Act of the Paris Convention for the Protection of Industrial Property which, in the said Stockholm Act, correspond to Articles 16, 16bis, and 17bis, of the earlier Acts of the Paris Convention.

(2) *(a)* Any modification of the fees referred to in Article 3 of the 1961 Additional Act shall be effected in accordance with the procedure prescribed under Article 2(2)*(a)*(iii) and (3)*(d)*.

Article 5

1) Des propositions de modification au présent Acte complémentaire peuvent être présentées par tout pays membre de l'Assemblée ou par le Directeur général. Ces propositions sont communiquées par ce dernier aux pays membres de l'Assemblée six mois au moins avant d'être soumises à l'examen de l'Assemblée.

2) Toute modification visée à l'alinéa 1) est adoptée par l'Assemblée. L'adoption requiert les trois quarts des votes exprimés; toutefois, toute modification de l'article 2 et du présent alinéa requiert les quatre cinquièmes des votes exprimés.

3) Toute modification visée à l'alinéa 1) entre en vigueur un mois après la réception par le Directeur général des notifications écrites d'acceptation, effectuée en conformité avec leurs règles constitutionnelles respectives, de la part des trois quarts des pays qui étaient membres de l'Assemblée au moment où la modification a été adoptée. Toute modification ainsi acceptée lie tous les pays qui sont membres de l'Assemblée au moment où la modification entre en vigueur ou qui en deviennent membres à une date ultérieure.

Article 6

1) *a)* Les références, dans l'Acte de 1934, au « Bureau international de la propriété industrielle à Berne », au « Bureau international de Berne » ou au « Bureau international » sont à considérer comme se rapportant au Bureau international tel qu'il est défini à l'article 1 du présent Acte complémentaire.

b) L'article 15 de l'Acte de 1934 est abrogé.

c) Toute modification du règlement d'exécution visé à l'article 20 de l'Acte de 1934 s'effectue selon la procédure prescrite par l'article 2.2)*a)*iii) et 3)*d)*.

d) A l'article 21 de l'Acte de 1934, les mots « revisée en 1928 » sont remplacés par les mots « pour la protection des œuvres littéraires et artistiques ».

e) Les références, dans l'article 22 de l'Acte de 1934, aux article 16, 16bis et 17bis de la « Convention générale » sont à considérer comme se rapportant à celles des dispositions de l'Acte de Stockholm de la Convention de Paris pour la protection de la propriété industrielle qui, dans ledit Acte de Stockholm, correspondent aux articles 16, 16bis et 17bis des Actes antérieurs de la Convention de Paris.

2) *a)* Toute modification des taxes visées à l'article 3 de l'Acte additionnel de 1961 s'effectue selon la procédure prescrite par l'article 2.2)*a)*iii) et 3)*d)*.

(b) Paragraph (1) of Article 4 of the 1961 Additional Act, and the words "When the reserve fund has reached this amount" in paragraph (2), are repealed.

(c) References in Article 6(2) of the 1961 Additional Act to Articles 16 and 16bis of the Paris Convention for the Protection of Industrial Property shall be construed as references to those provisions of the Stockholm Act of the said Convention which, in the Stockholm Act, correspond to Articles 16 and 16bis of the earlier Acts of the Paris Convention.

(d) References in paragraphs (1) and (3) of Article 7 of the 1961 Additional Act to the Government of the Swiss Confederation shall be construed as references to the Director General.

Article 7

(1) References in the 1960 Act to "the Bureau of the International Union for the Protection of Industrial Property" or to "the International Bureau" shall be construed as references to the International Bureau as defined in Article 1 of this Complementary Act.

(2) Articles 19, 20, 21, and 22, of the 1960 Act are repealed.

(3) References in the 1960 Act to the Government of the Swiss Confederation shall be construed as references to the Director General.

(4) In Article 29 of the 1960 Act, the words "periodical" (paragraph (1)) and "of the International Design Committee or" (paragraph (2)) are deleted.

Article 8

(1)*(a)* Countries which, before January 13, 1968, have ratified the 1934 Act or the 1960 Act, and countries which have acceded to at least one of those Acts, may sign this Complementary Act and ratify it, or may accede to it.

(b) Ratification of, or accession to, this Complementary Act by a country which is bound by the 1934 Act without being bound also by the 1961 Additional Act shall automatically entail ratification of, or accession to, the 1961 Additional Act.

(2) Instruments of ratification and accession shall be deposited with the Director General.

Article 9

(1) With respect to the first five countries which have deposited their instruments of ratification or accession, this

b) L'alinéa 1) de l'article 4 de l'Acte additionnel de 1961, ainsi que les mots « lorsque le fonds de réserve a atteint ce montant » de l'alinéa 2) dudit article, sont abrogés.

c) Les références, dans l'article 6.2) de l'Acte additionnel de 1961, aux articles 16 et 16bis de la Convention de Paris pour la protection de la propriété industrielle sont à considérer comme se rapportant à celles des dispositions de l'Acte de Stockholm de ladite Convention qui, dans l'Acte de Stockholm, correspondent aux articles 16 et 16bis des Actes antérieurs de la Convention de Paris.

d) Les références, dans les alinéas 1) et 3) de l'article 7 de l'Acte additionnel de 1961, au Gouvernement de la Confédération suisse sont à considérer comme se rapportant au Directeur général.

Article 7

1) Les références, dans l'Acte de 1960, au « Bureau de l'Union internationale pour la protection de la propriété industrielle » ou au « Bureau international » sont à considérer comme se rapportant au Bureau international tel qu'il est défini à l'article 1 du présent Acte complémentaire.

2) Les articles 19, 20, 21 et 22 de l'Acte de 1960 sont abrogés.

3) Les références, dans l'Acte de 1960, au Gouvernement de la Confédération suisse sont à considérer comme se rapportant au Directeur général.

4) Dans l'article 29 de l'Acte de 1960, les mots « périodiques » (alinéa 1)) et « du Comité international des dessins ou modèles ou » (alinéa 2)) sont supprimés.

Article 8

1) *a)* Les pays qui, avant le 13 janvier 1968, ont ratifié l'Acte de 1934 ou l'Acte de 1960, ainsi que les pays qui ont adhéré à l'un au moins de ces Actes, peuvent signer et ratifier le présent Acte complémentaire ou peuvent y adhérer.

b) La ratification du présent Acte complémentaire, ou l'adhésion à celui-ci, par un pays qui est lié par l'Acte de 1934 sans être lié également par l'Acte additionnel de 1961, comporte la ratification automatique de l'Acte additionnel de 1961, ou l'adhésion automatique à celui-ci.

2) Les instruments de ratification et d'adhésion sont déposés auprès du Directeur général.

Article 9

1) A l'égard des cinq pays qui ont, les premiers, déposé leurs instruments de ratification ou d'adhésion, le présent

Complementary Act shall enter into force three months after the deposit of the fifth such instrument of ratification or accession.

(2) With respect to any other country, this Complementary Act shall enter into force three months after the date on which its ratification or accession has been notified by the Director General, unless a subsequent date has been indicated in the instrument of ratification or accession. In the latter case, this Complementary Act shall enter into force with respect to that country on the date thus indicated.

Article 10

(1) Subject to the provisions of Article 8 and the following paragraph, any country which has not ratified or acceded to the 1934 Act shall become bound by the 1961 Additional Act and by Articles 1 to 6 of this Complementary Act from the date on which its accession to the 1934 Act enters into force, provided that, if on the said date this Complementary Act has not yet entered into force pursuant to Article 9(1), then, such country shall become bound by the said Articles of this Complementary Act only from the date of entry into force of the Complementary Act pursuant to Article 9(1).

(2) Subject to the provisions of Article 8 and the foregoing paragraph, any country which has not ratified or acceded to the 1960 Act shall become bound by Articles 1 to 7 of this Complementary Act from the date on which its ratification of, or accession to, the 1960 Act enters into force, provided that, if on the said date this Complementary Act has not yet entered into force pursuant to Article 9(1), then, such country shall become bound by the said Articles of this Complementary Act only from the date of entry into force of the Complementary Act pursuant to Article 9(1).

Article 11

(1) *(a)* This Complementary Act shall be signed in a single copy in the French language and shall be deposited with the Government of Sweden.

(b) Official texts shall be established by the Director General, after consultation with the interested Governments, in such other languages as the Assembly may designate.

(2) This Complementary Act shall remain open for signature at Stockholm until January 13, 1968.

(3) The Director General shall transmit two copies, certified by the Government of Sweden, of the signed text of this Complementary Act to the Government of all countries of the Special Union and, on request, to the Government of any other country.

Acte complémentaire entre en vigueur trois mois après le dépôt du cinquième instrument de ratification ou d'adhésion.

2) A l'égard de tout autre pays, le présent Acte complémentaire entre en vigueur trois mois après la date à laquelle sa ratification ou son adhésion a été notifiée par le Directeur général, à moins qu'une date postérieure n'ait été indiquée dans l'instrument de ratification ou d'adhésion. Dans ce dernier cas, le présent Acte entre en vigueur, à l'égard de ce pays, à la date ainsi indiquée.

Article 10

1) Sous réserve de l'article 8 et de l'alinéa suivant, tout pays qui n'a pas ratifié l'Acte de 1934 ou qui n'y a pas adhéré devient lié par l'Acte additionnel de 1961 et par les articles 1 à 6 du présent Acte complémentaire à partir de la date à laquelle son adhésion à l'Acte de 1934 prend effet; toutefois, si à cette date le présent Acte complémentaire n'est pas encore entré en vigueur selon les termes de l'article 9.1), alors ce pays ne devient lié par lesdits articles du présent Acte complémentaire qu'à partir de l'entrée en vigueur de ce dernier Acte selon les termes de l'article 9.1).

2) Sous réserve de l'article 8 et de l'alinéa précédent, tout pays qui n'a pas ratifié l'Acte de 1960 ou qui n'y a pas adhéré devient lié par les articles 1 à 7 du présent Acte complémentaire à partir de la date à laquelle sa ratification de l'Acte de 1960 ou son adhésion à celui-ci prend effet; toutefois, si à cette date le présent Acte complémentaire n'est pas encore entré en vigueur selon les termes de l'article 9.1), alors ce pays ne devient lié par lesdits articles du présent Acte complémentaire qu'à partir de l'entrée en vigueur de ce dernier Acte selon les termes de l'article 9.1).

Article 11

1) *a)* Le présent Acte complémentaire est signé en un seul exemplaire en langue française et déposé auprès du Gouvernement de la Suède.

b) Des textes officiels sont établis par le Directeur général, après consultation des Gouvernements intéressés, dans les autres langues que l'Assemblée pourra indiquer.

2) Le présent Acte complémentaire reste ouvert à la signature, à Stockholm, jusqu'au 13 janvier 1968.

3) Le Directeur général transmet deux copies, certifiées conformes par le Gouvernement de la Suède, du texte signé du présent Acte complémentaire aux Gouvernements de tous les pays de l'Union particulière et, sur demande, au Gouvernement de tout autre pays.

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

(5) The Director General shall notify the Governments of all countries of the Special Union of signatures, deposits of instruments of ratification or accession, entry into force, and all other relevant notifications.

Article 12

(1) Until the first Director General assumes office, references in this Complementary Act to the International Bureau of the Organization or to the Director General shall be construed as references to the Bureau of the Union established by the Paris Convention for the Protection of Industrial Property or its Director, respectively.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Act.

DONE at Stockholm, on July 14, 1967.

Belgium (B[on] F. Cogels); France (B. de Menthon); Germany, Federal Republic (Kurt Haertel); Holy See (Gunnar Sterner); Liechtenstein (Marianne Marxer); Monaco (J.M. Notari); Morocco (H'ssaine); Netherlands (Gerbrandy, W. G. Belinfante); Spain (J. F. Alcover, Electo J. Garcia Tejedor); Switzerland (Hans Morf, Joseph Voyame); Tunisia (M. Kedadi).

4) Le Directeur général fait enregistrer le présent Acte complémentaire auprès du Secrétariat de l'Organisation des Nations Unies.

5) Le Directeur général notifie aux Gouvernements de tous les pays de l'Union particulière les signatures, les dépôts d'instruments de ratification ou d'adhésion, l'entrée en vigueur et toute autre notification appropriée.

Article 12

Jusqu'à l'entrée en fonction du premier Directeur général, les références, dans le présent Acte complémentaire, au Bureau international de l'Organisation ou au Directeur général sont considérées comme se rapportant respectivement au Bureau de l'Union établie par la Convention de Paris pour la protection de la propriété industrielle, ou à son Directeur.

EN FOI DE QUOI, les soussignés, dûment autorisés à cet effet, ont signé le présent Acte complémentaire.

FAIT à Stockholm, le 14 juillet 1967.

Belgique (B[on] F. Cogels); Espagne (J. F. Alcover, Electo J. Garcia Tejedor); France (B. de Menthon); Liechtenstein (Marianne Marxer); Maroc (H'ssaine); Monaco (J. M. Notari); Pays-Bas (Gerbrandy, W. G. Belinfante); République Fédérale d'Allemagne (Kurt Haertel); Saint-Siège (Gunnar Sterner); Suisse (Hans Morf, Joseph Voyame); Tunisie (M. Kedadi).

Nice Agreement
Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks
(Stockholm Act)

Arrangement de Nice
concernant la classification internationale des produits et des services aux fins de l'enregistrement des marques
(Acte de Stockholm)

Nice Agreement
Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks

of June 15, 1957,
as revised at STOCKHOLM on July 14, 1967

Article 1

(1) The countries to which this Agreement applies constitute a Special Union.

(2) They adopt, for the purposes of the registration of marks, a single classification of goods and services.

(3) This classification consists of:

(a) a list of classes;

(b) an alphabetical list of goods and services with an indication of the classes into which they fall.

(4) The list of classes and the alphabetical list of goods are those which were published in 1935 by the International Bureau for the Protection of Industrial Property.

(5) The list of classes and the alphabetical list of goods and services may be amended or supplemented by the Committee of Experts set up under Article 3 of this Agreement, in accordance with the procedure laid down in that Article.

(6) The classification shall be established in the French language and, at the request of any contracting country, an official translation into the language of that country may be published by the International Bureau of Intellectual Property (hereinafter designated as " the International Bureau ") referred to in the Convention establishing the World Intellectual Property Organization (hereinafter designated as " the Organization "), in agreement with the national Office concerned. Each translation of the list of goods and services shall mention against each of the goods or services, in addition to its number according to the alphabetical listing in the language concerned, the number which it bears in the list established in the French language.

Arrangement de Nice concernant la classification internationale des produits et des services aux fins de l'enregistrement des marques

du 15 juin 1957
revisé à STOCKHOLM le 14 juillet 1967

Article 1

1) Les pays auxquels s'applique le présent Arrangement sont constitués à l'état d'Union particulière.

2) Ils adoptent, en vue de l'enregistrement des marques, une même classification des produits et des services.

3) Cette classification est constituée par:

a) une liste des classes,
b) une liste alphabétique des produits et des services avec indication des classes dans lesquelles ils sont rangés.

4) La liste des classes et la liste alphabétique des produits sont celles qui ont été éditées en 1935 par le Bureau international pour la protection de la propriété industrielle.

5) La liste des classes et la liste alphabétique des produits et des services pourront être modifiées ou complétées par le Comité d'experts institué par l'article 3 du présent Arrangement et selon la procédure fixée par cet article.

6) La classification sera établie en langue française et, sur la demande de chaque pays contractant, une traduction officielle en sa langue pourra en être publiée par le Bureau international de la propriété intellectuelle (ci-après dénommé « le Bureau international ») visé dans la Convention instituant l'Organisation Mondiale de la Propriété Intellectuelle (ci-après dénommé « l'Organisation »), en accord avec l'Administration nationale intéressée. Chaque traduction de la liste des produits et des services mentionnera, en regard de chaque produit ou service, outre le numéro d'ordre propre à l'énumération alphabétique dans la langue considérée, le numéro d'ordre qu'il porte dans la liste établie en langue française.

Article 2

(1) Subject to the requirements prescribed by this Agreement, the effect of the international classification shall be that attributed to it by each contracting country. In particular, the international classification shall not bind the contracting countries in respect of either the evaluation of the extent of the protection afforded to any given mark or the recognition of service marks.

(2) Each of the contracting countries reserves the right to use the international classification of goods and services as a principal or as a subsidiary system.

(3) The Offices of the contracting countries shall include in the official documents and publications concerning the registrations of marks the numbers of the classes of the international classification to which the goods or services for which the mark is registered belong.

(4) The fact that a term is included in the alphabetical list of goods and services in no way affects any rights which might subsist in such a term.

Article 3

(1) A Committee of Experts charged with deciding all amendments and additions to be made in the international classification of goods and services shall be set up at the International Bureau. Each of the contracting countries shall be represented on the Committee of Experts, which shall be organized according to Regulations adopted by a majority of the countries represented. The International Bureau shall be represented on the Committee.

(2) Proposals for amendments or additions shall be addressed by the Offices of the contracting countries to the International Bureau, which shall transmit them to the members of the Committee of Experts not later than two months before that session of the Committee at which the said proposals are to be considered.

(3) Decisions of the Committee concerning amendments to the classification shall require the unanimous consent of the contracting countries. "Amendment" shall mean any transfer of goods from one class to another or the creation of any new class entailing such transfer.

(4) Decisions of the Committee concerning additions to the classification shall require a simple majority of the votes of the contracting countries.

(5) Each expert shall have the right to submit his opinion in writing or to delegate his powers to the expert of another country.

Article 2

1) Sous réserve des obligations imposées par le présent Arrangement, la portée de la classification internationale est celle qui lui est attribuée par chaque pays contractant. Notamment, la classification internationale ne lie les pays contractants ni quant à l'appréciation de l'étendue de la protection de la marque, ni quant à la reconnaissance des marques de service.

2) Chacun des pays contractants se réserve la faculté d'appliquer la classification internationale des produits et des services à titre de système principal ou de système auxiliaire.

3) Les Administrations des pays contractants feront figurer dans les titres et publications officiels des enregistrements des marques les numéros des classes de la classification internationale auxquelles appartiennent les produits ou les services pour lesquels la marque est enregistrée.

4) Le fait qu'une dénomination figure dans la liste alphabétique des produits et des services n'affecte en rien les droits qui pourraient exister sur cette dénomination.

Article 3

1) Il est institué auprès du Bureau international un comité d'experts chargé de décider de toutes modifications ou de tous compléments à apporter à la classification internationale des produits et des services. Chacun des pays contractants sera représenté au Comité d'experts, lequel s'organise par un règlement d'ordre intérieur adopté à la majorité des pays représentés. Le Bureau international est représenté au Comité.

2) Les propositions de modification ou de complément doivent être adressées par les Administrations des pays contractants au Bureau international qui devra les transmettre aux membres du Comité d'experts au plus tard deux mois avant la séance de celui-ci au cours de laquelle ces propositions seront examinées.

3) Les décisions du Comité relatives aux modifications à apporter à la classification sont prises à la majorité simple des contractants. Par modification, il faut entendre tout transfert de produits d'une classe à une autre, ou toute création de nouvelles classes entraînant un tel transfert.

4) Les décisions du Comité relatives aux compléments à apporter à la classification sont prises à l'unanimité des pays pays contractants.

5) Les experts ont la faculté de faire connaître leur avis par écrit ou de déléguer leurs pouvoirs à l'expert d'un autre pays.

(6) If a country does not appoint an expert to represent it, or if the expert appointed does not submit his opinion within a period to be prescribed by the Regulations, the country concerned shall be considered to have accepted the decision of the Committee.

Article 4

(1) Every amendment and addition decided by the Committee of Experts shall be notified to the Offices of the contracting countries by the International Bureau. The decisions shall come into force, in so far as additions are concerned, as soon as the notification is received, and, as far as amendments are concerned, within a period of six months from the date of dispatch of the notification.

(2) The International Bureau, as the depositary of the classification of goods and services, shall incorporate therein the amendments and additions which have entered into force. Announcements of such amendments and additions shall be published in the two periodicals, *La Propriété industrielle* and *Les Marques internationales.*

Article 5

(1) *(a)* The Special Union shall have an Assembly consisting of those countries which have ratified or acceded to this Act.

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

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

(2) *(a)* Subject to the provisions of Articles 3 and 4, the Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Special Union and the implementation of this Agreement;

(ii) give directions to the International Bureau concerning the preparation for conferences of revision, due account being taken of any comments made by those countries of the Special Union which have not ratified or acceded to this Act;

(iii) review and approve the reports and activities of the Director General of the Organization (hereinafter designated as " the Director General ") concerning the Special Union, and give him all necessary instructions concerning matters within the competence of the Special Union;

6) Dans le cas où un pays n'aurait pas désigné d'expert pour le représenter, ainsi que dans le cas où l'expert désigné n'aurait pas fait connaître son opinion dans un délai qui sera fixé par le règlement d'ordre intérieur, le pays en cause serait considéré comme acceptant la décision du Comité.

Article 4

1) Toutes modifications et tous compléments décidés par le Comité d'experts sont notifiés aux Administrations des pays contractants par le Bureau international. L'entrée en vigueur des décisions aura lieu, en ce qui concerne les compléments, dès la réception de la notification et, en ce qui concerne les modifications, dans un délai de six mois à compter de la date d'envoi de la notification.

2) Le Bureau international, en sa qualité de dépositaire de la classification des produits et des services, y incorpore les modifications et les compléments entrés en vigueur. Ces modifications et ces compléments font l'objet d'avis publiés dans les deux périodiques *La Propriété industrielle* et *Les Marques internationales.*

Article 5

1) *a)* L'Union particulière a une Assemblée composée des pays qui ont ratifié le présent Acte ou y ont adhéré.

b) Le Gouvernement de chaque pays est représenté par un délégué, qui peut être assisté de suppléants, de conseillers et d'experts.

c) Les dépenses de chaque délégation sont supportées par le Gouvernement qui l'a désignée.

2) *a)* Sous réserve des dispositions des articles 3 et 4, l'Assemblée:

i) traite de toutes les questions concernant le maintien et le développement de l'Union particulière et l'application du présent Arrangement;

ii) donne au Bureau international des directives concernant la préparation des conférences de revision, compte étant dûment tenu des observations des pays de l'Union particulière qui n'ont pas ratifié le présent Acte ou n'y ont pas adhéré;

iii) examine et approuve les rapports et les activités du Directeur général de l'Organisation (ci-après dénommé « le Directeur général ») relatifs à l'Union particulière et lui donne toutes directives utiles concernant les questions de la compétence de l'Union particulière;

(iv) determine the program and adopt the triennial budget of the Special Union, and approve its final accounts;
(v) adopt the financial regulations of the Special Union;
(vi) establish, in addition to the Committee of Experts referred to in Article 3, such other committees of experts and working groups as it may deem necessary to achieve the objectives of the Special Union;
(vii) determine which countries not members of the Special Union and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;

(viii) adopt amendments to Articles 5 to 8;
(ix) take any other appropriate action designed to further the objectives of the Special Union;
(x) perform such other functions as are appropriate under this Agreement.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3) *(a)* Each country member of the Assembly shall have one vote.

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

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

(d) Subject to the provisions of Article 8(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(e) Abstentions shall not be considered as votes.

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

iv) arrête le programme, adopte le budget triennal de l'Union particulière et approuve ses comptes de clôture;
v) adopte le règlement financier de l'Union particulière;
vi) crée, outre le Comité d'experts mentionné à l'article 3, les autres comités d'experts et les groupes de travail qu'elle juge utiles à la réalisation des objectifs de l'Union particulière;
vii) décide quels sont les pays non membres de l'Union particulière et quelles sont les organisations intergouvernementales et internationales non gouvernementales qui peuvent être admis à ses réunions en qualité d'observateurs;
viii) adopte les modifications des articles 5 à 8;
ix) entreprend toute autre action appropriée en vue d'atteindre les objectifs de l'Union particulière;
x) s'acquitte de toutes autres tâches qu'implique le présent Arrangement.

b) Sur les questions qui intèressent également d'autres Unions administrées par l'Organisation, l'Assemblée statue connaissance prise de l'avis du Comité de coordination de l'Organisation.

3) *a)* Chaque pays membre de l'Assemblée dispose d'une voix.

b) La moitié des pays membres de l'Assemblée constitue le quorum.

c) Nonobstant les dispositions du sous-alinéa *b)*, si, lors d'une session, le nombre des pays représentés est inférieur à la moitié mais égal ou supérieur au tiers des pays membres de l'Assemblée, celle-ci peut prendre des décisions; toutefois, les décisions de l'Assemblée, à l'exception de celles qui concernent sa procédure, ne deviennent exécutoires que lorsque les conditions énoncées ci-après sont remplies. Le Bureau international communique lesdites décisions aux pays membres de l'Assemblée qui n'étaient pas représentés, en les invitant à exprimer par écrit, dans un délai de trois mois à compter de la date de ladite communication, leur vote ou leur abstention. Si, à l'expiration de ce délai, le nombre des pays ayant ainsi exprimé leur vote ou leur abstention est au moins égal au nombre de pays qui faisait défaut pour que le quorum fût atteint lors de la session, lesdites décisions deviennent exécutoires, pourvu qu'en même temps la majorité nécessaire reste acquise.

d) Sous réserve des dispositions de l'article 8.2), les décisions de l'Assemblée sont prises à la majorité des deux tiers des votes exprimés.

e) L'abstention n'est pas considérée comme un vote.

f) Un délégué ne peut représenter qu'un seul pays et ne peut voter qu'au nom de celui-ci.

(g) Countries of the Special Union not members of the Assembly shall be admitted to the meetings of the latter as observers.

(4) *(a)* The Assembly shall meet once in every third calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of one-fourth of the countries members of the Assembly.

(c) The agenda of each session shall be prepared by the Director General.

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

Article 6

(1) *(a)* Administrative tasks concerning the Special Union shall be performed by the International Bureau.

(b) In particular, the International Bureau shall prepare the meetings and provide the secretariat of the Assembly, the Committee of Experts, and such other committees of experts and working groups as may have been established by the Assembly or the Committee of Experts.

(c) The Director General shall be the chief executive of the Special Union and shall represent the Special Union.

(2) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the Committee of Experts, and such other committees of experts or working groups as may have been established by the Assembly or the Committee of Experts. The Director General, or a staff member designated by him, shall be ex officio secretary of those bodies.

(3) *(a)* The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for the conferences of revision of the provisions of the Agreement other than Articles 5 to 8.

(b) The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for conferences of revision.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at those conferences.

(4) The International Bureau shall carry out any other tasks assigned to it.

g) Les pays de l'Union particulière qui ne sont pas membres de l'Assemblée sont admis à ses réunions en qualité d'observateurs.

4) *a)* L'Assemblée se réunit une fois tous les trois ans en session ordinaire sur convocation du Directeur général et, sauf cas exceptionnels, pendant la même période et au même lieu que l'Assemblée générale de l'Organisation.

b) L'Assemblée se réunit en session extraordinaire sur convocation adressée par le Directeur général, à la demande d'un quart des pays membres de l'Assemblée.

c) L'ordre du jour de chaque session est préparé par le Directeur général.

5) L'Assemblée adopte son règlement intérieur.

Article 6

1) *a)* Les tâches administratives incombant à l'Union particulière sont assurées par le Bureau international.

b) En particulier, le Bureau international prépare les réunions et assure le secrétariat de l'Assemblée, du Comité d'experts, et de tous autres comités d'experts et tous groupes de travail que l'Assemblée ou le Comité d'experts peut créer.

c) Le Directeur général est le plus haut fonctionnaire de l'Union particulière et la représente.

2) Le Directeur général et tout membre du personnel désigné par lui prennent part, sans droit de vote, à toutes les réunions de l'Assemblée, du Comité d'experts, et de tout autre comité d'experts ou tout groupe de travail que l'Assemblée ou le Comité d'experts peut créer. Le Directeur général ou un membre du personnel désigné par lui est d'office secrétaire de ces organes.

3) *a)* Le Bureau international, selon les directives de l'Assemblée, prépare les conférences de revision des dispositions de l'Arrangement autres que les articles 5 à 8.

b) Le Bureau international peut consulter des organisations intergouvernementales et internationales non gouvernementales sur la préparation des conférences de revision.

c) Le Directeur général et les personnes désignées par lui prennent part, sans droit de vote, aux délibérations dans ces conférences.

4) Le Bureau international exécute toutes autres tâches qui lui sont attribuées.

Article 7

(1) *(a)* The Special Union shall have a budget.

(b) The budget of the Special Union shall include the income and expenses proper to the Special Union, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization.

(c) Expenses not attributable exclusively to the Special Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Special Union in such common expenses shall be in proportion to the interest the Special Union has in them.

(2) The budget of the Special Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

(3) The budget of the Special Union shall be financed from the following sources:

(i) contributions of the countries of the Special Union;

(ii) fees and charges due for services rendered by the International Bureau in relation to the Special Union;

(iii) sale of, or royalties on, the publications of the International Bureau concerning the Special Union;

(iv) gifts, bequests, and subventions;

(v) rents, interests, and other miscellaneous income.

(4) *(a)* For the purpose of establishing its contribution referred to in paragraph (3)(i), each country of the Special Union shall belong to the same class as it belongs to in the Paris Union for the Protection of Industrial Property, and shall pay its annual contributions on the basis of the same number of units as is fixed for that class in that Union.

(b) The annual contribution of each country of the Special Union shall be an amount in the same proportion to the total sum to be contributed to the budget of the Special Union by all countries as the number of its units is to the total of the units of all contributing countries.

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

(d) A country which is in arrears in the payment of its contributions may not exercise its right to vote in any organ of the Special Union if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any organ of the Special Union may allow such a country to continue to exercise its right to vote in that organ if, and as long as, it is satisfied that the

Article 7

1) *a)* L'Union particulière a un budget.

b) Le budget de l'Union particulière comprend les recettes et les dépenses propres à l'Union particulière, sa contribution au budget des dépenses communes aux Unions, ainsi que, le cas échéant, la somme mise à la disposition du budget de la Conférence de l'Organisation.

c) Sont considérées comme dépenses communes aux Unions, les dépenses qui ne sont pas attribuées exclusivement à l'Union particulière mais également à une ou plusieurs autres Unions administrées par l'Organisation. La part de l'Union particulière dans ces dépenses communes est proportionnelle à l'intérêt que ces dépenses présentent pour elle.

2) Le budget de l'Union particulière est arrêté compte tenu des exigences de coordination avec les budgets des autres Unions administrées par l'Organisation.

3) Le budget de l'Union particulière est financé par les ressources suivantes:

i) les contributions des pays de l'Union particulière;
ii) les taxes et sommes dues pour les services rendus par le Bureau international au titre de l'Union particulière;
iii) le produit de la vente des publications du Bureau international concernant l'Union particulière et les droits afférents à ces publications;
iv) les dons, legs et subventions;
v) les loyers, intérêts et autres revenus divers.

4) *a)* Pour déterminer sa part contributive au sens de l'alinéa 3)i), chaque pays de l'Union particulière appartient à la classe dans laquelle il est rangé pour ce qui concerne l'Union de Paris pour la protection de la propriété industrielle, et paie ses contributions annuelles sur la base du nombre d'unités déterminé pour cette classe dans cette Union.

b) La contribution annuelle de chaque pays de l'Union particulière consiste en un montant dont le rapport à la somme totale des contributions annuelles au budget de l'Union particulière de tous les pays est le même que le rapport entre le nombre des unités de la classe dans laquelle il est rangé et le nombre total des unités de l'ensemble des pays.

c) Les contributions sont dues au premier janvier de chaque année.

d) Un pays en retard dans le paiement de ses contributions ne peut exercer son droit de vote dans aucun des organes de l'Union particulière si le montant de son arriéré est égal ou supérieur à celui des contributions dont il est redevable pour les deux années complètes écoulées. Cependant, un tel pays peut être autorisé à conserver l'exercice de son droit de vote au sein dudit organe aussi longtemps que ce dernier estime que

delay in payment is due to exceptional and unavoidable circumstances.

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

(5) The amount of the fees and charges due for services rendered by the International Bureau in relation to the Special Union shall be established, and shall be reported to the Assembly, by the Director General.

(6) *(a)* The Special Union shall have a working capital fund which shall be constituted by a single payment made by each country of the Special Union. If the fund becomes insufficient, the Assembly shall decide to increase it.

(b) The amount of the initial payment of each country to the said fund or of its participation in the increase thereof shall be a proportion of the contribution of that country for the year in which the fund is established or the decision to increase it is made.

(c) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee of the Organization.

(7) *(a)* In the headquarters agreement concluded with the country on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such country shall grant advances. The amount of those advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such country and the Organization.

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

(8) The auditing of the accounts shall be effected by one or more of the countries of the Special Union or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

Article 8

(1) Proposals for the amendment of Articles 5, 6, 7, and the present Article, may be initiated by any country member of the Assembly, or by the Director General. Such proposals shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.

le retard résulte de circonstances exceptionnelles et inévitables.

e) Dans le cas où le budget n'est pas adopté avant le début d'un nouvel exercice, le budget de l'année précédente est reconduit selon les modalités prévues par le règlement financier.

5) Le montant des taxes et sommes dues pour des services rendus par le Bureau international au titre de l'Union particulière est fixé par le Directeur général, qui fait rapport à l'Assemblée.

6) *a)* L'Union particulière possède un fonds de roulement constitué par un versement unique effectué par chaque pays de l'Union particulière. Si le fonds devient insuffisant, l'Assemblée décide de son augmentation.

b) Le montant du versement initial de chaque pays au fonds précité ou de sa participation à l'augmentation de celui-ci est proportionnel à la contribution de ce pays pour l'année au cours de laquelle le fonds est constitué ou l'augmentation décidée.

c) La proportion et les modalités de versement sont arrêtées par l'Assemblée, sur proposition du Directeur général et après avis du Comité de coordination de l'Organisation.

7) *a)* L'Accord de siège conclu avec le pays sur le territoire duquel l'Organisation a son siège prévoit que, si le fonds de roulement est insuffisant, ce pays accorde des avances. Le montant de ces avances et les conditions dans lesquelles elles sont accordées font l'objet, dans chaque cas, d'accords séparés entre le pays en cause et l'Organisation.

b) Le pays visé au sous-alinéa *a)* et l'Organisation ont chacun le droit de dénoncer l'engagement d'accorder des avances moyennant notification par écrit. La dénonciation prend effet trois ans après la fin de l'année au cours de laquelle elle a été notifiée.

8) La vérification des comptes est assurée, selon les modalités prévues par le règlement financier, par un ou plusieurs pays de l'Union particulière ou par des contrôleurs extérieurs, qui sont, avec leur consentement, désignés par l'Assemblée.

Article 8

1) Des propositions de modification des articles 5, 6, 7 et du présent article peuvent être présentées par tout pays membre de l'Assemblée ou par le Directeur général. Ces propositions sont communiquées par ce dernier aux pays membres de l'Assemblée six mois au moins avant d'être soumises à l'examen de l'Assemblée.

(2) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided that any amendment to Article 5, and to the present paragraph, shall require four-fifths of the votes cast.

(3) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the countries members of the Assembly at the time it adopted the amendment. Any amendment to the said Articles thus accepted shall bind all the countries which are members of the Assembly at the time the amendment enters into force, or which become members thereof at a subsequent date, provided that any amendment increasing the financial obligations of countries of the Special Union shall bind only those countries which have notified their acceptance of such amendment.

Article 9

(1) Any country of the Special Union which has signed this Act may ratify it, and, if it has not signed it, may accede to it.

(2) Any country outside the Special Union which is party to the Paris Convention for the Protection of Industrial Property may accede to this Act and thereby become a member of the Special Union.

(3) Instruments of ratification and accession shall be deposited with the Director General.

(4) *(a)* With respect to the first five countries which have deposited their instruments of ratification or accession, this Act shall enter into force three months after the deposit of the fifth such instrument.

(b) With respect to any other country, this Act shall enter into force three months after the date on which its ratification or accession has been notified by the Director General, unless a subsequent date has been indicated in the instrument of ratification or accession. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.

(5) Ratification or accession shall automatically entail acceptance of all the clauses and admission to all the advantages of this Act.

(6) After the entry into force of this Act, a country may accede to the original Act of June 15, 1957, of this Agreement only in conjunction with ratification of, or accession to, this Act.

2) Toute modification des articles visés à l'alinéa 1) est adoptée par l'Assemblée. L'adoption requiert les trois quarts des votes exprimés; toutefois, toute modification de l'article 5 et du présent alinéa requiert les quatre cinquièmes des votes exprimés.

3) Toute modification des articles visés à l'alinéa 1) entre en vigueur un mois après la réception par le Directeur général des notifications écrites d'acceptation, effectuée en conformité avec leurs règles constitutionnelles respectives, de la part des trois quarts des pays qui étaient membres de l'Assemblée au moment où la modification a été adoptée. Toute modification desdits articles ainsi acceptée lie tous les pays qui sont membres de l'Assemblée au moment où la modification entre en vigueur ou qui en deviennent membres à une date ultérieure; toutefois, toute modification qui augmente les obligations financières des pays de l'Union particulière ne lie que ceux d'entre eux qui ont notifié leur acceptation de ladite modification.

Article 9

1) Chacun des pays de l'Union particulière qui a signé le présent Acte peut le ratifier et, s'il ne l'a pas signé, peut y adhérer.

2) Tout pays étranger à l'Union particulière, partie à la Convention de Paris pour la protection de la propriété industrielle, peut adhérer au présent Acte et devenir, de ce fait, membre de l'Union particulière.

3) Les instruments de ratification et d'adhésion sont déposés auprès du Directeur général.

4) *a)* A l'égard des cinq pays qui ont, les premiers, déposé leurs instruments de ratification ou d'adhésion, le présent Acte entre en vigueur trois mois après le dépôt du cinquième de ces instruments.

b) A l'égard de tout autre pays, le présent Acte entre en vigueur trois mois après la date à laquelle sa ratification ou son adhésion a été notifiée par le Directeur général, à moins qu'une date postérieure n'ait été indiquée dans l'instrument de ratification ou d'adhésion. Dans ce dernier cas, le présent Acte entre en vigueur, à l'égard de ce pays, à la date ainsi indiquée.

5) La ratification ou l'adhésion emporte de plein droit accession à toutes les clauses et admission à tous les avantages stipulés par le présent Acte.

6) Après l'entrée en vigueur du présent Acte, un pays ne peut adhérer à l'Acte du 15 juin 1957 du présent Arrangement que conjointement avec la ratification du présent Acte ou l'adhésion à celui-ci.

Article 10

This Agreement shall have the same force and duration as the Paris Convention for the Protection of Industrial Property.

Article 11

(1) This Agreement shall be submitted to revisions with a view to the introduction of desired improvements.

(2) Every revision shall be considered at a conference which shall be held between the delegates of the countries of the Special Union.

Article 12

(1) *(a)* This Act shall, as regards the relations between the countries of the Special Union by which it has been ratified or acceded to, replace the original Act of June 15, 1957.

(b) However, any country of the Special Union which has ratified or acceded to this Act shall be bound by the original Act of June 15, 1957, as regards its relations with countries of the Special Union which have not ratified or acceded to this Act.

(2) Countries outside the Special Union which become party to this Act shall apply it with respect to any country of the Special Union not party to this Act. Such countries shall recognize that the aforesaid country of the Special Union may apply, as regards its relations with them, the provisions of the original Act of June 15, 1957.

Article 13

(1) Any country may denounce this Act by notification addressed to the Director General. Such denunciation shall constitute also denunciation of the original Act of June 15, 1957, of this Agreement, and shall affect only the country making it, the Agreement remaining in full force and effect as regards the other countries of the Special Union.

(2) Denunciation shall take effect one year after the day on which the Director General has received the notification.

(3) The right of denunciation provided for by this Article shall not be exercised by any country before the expiration of five years from the date upon which it becomes a member of the Special Union.

Article 14

The provisions of Article 24 of the Paris Convention for the Protection of Industrial Property shall apply to this Agreement.

Article 10

Le présent Arrangement a la même force et durée que la Convention de Paris pour la protection de la propriété industrielle.

Article 11

1) Le présent Arrangement sera soumis à des revisions en vue d'y introduire les améliorations désirables.

2) Chacune de ces revisions fera l'objet d'une conférence qui se tiendra entre les délégués des pays de l'Union particulière.

Article 12

1) *a)* Le présent Acte remplace, dans les rapports entre les pays de l'Union particulière qui l'ont ratifié ou qui y ont adhéré, l'Acte du 15 juin 1957.

b) Toutefois, tout pays de l'Union particulière qui a ratifié le présent Acte ou qui y a adhéré est lié par l'Acte du 15 juin 1957 dans ses rapports avec les pays de l'Union particulière qui n'ont pas ratifié le présent Acte ou qui n'y ont pas adhéré.

2) Les pays étrangers à l'Union particulière qui deviennent parties au présent Acte l'appliquent à l'égard de tout pays de cette Union qui n'est pas partie au présent Acte. Lesdits pays admettent que ledit pays de l'Union applique dans ses relations avec eux les dispositions de l'Acte du 15 juin 1957.

Article 13

1) Tout pays peut dénoncer le présent Acte par notification adressée au Directeur général. Cette dénonciation emporte aussi dénonciation de l'Acte du 15 juin 1957 du présent Arrangement et ne produit son effet qu'à l'égard du pays qui l'a faite, l'Arrangement restant en vigueur et exécutoire à l'égard des autres pays de l'Union particulière.

2) La dénonciation prend effet un an après le jour où le Directeur général a reçu la notification.

3) La faculté de dénonciation prévue par le présent article ne peut être exercée par un pays avant l'expiration d'un délai de cinq ans à compter de la date à laquelle il est devenu membre de l'Union particulière.

Article 14

Les dispositions de l'article 24 de la Convention de Paris pour la protection de la propriété industrielle s'appliquent au présent Arrangement.

Article 15

(1) *(a)* This Act shall be signed in a single copy in the French language and shall be deposited with the Government of Sweden.

(b) Official texts shall be established by the Director General, after consultation with the interested Governments, in such other languages as the Assembly may designate.

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

(3) The Director General shall transmit two copies, certified by the Government of Sweden, of the signed text of this Act to the Governments of all countries of the Special Union and, on request, to the Government of any other country.

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

(5) The Director General shall notify the Governments of all countries of the Special Union of signatures, deposits of instruments of ratification or accession, entry into force of any provisions of this Act, and notifications of denunciation.

Article 16

(1) Until the first Director General assumes office, references in this Act to the International Bureau of the Organization or to the Director General shall be construed as references to the Bureau of the Union established by the Paris Convention for the Protection of Industrial Property or its Director, respectively.

(2) Countries of the Special Union not having ratified or acceded to this Act may, until five years after the entry into force of the Convention establishing the Organization, exercise, if they so desire, the rights provided for under Articles 5 to 8 of this Act as if they were bound by those Articles. Any country desiring to exercise such rights shall give written notification to that effect to the Director General; such notification shall be effective from the date of its receipt. Such countries shall be deemed to be members of the Assembly until the expiration of the said period.

Article 15

1) *a)* Le présent Acte est signé en un seul exemplaire en langue française et déposé auprès du Gouvernement de la Suède.

b) Des textes officiels sont établis par le Directeur général, après consultation des Gouvernements intéressés, dans les autres langues que l'Assemblée pourra indiquer.

2) Le présent Acte reste ouvert à la signature, à Stockholm, jusqu'au 13 janvier 1968.

3) Le Directeur général transmet deux copies, certifiées conformes par le Gouvernement de la Suède, du texte signé du présent Acte aux Gouvernements de tous les pays de l'Union particulière et, sur demande, au Gouvernement de tout autre pays.

4) Le Directeur général fait enregistrer le présent Acte auprès du Secrétariat de l'Organisation des Nations Unies.

5) Le Directeur général notifie aux Gouvernements de tous les pays de l'Union particulière les signatures, les dépôts d'instruments de ratification ou d'adhésion, l'entrée en vigueur de toutes dispositions du présent Acte, et les notifications de dénonciation.

Article 16

1) Jusqu'à l'entrée en fonction du nouveau Directeur général, les références, dans le présent Acte, au Bureau international de l'Organisation ou au Directeur général sont considérées comme se rapportant respectivement au Bureau de l'Union établie par la Convention de Paris pour la protection de la propriété industrielle ou à son Directeur.

2) Les pays de l'Union particulière qui n'ont pas ratifié le présent Acte, ou n'y ont pas adhéré, peuvent, pendant cinq ans après l'entrée en vigueur de la Convention instituant l'Organisation, exercer, s'ils le désirent, les droits prévus par les articles 5 à 8 du présent Acte, comme s'ils étaient liés par ces articles. Tout pays qui désire exercer lesdits droits dépose à cette fin auprès du Directeur général une notification écrite qui prend effet à la date de sa réception. De tels pays sont réputés être membres de l'Assemblée jusqu'à l'expiration de ladite période.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Act.

DONE at Stockholm, on July 14, 1967.

Belgium (B[on] F. Cogels); Denmark (Julie Olsen); France (B. de Menthon); Germany, Federal Republic (Kurt Haertel); Hungary (Esztergályos); Ireland (Valentin Iremonger); Israel (Z. Sher, G. Gavrieli); Italy (Cippico, Giorgio Ranzi); Monaco (J. M. Notari); Morocco (H'ssaine); Netherlands (Gerbrandy, W. G. Belinfante); Norway (Jens Evensen, B. Stuevold Lassen); Poland (M. Kajzer); Portugal (Adriano de Carvalho, José de Oliveira Ascensão, Ruy Alvaro Costa de Morais Serrão); Spain (J. F. Alcover, Electo J. Garcia Tejedor); Sweden (Herman Kling); Switzerland (Hans Morf, Joseph Voyame); United Kingdom of Great Britain and Northern Ireland (Gordon Grant, William Wallace); Yugoslavia (A. Jelić).

EN FOI DE QUOI, les soussignés, dûment autorisés à cet effet, ont signé le présent Acte.

FAIT à Stockholm, le 14 juillet 1967.

Belgique (Bon F. Cogels); Danemark (Julie Olsen); Espagne (J. F. Alcover, Electo J. Garcia Tejedor); France (B. de Menthon); Hongrie (Esztergályos); Irlande (Valentin Iremonger); Israël (Z. Sher, G. Gavrieli); Italie (Cippico, Giorgio Ranzi); Maroc (H'ssaine); Monaco (J. M. Notari); Norvège (Jens Evensen, B. Stuevold Lassen); Pays-Bas (Gerbrandy, W. G. Belinfante); Pologne (M. Kajzer); Portugal (Adriano de Carvalho, José de Oliveira Ascensão, Ruy Álvaro Costa de Morais Serrão); République Fédérale d'Allemagne (Kurt Haertel); Royaume-Uni de Grande-Bretagne et d'Irlande du Nord (Gordon Grant, William Wallace); Suède (Herman Kling); Suisse (Hans Morf, Joseph Voyame); Yougoslavie (A. Jelić).

Lisbon Agreement
for the Protection of Appellations of Origin and their International Registration
(Stockholm Act)

Arrangement de Lisbonne
concernant la protection des appellations d'origine et leur enregistrement international
(Acte de Stockholm)

Lisbon Agreement for the Protection of Appellations of Origin and their International Registration

of October 31, 1958,
as revised at STOCKHOLM on July 14, 1967

Article 1

(1) The countries to which this Agreement applies constitute a Special Union within the framework of the Union for the Protection of Industrial Property.

(2) They undertake to protect on their territories, in accordance with the terms of this Agreement, the appellations of origin of products of the other countries of the Special Union, recognized and protected as such in the country of origin and registered at the International Bureau of Intellectual Property (hereinafter designated as "the International Bureau" or "the Bureau") referred to in the Convention establishing the World Intellectual Property Organization (hereinafter designated as "the Organization").

Article 2

(1) In this Agreement, "appellation of origin" means the geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.

(2) The country of origin is the country whose name, or the country in which is situated the region or locality whose name, constitutes the appellation of origin which has given the product its reputation.

Article 3

Protection shall be ensured against any usurpation or imitation, even if the true origin of the product is indicated or if the appellation is used in translated form or accompanied by terms such as "kind," "type," "make," "imitation," or the like.

Arrangement de Lisbonne concernant la protection des appellations d'origine et leur enregistrement international

du 31 octobre 1958,
revisé à STOCKHOLM le 14 juillet 1967

Article 1

1) Les pays auxquels s'applique le présent Arrangement sont constitués à l'état d'Union particulière dans le cadre de l'Union pour la protection de la propriété industrielle.

2) Ils s'engagent à protéger, sur leurs territoires, selon les termes du présent Arrangement, les appellations d'origine des produits des autres pays de l'Union particulière, reconnues et protégées à ce titre dans le pays d'origine et enregistrées au Bureau international de la propriété intellectuelle (ci-après dénommé « le Bureau international » ou « le Bureau ») visé dans la Convention instituant l'Organisation Mondiale de la Propriété Intellectuelle (ci-après dénommée «l'Organisation»).

Article 2

1) On entend par appellation d'origine, au sens du présent Arrangement, la dénomination géographique d'un pays, d'une région ou d'une localité servant à désigner un produit qui en est originaire et dont la qualité ou les caractères sont dus exclusivement ou essentiellement au milieu géographique, comprenant les facteurs naturels et les facteurs humains.

2) Le pays d'origine est celui dont le nom, ou dans lequel est situé la région ou la localité dont le nom, constitue l'appellation d'origine qui a donné au produit sa notoriété.

Article 3

La protection sera assurée contre toute usurpation ou imitation, même si l'origine véritable du produit est indiquée ou si l'appellation est employée en traduction ou accompagnée d'expressions telles que « genre », « type », « façon », « imitation » ou similaires.

Article 4

The provisions of this Agreement shall in no way exclude the protection already granted to appellations of origin in each of the countries of the Special Union by virtue of other international instruments, such as the Paris Convention of March 20, 1883, for the Protection of Industrial Property and its subsequent revisions, and the Madrid Agreement of April 14, 1891, for the Repression of False or Deceptive Indications of Source on Goods and its subsequent revisions, or by virtue of national legislation or court decisions.

Article 5

(1) The registration of appellations of origin shall be effected at the International Bureau, at the request of the Offices of the countries of the Special Union, in the name of any natural persons or legal entities, public or private, having, according to their national legislation, a right to use such appellations.

(2) The International Bureau shall, without delay, notify the Offices of the various countries of the Special Union of such registrations, and shall publish them in a periodical.

(3) The Office of any country may declare that it cannot ensure the protection of an appellation of origin whose registration has been notified to it, but only in so far as its declaration is notified to the International Bureau, together with an indication of the grounds therefor, within a period of one year from the receipt of the notification of registration, and provided that such declaration is not detrimental, in the country concerned, to the other forms of protection of the appellation which the owner thereof may be entitled to claim under Article 4, above.

(4) Such declaration may not be opposed by the Offices of the countries of the Union after the expiration of the period of one year provided for in the foregoing paragraph.

(5) The International Bureau shall, as soon as possible, notify the Office of the country of origin of any declaration made under the terms of paragraph (3) by the Office of another country. The interested party, when informed by his national Office of the declaration made by another country, may resort, in that other country, to all the judicial and administrative remedies open to the nationals of that country.

(6) If an appellation which has been granted protection in a given country pursuant to notification of its international registration has already been used by third parties in that country from a date prior to such notification, the competent

Article 4

Les dispositions du présent Arrangement n'excluent en rien la protection existant déjà en faveur des appellations d'origine dans chacun des pays de l'Union particulière, en vertu d'autres instruments internationaux, tels que la Convention de Paris du 20 mars 1883 pour la protection de la propriété industrielle et ses revisions subséquentes, et l'Arrangement de Madrid du 14 avril 1891 concernant la répression des indications de provenance fausses ou fallacieuses sur les produits et ses revisions subséquentes, ou en vertu de la législation nationale ou de la jurisprudence.

Article 5

1) L'enregistrement des appellations d'origine sera effectué auprès du Bureau international, à la requête des Administrations des pays de l'Union particulière, au nom des personnes physiques ou morales, publiques ou privées, titulaires du droit d'user de ces appellations selon leur législation nationale.

2) Le Bureau international notifiera sans retard les enregistrements aux Administrations des divers pays de l'Union particulière et les publiera dans un recueil périodique.

3) Les Administrations des pays pourront déclarer qu'elles ne peuvent assurer la protection d'une appellation d'origine, dont l'enregistrement leur aura été notifié, mais pour autant seulement que leur déclaration soit notifiée au Bureau international, avec l'indication des motifs, dans un délai d'une année à compter de la réception de la notification de l'enregistrement, et sans que cette déclaration puisse porter préjudice, dans le pays en cause, aux autres formes de protection de l'appellation auxquelles le titulaire de celle-ci pourrait prétendre, conformément à l'article 4 ci-dessus.

4) Cette déclaration ne pourra pas être opposée par les Administrations des pays unionistes après l'expiration du délai d'une année prévu à l'alinéa précédent.

5) Le Bureau international donnera connaissance, dans le plus bref délai, à l'Administration du pays d'origine de toute déclaration faite aux termes de l'alinéa 3) par l'Administration d'un autre pays. L'intéressé, avisé par son Administration nationale de la déclaration faite par un autre pays, pourra exercer dans cet autre pays tous recours judiciaires ou administratifs appartenant aux nationaux de ce pays.

6) Si une appellation, admise à la protection dans un pays sur notification de son enregistrement international, se trouvait déjà utilisée par des tiers dans ce pays, depuis une date antérieure à cette notification, l'Administration compé-

Office of the said country shall have the right to grant to such third parties a period not exceeding two years to terminate such use, on condition that it advise the International Bureau accordingly during the three months following the expiration of the period of one year provided for in paragraph (3), above.

Article 6

An appellation which has been granted protection in one of the countries of the Special Union pursuant to the procedure under Article 5 cannot, in that country, be deemed to have become generic, as long as it is protected as an appellation of origin in the country of origin.

Article 7

(1) Registration effected at the International Bureau in conformity with Article 5 shall ensure, without renewal, protection for the whole of the period referred to in the foregoing Article.

(2) A single fee shall be paid for the registration of each appellation of origin.

Article 8

Legal action required for ensuring the protection of appellations of origin may be taken in each of the countries of the Special Union under the provisions of the national legislation:

1. at the instance of the competent Office or at the request of the public prosecutor;
2. by any interested party, whether a natural person or a legal entity, whether public or private.

Article 9

(1) *(a)* The Special Union shall have an Assembly consisting of those countries which have ratified or acceded to this Act.

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

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

(2) *(a)* The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Special Union and the implementation of this Agreement;

(ii) give directions to the International Bureau concerning the preparation for conferences of revision, due account

tente de ce pays aurait la faculté d'accorder à ces tiers un délai, ne pouvant dépasser deux ans, pour mettre fin à cette utilisation, à condition d'en aviser le Bureau international dans les trois mois suivant l'expiration du délai d'une année stipulé à l'alinéa 3) ci-dessus.

Article 6

Une appellation admise à la protection dans un des pays de l'Union particulière, suivant la procédure prévue à l'article 5, n'y pourra être considérée comme devenue générique, aussi longtemps qu'elle se trouve protégée comme appellation d'origine dans le pays d'origine.

Article 7

1) L'enregistrement effectué auprès du Bureau international conformément à l'article 5 assure, sans renouvellement, la protection pour toute la durée mentionnée à l'article précédent.

2) Il sera payé pour l'enregistrement de chaque appellation d'origine une taxe unique.

Article 8

Les poursuites nécessaires pour assurer la protection des appellations d'origine pourront être exercées, dans chacun des pays de l'Union particulière, suivant la législation nationale:

1° à la diligence de l'Administration compétente ou à la requête du Ministère public;

2° par toute partie intéressée, personne physique ou morale, publique ou privée.

Article 9

1) *a)* L'Union particulière a une Assemblée composée des pays qui ont ratifié le présent Acte ou y ont adhéré.

b) Le Gouvernement de chaque pays est représenté par un délégué, qui peut être assisté de suppléants, de conseillers et d'experts.

c) Les dépenses de chaque délégation sont supportées par le Gouvernement qui l'a désignée.

2) *a)* L'Assemblée:

i) traite de toutes les questions concernant le maintien et le développement de l'Union particulière et l'application du présent Arrangement;

ii) donne au Bureau international des directives concernant la préparation des conférences de revision, compte étant

being taken of any comments made by those countries of the Special Union which have not ratified or acceded to this Act;

(iii) modify the Regulations, including the fixation of the amount of the fee referred to in Article 7(2) and other fees relating to international registration;

(iv) review and approve the reports and activities of the Director General of the Organization (hereinafter designated as "the Director General") concerning the Special Union, and give him all necessary instructions concerning matters within the competence of the Special Union;

(v) determine the program and adopt the triennial budget of the Special Union, and approve its final accounts;

(vi) adopt the financial regulations of the Special Union;

(vii) establish such committees of experts and working groups as it may deem necessary to achieve the objectives of the Special Union;

(viii) determine which countries not members of the Special Union and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;

(ix) adopt amendments to Articles 9 to 12;

(x) take any other appropriate action designed to further the objectives of the Special Union;

(xi) perform such other functions as are appropriate under this Agreement.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3) *(a)* Each country member of the Assembly shall have one vote.

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

(c) Notwithstanding the provisions of subparagraph *(b)*, if, in any session, the number of countries represented is less than one half but equal to or more than one-third of the countries members of the Assembly, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the countries members of the Assembly which were not represented and shall invite them to express in writing their vote or abstention

dûment tenu des observations des pays de l'Union particulière qui n'ont pas ratifié le présent Acte ou n'y ont pas adhéré;

iii) modifie le Règlement, ainsi que le montant de la taxe prévue à l'article 7.2) et des autres taxes relatives à l'enregistrement international;

iv) examine et approuve les rapports et les activités du Directeur général de l'Organisation (ci-après dénommé « le Directeur général ») relatifs à l'Union particulière et lui donne toutes directives utiles concernant les questions de la compétence de l'Union particulière;

v) arrête le programme, adopte le budget triennal de l'Union particulière et approuve ses comptes de clôture;

vi) adopte le règlement financier de l'Union particulière;

vii) crée les comités d'experts et groupes de travail qu'elle juge utiles à la réalisation des objectifs de l'Union particulière;

viii) décide quels sont les pays non membres de l'Union particulière et quelles sont les organisations intergouvernementales et internationales non gouvernementales qui peuvent être admis à ses réunions en qualité d'observateurs;

ix) adopte les modifications des articles 9 à 12;

x) entreprend toute autre action appropriée en vue d'atteindre les objectifs de l'Union particulière;

xi) s'acquitte de toutes autres tâches qu'implique le présent Arrangement.

b) Sur les questions qui intéressent également d'autres Unions administrées par l'Organisation, l'Assemblée statue connaissance prise de l'avis du Comité de coordination de l'Organisation.

3) *a)* Chaque pays membre de l'Assemblée dispose d'une voix.

b) La moitié des pays membres de l'Assemblée constitue le quorum.

c) Nonobstant les dispositions du sous-alinéa *b)*, si, lors d'une session, le nombre des pays représentés est inférieur à la moitié mais égal ou supérieur au tiers des pays membres de l'Assemblée, celle-ci peut prendre des décisions; toutefois, les décisions de l'Assemblée, à l'exception de celles qui concernent sa procédure, ne deviennent exécutoires que lorsque les conditions énoncées ci-après sont remplies. Le Bureau international communique lesdites décisions aux pays membres de l'Assemblée qui n'étaient pas représentés, en les invitant à exprimer par écrit, dans un délai de trois mois à compter de

within a period of three months from the date of the communication. If, at the expiration of this period, the number of countries having thus expressed their vote or abstention attains the number of countries which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(d) Subject to the provisions of Article 12(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(e) Abstentions shall not be considered as votes.

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

(g) Countries of the Special Union not members of the Assembly shall be admitted to the meetings of the latter as observers.

(4) *(a)* The Assembly shall meet once in every third calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of one-fourth of the countries members of the Assembly.

(c) The agenda of each session shall be prepared by the Director General.

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

Article 10

(1) *(a)* International registration and related duties, as well as all other administrative tasks concerning the Special Union, shall be performed by the International Bureau.

(b) In particular, the International Bureau shall prepare the meetings and provide the secretariat of the Assembly and of such committees of experts and working groups as may have been established by the Assembly.

(c) The Director General shall be the chief executive of the Special Union and shall represent the Special Union.

(2) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly and of such committees of experts or working groups as may have been established by the Assembly. The Director General, or a staff member designated by him, shall be ex officio secretary of those bodies.

la date de ladite communication, leur vote ou leur abstention. Si, à l'expiration de ce délai, le nombre des pays ayant ainsi exprimé leur vote ou leur abstention est au moins égal au nombre de pays qui faisait défaut pour que le quorum fût atteint lors de la session, lesdites décisions deviennent exécutoires, pourvu qu'en même temps la majorité nécessaire reste acquise.

d) Sous réserve des dispositions de l'article 12.2), les décisions de l'Assemblée sont prises à la majorité des deux tiers des votes exprimés.

e) L'abstention n'est pas considérée comme un vote.

f) Un délégué ne peut représenter qu'un seul pays et ne peut voter qu'au nom de celui-ci.

g) Les pays de l'Union particulière qui ne sont pas membres de l'Assemblée sont admis à ses réunions en qualité d'observateurs.

4) *a)* L'Assemblée se réunit une fois tous les trois ans en session ordinaire sur convocation du Directeur général et, sauf cas exceptionnels, pendant la même période et au même lieu que l'Assemblée générale de l'Organisation.

b) L'Assemblée se réunit en session extraordinaire sur convocation adressée par le Directeur général, à la demande d'un quart des pays membres de l'Assemblée.

c) L'ordre du jour de chaque session est préparé par le Directeur général.

5) L'Assemblée adopte son règlement intérieur.

Article 10

1) *a)* L'enregistrement international et les tâches y relatives, ainsi que toutes les autres tâches administratives incombant à l'Union particulière, sont assurés par le Bureau international.

b) En particulier, le Bureau international prépare les réunions et assure le secrétariat de l'Assemblée et des comités d'experts et groupes de travail qu'elle peut créer.

c) Le Directeur général est le plus haut fonctionnaire de l'Union particulière et la représente.

2) Le Directeur général et tout membre du personnel désigné par lui prennent part, sans droit de vote, à toutes les réunions de l'Assemblée et de tout comité d'experts ou groupe de travail qu'elle peut créer. Le Directeur général ou un membre du personnel désigné par lui est d'office secrétaire de ces organes.

(3) *(a)* The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for the conferences of revision of the provisions of the Agreement other than Articles 9 to 12.

(b) The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for conferences of revision.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at those conferences.

(4) The International Bureau shall carry out any other tasks assigned to it.

Article 11

(1) *(a)* The Special Union shall have a budget.

(b) The budget of the Special Union shall include the income and expenses proper to the Special Union, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization.

(c) Expenses not attributable exclusively to the Special Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Special Union in such common expenses shall be in proportion to the interest the Special Union has in them.

(2) The budget of the Special Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

(3) The budget of the Special Union shall be financed from the following sources:

(i) international registration fees collected under Article 7(2) and other fees and charges due for other services rendered by the International Bureau in relation to the Special Union;

(ii) sale of, or royalties on, the publications of the International Bureau concerning the Special Union;

(iii) gifts, bequests, and subventions;

(iv) rents, interests, and other miscellaneous income;

(v) contributions of the countries of the Special Union, if and to the extent to which receipts from the sources indicated in items (i) to (iv) do not suffice to cover the expenses of the Special Union.

(4) *(a)* The amount of the fee referred to in Article 7(2) shall be fixed by the Assembly on the proposal of the Director General.

3) *a)* Le Bureau international, selon les directives de l'Assemblée, prépare les conférences de revision des dispositions de l'Arrangement autres que les articles 9 à 12.

b) Le Bureau international peut consulter des organisations intergouvernementales et internationales non gouvernementales sur la préparation des conférences de revision.

c) Le Directeur général et les personnes désignées par lui prennent part, sans droit de vote, aux délibérations dans ces conférences.

4) Le Bureau international exécute toutes autres tâches qui lui sont attribuées.

Article 11

1) *a)* L'Union particulière a un budget.

b) Le budget de l'Union particulière comprend les recettes et les dépenses propres à l'Union particulière, sa contribution au budget des dépenses communes aux Unions, ainsi que, le cas échéant, la somme mise à la disposition du budget de la Conférence de l'Organisation.

c) Sont considérées comme dépenses communes aux Unions les dépenses qui ne sont pas attribuées exclusivement à l'Union particulière mais également à une ou plusieurs autres Unions administrées par l'Organisation. La part de l'Union particulière dans ces dépenses communes est proportionnelle à l'intérêt que ces dépenses présentent pour elle.

2) Le budget de l'Union particulière est arrêté compte tenu des exigences de coordination avec les budgets des autres Unions administrées par l'Organisation.

3) Le budget de l'Union particulière est financé par les ressources suivantes:

i) les taxes d'enregistrement international perçues conformément à l'article 7.2) et les taxes et sommes dues pour les autres services rendus par le Bureau international au titre de l'Union particulière;

ii) le produit de la vente des publications du Bureau international concernant l'Union particulière et les droits afférents à ces publications;

iii) les dons, legs et subventions;

iv) les loyers, intérêts et autres revenus divers;

v) les contributions des pays de l'Union particulière, dans la mesure où les recettes provenant des sources mentionnées aux points i) à iv) ne suffisent pas à couvrir les dépenses de l'Union particulière.

4) *a)* Le montant de la taxe mentionnée à l'article 7.2) est fixé par l'Assemblée, sur proposition du Directeur général.

(b) The amount of the said fee shall be so fixed that the revenue of the Special Union should, under normal circumstances, be sufficient to cover the expenses of the International Bureau for maintaining the international registration service, without requiring payment of the contributions referred to in paragraph (3)(v), above.

(5) *(a)* For the purpose of establishing its contribution referred to in paragraph (3)(v), each country of the Special Union shall belong to the same class as it belongs to in the Paris Union for the Protection of Industrial Property, and shall pay its annual contributions on the basis of the same number of units as is fixed for that class in that Union.

(b) The annual contribution of each country of the Special Union shall be an amount in the same proportion to the total sum to be contributed to the budget of the Special Union by all countries as the number of its units is to the total of the units of all contributing countries.

(c) The date on which contributions are to be paid shall be fixed by the Assembly.

(d) A country which is in arrears in the payment of its contributions may not exercise its right to vote in any of the organs of the Special Union if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any organ of the Union may allow such a country to continue to exercise its right to vote in that organ if, and as long as, it is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

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

(6) Subject to the provisions of paragraph (4)*(a)*, the amount of fees and charges due for other services rendered by the International Bureau in relation to the Special Union shall be established, and shall be reported to the Assembly, by the Director General.

(7) *(a)* The Special Union shall have a working capital fund which shall be constituted by a single payment made by each country of the Special Union. If the fund becomes insufficient, the Assembly shall decide to increase it.

(b) The amount of the initial payment of each country to the said fund or of its participation in the increase thereof shall be a proportion of the contribution of that country as a member of the Paris Union for the Protection of Industrial Property to the budget of the said Union for the year in

b) Le montant de cette taxe est fixé de manière à ce que les recettes de l'Union particulière soient, normalement, suffisantes pour couvrir les dépenses occasionnées au Bureau international par le fonctionnement du service de l'enregistrement international sans qu'il soit recouru au versement des contributions mentionnées à l'alinéa 3)v) ci-dessus.

5) *a)* Pour déterminer sa part contributive au sens de l'alinéa 3)v), chaque pays de l'Union particulière appartient à la classe dans laquelle il est rangé pour ce qui concerne l'Union de Paris pour la protection de la propriété industrielle, et paie ses contributions annuelles sur la base du nombre d'unités déterminé pour cette classe dans cette Union.

b) La contribution annuelle de chaque pays de l'Union particulière consiste en un montant dont le rapport à la somme totale des contributions annuelles au budget de l'Union particulière de tous les pays est le même que le rapport entre le nombre des unités de la classe dans laquelle il est rangé et le nombre total des unités de l'ensemble des pays.

c) La date à laquelle les contributions sont dues sera fixée par l'Assemblée.

d) Un pays en retard dans le paiement de ses contributions ne peut exercer son droit de vote dans aucun des organes de l'Union particulière si le montant de son arriéré est égal ou supérieur à celui des contributions dont il est redevable pour les deux années complètes écoulées. Cependant, un tel pays peut être autorisé à conserver l'exercice de son droit de vote au sein dudit organe aussi longtemps que ce dernier estime que le retard résulte de circonstances exceptionnelles et inévitables.

e) Dans le cas où le budget n'est pas adopté avant le début d'un nouvel exercice, le budget de l'année précédente est reconduit selon les modalités prévues par le règlement financier.

6) Sous réserve des dispositions de l'alinéa 4)*a)*, le montant des taxes et sommes dues pour les autres services rendus par le Bureau international au titre de l'Union particulière est fixé par le Directeur général, qui en fait rapport à l'Assemblée.

7) *a)* L'Union particulière possède un fonds de roulement constitué par un versement unique effectué par chaque pays de l'Union particulière. Si le fonds devient insuffisant, l'Assemblée décide de son augmentation.

b) Le montant du versement initial de chaque pays au fonds précité ou de sa participation à l'augmentation de celui-ci est proportionnel à la contribution de ce pays, en tant que membre de l'Union de Paris pour la protection de la propriété industrielle, au budget de ladite Union pour l'année au

which the fund is established or the decision to increase it is made.

(c) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee of the Organization.

(8) *(a)* In the headquarters agreement concluded with the country on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such country shall grant advances. The amount of those advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such country and the Organization.

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

(9) The auditing of the accounts shall be effected by one or more of the countries of the Special Union or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

Article 12

(1) Proposals for the amendment of Articles 9, 10, 11, and the present Article, may be initiated by any country member of the Assembly, or by the Director General. Such proposals shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.

(2) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided that any amendment to Article 9, and to the present paragraph, shall require four-fifths of the votes cast.

(3) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the countries members of the Assembly at the time it adopted the amendment. Any amendment to the said Articles thus accepted shall bind all the countries which are members of the Assembly at the time the amendment enters into force, or which become members thereof at a subsequent date, provided that any amendment increasing the financial obligations of countries of the Special

cours de laquelle le fonds est constitué ou l'augmentation décidée.

c) La proportion et les modalités de versement sont arrêtées par l'Assemblée, sur proposition du Directeur général et après avis du Comité de coordination de l'Organisation.

8) *a)* L'Accord de siège conclu avec le pays sur le territoire duquel l'Organisation a son siège prévoit que, si le fonds de roulement est insuffisant, ce pays accorde des avances. Le montant de ces avances et les conditions dans lesquelles elles sont accordées font l'objet, dans chaque cas, d'accords séparés entre le pays en cause et l'Organisation.

b) Le pays visé au sous-alinéa *a)* et l'Organisation ont chacun le droit de dénoncer l'engagement d'accorder des avances moyennant notification par écrit. La dénonciation prend effet trois ans après la fin de l'année au cours de laquelle elle a été notifiée.

9) La vérification des comptes est assurée, selon les modalités prévues par le règlement financier, par un ou plusieurs pays de l'Union particulière ou par des contrôleurs extérieurs, qui sont, avec leur consentement, désignés par l'Assemblée.

Article 12

1) Des propositions de modification des articles 9, 10, 11 et du présent article peuvent être présentées par tout pays membre de l'Assemblée ou par le Directeur général. Ces propositions sont communiquées par ce dernier aux pays membres de l'Assemblée six mois au moins avant d'être soumises à l'examen de l'Assemblée.

2) Toute modification des articles visés à l'alinéa 1) est adoptée par l'Assemblée. L'adoption requiert les trois quarts des votes exprimés; toutefois, toute modification de l'article 9 et du présent alinéa requiert les quatre cinquièmes des votes exprimés.

3) Toute modification des articles visés à l'alinéa 1) entre en vigueur un mois après la réception par le Directeur général des notifications écrites d'acceptation, effectuée en conformité avec leurs règles constitutionnelles respectives, de la part des trois quarts des pays qui étaient membres de l'Assemblée au moment où la modification a été adoptée. Toute modification desdits articles ainsi acceptée lie tous les pays qui sont membres de l'Assemblée au moment où la modification entre en vigueur ou qui en deviennent membres à une date ultérieure; toutefois, toute modification qui augmente les obligations financières des pays de l'Union particulière ne lie

Union shall bind only those countries which have notified their acceptance of such amendment.

Article 13

(1) The details for carrying out this Agreement are fixed in the Regulations.

(2) This Agreement may be revised by conferences held between the delegates of the countries of the Special Union.

Article 14

(1) Any country of the Special Union which has signed this Act may ratify it, and, if it has not signed it, may accede to it.

(2) *(a)* Any country outside the Special Union which is party to the Paris Convention for the Protection of Industrial Property may accede to this Act and thereby become a member of the Special Union.

(b) Notification of accession shall, of itself, ensure, in the territory of the acceding country, the benefits of the foregoing provisions to appellations of origin which, at the time of accession, are the subject of international registration.

(c) However, any country acceding to this Agreement may, within a period of one year, declare in regard to which appellations of origin, already registered at the International Bureau, it wishes to exercise the right provided for in Article 5(3).

(3) Instruments of ratification and accession shall be deposited with the Director General.

(4) The provisions of Article 24 of the Paris Convention for the Protection of Industrial Property shall apply to this Agreement.

(5) *(a)* With respect to the first five countries which have deposited their instruments of ratification or accession, this Act shall enter into force three months after the deposit of the fifth such instrument.

(b) With respect to any other country, this Act shall enter into force three months after the date on which its ratification or accession has been notified by the Director General, unless a subsequent date has been indicated in the instrument of ratification or accession. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.

(6) Ratification or accession shall automatically entail acceptance of all the clauses and admission to all the advantages of this Act.

(7) After the entry into force of this Act, a country may accede to the original Act of October 31, 1958, of this Agree-

que ceux d'entre eux qui ont notifié leur acceptation de ladite modification.

Article 13

1) Les détails d'exécution du présent Arrangement sont déterminés par un Règlement.

2) Le présent Arrangement pourra être revisé par des conférences tenues entre les délégués des pays de l'Union particulière.

Article 14

1) Chacun des pays de l'Union particulière qui a signé le présent Acte peut le ratifier et, s'il ne l'a pas signé, peut y adhérer.

2) *a)* Tout pays étranger à l'Union particulière, partie à la Convention de Paris pour la protection de la propriété industrielle, peut adhérer au présent Acte et devenir, de cc fait, membre de l'Union particulière.

b) La notification d'adhésion assure, par elle-même, sur le territoire du pays adhérent, le bénéfice des dispositions ci-dessus aux appellations d'origine qui, au moment de l'adhésion, bénéficient de l'enregistrement international.

c) Toutefois, chaque pays, en adhérant au présent Arrangement, peut, dans un délai d'une année, déclarer quelles sont les appellations d'origine, déjà enregistrées au Bureau international, pour lesquelles il exerce la faculté prévue à l'article 5.3).

3) Les instruments de ratification et d'adhésion sont déposés auprès du Directeur général.

4) Les dispositions de l'article 24 de la Convention de Paris pour la protection de la propriété industrielle s'appliquent au présent Arrangement.

5) *a)* A l'égard des cinq pays qui ont, les premiers, déposé leurs instruments de ratification ou d'adhésion, le présent Acte entre en vigueur trois mois après le dépôt du cinquième de ces instruments.

b) A l'égard de tout autre pays, le présent Acte entre en vigueur trois mois après la date à laquelle sa ratification ou son adhésion a été notifiée par le Directeur général, à moins qu'une date postérieure n'ait été indiquée dans l'instrument de ratification ou d'adhésion. Dans ce dernier cas, le présent Acte entre en vigueur, à l'égard de ce pays, à la date ainsi indiquée.

6) La ratification ou l'adhésion emporte de plein droit accession à toutes les clauses et admission à tous les avantages stipulés par le présent Acte.

7) Après l'entrée en vigueur du présent Acte, un pays ne peut adhérer à l'Acte du 31 octobre 1958 du présent Arran-

ment only in conjunction with ratification of, or accession to, this Act.

Article 15

(1) This Agreement shall remain in force as long as five countries at least are party to it.

(2) Any country may denounce this Act by notification addressed to the Director General. Such denunciation shall constitute also denunciation of the original Act of October 31, 1958, of this Agreement and shall affect only the country making it, the Agreement remaining in full force and effect as regards the other countries of the Special Union.

(3) Denunciation shall take effect one year after the day on which the Director General has received the notification.

(4) The right of denunciation provided for by this Article shall not be exercised by any country before the expiration of five years from the date upon which it becomes a member of the Special Union.

Article 16

(1) *(a)* This Act shall, as regards the relations between the countries of the Special Union by which it has been ratified or acceded to, replace the original Act of October 31, 1958.

(b) However, any country of the Special Union which has ratified or acceded to this Act shall be bound by the original Act of October 31, 1958, as regards its relations with countries of the Special Union which have not ratified or acceded to this Act.

(2) Countries outside the Special Union which become party to this Act shall apply it to international registrations of appellations of origin effected at the International Bureau at the request of the Office of any country of the Special Union not party to this Act, provided that such registrations satisfy, with respect to the said countries, the requirements of this Act. With regard to international registrations effected at the International Bureau at the request of the Offices of the said countries outside the Special Union which become party to this Act, such countries recognize that the aforesaid country of the Special Union may demand compliance with the requirements of the original Act of October 31, 1958.

Article 17

(1) *(a)* This Act shall be signed in a single copy in the French language and shall be deposited with the Government of Sweden.

(b) Official texts shall be established by the Director General, after consultation with the interested Governments, in such other languages as the Assembly may designate.

gement que conjointement avec la ratification du présent Acte ou l'adhésion à celui-ci.

Article 15

1) Le présent Arrangement demeure en vigueur aussi longtemps que cinq pays au moins en font partie.

2) Tout pays peut dénoncer le présent Acte par notification adressée au Directeur général. Cette dénonciation emporte aussi dénonciation de l'Acte du 31 octobre 1958 du présent Arrangement et ne produit son effet qu'à l'égard du pays qui l'a faite, l'Arrangement restant en vigueur et exécutoire à l'égard des autres pays de l'Union particulière.

3) La dénonciation prend effet un an après le jour où le Directeur général a reçu la notification.

4) La faculté de dénonciation prévue par le présent article ne peut être exercée par un pays avant l'expiration d'un délai de cinq ans à compter de la date à laquelle il est devenu membre de l'Union particulière.

Article 16

1) *a)* Le présent Acte remplace, dans les rapports entre les pays de l'Union particulière qui l'ont ratifié ou qui y ont adhéré, l'Acte du 31 octobre 1958.

b) Toutefois, tout pays de l'Union particulière qui a ratifié le présent Acte ou qui y a adhéré est lié par l'Acte du 31 octobre 1958 dans ses rapports avec les pays de l'Union particulière qui n'ont pas ratifié le présent Acte ou qui n'y ont pas adhéré.

2) Les pays étrangers à l'Union particulière qui deviennent parties au présent Acte l'appliquent aux enregistrements internationaux d'appellations d'origine effectués au Bureau international à la requête de l'Administration de tout pays de l'Union particulière qui n'est pas partie au présent Acte pourvu que ces enregistrements satisfassent, quant auxdits pays, aux conditions prescrites par le présent Acte. Quant aux enregistrements internationaux effectués au Bureau international à la requête d'une Administration desdits pays étrangers à l'Union particulière qui deviennent partie au présent Acte, ceux-ci admettent que le pays visé ci-dessus exige l'accomplissement des conditions prescrites par l'Acte du 31 octobre 1958.

Article 17

1) *a)* Le présent Acte est signé en un seul exemplaire en langue française et déposé auprès du Gouvernement de la Suède.

b) Des textes officiels sont établis par le Directeur général, après consultation des Gouvernements intéressés, dans les autres langues que l'Assemblée pourra indiquer.

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

(3) The Director General shall transmit two copies, certified by the Government of Sweden, of the signed text of this Act to the Governments of all countries of the Special Union and, on request, to the Government of any other country.

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

(5) The Director General shall notify the Governments of all countries of the Special Union of signatures, deposits of instruments of ratification or accession, entry into force of any provisions of this Act, denunciations, and declarations pursuant to Article 14(2)*(c)* and (4).

Article 18

(1) Until the first Director General assumes office, references in this Act to the International Bureau of the Organization or to the Director General shall be construed as references to the Bureau of the Union established by the Paris Convention for the Protection of Industrial Property or its Director, respectively.

(2) Countries of the Special Union not having ratified or acceded to this Act may, until five years after the entry into force of the Convention establishing the Organization, exercise, if they so desire, the rights provided for under Articles 9 to 12 of this Act as if they were bound by those Articles. Any country desiring to exercise such rights shall give written notification to that effect to the Director General; such notification shall be effective from the date of its receipt. Such countries shall be deemed to be members of the Assembly until the expiration of the said period.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Act.

DONE at Stockholm, on July 14, 1967.

Cuba (A. M. González); France (B. de Menthon); Hungary (Esztergályos); Israel (Z. Sher, G. Gavrieli); Portugal (Adriano de Carvalho, José de Oliveira Ascensão, Ruy Alvaro Costa de Morais Serrão).

2) Le présent Acte reste ouvert à la signature, à Stockholm, jusqu'au 13 janvier 1968.

3) Le Directeur général transmet deux copies, certifiées conformes par le Gouvernement de la Suède, du texte signé du présent Acte aux Gouvernements de tous les pays de l'Union particulière et, sur demande, au Gouvernement de tout autre pays.

4) Le Directeur général fait enregistrer le présent Acte auprès du Secrétariat de l'Organisation des Nations Unies.

5) Le Directeur général notifie aux Gouvernements de tous les pays de l'Union particulière les signatures, les dépôts d'instruments de ratification ou d'adhésion, l'entrée en vigueur de toutes dispositions du présent Acte, les dénonciations et les déclarations faites en application de l'article 14.2)*c)* et 4).

Article 18

1) Jusqu'à l'entrée en fonction du premier Directeur général, les références, dans le présent Acte, au Bureau international de l'Organisation ou au Directeur général sont considérées comme se rapportant respectivement au Bureau de l'Union établie par la Convention de Paris pour la protection de la propriété industrielle ou à son Directeur.

2) Les pays de l'Union particulière qui n'ont pas ratifié le présent Acte, ou n'y ont pas adhéré, peuvent, pendant cinq ans après l'entrée en vigueur de la Convention instituant l'Organisation, exercer, s'ils le désirent, les droits prévus par les articles 9 à 12 du présent Acte, comme s'ils étaient liés par ces articles. Tout pays qui désire exercer lesdits droits dépose à cette fin auprès du Directeur général une notification écrite qui prend effet à la date de sa réception. De tels pays sont réputés être membres de l'Assemblée jusqu'à l'expiration de ladite période.

EN FOI DE QUOI, les soussignés, dûment autorisés à cet effet, ont signé le présent Acte.

FAIT à Stockholm, le 14 juillet 1967.

Cuba (A. M. González); France (B. de Menthon); Hongrie (Esztergályos); Israël (Z. Sher, G. Gavrieli); Portugal (Adriano de Carvalho, José de Oliveira Ascensão, Ruy Álvaro Costa de Morais Serrão).

FINAL ACT

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

ЗАКЛЮЧИТЕЛЬНЫЙ АКТ

СТОКГОЛЬМСКАЯ КОНФЕРЕНЦИЯ ПО ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ 1967 ГОДА

FINAL ACT

1. THE "INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967,"

PREPARED by the Government of Sweden and the United International Bureaux for the Protection of Intellectual Property (BIRPI),

CONVENED by the Government of Sweden,

WAS HELD at Stockholm from June 11 to July 14, 1967, in the Riksdag Building.

2. THE STATES party to the Berne and Paris Conventions and the Special Agreements concluded under the latter revised the said Conventions and Agreements, made various decisions, and adopted several recommendations.

3. THE CONFERENCE adopted the Convention establishing the World Intellectual Property Organization.

IN WITNESS WHEREOF, the undersigned, being Delegates of the States invited to the Conference, have signed this Final Act.

DONE at Stockholm, on July 14, 1967, in the French, English, Spanish and Russian languages, the original to be deposited with the Government of Sweden.

Algeria (A. Hacene); Australia (K. B. Petersson); Austria (Gottfried H. Thaler, Dr. Robert Dittrich); Belgium (B[on] F. Cogels); Bulgaria (L. Gantchev); Byelorussian Soviet Socialist Republic (Kudriavtsev); Cameroon (D. Ekani); Canada (A. J. Andrew); Central African Republic (L. P. Gamba); Chile (E. Carvallo); Congo, Democratic Republic (G. Mulenda); Cuba (J. Santiesteban Torres); Czechoslovakia (F. Křístek); Denmark (J. Paludan); Ecuador (E. Sanchez); Finland (Paul Gustafsson; France B. de Menthon; Gabon (J. F. Oyoué); Germany (Federal Republic) (Kurt Haertel, Eugen Ulmer); Greece (J. A. Dracoulis); Guatemala (L. Hannell); Holy See (Gunnar Sterner); Hungary (E. Tasnadi); Iceland (Arni Tryggvason); India (Sher Singh, R. S. Gae); Indonesia (Ibrahim Jasin); Iran (A. Daraï); Ireland (J. J. Lennon, J. Quinn); Israel (Ze'ev Sher, G. Gavrieli); Italy (Cippico, Giorgio Ranzi); Ivory Coast (Bilé); Japan M. Takahashi, C. Kawade, K. Adachi); Kenya (M. K. Mwendwa); Korea (Sangchin Lee); Liechtenstein (Marianne Marxer); Luxembourg (J. P. Hoffmann); Madagascar (Ratovondriaka); Mexico (E. Rojas y Benavides); Monaco (J. M. Notari); Morocco (H'ssaine); Netherlands (Gerbrandy, W. G. Belinfante); Niger (A. Wright); Norway (Jens Evensen, B. Stuevold Lassen); Peru (J. Fernandez Dávila); Philippines (Lauro Baja); Poland M. Kajzer); Portugal (Adriano de Carvalho, José de Oliveira Ascensão, Ruy Alvaro Costa de Morais Serrão); Rumania (C. Stanescu, L. Marinete, T. Preda); Senegal (A. Seck); South Africa (T. Schoeman); Spain (J. F. Alcover, Electo J. Garcia Tejedor, José Montero); Sweden (Herman Kling); Switzerland (Hans Morf, Joseph Voyame); Togo (Apedo-Amah); Tunisia M. Kedadi); Turkey (T. Benler, Ferid Ayiter); Ukrainian Soviet Socialist Republic (M. W. Gordon); Union of Soviet Socialist Republics (USSR) (Maksarev); United Arab Republic (M. Tawfik); United Kingdom (Gordon Grant, William Wallace); United States (Eugene M. Braderman); Uruguay J. J. Boero-Brian, M. Mendez-Riva); Yugoslavia (A. Jelić).

ЗАКЛЮЧИТЕЧЬНЫЙ АКТ

1. «СТОКГОЛЬМСКАЯ КОНФЕРЕНЦИЯ ПО ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ 1967 года»,

ПОДГОТОВЛЕННАЯ Правительством Швеции и Объединенными Международными бюро по охране интеллектуальной собственности (БИРПИ),

СОЗВАННАЯ Правительством Швеции,

БЫЛА ПРОВЕДЕНА в Стокгольме с 11 июня по 14 июля 1967 года в здании шведского парламента.

2. ГОСУДАРСТВА-стороны Бернской и Парижской Конвенций и специальных Соглашений, заключенных в рамках последней, пересмотрели упомянутые Конвенции и Соглашения, вынесли ряд решений и приняли некоторые рекомендации.

3. КОНФЕРЕНЦИЯ приняла Конвенцию, учреждающую Всемирную Организацию Интеллектуальной Собственности.

В УДОСТОВЕРЕНИЕ ЧЕГО нижеподписавшиеся, являющиеся делегатами государств приглашенныхна Конференцию, подписали настоящий Заключительный Акт.

СОВЕРШЕНО в Стокгольме 14 июля 1967 года на английском, испанском, русском и французском языках, подлинник подлежит сдаче на хранение Правительству Швеции.

DECISIONS
RECOMMENDATIONS

DECISIONS

The countries members of the Berne Union for the Protection of Literary and Artistic Works,
In a Revision Conference assembled at Stockholm from June 12 to July 14, 1967,

Unanimously decide

That the maximum total amount of the yearly contributions of the member countries shall be the following:

— for 1968: 800,000 Swiss francs
— for 1969: 900,000 Swiss francs
— for 1970: 1,000,000 Swiss francs

unless new decisions are made, or enter into force, in the meantime.

* *
*

The countries members of the Paris Union for the Protection of Industrial Property,
In a Conference of Plenipotentiaries assembled at Stockholm on July 14, 1967,

Unanimously decide

That the maximum total amount of the ordinary yearly contributions of the member countries shall be the following:

— for 1968: 1,200,000 Swiss francs
— for 1969: 1,400,000 Swiss francs
— for 1970: 1,600,000 Swiss francs

unless new decisions are made, or enter into force, in the meantime.

* *
*

RECOMMENDATIONS

RECOMMENDATIONS ADOPTED IN THE FIELD OF COPYRIGHT

I *Duration of Protection*

The Countries members of the Berne Union for the Protection of Literary and Artistic Works,

In a Conference assembled at Stockholm from June 12 to July 14, 1967,

Considering that certain countries have expressed a desire for the general term of protection of literary and artistic works to be extended,

that certain countries already grant a term of protection in excess of fifty years after the death of the author,

that, moreover, several countries of the Union have extended the term of protection, for reasons resulting from the war,

that negotiations have already taken place at the international level with the object of providing for an extension of the term of protection by a special agreement,

that, in addition, bilateral agreements have already been concluded between certain countries for the reciprocal application of extensions of terms of protection, for reasons resulting from the war,

Express the wish that negotiations be pursued between the countries concerned for the conclusion of a multilateral agreement on the extension of the term of protection in countries parties to that agreement.

II *Original Musical Scores*

The Countries members of the Berne Union for the Protection of Literary and Artistic Works,

In a Conference assembled at Stockholm from June 12 to July 14, 1967,

Having before them proposals to insert in the Berne Convention provisions under which

(i) the publisher of a literary, dramatico-musical or musical work published in a country of the Union should be under an obligation to deposit with the national library of that country, or with some other similar establishment, a facsimile of the earliest and most authentic copy of such work in the form approved by its author;

(ii) it should be a matter for the legislation of the countries of the Union to provide that, where a dramatico-musical or musical work has been made available to the public with the consent of the author thereof, the graphic copies of the said work should also be made accessible to the public without restrictions contrary to fair practice;

Consider sympathetically the spirit and purpose of these proposals, subject always to the protection of the rights of authors of such works; and

Express the wish that the International Bureau undertake a study of the above questions, in order that consideration may be given to the possibility of including provisions relating to them in a future revision of the Convention.

III *Developing Countries*

The countries members of the Berne Union for the Protection of Literary and Artistic Works,

In a Conference assembled at Stockholm from June 12 to July 14, 1967,

Recognizing the special economic and cultural needs of developing countries,

Desirous of enabling developing countries to have access to works protected by copyright for their educational requirements,

Having for this purpose adopted the Protocol Regarding Developing Countries,

Recommend the International Bureau to undertake in association with other governmental and non-governmental organizations a study of ways and means of creating financial machinery to ensure a fair and just return to authors.

RECOMMENDATION ADOPTED IN THE FIELD OF INDUSTRIAL PROPERTY

Priority Fees

The countries members of the Paris Union for the Protection of Industrial Property,

In a Conference assembled at Stockholm from June 12 to July 14, 1967,

Recommend that:

The International Bureau study, in cooperation with committees of experts, the desirability and the feasibility of creating new sources of revenue for the Union, through the collection of a modest fee for each application filed with a national Administration whenever, in such application, the right of priority provided for in the Convention of the Union is claimed;

Should the study lead to positive results and should it show that the Paris Convention would require revision to introduce the scheme, concrete proposals be worked out for the Revision Conference of the Paris Union to be held at Vienna.

* *
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The indexes of this work consist of a General Index, several Special Indexes relating to the different Conventions and Agreements adopted by the Conference, and Indexes of the States, Organizations, and Persons, having participated in the Conference.

The Special Indexes are divided into two parts: an index based on the numbers of the articles ("Index of Articles"), and an index based on the key-words ("Catchword Index").

The numbers which appear in all the indexes refer to the **pages** *of this work, with the exception of the numbers in italics in the Indexes of States, Organizations and Persons, which refer to* **paragraphs** *of the summary minutes.*

It should be noted that, in the Indexes of Articles, the page numbers are indicated according to the following principles:

- *preparatory documents (S/1 to S/12): the pages indicated are those on which the documents begin and those on which proposals concerning given texts begin;*
- *observations of Governments (S/13, S/14, S/15, S/17, S/18, S/19, S/21 and S/40) and report by the Director of BIRPI (S/16): only the pages on which the documents begin are indicated;*
- *proposed amendments to the preparatory documents: the pages indicated are those on which the documents begin and, if the relevant parts are on different pages, also those other pages;*
- *reports of the five Main Committees (drafts and final versions): the pages indicated are those on which the reports begin and all the pages (e.g. "x" to "y") on which specific problems are dealt with;*
- *summary minutes: all the pages on which specific problems are dealt with (e.g. "x" to "y") are indicated.*

The numbering of the articles—especially those containing the administrative provisions and final clauses of the Berne and Paris Conventions (see the table of corresponding provisions page 1589)—was altered in the course of the deliberations of the Stockholm Conference. The old numbering used in the preparatory documents is indicated in brackets.

Certain problems concerning the corresponding administrative provisions of the Conventions and Special Agreements were in some cases discussed only in relation to one of the two Conventions (Paris or Berne), and the solutions adopted were subsequently applied by analogy to the other texts. For that reason, in the Index of Articles of the Paris Convention, proposed amendments to the preparatory documents for the Berne Convention are mentioned by analogy, and vice versa.

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BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS
(Stockholm Act)

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Main Committee I: 837, 838, 839 to 843, 844, 845 to 851 855, 856, 861, 874, 891, 899 to 900, 915, 925, 929
Plenary of the Berne Union: 804
— text in Stockholm Act (Article 3): 1289

Article 4: Works to Which Convention Applies (continued): Cinematographic Works and Works of Architecture
— basic proposals (Sweden and BIRPI), S/1 (Article 6(2), (3)): 71, 99, 100, 153
— observations on basic proposals by Governments, S/13: 611; S/18: 665
— amendments proposed to basic proposals:
France, S/28: 682
United Kingdom, S/42: 687
Chairman of Main Committee I, S/44: 687
Australia, S/52: 688
Greece, S/56: 688, 689
Switzerland, S/63: 690
Drafting Committee I, S/88: 692
Secretariat, S/187: 708
Working Group I, S/190: 709
Secretariat, S/241-Annex: 721, 723
Drafting Committee I, S/269: 734
Main Committees I, II and IV, S/278: 752
— report of Main Committee I
draft, S/271: 739
final text: 1131, 1133, 1135, 1136, 1141, 1176, 1179 to 1180
— summary minutes
Main Committee I: 837, 838, 839, 843 to 845, 849 to 851, 855, 856, 872 to 874, 891, 925
Plenary of the Berne Union: 804, 805
— text in Stockholm Act (Article 4): 1289

Article 5: National Treatment and Rights Specially Granted by the Convention; No Formalities; Independence of Protection from Protection in Country of Origin; Protection in Country of Origin; Notion of "Country of Origin"
— basic proposals (Sweden and BIRPI), S/1 (Articles 4(1), (3), (4); 5; 6(1)): 71, 90, 92, 99, 151, 153
— observations on basic proposals by Governments, S/13: 611; S/17: 662; S/18: 665
— amendments proposed to basic proposals:
Chairman of Main Committee I, S/44: 687
Switzerland, S/63. 690
Secretariat, S/187: 708
Working Group I, S/190: 709
Brazil, S/210: 714
Secretariat, S/241-Annex: 721, 723
Drafting Committee I, S/269: 734
Main Committees I, II and IV, S/278: 752
— report of Main Committee I
draft, S/271: 739
final text: 1131, 1133, 1135, 1136, 1137 to 1138, 1140 to 1141, 1150, 1178
— summary minutes
Main Committee I: 837, 838, 839, 841 to 842, 843, 844, 845, 846, 847 to 851, 855 to 856, 874, 899 to 900, 925
Plenary of the Berne Union: 804
— text in Stockholm Act (Article 5): 1290

Article 6: Possibility of Retaliation
— basic proposals (Sweden and BIRPI), S/1 (Article 6(4), (5), (6)): 71, 99, 103, 153
— observations on basic proposals by Governments: no special mention
— amendments proposed to basic proposals:
Chairman of Main Committee I, S/44: 687, 688
Switzerland, S/63: 690
Secretariat, S/187: 708, 709
Secretariat, S/241-Annex: 721, 724
Drafting Committee I, S/269: 734
Main Committees I, II and IV, S/278: 752
— report of Main Committee I
draft, S/271: 739
final text: 1131, 1133, 1135, 1136
— summary minutes
Main Committee I: 837, 838, 839, 844, 846, 847 to 851, 855 to 866, 893, 925 to 926
Plenary of the Berne Union: 804
— text in Stockholm Act (Article 6): 1290

Article 6bis: Moral Rights
— basic proposals (Sweden and BIRPI), S/1 (Article 6bis): 71, 103, 153
— observations on basic proposals by Governments, S/13: 611; S/17: 662; S/18: 665
— amendments proposed to basic proposals:
Greece, S/56: 688, 689
India, S/73: 690, 691
Bulgaria, S/89: 692
Austria, S/147: 700
Greece, Portugal, S/151: 700
Greece, S/183: 708
Bulgaria, S/197 (Corrigendum to document S/89): 710
Brazil, S/210: 714
Australia, Denmark, Finland, Ireland, Norway, Sweden, United Kingdom, S/232: 717
Australia, Austria, Denmark, Finland, Germany (Fed Rep.), Norway, Sweden, United Kingdom, S/247: 726
Secretariat, S/263: 732, 733
Drafting Committee I, S/269: 734
Drafting Committee I, S/269/Add.: 735
Main Committees I, II and IV, S/278: 752
— report of Main Committee I
draft, S/271: 739
final text: 1131, 1133, 1150, 1157 to 1159, 1165, 1189

— summary minutes
Main Committee I: 837, 838, 893 to 897, 914, 918 to 920, 926
Plenary of the Berne Union: 804
— text in Stockholm Act (Article 6bis): 1291

Article 7: Term of Protection
— basic proposals (Sweden and BIRPI), S/1 (Article 7): 71, 104, 155
— observations on basic proposals by Governments, S/13: 611; S/17: 662; S/18: 665
— amendments proposed to basic proposals:
United Kingdom, S/42: 687
Bulgaria, Poland, S/50: 688
Greece, S/56: 688, 689
Switzerland, S/69: 690
India, S/73: 690, 691
Hungary, S/91: 694
Denmark, S/99: 696
Greece, Portugal, S/151: 700
Portugal, S/152: 700
United Kingdom, S/192: 710
Secretariat, S/225: 716
Secretariat, S/241: 721
Drafting Committee I, S/269: 734
Main Committees I, II and IV, S/278: 752
— report of Main Committee I
draft, S/271: 739
final text: 1131, 1133, 1154, 1155, 1159 to 1163, 1173, 1175, 1176, 1180
— report of Main Committee II
drafts, S/270: 735, 736
S/270/Add.: 736
S/270/Rev.: 737
S/270/Rev./Corr.: 738
S/301: 760, 761
final text: 1193, 1195
— summary minutes
Main Committee I: 837, 838, 846, 848, 869, 874 to 875, 876, 882, 897 to 901, 908, 913, 915, 920 to 921, 926
Plenary of the Berne Union: 804
— text in Stockholm Act (Article 7): 1291

Article 7bis: Term of Protection for Works of Joint Authorship
— basic proposals (Sweden and BIRPI), S/1 (Article 7bis): 71, 110, 155
— observations on basic proposals by Governments, S/13: 611; S/18: 665
— amendments proposed to basic proposals:
India, S/73: 690, 691
Secretariat, S/241: 721
Drafting Committee I, S/269: 734
Main Committees I, II and IV, S/278: 752
— report of Main Committee I
draft, S/271: 739
final text: 1131, 1133, 1163 to 1164
— summary minutes
Main Committee I: 901, 926
Plenary of the Berne Union: 804
— text in Stockholm Act (Article 7bis): 1292

Article 8: Right to Translate
— basic proposals (Sweden and BIRPI), S/1 (Article 8): 71, 110, 155
— observations on basic proposals by Governments, S/13: 611; S/18: 665
— amendments proposed to basic proposals:
Greece, S/56: 688, 689
India, S/73: 690, 691
Drafting Committee I, S/248: 726
Secretariat, S/263: 732, 733
Drafting Committee I, S/269: 734
Main Committees I, II and IV, S/278: 752
— report of Main Committee I
drafts, S/271: 739
S/271/Corr.: 746
final text: 1131, 1133, 1164 to 1165, 1166
— summary minutes
Main Committee I: 892, 901 to 902, 922, 926
Plenary of the Berne Union: 804
— text in Stockholm Act (Article 8): 1293

Article 9: Right to Reproduce
— basic proposals (Sweden and BIRPI), S/1 (Article 9): 71, 111, 155
— observations on basic proposals by Governments, S/13: 611; S/17: 662; S/18: 665
— amendments proposed to basic proposals:
Austria, S/38: 683
United Kingdom, S/42: 687
Czechoslovakia, Hungary, Poland, S/51: 688
Greece, S/56: 688, 689
Monaco, S/66: 690
Germany (Fed. Rep.), S/67: 690
France, S/70: 690
Austria, Italy, Morocco, S/72: 690
India, S/73: 690, 691
Rumania, S/75: 691
Japan, S/80: 691
Netherlands, S/81: 691
India, S/86: 692
Working Group I, S/109: 696
Secretariat, S/187: 708, 709
Secretariat, S/238: 720
Secretariat, S/241-Annex: 721, 724
Drafting Committee I, S/248: 726
Drafting Committee I, S/269: 734
Drafting Committee I, S/269/Add.: 735
Main Committees I, II and IV, S/278: 752
Secretariat, S/289: 757
Drafting Committee I, S/290: 758
— report of Main Committee I
draft, S/271: 739
final text: 1131, 1132, 1133, 1134, 1142 to 1146, 1147, 1148 to 1149, 1165
— summary minutes
Main Committee I: 837, 838, 851 to 855, 856 to 860, 861, 862, 881, 883 to 885, 892, 901, 905, 906, 922, 923, 927 to 928, 929, 931
Plenary of the Berne Union: 804 to 805
— text in Stockholm Act (Article 9): 1293

Article 10: Free Quotations and Other Utilizations
— basic proposals (Sweden and BIRPI), S/1 (Article 10): 71, 116, 157
— observations on basic proposals by Governments, S/13: 611; S/17: 662; S/18: 665
— amendments proposed to basic proposals:
France, S/45: 688
Czechoslovakia, Hungary, Poland, S/51: 688
Greece, S/56: 688, 689
Switzerland, S/68: 690
India, S/73: 690, 691
Bulgaria, Czechoslovakia, Poland, Rumania, S/83: 692
Netherlands, S/108: 696
Working Group I, S/185: 708
Secretariat, S/187: 708, 709
Brazil, Mexico, Portugal, S/216: 715
Secretariat, S/238: 720, 721
Secretariat, S/241-Annex: 721, 724
Drafting Committee I, S/248: 726
Drafting Committee I, S/269: 734
Drafting Committee I, S/269/Add.: 735
Main Committees I, II and IV, S/278: 752
— report of Main Committee I
draft, S/271: 739
final text: 1131, 1132, 1133, 1134, 1142, 1146 to 1148, 1165
— summary minutes
Main Committee I: 837, 838, 853, 856, 857, 859 to 862, 885 to 887, 892, 902, 921, 926, 927, 928, 931
Plenary of the Berne Union: 805
— text in Stockholm Act (Article 10): 1293

Article 10bis: Restrictions of Copyright in Case of Certain Articles and for Reporting Current Events
— basic proposals (Sweden and BIRPI), S/1 (Article 10bis): 71, 118, 157
— observations on basic proposals by Governments, S/13: 611; S/17: 662; S/18: 665
— amendments proposed to basic proposals:
India, S/73: 690
Monaco, S/76: 691
Secretariat, S/187: 708, 709
Secretariat, S/238: 720, 721
Secretariat, S/241-Annex: 721, 724
Drafting Committee I, S/248: 726
Drafting Committee I, S/269: 734
Drafting Committee I, S/269/Add.: 735
Main Committees I, II and IV, S/278: 752
Secretariat, S/289: 757
Drafting Committee I, S/290: 758
— report of Main Committee I
draft, S/271: 739
final text: 1131, 1133, 1134, 1142, 1143, 1148 to 1150, 1165, 1175 to 1176
— report of Main Committee II
draft: no special mention
final text: 1193, 1195
— summary minutes
Main Committee I: 857, 862, 885, 892, 921, 923, 926, 927, 928
Plenary of the Berne Union: 805
— text in Stockholm Act (Article 10bis): 1293

Article 11: Right to Public Performance and to Communicate to the Public Dramatic, Dramatico-Musical and Musical Works
— basic proposals (Sweden and BIRPI), S/1 (Article 11): 71, 120, 157
— observations on basic proposals by Governments, S/13: 611; S/18: 665
— amendments proposed to basic proposals:
Greece, S/56: 688, 689
Secretariat, S/241: 721
Drafting Committee I, S/248: 726
Drafting Committee I, S/269: 734
Main Committees I, II and IV, S/278: 752
— report of Main Committee I
draft S/271: 739
final text: 1131, 1133, 1134, 1146, 1165 to 1167
— summary minutes
Main Committee I: 856, 885, 902, 905, 924, 928, 930
Plenary of the Berne Union: 805
— text in Stockholm Act (Article 11): 1294

Article 11bis: Right to Broadcast, etc.
— basic proposals (Sweden and BIRPI), S/1 (Article 11bis): 71, 121, 157
— observations on basic proposals by Governments, S/13: 611; S/17: 662; S/18: 665
— amendments proposed to basic proposals:
India, S/73: 690, 691
Monaco, S/77: 691
Japan, S/112: 696
United Kingdom, S/171: 704
Working Group I, S/195: 710
Brazil, S/217: 715
Secretariat, S/241: 721
Drafting Committee I, S/248: 726
Drafting Committee I, S/269: 734
Drafting Committee I, S/269/Add.: 735
Main Committees I, II and IV, S/278: 752
— report of Main Committee I
draft, S/271: 739
final text: 1131, 1133, 1134, 1165, 1166, 1167 to 1168, 1181 to 1182
— report of Main Committee II
drafts, S/270: 735, 736
S/270/Add.: 736
S/270/Rev.: 737, 738
S/270/Rev./ Corr.: 738
S/301: 760, 761
final text: 1193, 1197
— summary minutes
Main Committee I: 852, 865 to 866, 868, 884, 893, 902 to 904, 916, 921, 923, 926, 927, 928, 930, 936, 937
Plenary of the Berne Union: 804, 805
— text in Stockholm Act (Article 11bis): 1294

Article 11ter: Right to Recite in Public, etc. Literary Works
— basic proposals (Sweden and BIRPI), S/1 (Article 11ter): 71, 122, 159
— observations on basic proposals by Governments, S/13: 611; S/17: 662; S/18: 665
— amendments proposed to basic proposals:
Germany (Fed. Rep.), S/92: 694
Secretariat, S/241: 721, 722
Drafting Committee I, S/269: 734
Main Committees I, II and IV, S/278: 752
— report of Main Committee I
draft, S/271: 739
final text: 1131, 1133, 1134, 1146, 1165, 1166, 1168 to 1169
— summary minutes
Main Committee I: 904 to 905, 924, 928, 930
Plenary of the Berne Union: 805
— text in Stockholm Act (Article 11ter): 1295

Article 12: Right to Adapt, Arrange, etc.
— basic proposals (Sweden and BIRPI), S/1 (Article 12): 71, 123, 159
— observations on basic proposals by Governments, S/13: 611; S/18: 665
— amendments proposed to basic proposals:
India, S/73: 690
Secretariat, S/241: 721, 722
Drafting Committee I, S/269: 734
Main Committees I, II and IV, S/278: 752
— report of Main Committee I
draft, S/271: 739
final text: 1131, 1169
— summary minutes
Main Committee I: 905, 928
Plenary of the Berne Union: 805
— text in Stockholm Act (Article 12): 1295

Article 13: Possibility to Restrict the Right to Make Sound Recordings
— basic proposals (Sweden and BIRPI), S/1 (Article 13): 71, 123, 159
— observations on basic proposals by Governments, S/13: 611; S/18: 665
— amendments proposed to basic proposals:
Greece, S/56: 688, 689
Germany (Fed. Rep.), S/92: 694
United Kingdom, S/171: 704
Brazil, S/217: 715
Netherlands, S/230: 717
Secretariat, S/241: 721, 722
Drafting Committee I, S/248: 726
Drafting Committee I, S/269: 734
Drafting Committee I, S/269/Add.: 735
Main Committees I, II and IV, S/278: 752
Secretariat, S/289: 757
Drafting Committee I, S/290: 758
— report of Main Committee I
draft, S/271: 739
final text: 1131, 1133, 1134, 1146, 1165, 1166, 1169 to 1171, 1176, 1180, 1181
— summary minutes
Main Committee I: 851, 858, 884, 902, 904, 905 to 907, 921, 923, 926, 929, 931, 936
Plenary of the Berne Union: 804, 805
— text in Stockholm Act (Article 13): 1295

Article 14: Right to Adapt, etc. to Cinematography and Right to Perform in Public, etc. Works so Adapted
— basic proposals (Sweden and BIRPI), S/1 (Article 14(1), (3)): 71, 125, 159
— observations on basic proposals by Governments, S/13: 611; S/17: 662; S/18: 665
— amendments proposed to basic proposals:
  India, S/73: 690
  Germany (Fed. Rep.), S/92: 694
  Monaco, S/115: 697
  Working Group I, S/195: 710
  Secretariat, S/241: 721, 722
  Drafting Committee I, S/269: 734
  Main Committees I, II and IV, S/278: 752
— report of Main Committee I
  draft, S/271: 739
  final text: 1131, 1132, 1134, 1165, 1166, 1175 to 1177, 1180 to 1182
— summary minutes
  Main Committee I: 837, 838, 863, 865 to 866, 869, 887, 904, 929, 930, 938, 940
  Plenary of the Berne Union: 805
— text in Stockholm Act (Article 14): 1296

Article 14bis: Cinematographic Works
— basic proposals (Sweden and BIRPI), S/1 (Article 14(2), (4) to (7)): 71, 125, 127, 129, 159
— observations on basic proposals by Governments, S/13: 611; S/17: 662; S/18: 665
— amendments proposed to basic proposals:
  Greece, S/56: 688, 689
  Germany (Fed. Rep.), S/92: 694
  United Kingdom, S/101: 696
  Yugoslavia, S/107: 696
  Japan, S/111: 696
  Monaco, S/115: 697
  France, S/130: 698
  Hungary, S/139: 699
  Belgium, S/144: 699
  Working Group I, S/195: 710
  Secretariat, S/241: 721, 722
  Drafting Committee I, S/269: 734
  Main Committees I, II and IV, S/278: 752
  Secretariat, S/289: 757
  Drafting Committee I, S/290: 758
  Chairman of Main Committee I, S/299: 760
— report of Main Committee I
  draft, S/271: 739
  final text: 1131, 1132, 1133, 1134, 1175 to 1177, 1179, 1180 to 1181, 1182 to 1188
— summary minutes
  Main Committee I: 837, 838, 863, 864, 866 to 871, 887 to 891, 904, 929, 931 to 936, 938, 939, 940
  Plenary of the Berne Union: 804, 805
— text in Stockholm Act (Article 14bis): 1296

Article 14ter: Right to Interest in Sale of Original Works of Art or Manuscripts
— basic proposals (Sweden and BIRPI), S/1 (Article 14bis): 71, 136, 161
— observations on basic proposals by Governments, S/13: 611; S/18: 665
— amendments proposed to basic proposals:
  Secretariat, S/241: 721, 722
  Drafting Committee I, S/269: 734
  Main Committees I, II and IV, S/278: 752
— report of Main Committee I
  draft, S/271: 739
  final text: 1131, 1171, 1177
— summary minutes
  Main Committee I: 865, 929
  Plenary of the Berne Union: 805
— text in Stockholm Act (Article 14ter): 1297

Article 15: Persons Entitled to Institute Infringement Proceedings
— basic proposals (Sweden and BIRPI), S/1 (Articles 4(6); 15): 71, 97, 136, 153, 161
— observations on basic proposals by Governments, S/13: 611; S/18: 665
— amendments proposed to basic proposals:
  France, S/27: 682
  India, S/41: 686, 687
  United Kingdom, S/42: 687
  Hungary, Poland, S/43: 687
  Greece, S/56: 688, 689
  India, S/73: 690, 691
  Portugal, S/152: 700
  Italy, S/168: 703
  Working Group I, S/190: 709
  Czechoslovakia, S/212: 714
  Working Group I (folklore), S/240: 721
  Secretariat, S/241: 721, 722
  Drafting Committee I, S/269: 734
  Main Committees I, II and IV, S/278: 752
— report of Main Committee I
  draft, S/271: 739
  final text: 1131, 1132, 1133, 1135, 1136, 1140, 1161, 1171 to 1173, 1176, 1177, 1178 to 1179, 1188
— report of Main Committee II
  drafts, S/270: 735, 736
    S/270/Add.: 736
    S/270/Rev.: 737, 738
    S/270/Rev./Corr.: 738
    S/301: 760, 762
  final text: 1193, 1199
— summary minutes
  Main Committee I: 837, 838, 839, 842, 844, 846, 848, 855 to 856, 871 to 872, 875 to 878, 891, 893, 895, 913 to 915, 917 to 918, 929
  Plenary of the Berne Union: 805
— text in Stockholm Act (Article 15): 1297

Article 16: Seizure
— basic proposals (Sweden and BIRPI), S/1 (Article 16): 71, 136, 161
— observations on basic proposals by Governments: no special mention
— amendments proposed to basic proposals:
  United Kingdom, S/211: 714
  Secretariat, S/241: 721, 722
  Drafting Committee I, S/269: 734
  Main Committees I, II and IV, S/278: 752
— report of Main Committee I
  draft, S/271: 739
  final text: 1131, 1173
— summary minutes
  Main Committee I: 907, 929
  Plenary of the Berne Union: 805
— text in Stockholm Act (Article 16): 1298

Article 17: Police Powers of Contracting States
— basic proposals (Sweden and BIRPI), S/1 (Article 17): 71, 136, 161
— observations on basic proposals by Governments, S/13: 611; S/18: 665
— amendments proposed to basic proposals:
  United Kingdom, S/171: 704
  Australia, S/215: 715
  Israel, S/223: 716
  Italy, S/226: 716
  Secretariat, S/241: 721, 722
  Drafting Committee I, S/269: 734
  Main Committees I, II and IV, S/278: 752
— report of Main Committee I
  draft, S/271: 739
  final text: 1131, 1173 to 1175

— summary minutes
Main Committee I: 907 to 908, 909 to 922, 929, 937 to 938
Plenary of the Berne Union: 806
— text in Stockholm Act (Article 17): 1298

Article 18: Protection of Works Existing when Convention Enters into Force
— basic proposals (Sweden and BIRPI), S/1 (Article 18): 71, 136, 163
— observations on basic proposals by Governments: no special mention
— amendments proposed to basic proposals:
Secretariat, S/241: 721, 722
Drafting Committee I, S/269: 734
Main Committees I, II and IV, S/278: 752
— report of Main Committee I
draft, S/271: 739
final text: 1131, 1175
— summary minutes
Main Committee I: 877, 912, 930
Plenary of the Berne Union: 806
— text in Stockholm Act (Article 18): 1298

Article 19: Protection Greater than that Provided for in the Convention
— basic proposals (Sweden and BIRPI), S/1 (Article 19): 71, 136, 163
— observations on basic proposals by Governments: no special mention
— amendments proposed to basic proposals:
Secretariat, S/241: 721, 723
Drafting Committee I, S/269: 734
Main Committees I, II and IV, S/278: 752
— report of Main Committee I
draft, S/271: 739
final text: 1131, 1175
— summary minutes
Main Committee I: 912, 930
Plenary of the Berne Union: 806
— text in Stockholm Act (Article 19): 1299

Article 20: Special Agreements
— basic proposals (Sweden and BIRPI), S/1 (Article 20): 71, 136, 163
— observations on basic proposals by Governments: no special mention
— amendments proposed to basic proposals:
Secretariat, S/241: 721, 723
Drafting Committee I, S/269: 734
Main Committees I, II and IV, S/278: 752
— report of Main Committee I
draft, S/271: 739
final text: 1131, 1175
— summary minutes
Main Committee I: 912, 930
Plenary of the Berne Union: 806
— text in Stockholm Act (Article 20): 1299

Article 21: Incorporation of Protocol Regarding Developing Countries
— basic proposals (BIRPI), S/9 and S/9/Corr./1, (Article 20bis): 419, 436, 486, 487
— observations on basic proposals by Governments, S/15: 633; S/19: 674
— amendments proposed to basic proposals:
Czechoslovakia, S/61: 689, 690
Israel, S/227: 716
Argentina, Mexico, Uruguay, S/231: 717
Secretariat, S/235: 719
Main Committees I, II and IV, S/278: 752
— report of Main Committee IV
drafts, S/288: 754, 756
S/288/Rev.: 757
final text: 1207, 1214
— summary minutes
Main Committee IV: 1033
Main Committees II and IV: 989 to 991, 998
Plenary of the Berne Union: 807
— text in Stockholm Act (Article 21): 1299

Article 22: Assembly of the Union
— basic proposals (BIRPI), S/9 (Article 21): 419, 438
— observations on basic proposals by Governments, S/15: 633; S/19: 674
— amendments proposed to basic proposals:
Austria, S/25: 682
France, S/29: 682
Switzerland, S/33: 683
Germany (Fed. Rep.), S/36: 683
Austria, S/39: 683
Sweden, S/47: 688
Austria, Poland, S/58: 689
Czechoslovakia, S/61: 689
Working Group IV, S/78: 691
Secretariat, S/114: 696
Drafting Committee IV, S/180: 705
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PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY (Stockholm Act)

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GUINEA
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GUYANA
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HAITI
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HONDURAS
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HUNGARY
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INDIA
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INDONESIA
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IRAN
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IRAQ
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IRELAND
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ISRAEL
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ITALY
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party to the Nice Agreement, 20
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IVORY COAST
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JAMAICA
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LAOS
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LEBANON
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LIBERIA
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LIECHTENSTEIN
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LUXEMBOURG
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MADAGASCAR
party to the Berne Convention 17
party to the Paris Convention 18

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MALAWI
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MALAYSIA
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MALDIVE ISLANDS
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MALI
party to the Berne Convention, 17
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MALTA
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MAURITANIA
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MEXICO
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MONACO
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MONGOLIA
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MOROCCO
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NEPAL
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NETHERLANDS
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NEW ZEALAND
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party to the Madrid (False Indications) Agreement, 19
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NICARAGUA
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NIGER
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party to the Paris Convention, 18
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NIGERIA
party to the Paris Convention, 18
invited to the Stockholm Conference, 576

NORWAY
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PAKISTAN
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PANAMA
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CIPPICO, Tristram Alvise (Italy)
head of delegation, 588
vice-president of the Conference, 597
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ĆIRKOVIĆ, Miroslava (Mrs.) (Yugoslavia)
expert, 593

CLARE, Daniel H. (United States of America)
secretary of the delegation, 593

COGELS, F. (Belgium)
head of delegation, 585
vice-president of the Plenary of the Berne Union, 597

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COLLOVA, Taddeo (International Bureau for Mechanical Reproduction)
observer, 594

CONK, Josef (Czechoslovakia)
delegate, 586
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CORRADINI, Giancarlo (Italy)
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CORRE, Jacques (International Federation of Patent Agents)
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COWARD, David John (Kenya)
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CRUZ, Jorge Barbosa Pereira da (Portugal)
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CURTIS, Lindsay James (Australia)
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CZERWINSKI, Ignacy (Poland)
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DARAÏ, Akbar (Iran)
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DAVIDSON, Roy M. (Canada)
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DAVIES, Gillian (Miss) (BIRPI)
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DEGAVRE, Jacques (Belgium)
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DELICADO Y MONTERO RIOS, Julio (Spain)
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DELMAR, John (International Federation of Patent Agents)
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DESBOIS, Henri (France)
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deputy head of delegation, 585
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DOCK, M. C. (Miss) (United Nations Educational Scientific and Cultural Organization)
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DRABIENKO, Edward (Poland)
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EEROLA, Niilo (Finland)
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EGK, Werner (Internationale Gesellschaft für Urheberrecht)
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EKANI, Denis (Cameroon)
head of delegation, 586
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ELISSABIDE, Jean (International Bureau for Mechanical Reproduction)
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ELLWOOD, L. A. (International Chamber of Commerce)
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ELLWYN, Ola (Sweden)
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Elman, Peter (Israel)
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EMRINGER, Eugène (Luxembourg)
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EVANS, H. (International Alliance for Diffusion by Wire)
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EVANS, Robert V. (United States of America)
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EVENSEN, Jens (Norway)
head of delegation, 590
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FERRANTE, Antonio (Italy)
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FERRANTE, Antonio (International League Against Unfair Competition)
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FERRARA SANTAMARIA, Massimo (Italy)
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FERRARI, Mario (Italy)
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FERSI, Mustapha (Tunisia)
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FINNISS, Guillaume (International Patent Institute)
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FISCHER, Axel (Denmark)
assistant counsellor, 586

FISCOWICH DE FRIES, Florencio (Spain)
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FORREST, Alan (International Secretariat of Entertainment Trade Unions)
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FOURNIER, Roger (France)
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FRISOLI, Pietro (Italy)
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GABAY, Mayer (United Nations)
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GAE, R. S. (India)
deputy head of delegation, 588
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GAJAC, Roger (France)
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GALTIERI, Gino (Italy)
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GAMBA, Louis-Pierre (Central African Republic)
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GANDZADI, Auguste Roche (Congo (Brazzaville))
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GANTCHEV, Laliu (Bulgaria)
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GARCÍA DE ENTERRÍA, Eduardo (Spain)
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GARCÍA INCHAUSTEGUI, Mario (Cuba)
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GARCÍA TEJEDOR, Electo José (Spain)
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GEHLIN, Jan (Sweden)
expert, 591
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GÉRANTON, André (France)
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GERBRANDY, S. (Netherlands)
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observer, 594

GODENHIELM, Berndt (Finland)
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GOLSONG, Herbert (Council of Europe)
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GÓMEZ-ACEBO Y POMBO, José Miguel (Spain)
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GONZÁLEZ, A. M. (Cuba)
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GORDON, Michel Woldemarovitch (Ukraine)
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GOUGH, Betty C. (Miss) (United States of America)
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GOUIN, Oliver Mercier (Canada)
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GOUNDIAM, Ousmane (Senegal)
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GOWERS, J. S. (European Free Trade Association)
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GRAAS, Gustave (Luxembourg)
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GRANDCHAMP, Isabel (Mrs.) (BIRPI)
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GRANT, Gordon (United Kingdom)
head of delegation, 592
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GRÜTING-BENTATA, Britt (Mrs.) (Sweden)
secretary of the delegation, 591

GUSTAFSSON, Paul (Finland)
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HAAN, C. J. de (Netherlands)
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HACENE, Aziz (Algeria)
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HAERTEL, Kurt (Germany (Federal Republic))
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HAFSTEIN, Hannes (Iceland)
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HAILE-MARIAM, Getaneh (Ethiopia)
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HALD, Arthur (Sweden)
expert, 591

HALÉVY, Jean-Pierre (France)
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HALLVIG, Ivar (International Federation of Newspaper Publishers)
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HALVORSEN, K. B. (International Federation of Patent Agents)
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HARBEN, Roger (United Kingdom)
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HAULRIG, Kurt (Denmark)
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HAMED, Kamel (United Arab Republic)
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HANDL, Josef (International Union of Cinematograph Exhibitors)
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HANNEL, Lars (Guatemala)
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HANSAVESA, Vitoon (Thailand)
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HANSSON, Gunnar (Sweden)
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HANSSON, Gunnar (European Broadcasting Union)
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HAZELZET, P. L. (Netherlands)
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HELLBERG, O. (Sweden)
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HEMMERLING, Joachim (Council for Mutual Economic Assistance)
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HENNEBERG, Ivan (Yugoslavia)
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HERMANS, Louis (Belgium)
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HERNLUND, C. H. (International Federation of Journalists)
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HESSER, Torwald (Sweden)
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member, Swedish Organizing Committee, 599
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HEWITT, Warren E. (United States of America)
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HJALMAR, Pehrsson (International Publishers' Association)
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HOLMBERG, C. V. (Sweden)
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HOOLANTS, Edgard (Belgium)
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HOPSTOCK, Heinz (Internationale Gesellschaft für Urheberrecht)
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HOYLE, John Henry Allen (Australia)
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H'SSAINE, Abderrahim (Morocco)
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IDOWU, Ayo (European Broadcasting Union)
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IOANNOU, Tassos (Greece)
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IREMONGER, Valentin (Ireland)
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ISACKER, F. van (Belgium)
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IVANOV, Ivan (Bulgaria)
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IVEROTH, A. (Sweden)
member, Swedish Organizing Committee, 599

JASIN, Ibrahim (Indonesia)
head of delegation, 588
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JELIĆ, Aleksandar (Yugoslavia)
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JENSEN, Einar (Denmark)
assistant counsellor, 586

JEPPESEN, Edvard (Denmark)
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KAMINSTEIN, Abraham L. (United States of America)
alternate delegate, 592
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KAPUR, B. K. (India)
deputy head of delegation, 588

KARDAN, Mohamed Amine (Iran)
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KARNELL, Gunnar (Sweden)
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KARSCH, Gerhard (Austria)
delegate, 585

KASTENMEIER, Robert W. (United States of America)
congressional advisor, 593

KAUFMANN, Guy (International Bureau for Mechanical Reproduction)
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KAWADE, Chihaya (Japan)
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KAYE, Sydney M. (United States of America)
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KEDADI, Moncef (Tunisia)
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KELLBERG, Love (Sweden)
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KELLMAN, LEON (United States of America)
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KEMPE, Richard J. (United Nations Industrial Development Organization)
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KEREVER, André (France)
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KEYES, A. A. (Canada)
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KING, Alfred Capel (Australia)
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rapporteur of Main Committee III, 598
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KITO, Yuzuki (Japan)
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KJAER, Hans Jacob (Denmark)
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KLAVER, F. M. Th. (Miss) (Netherlands)
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KLEINE, Heinz (International Literary and Artistic Association)
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KLING, Herman (Sweden)
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chairman, Swedish Organizing Committee, 599
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KONOVALOV, S. A. (Soviet Union)
delegate, 592

KOOY, H. J. Jr. (International Federation of Patent Agents)
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KÖRBLER, Milivoj (Yugoslavia)
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KORDAČ, Jiři (Czechoslovakia)
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KOSTIĆ, Vojislav (Yugoslavia)
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KOUTIKOV, Vladimir (Bulgaria)
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KRIEGER, Albrecht (Germany (Federal Republic))
delegate, 587
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KRISHNAMURTI, T. S. (India)
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KŘÍSTEK, František (Czechoslovakia)
head of delegation, 586
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KRUGER, James Thomas (South Africa)
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KUDRIAVTSEV, Boris (Byelorussia)
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KUNZMANN, Karl Heinz (Germany (Federal Republic))
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KURENKOV, B. P. (Soviet Union)
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KUROKAWA, Tokutaro (Asian Broadcasting Union)
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KVARNBÄCK, Tor (Sweden)
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LABRY, Roger (France)
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LAGUS, Klaus (Finland)
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LAHLOU, Abdelhaq (Morocco)
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LAKHDAR, Chedly (Tunisia)
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LAMBERTI, Carlo Zini (Italy)
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LANGBALLE, P. O. (Union of European Patent Agents)
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LARFELDT, N. (International Federation of Patent Agents)
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LASSEN, Bengt (Sweden)
expert, 591
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LASSEN, Bengt (International Publishers' Association)
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LASSEN, Birger Stuevold (Norway)
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LASSEN, Otto (International Federation of the Phonographic Industry)
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LAURELLI, Luis Maria (Argentina)
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LEBRUN MORATINOS, Luis (Venezuela)
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LEDOUX, Louis (Senegal)
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LEE, Sangchin (Korea (Republic of))
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LEMAÎTRE, Robert (France)
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LENNON, J. J. (Ireland)
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LEONARDOS, Luís (Brazil)
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LEUZINGER, Rudolf (International Federation of Musicians)
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LEWIN, Saul (Sweden)
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LID, Olav (Norway)
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LIGHTMAN, Joseph M. (United States of America)
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LINDEN, Bella L. (Mrs.) (United States of America)
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LINDVALL, Sten Eric (Nicaragua)
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LJUNGMAN, Seve (Sweden)
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LOI, Salvatore (Italy)
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Lucas, Bernard (Niger)
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LULE, G. S. (Uganda)
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MAEDA, Masahiro (Japan)
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MAGNIN, Charles-Louis (BIRPI)
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MAKSAREV, Y. E. (Soviet Union)
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MALAPLATE, Léon (International Confederation of Societies of Authors and Composers)
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MALEKOU, Paul (Gabon)
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MALTSEV (Byelorussia)
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MALTSEV (Soviet Union)
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MALTSEV (Ukraine)
signer of WIPO Convention, 1282

MANGES, Horace S. (United States of America)
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MARCHETTI, Dino (Italy)
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MARINETE, Lucian (Rumania)
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MARRO, Jean-Louis (Switzerland)
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MARXER, Marianne (Miss) (Liechtenstein)
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MAS, Yves (France)
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MASOUYÉ, Claude (BIRPI)
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MASSALSKI, C. (International Federation of Patent Agents)
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MAST, Heribert (Germany (Federal Republic))
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MATHÉLY, Paul (International Association for the Protection of Industrial Property)
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MATSUSHITA, Shozo (Japan)
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MATTHYSSENS, Jean (France)
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MAZARAMBROZ Y MARTÍN RABADAN, Antonio Fernández (Spain)
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MC DONALD, Bruce C. (Canada)
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MEINANDER, Ragnar (Finland)
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MENDEZ-RIVAS, Mario (Uruguay)
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MENTHON, Bernard de (France)
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MESSEROTTI-BENVENUTI, Roberto (Italy)
expert, 589

METZ, Willem (International Alliance for Diffusion by Wire)
observer, 594

MICHANEK, Karl Gustav (Sweden)
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MIHINDOU, Gérard (Gabon)
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MIMURA, Masaru (European Broadcasting Union)
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MIQUEL, François (France)
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MIQUELON, Jean (Canada)
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MITROVIĆ, Živorad (Yugoslavia)
expert, 593

MONTERO DE PEDRO, José (Spain)
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MORAIS, SERRÃO, Ruy Alvaro Costa de (Portugal)
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MORENO, Juan Gilberto (Colombia)
head of delegation, 586

MORF, Hans (Switzerland)
head of delegation, 591
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MOROZOV, Ivan (BIRPI)
officer, 596
assistant secretary of Main Committee III, 598
assistant secretary of Main Committee V, 598
assistant secretary of Credentials Committee, 597

MOTT, Kelsey M. (Mrs.) (United States of America)
advisor, 593

MUHONEN, Juhani (Finland)
secretary of the delegation, 587

MULENDA, Gustave (Congo (Kinshasa))
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MURAKAMI, Yuzuru (Japan)
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MWENDWA, Maluki Kitili (Kenya)
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MYRSTEN, Lennart (Sweden)
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NAMUROIS, Albert (Belgium)
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NAMUROIS, Albert (European Broadcasting Union)
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NARAGHI, Mehdi (Iran)
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NIEUWENHOVEN HELBACH, E. A. Van (Netherlands)
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NILSEN, Sylvia E. (Miss) (United States of America)
advisor, 593
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vice-chairman of the Drafting Committee of Main Committee IV, 598
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consultant, 596

NOLLET, Paul (France)
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NOMURA, Yoshio (Japan)
counsellor, 589

NORDENSON, Ulf (Sweden)
delegate, 591
member, Swedish Organizing Committee, 599
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NORDSTRAND, Lief G. (Norway)
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NORLINDH, I. (International Federation of the Phonographic Industry)
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NOTARI, Jean-Marie (Monaco)
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vice-president of the Plenary of the Hague Union, 597
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NUS, J. Van (International Literary and Artistic Association)
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O'BRIEN, Gerald D. (United States of America)
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O'HANNRACHÁIN, F. (Ireland)
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OLSEN, Julie M. (Miss) (Denmark)
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OMODEO-SALE, Giorgio (International Federation of Patent Agents)
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ONN, Harry (International Federation of Patent Agents)
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ONSAGER, Per (Union of European Patent Agents)
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ORÁA, Aquiles (Venezuela)
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OSIECKI, Jerzy (Poland)
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OSSIKOWSKI, Georgi (Bulgaria)
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OVERATH, Johannes (Internationale Gesellschaft für Urheberrecht)
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OYAMA, Yukifusa (Japan)
expert, 589

OYOUÉ, Jean Félix (Gabon)
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PALEWSKI, Jean-Paul (France)
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PÁLOS, György (Hungary)
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PÅLSSON, F. R. (Sweden)
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PALUDAN, Janus A. W. (Denmark)
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vice-chairman of Main Committee II, 597
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PARDO, Eduardo Tomás (Argentina)
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PENZ, Blahoslav (Czechoslovakia)
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RATOVONDRIAKA, Olivier (Madagascar)
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RICHARDSON, Robin (International Secretariat of Entertainment Trade Unions)
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TASNÁDI, Emil (Hungary)
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TAWFIK, Mostafa (United Arab Republic)
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