

**RECORDS
OF THE DIPLOMATIC CONFERENCE
FOR THE CONCLUSION OF A PROTOCOL
RELATING TO THE MADRID AGREEMENT CONCERNING
THE INTERNATIONAL REGISTRATION OF MARKS**

Madrid, 1989



**WORLD INTELLECTUAL PROPERTY ORGANIZATION
(WIPO)**

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EDITOR'S NOTE

The Records of the Diplomatic Conference for the Conclusion of a Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, held in Madrid, from June 12 to 28, 1989, contain documents relating to that Conference which were issued before, during and after the said Conference.

The final text--that is the text as adopted and signed--of the Protocol appears on the right-hand (odd-number) pages of the first part of this volume (up to page 45). On the opposite, left-hand (even-number) pages (up to page 44) appears the text of the draft of the said Protocol as presented to the Diplomatic Conference. In order to facilitate the comparison of the draft with the final text, those pages do not always contain in full the text of the draft but they sometimes merely indicate where the texts are identical or specify the differences existing between the draft and the final text.

The list of States that had signed the Protocol by the date until which it was open for signature (that is, December 31, 1989) appears on page 47.

The text of the Final Act adopted and signed by the Diplomatic Conference and the list of signatories of the Final Act on June 28, 1989, appears on page 51.

The part entitled "Conference Documents" (pages 55 to 126) contains three series of documents distributed before and during the Diplomatic Conference: "MM/DC" (30 documents), "MM/DC/DC" (one document) and "MM/DC/INF" (four documents).

The Rules of Procedure of the Diplomatic Conference appear on pages 60 to 73.

The part entitled "Summary Minutes" (pages 129 to 332) contains the summary minutes of the Plenary of the Diplomatic Conference and the Main Committee of the latter. Those minutes were written in their provisional form by the International Bureau on the basis of transcripts of the tape recordings which were made of all interventions. The transcripts are preserved in the archives of the International Bureau. The provisional minutes were then made available to the speakers with the invitation to make suggestions for changes where desired. The final minutes, published in this volume, take such suggestions into account.

The part entitled "Participants" (pages 335 to 351) lists the individuals who represented governments (pages 335 to 348), intergovernmental organizations other than the World Intellectual Property Organization (page 348), international non-governmental organizations (pages 348 to 350) and the World Intellectual Property Organization (page 351). (The reports of the Credentials Committee appear on pages 112 to 114 and 120 and 121.) The part entitled "Participants" also lists the officers of the Diplomatic Conference and the officers and members of the Committees of the Diplomatic Conference (pages 352 and 353).

Finally, the Records contain six different indexes (pages 356 to 416).

The first two (pages 357 to 387) are indexes relating to the subject matter of the Protocol. The first of those two indexes lists by number each Article of the Protocol and indicates, under each of them, the number which the Article had in the draft presented to the Conference, the pages where the text of the draft and the final text of the Article appear in these Records, the pages where the written proposals for amendments to the Article are reproduced, and, finally, the serial numbers of those paragraphs of the summary minutes which reflect the discussion on and adoption of the Article. The second index is a catchword index, which lists alphabetically the main subjects dealt with in the Protocol. After each catchword, the number of the Article in which the particular subject is dealt with is indicated. By consulting the first index under the Article thus indicated, the reader will find the references to the pages where that provision appears and to the paragraph numbers of the minutes where it is treated.

The third index (pages 389 to 393) is an alphabetical list of States and of the Intergovernmental Organization having the status of a member delegation showing, under the name of each such member delegation, where to find the names of the members of their delegation, as well as any written proposals for amendments submitted and any interventions made on behalf of that member delegation, and referring to the signature of the Protocol and the Final Act on behalf of that State or Intergovernmental Organization, if such a signature took place.

The fourth index (pages 394 and 395) is an index of the observer delegations showing, under the name of the State, where to find the name of the observer representing it, as well as the interventions made on its behalf.

The fifth index (pages 396 to 399) is an alphabetical list of the Organizations showing, under the name of each Organization, where to find the names of the observers representing it, as well as the interventions made on its behalf.

The sixth index (pages 400 to 416) is an alphabetical list of the participants indicating, under the name of each individual, the State or Organization which he represented, as well as the place in these Records where his name appears, together with that of the State or Organization represented by him, as an officer of the Conference or as an officer or a member of a Committee, or as a speaker in the Plenary or Main Committee.

Geneva, 1991

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PROTOCOL
RELATING TO THE MADRID AGREEMENT CONCERNING
THE INTERNATIONAL REGISTRATION OF MARKS

Draft of the Protocol
as presented to the Diplomatic Conference

Text of the Protocol
as adopted by the Diplomatic Conference

SIGNATORIES

DRAFT

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THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKSContents

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PROTOCOL RELATING TO
THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS

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Article 1

MEMBERSHIP IN THE MADRID UNION

[Same as in the Final Text, except that, in the Draft, the words corresponding to the words "as revised at Stockholm" appearing in the Final Text read as follows: "as revised in Stockholm," and that the words corresponding to the words "Article 14(1)(b) which are party to this Protocol" appearing in the Final Text read as follows: "Article 14(1)(b) of this Protocol which are party to this Protocol."]

Article 2

SECURING PROTECTION THROUGH INTERNATIONAL REGISTRATION

(1) [Same as in the Final Text, except that, in the Draft, the words corresponding to the words "in the territory of the Contracting Parties" appearing in the Final Text read as follows: "in the territory of the Contracting States and the territory of the States members of the Contracting Organizations," and that the words corresponding to the words "(hereinafter referred to as the 'international registration,' 'the International Register,' 'the International Bureau' and 'the Organization,' respectively" appearing in the Final Text read as follows: "(hereinafter referred to as 'the International Register' and 'the International Bureau,' respectively)."]

Article 9 <u>ter</u> :	Fees for Certain Records
Article 9 <u>quater</u> :	Common Office of Several Contracting States
Article 9 <u>quinquies</u> :	Transformation of an International Registration into National or Regional Applications
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Article 1

MEMBERSHIP IN THE MADRID UNION

The States party to this Protocol (hereinafter referred to as "the Contracting States"), even where they are not party to the Madrid Agreement Concerning the International Registration of Marks as revised at Stockholm in 1967 and as amended in 1979 (hereinafter referred to as "the Madrid (Stockholm) Agreement"), and the organizations referred to in Article 14(1)(b) which are party to this Protocol (hereinafter referred to as "the Contracting Organizations") shall be members of the same Union of which countries party to the Madrid (Stockholm) Agreement are members. Any reference in this Protocol to "Contracting Parties" shall be construed as a reference to both Contracting States and Contracting Organizations.

Article 2

SECURING PROTECTION THROUGH INTERNATIONAL REGISTRATION

(1) Where an application for the registration of a mark has been filed with the Office of a Contracting Party, or where a mark has been registered in the register of the Office of a Contracting Party, the person in whose name that application (hereinafter referred to as "the basic application") or that registration (hereinafter referred to as "the basic registration") stands may, subject to the provisions of this Protocol, secure protection for his mark in the territory of the Contracting Parties, by obtaining the registration of that mark in the register of the International Bureau of the World Intellectual Property Organization (hereinafter referred to as "the international registration," "the International Register," "the International Bureau" and "the Organization," respectively), provided that,

(i) [Same as in the Final Text.]

(ii) [Same as in the Final Text, except that, in the Draft, the words corresponding to the words "in the territory of the said Contracting Organization" appearing in the Final Text read as follows: "in such a State."]

(2) [Same as in the Final Text.]

(3) [Same as in the Final Text.]

(4) [In the Draft, there is no corresponding provision.]

Article 3

INTERNATIONAL APPLICATION

(1) [Same as in the Final Text.]

(i) where the basic application has been filed with the Office of a Contracting State or where the basic registration has been made by such an Office, the person in whose name that application or registration stands is a national of that Contracting State, or is domiciled, or has a real and effective industrial or commercial establishment, in the said Contracting State,

(ii) where the basic application has been filed with the Office of a Contracting Organization or where the basic registration has been made by such an Office, the person in whose name that application or registration stands is a national of a State member of that Contracting Organization, or is domiciled, or has a real and effective industrial or commercial establishment, in the territory of the said Contracting Organization.

(2) The application for international registration (hereinafter referred to as "the international application") shall be filed with the International Bureau through the intermediary of the Office with which the basic application was filed or by which the basic registration was made (hereinafter referred to as "the Office of origin"), as the case may be.

(3) Any reference in this Protocol to an "Office" or an "Office of a Contracting Party" shall be construed as a reference to the office that is in charge, on behalf of a Contracting Party, of the registration of marks, and any reference in this Protocol to "marks" shall be construed as a reference to trademarks and service marks.

(4) For the purposes of this Protocol, "territory of a Contracting Party" means, where the Contracting Party is a State, the territory of that State and, where the Contracting Party is an intergovernmental organization, the territory in which the constituting treaty of that intergovernmental organization applies.

Article 3

INTERNATIONAL APPLICATION

(1) Every international application under this Protocol shall be presented on the form prescribed by the Regulations. The Office of origin shall certify that the particulars appearing in the international application correspond to the particulars appearing, at the time of the certification, in the basic application or basic registration, as the case may be. Furthermore, the said Office shall indicate,

(i) in the case of a basic application, the date and number of that application,

(ii) in the case of a basic registration, the date and number of that registration as well as the date and number of the application from which the basic registration resulted.

The Office of origin shall also indicate the date of the international application.

(2) [Same as in the Final Text.]

(3) [Same as in the Final Text.]

(4) [Same as in the Final Text, except that, in the Draft, the words "of this Protocol" appear after the words "with Article 2," and that the words corresponding to the words "the international registration shall bear the date on which the said international application was received by the International Bureau" appearing in the Final Text read as follows: "the International Bureau shall record it as at the date on which it received the said international application."]

(5) [Same as in the Final Text, except that, in the Draft, the words corresponding to the words "in Article 10 (hereinafter referred to as 'the Assembly')" appearing in the Final Text read as follows: "in Article 10 of this Protocol," and that the words corresponding to the words "and no other publicity may be required of the holder of the international registration" appearing in the Final Text read as follows: "and no other publicity may be required of the applicant."]

Article 3bis

TERRITORIAL EFFECT

[Same as in the Final Text.]

(2) The applicant must indicate the goods and 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 and 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 Office of origin. In the event of disagreement between the said 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

(i) to state the fact, and to file with his international application a notice specifying the color or the combination of colors claimed;

(ii) to append to his international application copies in color of the said mark, which shall be attached to the notifications 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 2. The international registration shall bear the date on which the international application was received in the Office of origin, provided that the international application has been received by the International Bureau within a period of two months from that date. If the international application has not been received within that period, the international registration shall bear the date on which the said international application was received by the International Bureau. The International Bureau shall notify the international registration without delay to the Offices concerned. Marks registered in the International Register shall be published in a periodical gazette issued by the International Bureau, on the basis of the particulars contained in the international application.

(5) With a view to the publicity to be given to marks registered in the International Register, each Office shall receive from the International Bureau a number of copies of the said gazette free of charge and a number of copies at a reduced price, under the conditions fixed by the Assembly referred to in Article 10 (hereinafter referred to as "the Assembly"). Such publicity shall be deemed to be sufficient for the purposes of all the Contracting Parties, and no other publicity may be required of the holder of the international registration.

Article 3bis

TERRITORIAL EFFECT

The protection resulting from the international registration shall extend to any Contracting Party only at the request of the person who files the international application or who is the holder of the international registration. However, no such request can be made with respect to the Contracting Party whose Office is the Office of origin.

Article 3ter

REQUEST FOR "TERRITORIAL EXTENSION"

(1) [Same as in the Final Text.]

(2) [Same as in the Final Text, except that, in the Draft, the words "effected under this Protocol" appear after the words "subsequently to the international registration."]

Article 4

EFFECTS OF INTERNATIONAL REGISTRATION

(1)(a) [The text of the Draft reads as follows: "From the date of the registration or recordal effected in accordance with the provisions of Articles 3 and 3ter of this Protocol, the protection of the mark in each of the Contracting Parties concerned shall, subject to Article 5 of this Protocol, be the same as if the mark had been registered by the Office of that Contracting Party."]

(b) [Same as in the Final Text, except that, in the Draft, the words "of this Protocol" appear after the words "Article 3."]

(2) [Same as in the Final Text, except that, in the Draft, the words corresponding to the words "without it being necessary to comply" appearing in the Final Text read as follows: "without requiring compliance."]

Article 4bisREPLACEMENT OF A NATIONAL OR REGIONAL REGISTRATION
BY AN INTERNATIONAL REGISTRATION

(1) [Same as in the Final Text, except that, in the Draft, the words corresponding to the words "is deemed to replace" appearing in the Final Text read as follows: "shall be deemed to have replaced," and the words "without prejudice to any rights acquired by virtue of the latter," do not appear.]

Article 3ter

REQUEST FOR "TERRITORIAL EXTENSION"

(1) Any request for extension of the protection resulting from the international registration to any Contracting Party shall be specially mentioned in the international application.

(2) A request for territorial extension may also be made subsequently to the international registration. Any such request shall be presented on the form prescribed by the Regulations. It shall be immediately recorded by the International Bureau, which shall notify such recordal without delay to the Office or Offices concerned. Such recordal shall be published in the periodical gazette of 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 expiry of the international registration to which it relates.

Article 4

EFFECTS OF INTERNATIONAL REGISTRATION

(1)(a) From the date of the registration or recordal effected in accordance with the provisions of Articles 3 and 3ter, the protection of the mark in each of the Contracting Parties concerned shall be the same as if the mark had been deposited direct with the Office of that Contracting Party. If no refusal has been notified to the International Bureau in accordance with Article 5(1) and (2) or if a refusal notified in accordance with the said Article has been withdrawn subsequently, the protection of the mark in the Contracting Party concerned shall, as from the said date, be the same as if the mark had been registered by the Office of that Contracting Party.

(b) The indication of classes of goods and services provided for in Article 3 shall not bind the Contracting Parties with regard to the determination of the scope of the protection of the mark.

(2) Every international registration shall enjoy the right of priority provided for by Article 4 of the Paris Convention for the Protection of Industrial Property, without it being necessary to comply with the formalities prescribed in Section D of that Article.

Article 4bis

REPLACEMENT OF A NATIONAL OR REGIONAL REGISTRATION
BY AN INTERNATIONAL REGISTRATION

(1) Where a mark that is the subject of a national or regional registration in the Office of a Contracting Party is also the subject of an international registration and both registrations stand in the name of the same person, the international registration is deemed to replace the national or regional registration, without prejudice to any rights acquired by virtue of the latter, provided that

(i) [Same as in the Final Text, except that, in the Draft, the words "of this Protocol" appear after the words "under Article 3~~ter~~(1) or (2)."]

(ii) [Same as in the Final Text.]

(iii) [Same as in the Final Text, except that, in the Draft, the words corresponding to the words "takes effect" appearing in the Final Text read as follows: "took effect."]

(2) [Same as in the Final Text.]

Article 5

REFUSAL AND INVALIDATION OF EFFECTS OF INTERNATIONAL REGISTRATION IN RESPECT OF CERTAIN CONTRACTING PARTIES

(1) [Same as in the Final Text, except that, in the Draft, the words "of this Protocol" appear after the words "under Article 3~~ter~~(1) or (2)," and the words corresponding to the words "a mark deposited direct with" appearing in the Final Text read as follows: "a mark filed direct with."]

(2)(a) [Same as in the Final Text, except that, in the Draft, the words "within the period prescribed by the law applicable to that Office and" do not appear, and the words corresponding to the words "before the expiry of one year from the date on which the notification of the extension referred to in paragraph (1) has been sent" appearing in the Final Text read as follows: "before the expiration of one year from the date on which the extension referred to in paragraph (1) has been notified."]

(b) [Same as in the Final Text.]

(c) [In the first part of subparagraph (c), same as in the Final Text, except that, in the Draft, the word corresponding to the word "expiry" appearing in the Final Text reads "expiration."]

(i) [The text of the Draft reads as follows: "it has, before the expiration of the 18-month time limit, sent information to the International Bureau to the effect that there was a possibility of oppositions being filed after the expiration of the said 18-month time limit, and."]

(i) the protection resulting from the international registration extends to the said Contracting Party under Article 3ter(1) or (2),

(ii) all the goods and services listed in the national or regional registration are also listed in the international registration in respect of the said Contracting Party,

(iii) such extension takes effect after the date of the national or regional registration.

(2) The Office referred to in paragraph (1) shall, upon request, be required to take note in its register of the international registration.

Article 5

REFUSAL AND INVALIDATION OF EFFECTS OF INTERNATIONAL REGISTRATION IN RESPECT OF CERTAIN CONTRACTING PARTIES

(1) Where the applicable legislation so authorizes, any Office of a Contracting Party which has been notified by the International Bureau of an extension to that Contracting Party, under Article 3ter(1) or (2), of the protection resulting from the international registration shall have the right to declare in a notification of refusal that protection cannot be granted in the said Contracting Party to the mark which is the subject of such extension. 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 deposited direct with the Office which notifies the refusal. However, protection may not be refused, even partially, by reason only that the applicable legislation would permit registration only in a limited number of classes or for a limited number of goods or services.

(2)(a) Any Office wishing to exercise such right shall notify its refusal to the International Bureau, together with a statement of all grounds, within the period prescribed by the law applicable to that Office and at the latest, subject to subparagraphs (b) and (c), before the expiry of one year from the date on which the notification of the extension referred to in paragraph (1) has been sent to that Office by the International Bureau.

(b) Notwithstanding subparagraph (a), any Contracting Party may declare that, for international registrations made under this Protocol, the time limit of one year referred to in subparagraph (a) is replaced by 18 months.

(c) Such declaration may also specify that, when a refusal of protection may result from an opposition to the granting of protection, such refusal may be notified by the Office of the said Contracting Party to the International Bureau after the expiry of the 18-month time limit. Such an Office may, with respect to any given international registration, notify a refusal of protection after the expiry of the 18-month time limit, but only if

(i) it has, before the expiry of the 18-month time limit, informed the International Bureau of the possibility that oppositions may be filed after the expiry of the 18-month time limit, and

(ii) [The text of the Draft reads as follows: "the notification of the refusal based on an opposition is made within a time limit of one month from the date of the expiration of the period allowed by the applicable law for filing oppositions."]

(d) [Same as in the Final Text, except that, in the Draft, the words "of this Protocol" appear after the words "referred to in Article 14(2)," the words "this Protocol" in the Final Text read "the Protocol" in the Draft, the words "Director General of the Organization" in the Final Text read "Director General of the World Intellectual Property Organization," and the words corresponding to the words "in respect of any international registration whose date is the same as or is later than the effective date of the declaration" appearing in the Final Text read as follows: "in respect of international registrations effected on or after the date of effect of the declaration."]

(e) [The text of the Draft reads as follows: "The time limits referred to in subparagraphs (b) and (c) may be modified by a unanimous decision of the Assembly referred to in Article 10 of this Protocol."]

(3) [Same as in the Final Text, except that, in the Draft, the word corresponding to the word "deposited" in the Final Text reads: "filed."]

(4) [Same as in the Final Text.]

(5) [Same as in the Final Text, except that, in the Draft, the words "with respect to that international registration" appear at the end of the paragraph.]

(6) [Same as in the Final Text, except that, in the Draft, the words "the territory of" do not appear.]

Article 5bis

DOCUMENTARY EVIDENCE OF LEGITIMACY OF USE OF CERTAIN ELEMENTS OF THE MARK

[The text of the Draft reads as follows: "Article 5bis of the Madrid (Stockholm) Agreement shall apply mutatis mutandis."]]

(ii) the notification of the refusal based on an opposition is made within a time limit of not more than seven months from the date on which the opposition period begins; if the opposition period expires before this time limit of seven months, the notification must be made within a time limit of one month from the expiry of the opposition period.

(d) Any declaration under subparagraphs (b) or (c) may be made in the instruments referred to in Article 14(2), and the effective date of the declaration shall be the same as the date of entry into force of this Protocol with respect to the State or intergovernmental organization having made the declaration. Any such declaration may also be made later, in which case the declaration shall have effect three months after its receipt by the Director General of the Organization (hereinafter referred to as "the Director General"), or at any later date indicated in the declaration, in respect of any international registration whose date is the same as or is later than the effective date of the declaration.

(e) Upon the expiry of a period of ten years from the entry into force of this Protocol, the Assembly shall examine the operation of the system established by subparagraphs (a) to (d). Thereafter, the provisions of the said subparagraphs may be modified by a unanimous decision of the Assembly.

(3) The International Bureau shall, without delay, transmit one of the copies of the notification of refusal to the holder of the international registration. The said holder shall have the same remedies as if the mark had been deposited by him direct with the Office which has notified its refusal. Where the International Bureau has received information under paragraph (2)(c)(i), it shall, without delay, transmit the said information to the holder of the international registration.

(4) The grounds for refusing a mark shall be communicated by the International Bureau to any interested party who may so request.

(5) Any Office which has not notified, with respect to a given international registration, any provisional or final refusal to the International Bureau in accordance with paragraphs (1) and (2) shall, with respect to that international registration, lose the benefit of the right provided for in paragraph (1).

(6) Invalidation, by the competent authorities of a Contracting Party, of the effects, in the territory of that Contracting Party, of an international registration may not be pronounced without the holder of such international registration 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 LEGITIMACY OF USE OF CERTAIN ELEMENTS OF THE MARK

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 Parties shall be exempt from any legalization as well as from any certification other than that of the Office of origin.

Article 5ter

COPIES OF ENTRIES IN INTERNATIONAL REGISTER;
SEARCHES FOR ANTICIPATION;
EXTRACTS FROM INTERNATIONAL REGISTER

[The text of the Draft reads as follows: "Article 5ter of the Madrid (Stockholm) Agreement shall apply mutatis mutandis."]]

Article 6

PERIOD OF VALIDITY OF INTERNATIONAL REGISTRATION;
DEPENDENCE AND INDEPENDENCE OF INTERNATIONAL REGISTRATION

(1) [Same as in the Final Text, except that, in the Draft, the words "of this Protocol" appear after the words "Article 7."]

(2) [Same as in the Final Text, except that, in the Draft, the word corresponding to the word "expiry" appearing in the Final Text reads "expiration."]

(3) [As regards the first sentence, same as in the Final Text, except that, in the Draft, the word corresponding to the word "expiry" appearing in the Final Text reads "expiration," and that the words corresponding to the words "in respect of all or some of the goods and services listed in the international registration" appearing in the Final Text read as follows: "in respect of all or some of the goods and services indicated under Article 3(2) of this Protocol."]

[In the Draft, there is no provision corresponding to items (i), (ii), and (iii) appearing in the Final Text but a second sentence in paragraph (3) which reads as follows: "The same applies if proceedings that were in course before the expiration of the five-year period result after the expiration of the said period in a final decision of rejection, revocation, cancellation or invalidation of the basic application or the registration resulting therefrom, or the basic registration, as the case may be."]

Article 5terCOPIES OF ENTRIES IN INTERNATIONAL REGISTER;
SEARCHES FOR ANTICIPATIONS;
EXTRACTS FROM INTERNATIONAL REGISTER

(1) The International Bureau shall issue to any person applying therefor, upon the payment of a fee fixed by the Regulations, a copy of the entries in the International Register concerning a specific mark.

(2) The International Bureau may also, upon payment, undertake searches for anticipations among marks that are the subject of international registrations.

(3) Extracts from the International Register requested with a view to their production in one of the Contracting Parties shall be exempt from any legalization.

Article 6

PERIOD OF VALIDITY OF INTERNATIONAL REGISTRATION;
DEPENDENCE AND INDEPENDENCE OF INTERNATIONAL REGISTRATION

(1) Registration of a mark at the International Bureau is effected for ten years, with the possibility of renewal under the conditions specified in Article 7.

(2) Upon expiry of a period of five years from the date of the international registration, such registration shall become independent of the basic application or the registration resulting therefrom, or of the basic registration, as the case may be, subject to the following provisions.

(3) The protection resulting from the international registration, whether or not it has been the subject of a transfer, may no longer be invoked if, before the expiry of five years from the date of the international registration, the basic application or the registration resulting therefrom, or the basic registration, as the case may be, has been withdrawn, has lapsed, has been renounced or has been the subject of a final decision of rejection, revocation, cancellation or invalidation, in respect of all or some of the goods and services listed in the international registration. The same applies if

(i) an appeal against a decision refusing the effects of the basic application,

(ii) an action requesting the withdrawal of the basic application or the revocation, cancellation or invalidation of the registration resulting from the basic application or of the basic registration, or

(iii) an opposition to the basic application

results, after the expiry of the five-year period, in a final decision of rejection, revocation, cancellation or invalidation, or ordering the withdrawal, of the basic application, or the registration resulting therefrom, or the basic registration, as the case may be, provided that such appeal, action or opposition had begun before the expiry of the said period. The same

(4) [The text of the Draft reads as follows: "Where paragraph (3), first sentence, applies, the Office of origin shall request the International Bureau to cancel the international registration. Where paragraph (3), second sentence, applies, the Office of origin shall, within the five-year period, notify the International Bureau that the proceedings referred to in that provision are in course and, once the decision has become final, inform the International Bureau accordingly and, where applicable, request it to cancel the international registration. Where requested by the Office of origin to do so under the first or the second sentence of this paragraph, the International Bureau shall cancel the international registration."]

Article 7

RENEWAL OF INTERNATIONAL REGISTRATION

(1) [The text of the Draft reads as follows: "Any registration may be renewed for a period of ten years from the expiration of the preceding period, by payment only of the basic fee and, subject to Article 8(2) of this Protocol, of the supplementary and complementary fees provided for in Article 8 of the Madrid (Stockholm) Agreement."]

(2) [The text of the Draft reads as follows: "Paragraphs (2), (4) and (5) of Article 7 of the Madrid (Stockholm) Agreement shall apply."]

(3) [In the Draft, there is no corresponding provision.]

(4) [In the Draft, there is no corresponding provision.]

Article 8

FEEES FOR INTERNATIONAL APPLICATION AND REGISTRATION

(1) [The text of the Draft reads as follows: "Subject to paragraph (2), Article 8 of the Madrid (Stockholm) Agreement shall apply mutatis mutandis."]

(2)(a) [The text of the Draft reads as follows: "Any Contracting Party may declare that, in connection with each international registration under this Protocol in which it is mentioned under Article 3ter of this Protocol, and in connection with the renewal of any such international registration having effect in its territory, it wants to receive, instead of the share in the revenue produced by the supplementary and complementary fees--a share which it would otherwise be entitled to under Article 8(5) and (6) of the

also applies if the basic application is withdrawn, or the registration resulting from the basic application or the basic registration is renounced, after the expiry of the five-year period, provided that, at the time of the withdrawal or renunciation, the said application or registration was the subject of a proceeding referred to in item (i), (ii) or (iii) and that such proceeding had begun before the expiry of the said period.

(4) The Office of origin shall, as prescribed in the Regulations, notify the International Bureau of the facts and decisions relevant under paragraph (3), and the International Bureau shall, as prescribed in the Regulations, notify the interested parties and effect any publication accordingly. The Office of origin shall, where applicable, request the International Bureau to cancel, to the extent applicable, the international registration, and the International Bureau shall proceed accordingly.

Article 7

RENEWAL OF INTERNATIONAL REGISTRATION

(1) Any international registration may be renewed for a period of ten years from the expiry of the preceding period, by the mere payment of the basic fee and, subject to Article 8(7), of the supplementary and complementary fees provided for in Article 8(2).

(2) Renewal may not bring about any change in the international registration in its latest form.

(3) Six months before the expiry of the term of protection, the International Bureau shall, by sending an unofficial notice, remind the holder of the international registration and his representative, if any, of the exact date of expiry.

(4) Subject to the payment of a surcharge fixed by the Regulations, a period of grace of six months shall be allowed for renewal of the international registration.

Article 8

FEEES FOR INTERNATIONAL APPLICATION AND REGISTRATION

(1) The Office of origin may fix, at its own discretion, and collect, for its own benefit, a fee which it may require from the applicant for international registration or from the holder of the international registration in connection with the filing of the international application or the renewal of the international registration.

(2) Registration of a mark at the International Bureau shall be subject to the advance payment of an international fee which shall, subject to the provisions of paragraph (7)(a), include,

(i) a basic fee;

fee') whose amount shall be indicated in the declaration, and can be changed in further declarations, but may not be higher than [80% of] the equivalent of the amount which the said Contracting Party's Office would be entitled to receive from an applicant for a ten-year registration, or from the holder of a registration for a ten-year renewal of that registration, of the mark in the register of the said Office. Where such an individual fee is payable, no complementary fee referred to in Article 8(2)(c) of the Madrid (Stockholm) Agreement shall be payable in respect of the said Contracting Party, and no supplementary fee referred to in Article 8(2)(b) of the Madrid (Stockholm) Agreement shall be payable if only Contracting Parties which have made a declaration under this subparagraph are mentioned under Article 3ter of this Protocol."]

(b) [The text of the Draft reads as follows: "Any declaration under subparagraph (a) may be made in the instruments referred to in Article 14(2) of this Protocol, and the effective date of the declaration shall be the same as the date of entry into force of the Protocol with respect to the State or intergovernmental organization having made the declaration." Any such declaration may be made also later, in which case the declaration shall have effect three months after its receipt by the Director General, or at any later date indicated in the declaration, in respect of international registrations effected on or after the date of effect of the declaration."]

[In the Draft, there are no provisions corresponding to paragraphs (3), (4), (5), (6) and (7).]

(ii) 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;

(iii) a complementary fee for any request for extension of protection under Article 3ter.

(3) However, the supplementary fee specified in paragraph (2)(ii) may, without prejudice to the date of the international registration, be paid within the 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 expiry 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 international application shall be deemed to have been abandoned.

(4) The annual product of the various receipts from international registration, with the exception of the receipts derived from the fees mentioned in paragraph (2)(ii) and (iii), shall be divided equally among the Contracting Parties by the International Bureau, after deduction of the expenses and charges necessitated by the implementation of this Protocol.

(5) The amounts derived from the supplementary fees provided for in paragraph (2)(ii) shall be divided, at the expiry of each year, among the interested Contracting Parties 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 Contracting Parties which make an examination, by a coefficient which shall be determined by the Regulations.

(6) The amounts derived from the complementary fees provided for in paragraph (2)(iii) shall be divided according to the same rules as those provided for in paragraph (5).

(7)(a) Any Contracting Party may declare that, in connection with each international registration in which it is mentioned under Article 3ter, and in connection with the renewal of any such international registration, it wants to receive, instead of a share in the revenue produced by the supplementary and complementary fees, a fee (hereinafter referred to as "the individual fee") whose amount shall be indicated in the declaration, and can be changed

Article 9

RECORDAL OF CHANGE IN THE OWNERSHIP OF AN INTERNATIONAL REGISTRATION

[Same as in the Final Text, except that, in the Draft, the words corresponding to the words "At the request of the person in whose name the international registration stands, or at the request of an interested Office made ex officio or at the request of an interested person," appearing in the Final Text read as follows: "At the request of the person in whose name the international registration stands or of an interested Office," and the words "of this Protocol" appear after the words "under Article 2(1)."]

Article 9bisRECORDAL OF CERTAIN MATTERS CONCERNING
AN INTERNATIONAL REGISTRATION

[Same as in the Final Text, except that, in the Draft relating to item (v), the words corresponding to the words "is the subject of an international registration" appearing in the Final Text read as follows: "is the subject matter of an international registration."]

in further declarations, but may not be higher than the equivalent of the amount which the said Contracting Party's Office would be entitled to receive from an applicant for a ten-year registration, or from the holder of a registration for a ten-year renewal of that registration, of the mark in the register of the said Office, the said amount being diminished by the savings resulting from the international procedure. Where such an individual fee is payable,

(i) no supplementary fees referred to in paragraph (2)(ii) shall be payable if only Contracting Parties which have made a declaration under this subparagraph are mentioned under Article 3ter, and

(ii) no complementary fee referred to in paragraph (2)(iii) shall be payable in respect of any Contracting Party which has made a declaration under this subparagraph.

(b) Any declaration under subparagraph (a) may be made in the instruments referred to in Article 14(2), and the effective date of the declaration shall be the same as the date of entry into force of this Protocol with respect to the State or intergovernmental organization having made the declaration. Any such declaration may also be made later, in which case the declaration shall have effect three months after its receipt by the Director General, or at any later date indicated in the declaration, in respect of any international registration whose date is the same as or is later than the effective date of the declaration.

Article 9

RECORDAL OF CHANGE IN THE OWNERSHIP OF AN INTERNATIONAL REGISTRATION

At the request of the person in whose name the international registration stands, or at the request of an interested Office made ex officio or at the request of an interested person, the International Bureau shall record in the International Register any change in the ownership of that registration, in respect of all or some of the Contracting Parties in whose territories the said registration has effect and in respect of all or some of the goods and services listed in the registration, provided that the new holder is a person who, under Article 2(1), is entitled to file international applications.

Article 9bis

RECORDAL OF CERTAIN MATTERS CONCERNING AN INTERNATIONAL REGISTRATION

The International Bureau shall record in the International Register

(i) any change in the name or address of the holder of the international registration,

(ii) the appointment of a representative of the holder of the international registration and any other relevant fact concerning such representative,

(iii) any limitation, in respect of all or some of the Contracting Parties, of the goods and services listed in the international registration,

Article 9ter

FEES FOR CERTAIN RECORDALS

[Same as in the Final Text, except that, in the Draft, the words "of this Protocol" appear after the words "Article 9bis."]]

Article 9quater

COMMON OFFICE OF SEVERAL CONTRACTING STATES

[The text of the Draft reads as follows: "Article 9quater of the Madrid (Stockholm) Agreement shall apply mutatis mutandis."]]

Article 9quinquiesTRANSFORMATION OF AN INTERNATIONAL REGISTRATION
INTO NATIONAL OR REGIONAL APPLICATIONS

[Same as in the Final Text, except that, in the Draft, the words corresponding to the words "Where, in the event that the international registration is cancelled at the request of the Office of origin under Article 6(4), in respect of all or some of the goods and services listed in the said registration" appearing in the Final Text read as follows: "Where, in case the international registration is cancelled at the request of the Office of origin under Article 6(4) of this Protocol [or in case the international registration is cancelled for any other reason]," and that the words corresponding to the words "according to Article 3(4) or on the date of recordal of the territorial extension according to Article 3ter(2) and" appearing in the Final Text read as follows: "according to Article 3(4) of this Protocol and."]]

(iv) any renunciation, cancellation or invalidation of the international registration in respect of all or some of the Contracting Parties,

(v) any other relevant fact, identified in the Regulations, concerning the rights in a mark that is the subject of an international registration.

Article 9ter

FEES FOR CERTAIN RECORDALS

Any recordal under Article 9 or under Article 9bis may be subject to the payment of a fee.

Article 9quater

COMMON OFFICE OF SEVERAL CONTRACTING STATES

(1) If several Contracting States agree to effect the unification of their domestic legislations on marks, they may notify the Director General

(i) that a common Office shall be substituted for the national Office of each of them, and

(ii) that the whole of their respective territories shall be deemed to be a single State for the purposes of the application of all or part of the provisions preceding this Article as well as the provisions of Articles 9quinquies and 9sexies.

(2) Such notification shall not take effect until three months after the date of the communication thereof by the Director General to the other Contracting Parties.

Article 9quinquies

TRANSFORMATION OF AN INTERNATIONAL REGISTRATION INTO NATIONAL OR REGIONAL APPLICATIONS

Where, in the event that the international registration is cancelled at the request of the Office of origin under Article 6(4), in respect of all or some of the goods and services listed in the said registration, the person who was the holder of the international registration files an application for the registration of the same mark with the Office of any of the Contracting Parties in the territory of which the international registration had effect, that application shall be treated as if it had been filed on the date of the international registration according to Article 3(4) or on the date of recordal of the territorial extension according to Article 3ter(2) and, if the international registration enjoyed priority, shall enjoy the same priority, provided that

Article 9sexies

SAFEGUARD OF THE MADRID (STOCKHOLM) AGREEMENT

[Same as paragraph (1) in the Final Text, except that, in the Draft, at the end of the provision the words "and, consequently, no request for territorial extension can be made, under Article 3ter(1) or (2) of this Protocol, with respect to any such State" appear.]

[In the Draft, there is no provision corresponding to paragraph (2).]

Article 10

ASSEMBLY

[The text of the Draft reads as follows: "Article 10 of the Madrid (Stockholm) Agreement shall apply mutatis mutandis, it being understood

(i) that Contracting States, even where they are not party to the Madrid (Stockholm) Agreement, and Contracting Organizations shall be members of the same Assembly of which countries party to the Madrid (Stockholm) Agreement are members;

(ii) that, on matters concerning only countries that are party to the Madrid (Stockholm) Agreement without being Contracting States, Contracting States that are not party to the Madrid (Stockholm) Agreement and Contracting Organizations shall not vote in the Assembly, whereas, on matters concerning only Contracting Parties, only the latter shall vote in the Assembly."]

(i) such application is filed within three months from the date on which the international registration was cancelled,

(ii) the goods and services listed in the application are in fact covered by the list of goods and services contained in the international registration in respect of the Contracting Party concerned, and

(iii) such application complies with all the requirements of the applicable law, including the requirements concerning fees.

Article 9^{sexies}

SAFEGUARD OF THE MADRID (STOCKHOLM) AGREEMENT

(1) Where, with regard to a given international application or a given international registration, the Office of origin is the Office of a State that is party to both this Protocol and the Madrid (Stockholm) Agreement, the provisions of this Protocol shall have no effect in the territory of any other State that is also party to both this Protocol and the Madrid (Stockholm) Agreement.

(2) The Assembly may, by a three-fourths majority, repeal paragraph (1), or restrict the scope of paragraph (1), after the expiry of a period of ten years from the entry into force of this Protocol, but not before the expiry of a period of five years from the date on which the majority of the countries party to the Madrid (Stockholm) Agreement have become party to this Protocol. In the vote of the Assembly, only those States which are party to both the said Agreement and this Protocol shall have the right to participate.

Article 10

ASSEMBLY

(1)(a) The Contracting Parties shall be members of the same Assembly as the countries party to the Madrid (Stockholm) Agreement.

(b) Each Contracting Party shall be represented in that Assembly by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(c) The expenses of each delegation shall be borne by the Contracting Party which has appointed it, except for the travel expenses and the subsistence allowance of one delegate for each Contracting Party, which shall be paid from the funds of the Union.

(2) The Assembly shall, in addition to the functions which it has under the Madrid (Stockholm) Agreement, also

(i) deal with all matters concerning the implementation of this Protocol;

(ii) give directions to the International Bureau concerning the preparation for conferences of revision of this Protocol, due account being taken of any comments made by those countries of the Union which are not party to this Protocol;

(iii) adopt and modify the provisions of the Regulations concerning the implementation of this Protocol;

(iv) perform such other functions as are appropriate under this Protocol.

(3)(a) Each Contracting Party shall have one vote in the Assembly. On matters concerning only countries that are party to the Madrid (Stockholm) Agreement, Contracting Parties that are not party to the said Agreement shall not have the right to vote, whereas, on matters concerning only Contracting Parties, only the latter shall have the right to vote.

(b) One-half of the members of the Assembly which have the right to vote on a given matter shall constitute the quorum for the purposes of the vote on that matter.

(c) Notwithstanding the provisions of subparagraph (b), if, in any session, the number of the members of the Assembly having the right to vote on a given matter which are represented is less than one-half but equal to or more than one-third of the members of the Assembly having the right to vote on that matter, 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 members of the Assembly having the right to vote on the said matter 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 expiry of this period, the number of such members having thus expressed their vote or abstention attains the number of the members 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 Articles 5(2)(e), 9sexies(2), 12 and 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 member of the Assembly only.

(4) In addition to meeting in ordinary sessions and extraordinary sessions as provided for by the Madrid (Stockholm) Agreement, the Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of one-fourth of the members of the Assembly having the right to vote on the matters proposed to be included in the agenda of the session. The agenda of such an extraordinary session shall be prepared by the Director General.

Article 11

INTERNATIONAL BUREAU

[The text of the Draft reads as follows: "Article 11 of the Madrid (Stockholm) Agreement shall apply mutatis mutandis."]]

Article 12

FINANCES

[The text of the Draft reads as follows: "Article 12 of the Madrid (Stockholm) Agreement shall apply mutatis mutandis, provided that, for the purposes of paragraph (6) of the said Article, any Contracting Organization shall, subject to a unanimous decision to the contrary by the Assembly, be considered to belong to contribution class I (one) under the Paris Convention for the Protection of Industrial Property."]

Article 13

AMENDMENT OF CERTAIN ARTICLES OF THIS PROTOCOL

[The text of the Draft reads as follows: "Article 13 of the Madrid (Stockholm) Agreement shall apply, mutatis mutandis, to the amendment of Articles 10, 11, 12 and the present Article of this Protocol."]

Article 11

INTERNATIONAL BUREAU

(1) International registration and related duties, as well as all other administrative tasks, under or concerning this Protocol, shall be performed by the International Bureau.

(2)(a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for the conferences of revision of this Protocol.

(b) The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for such conferences of revision.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at such conferences of revision.

(3) The International Bureau shall carry out any other tasks assigned to it in relation to this Protocol.

Article 12

FINANCES

As far as Contracting Parties are concerned, the finances of the Union shall be governed by the same provisions as those contained in Article 12 of the Madrid (Stockholm) Agreement, provided that any reference to Article 8 of the said Agreement shall be deemed to be a reference to Article 8 of this Protocol. Furthermore, for the purposes of Article 12(6)(b) of the said Agreement, Contracting Organizations shall, subject to a unanimous decision to the contrary by the Assembly, be considered to belong to contribution class I (one) under the Paris Convention for the Protection of Industrial Property.

Article 13

AMENDMENT OF CERTAIN ARTICLES OF THE PROTOCOL

(1) Proposals for the amendment of Articles 10, 11, 12, and the present Article, may be initiated by any Contracting Party, or by the Director General. Such proposals shall be communicated by the Director General to the Contracting Parties 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.

Article 14

[In the Draft, the title of this Article reads as follows:
"Ratification and Accession; Entry into Force"]

(1)(a) [Same as in the Final Text.]

(b) [Same as in the Final Text.]

(i) [Same as in the Final Text.]

(ii) [The text of the Draft reads as follows: "that organization has a regional Office for the purposes of registering marks with effect in all States members of such organization, provided that such Office is not a common Office within the meaning of Article 9 quater of this Protocol."]

(2) [Same as in the Final Text, except that, in the Draft, the words corresponding to the words "an instrument of ratification, acceptance or approval of this Protocol" appearing in the Final Text read as follows: "an instrument of ratification, acceptance, approval or formal confirmation of this Protocol."]

(3) [Same as in the Final Text.]

(4)(a) [Same as in the Final Text, except that, in the Draft, the words "formal confirmation" appear between the words "approval," and "or accession" and that the words corresponding to the words "by a country party to the Madrid (Stockholm) Agreement and at least one other of those" appearing in the Final Text read as follows: "by a State party to the Madrid (Stockholm) Agreement and at least one of those."]

(b) [Same as in the Final Text, except that, in the Draft, the words "formal confirmation" appear between the words "approval," and "or accession."]

(5) [Same as in the Final Text, except that, in the Draft, the words "or formal confirmation" appear between the words "approval" and "of, or accession to."]

(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 those States and intergovernmental organizations which, at the time the amendment was adopted, were members of the Assembly and had the right to vote on the amendment. Any amendment to the said Articles thus accepted shall bind all the States and intergovernmental organizations which are Contracting Parties at the time the amendment enters into force, or which become Contracting Parties at a subsequent date.

Article 14

BECOMING PARTY TO THE PROTOCOL; ENTRY INTO FORCE

(1)(a) Any State that is a party to the Paris Convention for the Protection of Industrial Property may become party to this Protocol.

(b) Furthermore, any intergovernmental organization may also become party to this Protocol where the following conditions are fulfilled:

(i) at least one of the member States of that organization is a party to the Paris Convention for the Protection of Industrial Property;

(ii) that organization has a regional Office for the purposes of registering marks with effect in the territory of the organization, provided that such Office is not the subject of a notification under Article 9quater.

(2) Any State or organization referred to in paragraph (1) may sign this Protocol. Any such State or organization may, if it has signed this Protocol, deposit an instrument of ratification, acceptance or approval of this Protocol or, if it has not signed this Protocol, deposit an instrument of accession to this Protocol.

(3) The instruments referred to in paragraph (2) shall be deposited with the Director General.

(4)(a) This Protocol shall enter into force three months after four instruments of ratification, acceptance, approval or accession have been deposited, provided that at least one of those instruments has been deposited by a country party to the Madrid (Stockholm) Agreement and at least one other of those instruments has been deposited by a State not party to the Madrid (Stockholm) Agreement or by any of the organizations referred to in paragraph (1)(b).

(b) With respect to any other State or organization referred to in paragraph (1), this Protocol shall enter into force three months after the date on which its ratification, acceptance, approval or accession has been notified by the Director General.

(5) Any State or organization referred to in paragraph (1) may, when depositing its instrument of ratification, acceptance or approval of, or accession to, this Protocol, declare that the protection resulting from any international registration effected under this Protocol before the date of entry into force of this Protocol with respect to it cannot be extended to it.

Article 15

DENUNCIATION

(1) [Same as in the Final Text.]

(2) [Same as in the Final Text.]

(3) [Same as in the Final Text.]

(4) [Same as in the Final Text.]

(5) [The text of the Draft reads as follows: "International marks registered up to the date on which denunciation becomes effective, and not refused within the period applicable under Article 5 of this Protocol, shall continue, until the first renewal or the next renewal, as the case may be, to enjoy the same protection as if they had been registered by the Office of the denouncing party."]

Article 16

SIGNATURE; LANGUAGES; DEPOSITARY FUNCTIONS

(1)(a) [The text of the Draft reads as follows: "This Protocol shall be signed in a single copy in the English and French languages and shall be deposited with the Director General. The texts in the two languages shall be equally authentic."]

Article 15

DENUNCIATION

(1) This Protocol shall remain in force without limitation as to time.

(2) Any Contracting Party may denounce this Protocol by notification addressed to the Director General.

(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 Contracting Party before the expiry of five years from the date upon which this Protocol entered into force with respect to that Contracting Party.

(5)(a) Where a mark is the subject of an international registration having effect in the denouncing State or intergovernmental organization at the date on which the denunciation becomes effective, the holder of such registration may file an application for the registration of the same mark with the Office of the denouncing State or intergovernmental organization, which shall be treated as if it had been filed on the date of the international registration according to Article 3(4) or on the date of recordal of the territorial extension according to Article 3ter(2) and, if the international registration enjoyed priority, enjoy the same priority, provided that

(i) such application is filed within two years from the date on which the denunciation became effective,

(ii) the goods and services listed in the application are in fact covered by the list of goods and services contained in the international registration in respect of the denouncing State or intergovernmental organization, and

(iii) such application complies with all the requirements of the applicable law, including the requirements concerning fees.

(b) The provisions of subparagraph (a) shall also apply in respect of any mark that is the subject of an international registration having effect in Contracting Parties other than the denouncing State or intergovernmental organization at the date on which denunciation becomes effective and whose holder, because of the denunciation, is no longer entitled to file international applications under Article 2(1).

Article 16

SIGNATURE; LANGUAGES; DEPOSITARY FUNCTIONS

(1)(a) This Protocol shall be signed in a single copy in the English, French and Spanish languages, and shall be deposited with the Director General when it ceases to be open for signature at Madrid. The texts in the three languages shall be equally authentic.

(b) [Same as in the Final Text, except that, in the Draft, the words corresponding to the words "German, Italian, Japanese, Portuguese and Russian languages," appearing in the Final text read as follows: "German, Japanese, Portuguese, Russian and Spanish languages."]

(2) [Same as in the Final Text.]

(3) [Same as in the Final Text, except that, in the Draft, the word corresponding to the word "texts" appearing in the Final Text reads "text."]

(4) [Same as in the Final Text.]

(5) [Same as in the Final Text, except that in the Draft, the words "formal confirmation" appear between the words "approval," and "or accession," and the words "and any amendment thereto, any notification of denunciation" do not appear after the words "the entry into force of this Protocol."]

(b) Official texts of this Protocol shall be established by the Director General, after consultation with the interested governments and organizations, in the Arabic, Chinese, German, Italian, Japanese, Portuguese and Russian languages, and in such other languages as the Assembly may designate.

(2) This Protocol shall remain open for signature at Madrid until December 31, 1989.

(3) The Director General shall transmit two copies, certified by the Government of Spain, of the signed texts of this Protocol to all States and intergovernmental organizations that may become party to this Protocol.

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

(5) The Director General shall notify all States and international organizations that may become or are party to this Protocol of signatures, deposits of instruments of ratification, acceptance, approval or accession, the entry into force of this Protocol and any amendment thereto, any notification of denunciation and any declaration provided for in this Protocol.

The following Delegations signed the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks.*

AUSTRIA, December 29, 1989; BELGIUM; DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA; DENMARK; EGYPT; FINLAND, December 27, 1989; FRANCE; GERMAN DEMOCRATIC REPUBLIC; GERMANY (FEDERAL REPUBLIC OF); GREECE, December 13, 1989; HUNGARY; IRELAND, December 21, 1989; ITALY; LIECHTENSTEIN; LUXEMBOURG; MONACO, December 21, 1989; MONGOLIA; MOROCCO; NETHERLANDS, December 27, 1989; PORTUGAL; ROMANIA, December 30, 1989; SENEGAL, December 27, 1989; SOVIET UNION; SPAIN; SWEDEN, December 21, 1989; SWITZERLAND; UNITED KINGDOM; YUGOSLAVIA.

* Editor's Note: All signatures were affixed on June 28, 1989, unless otherwise indicated.

FINAL ACT
OF THE DIPLOMATIC CONFERENCE

FINAL ACT
OF THE
DIPLOMATIC CONFERENCE FOR THE CONCLUSION
OF A PROTOCOL RELATING TO THE MADRID AGREEMENT
CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS

In accordance with the decision made by the Assembly of the Special Union for the International Registration of Marks (Madrid Union) at its eighteenth session, and following preparations initiated and carried out by the World Intellectual Property Organization with the participation of the member States of the Madrid Union, the States members of the European Communities not members of the Madrid Union and the European Communities, the Diplomatic Conference for the Conclusion of a Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks was held from June 12 to 28, 1989, at Madrid.

The Diplomatic Conference adopted the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks which was opened for signature on June 28, 1989.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this final Act:

Austria, Belgium, Bulgaria, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Egypt, France, German Democratic Republic, Germany (Federal Republic of), Greece, Hungary, Ireland, Italy, Liechtenstein, Luxembourg, Mongolia, Morocco, Netherlands, Portugal, Romania, Soviet Union, Spain, Switzerland, United Kingdom, Viet Nam, Yugoslavia, European Communities (28).

CONFERENCE DOCUMENTS

CONFERENCE DOCUMENTS "MM/DC," "MM/DC/DC," and "MM/DC/INF" SERIES

Document Number	Source	Subject
MM/DC/1	The Preparatory Committee for the Diplomatic Conference for the Conclusion of a Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks	Draft Agenda
MM/DC/2	The Preparatory Committee for the Diplomatic Conference for the Conclusion of a Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks	Draft Rules of Procedure
MM/DC/3	The Director General of WIPO	Basic Proposal for the Protocol submitted under Rule 29(1) of the Draft Rules of Procedure
MM/DC/4	The Delegation of Switzerland	Proposal concerning Draft Article 5(2) and (3) of the Protocol
MM/DC/5	The Delegation of the European Communities	Proposal concerning Draft Article 2 of the Protocol
MM/DC/6	The Delegation of the Soviet Union	Proposal concerning Draft Articles 3(1), 3ter(2) and 4 of the Protocol
MM/DC/7	The Delegation of Spain	Proposal concerning Draft Article 4(1)(a) of the Protocol
MM/DC/8	The Director General of WIPO	Suggestion concerning Draft Article 4(1)(a) of the Protocol
MM/DC/9	The Diplomatic Conference	Rules of Procedure. Text adopted by the Diplomatic Conference

Document Number	Source	Subject
MM/DC/10	The Delegation of the European Communities	Proposal concerning Draft Article 8(2)(a) of the Protocol
MM/DC/11	The Delegation of the European Communities	Proposal concerning Draft Article <u>9quinquies</u> of the Protocol
MM/DC/12	The Director General of WIPO	Suggestion concerning Draft Article 6(3) of the Protocol
MM/DC/13	The Delegation of Spain	Proposal concerning Draft Article 9 of the Protocol
MM/DC/14	The Delegation of Spain	Proposal concerning Draft Article 16(1)(a) and (b) of the Protocol
MM/DC/15	The Director General of WIPO	Suggestion concerning Draft Article 6(3) and (4) of the Protocol
MM/DC/16	The Director General of WIPO	Suggestion concerning Draft Article 8(2)(a) of the Protocol
MM/DC/17	The Delegation of the Federal Republic of Germany	Proposal concerning Draft Article 15(5) of the Protocol
MM/DC/18	The Delegation of the European Communities	Proposal concerning Draft Article 5(2)(c), (d) and (e) of the Protocol
MM/DC/19	The Delegation of the European Communities	Proposal concerning Draft Article 14(1)(b)(ii) of the Protocol
MM/DC/20	The Credentials Committee	Report (Prepared by the Secretariat of the Conference)

Document Number	Source	Subject
MM/DC/21	The Delegations of the Federal Republic of Germany and Portugal	Proposal concerning Draft Article 9 ^{sexies} of the Protocol
MM/DC/22	The Assembly of the Madrid Union	Decision (Procedure and Draft proposed by the Chairman of the Assembly of the Madrid Union, also in his capacity of Chairman of the Main Committee of the Diplomatic Conference)
MM/DC/23	The Delegations of Belgium and the Netherlands	Proposal concerning Draft Article 9 ^{sexies} of the Protocol
MM/DC/24	The Director General of WIPO	Suggestion concerning Draft Article 15(5) of the Protocol
MM/DC/25 Rev.	The Secretariat of the Conference	Draft of the Final Act
MM/DC/26	The Drafting Committee	Draft Protocol submitted to the Main Committee
MM/DC/27	The Main Committee	Protocol adopted by the Main Committee
MM/DC/27 Rev.	The Diplomatic Conference	Protocol adopted by the Diplomatic Conference on June 27, 1989
MM/DC/28 Rev.	The Credentials Committee	Second Report (prepared by the Secretariat of the Conference)
MM/DC/29	The Plenary of the Diplomatic Conference	Final Act adopted by the Diplomatic Conference on June 27, 1989
MM/DC/30	The Secretariat of the Conference	Signatures. Memorandum by the Secretariat (Protocol; Final Act)

Document Number	Source	Subject
MM/DC/DC/1	The Secretariat of the Conference	Protocol (Draft Submitted to the Drafting Committee)
MM/DC/INF/1	The Secretariat of the Conference	List of Participants
MM/DC/INF/2 Rev.	The Secretariat of the Conference	Officers and Committees
MM/DC/INF/3	The Director General of WIPO	Address by Dr. Arpad Bogsch, Director General of WIPO, at the Close of the Madrid Diplomatic Conference on June 28, 1989
MM/DC/INF/4	The Secretariat of the Conference	List of Documents of the Diplomatic Conference

MM/DC/1

December 30, 1988 (Original: English)

Source: THE PREPARATORY COMMITTEE

Draft Agenda of the Diplomatic Conference Established by the Preparatory Committee for the Diplomatic Conference for the Conclusion of a Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks

1. Opening of the Conference by the Director General of WIPO
2. Address by the Representative of the Government of Spain
3. Election of the President of the Conference
4. Consideration and adoption of the Rules of Procedure of the Conference
5. Election of the Vice-Presidents of the Conference
6. Consideration and adoption of the agenda of the Conference
7. Election of the members of the Credentials Committee
8. Election of the members of the Drafting Committee
9. Consideration of the first report of the Credentials Committee
10. Opening declarations by Delegations and by Representatives of Observer Organizations
11. Consideration of the texts proposed by the Main Committee
12. Consideration of the second report of the Credentials Committee
13. Adoption of the Protocol
14. Adoption of any recommendation, resolution, agreed statement or final act
15. Closing declarations by Delegations and by Representatives of Observer Organizations
16. Closing of the Conference by the President*

[End]

* Immediately after the closing of the Conference, the Protocol and any final act will be open for signature.

MM/DC/2

December 30, 1988 (Original: English)

Source: THE PREPARATORY COMMITTEE

Draft Rules of Procedure of the Diplomatic Conference* Established by the Preparatory Committee for the Diplomatic Conference for the Conclusion of a Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks

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* These draft Rules of Procedure will apply as provisional Rules of Procedure until the Diplomatic Conference adopts its Rules of Procedure under the relevant item of the agenda. According to Rule 34(1), such adoption requires a majority of two-thirds.

[MM/DC/2, continued]

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CHAPTER I: OBJECTIVE, COMPETENCE, COMPOSITION, SECRETARIAT

Rule 1: Objective and Competence

(1) The objective of the Diplomatic Conference for the Conclusion of a Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (hereinafter referred to as "the Conference") is to negotiate and adopt, on the basis of the draft contained in document MM/DC/3, a Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (hereinafter referred to as "the Protocol").

(2) The Conference, meeting in Plenary, shall be competent to:

(i) adopt these Rules of Procedure (hereinafter referred to as "these Rules") and to make any amendments thereto;

(ii) adopt the agenda of the Conference;

(iii) decide on credentials, full powers, letters or other documents presented in accordance with Rules 6, 7 and 8 of these Rules;

(iv) establish such committees and working groups as are provided for in these Rules;

(v) adopt the Protocol;

(vi) adopt any recommendation or resolution whose subject matter is germane to the Protocol;

(vii) adopt any agreed statements to be included in the Records of the Conference;

(viii) adopt any final act of the Conference;

(ix) deal with all other matters referred to it by these Rules or appearing on its agenda.

Rule 2: Composition

(1) The Conference shall, subject to paragraph (3), consist of:

(i) delegations of the States members of the Special Union for the International Registration of Marks (Madrid Union) and of the States members of the European Communities not members of the Madrid Union,

(ii) delegations of the States members of the International (Paris) Union for the Protection of Industrial Property other than those referred to in item (i),

(iii) representatives of intergovernmental and non-governmental organizations invited to the Conference.

[MM/DC/2, continued]

(2) Hereinafter, delegations referred to in paragraph (1)(i) are called "Member Delegations," delegations referred to in paragraph (1)(ii) are called "Observer Delegations," and representatives of organizations referred to in paragraph (1)(iii) are called "representatives of Observer Organizations." The term "Delegations," as hereinafter used, shall, unless otherwise expressly indicated, include Member Delegations and Observer Delegations. The term "Delegations" does not include the representatives of Observer Organizations.

(3) The Delegation of the European Communities shall have the status of a Member Delegation.

(4) The Conference may invite to one or more of its meetings any person whose technical advice it may consider useful for its work.

Rule 3: Secretariat

(1) The Conference shall have a Secretariat provided by the International Bureau of WIPO (hereinafter referred to as "the International Bureau").

(2) The Director General of WIPO and any official of the International Bureau designated by the Director General of WIPO may participate in the discussions of the Conference, meeting in Plenary, as well as in any committee or working group thereof and may make oral or written statements, observations or suggestions to the Conference, meeting in Plenary, and any committee or working group thereof concerning any question under consideration.

(3) The Director General of WIPO shall, from among the staff of the International Bureau, designate the Secretary of the Conference and a Secretary for each committee and for each working group.

(4) The Secretary of the Conference shall direct the staff required by the Conference.

(5) The Secretariat shall provide for the receiving, translation, reproduction and distribution of the required documents; the interpretation of oral interventions; and the performance of all other secretarial work required for the Conference.

(6) The Director General of WIPO shall be responsible for the custody and preservation in the archives of WIPO of all documents of the Conference. The International Bureau shall distribute the final documents of the Conference after the Conference.

CHAPTER II: REPRESENTATION

Rule 4: Composition Of Delegations

Each Delegation shall consist of one or more delegates and may include alternate delegates and advisors. Each Delegation shall have a Head of Delegation and may have an Alternate or Deputy Head of Delegation.

[MM/DC/2, continued]

Rule 5: Representatives of Observer Organizations

An Observer Organization may be represented by one or more representatives.

Rule 6: Credentials and Full Powers

(1) Each Delegation shall present credentials.

(2) Official full powers shall be required for signing the Protocol. Such powers may be included in the credentials.

Rule 7: Letters of Appointment

The representatives of Observer Organizations shall present a letter or other document appointing them.

Rule 8: Presentation of Credentials, etc.

The credentials and full powers referred to in Rule 6 and the letters or other documents referred to in Rule 7 shall be presented to the Secretary of the Conference, if possible not later than twenty-four hours after the opening of the Conference.

Rule 9: Examination of Credentials, etc.

(1) The Credentials Committee referred to in Rule 11 shall examine the credentials, full powers, letters or other documents referred to in Rules 6 and 7, respectively, and shall report to the Conference, meeting in Plenary.

(2) The final decision on the said credentials, full powers, letters or other documents shall be within the competence of the Conference, meeting in Plenary. Such decision shall be made as soon as possible and in any case before the adoption of the Protocol.

Rule 10: Provisional Participation

Pending a decision upon their credentials, letters or other documents of appointment, Delegations and representatives of Observer Organizations shall be entitled to participate provisionally in the deliberations of the Conference as provided in these Rules.

CHAPTER III: COMMITTEES AND WORKING GROUPS

Rule 11: Credentials Committee

(1) The Conference shall have a Credentials Committee.

[MM/DC/2, continued]

(2) The Credentials Committee shall consist of five members elected by the Conference, meeting in Plenary, from among the Member Delegations.

Rule 12: Main Committee and Working Groups

(1) The Conference shall have a Main Committee. The Main Committee shall consist of all the Member Delegations. It shall be responsible for proposing for adoption by the Conference, meeting in Plenary, the Protocol and any recommendation, resolution or agreed statement referred to in Rule 1(2)(vi) and (vii).

(2) The Main Committee may establish such working groups as it deems useful. In establishing them, it shall define their tasks. The number of the members of any working group shall be decided by the Main Committee, which shall elect them from among the Member Delegations.

Rule 13: Drafting Committee

(1) The Conference shall have a Drafting Committee.

(2) The Drafting Committee shall consist of six members elected by the Conference, meeting in Plenary, from among the Member Delegations, as well as, ex officio, the Chairman of the Main Committee.

(3) The Drafting Committee shall prepare drafts and give advice on drafting as requested by the Main Committee. The Drafting Committee shall not alter the substance of texts submitted to it, but shall coordinate and review the drafting of all texts approved by the Main Committee, and shall submit the texts so reviewed for final approval to the Main Committee.

Rule 14: Steering Committee

(1) The Steering Committee of the Conference shall consist of the President of the Conference, the Chairman of the Credentials Committee, the Chairman of the Main Committee and the Chairman of the Drafting Committee. Its meetings shall be chaired by the President of the Conference and, in his absence, by the Chairman of the Main Committee.

(2) The Steering Committee shall meet from time to time to review the progress of the Conference and to make decisions for furthering such progress, including, in particular, decisions on the coordinating of the meetings of the Plenary, the committees and the working groups.

(3) The Steering Committee shall propose for adoption by the Conference, meeting in Plenary, the text of any final act of the Conference.

CHAPTER IV: OFFICERS

Rule 15: Officers

(1) The Conference, meeting in Plenary and presided over by the Director General of WIPO, shall elect its President, and, presided over by its President, shall elect six Vice-Presidents.

[MM/DC/2, continued]

(2) The Credentials Committee, the Main Committee and the Drafting Committee shall each have a Chairman and two Vice-Chairmen.

(3) Each of the bodies mentioned in paragraphs (1) and (2) shall elect its officers from among the delegates of States whose Delegations are its members. The Main Committee shall elect the officers of any working group.

(4) Precedence among the Vice-Presidents or Vice-Chairmen of a given body shall depend on the place occupied by the name of the State of each of them in the list of Member Delegations established in the French alphabetical order, beginning with the name of the State drawn by lot by the President of the Conference.

Rule 16: Acting President or Acting Chairman

(1) If the President of the Conference or any Chairman is absent from any meeting of the body (the Conference, meeting in Plenary, the committee or working group) to be chaired by him, such meeting shall be presided over, as Acting President or Acting Chairman, by that Vice-President or Vice-Chairman of that body who, among the Vice-Presidents or Vice-Chairmen present, has precedence over the others.

(2) If all the officers of a body are absent from any meeting of that body (Conference, meeting in Plenary, committee or working group), an Acting President or Acting Chairman, as the case may be, shall be elected by that body.

Rule 17: Replacement of President or Chairman

If, for the rest of the duration of the Conference, the President or any Chairman is unable to perform his functions, a new President or Chairman shall be elected.

Rule 18: Vote by Presiding Officer

(1) No President or Chairman, whether elected as such or Acting (hereinafter referred to as "the Presiding Officer"), shall vote. Another member of his Delegation may vote in the name of his Delegation.

(2) Where the Presiding Officer is the only member of his Delegation, he may vote, but only after all other Delegations have voted.

CHAPTER V: CONDUCT OF BUSINESS

Rule 19: Quorum

(1) A quorum shall be required in the Conference, meeting in Plenary, and shall be constituted by one-half of the Member Delegations participating in the Conference.

[MM/DC/2, continued]

(2) A quorum shall not be required in the meetings of committees and working groups.

Rule 20: General Powers of the Presiding Officer

(1) In addition to exercising the powers conferred upon him elsewhere by these Rules, the Presiding Officer shall declare the opening and closing of the meetings, direct the discussions, accord the right to speak, put questions to the vote, and announce decisions. He shall rule on points of order and, subject to these Rules, shall have complete control of the proceedings at any meeting and over the maintenance of order thereat.

(2) The Presiding Officer may propose to the meeting the limiting of time to be allowed to speakers, the limitation of the number of times each Delegation may speak on any question, the closure of the list of speakers, or the closure of the debate. He may also propose the suspension or the adjournment of the meeting, or the adjournment of the debate on the question under discussion. Such proposals of the Presiding Officer shall be considered as adopted unless immediately rejected.

Rule 21: Speeches

(1) No person may speak without having previously obtained the permission of the Presiding Officer. Subject to Rules 22 and 23, the Presiding Officer shall call upon speakers in the order in which they signify their desire to speak.

(2) The Presiding Officer may call a speaker to order if his remarks are not relevant to the subject under discussion.

Rule 22: Precedence

(1) Member Delegations asking for the floor shall generally be accorded precedence over Observer Delegations asking for the floor, and either shall generally be accorded precedence over representatives of Observer Organizations.

(2) The Chairman of a committee or working group may be accorded precedence during discussions relating to the work of his committee or working group.

(3) The Director General of WIPO or his representative may be accorded precedence for making statements, observations or suggestions.

Rule 23: Points of Order

(1) During the discussion of any matter, any Member Delegation may rise to a point of order, and the point of order shall be immediately decided by the Presiding Officer in accordance with these Rules. Any Member Delegation may appeal against the ruling of the Presiding Officer. The appeal shall be immediately put to the vote, and the Presiding Officer's ruling shall stand unless the appeal is approved.

[MM/DC/2, continued]

(2) A Member Delegation which under paragraph (1) rises to a point of order may not speak on the substance of the matter under discussion.

Rule 24: Limit on Speeches

In any meeting, it may be decided to limit the time to be allowed to each speaker and the number of times each Delegation or representative of an Observer Organization may speak on any question. When the debate is limited and a Delegation or a representative of an Observer Organization has used up its allotted time, the Presiding Officer shall call it to order without delay.

Rule 25: Closing of List of Speakers

(1) During the discussion of any given question, the Presiding Officer may announce the list of participants who have signified their wish to speak and decide to close the list as to that question. The Presiding Officer may nevertheless accord the right of reply to any speaker if a speech, delivered after he has decided to close the list of speakers, makes it desirable.

(2) Any decision made by the Presiding Officer under paragraph (1) may be the subject of an appeal according to the provisions of Rule 23.

Rule 26: Adjournment or Closure of Debate

Any Member Delegation may at any time move the adjournment or closure of the debate on the question under discussion, whether or not any other participant has signified his wish to speak. In addition to the proposer of the motion to adjourn or close the debate, permission to speak on that motion shall be accorded to one Member Delegation supporting and two Member Delegations opposing it, after which the motion shall immediately be put to the vote. The Presiding Officer may limit the time allowed to speakers under this Rule.

Rule 27: Suspension or Adjournment of the Meeting

During the discussion of any matter, any Member Delegation may move the suspension or the adjournment of the meeting. Such motions shall not be debated, but shall immediately be put to the vote.

Rule 28: Order of Procedural Motions; Content of Interventions on Such Motions

(1) Subject to Rule 23, the following motions shall have precedence in the following order over all other proposals or motions before the meeting:

- (i) to suspend the meeting,
- (ii) to adjourn the meeting,
- (iii) to adjourn the debate on the question under discussion,
- (iv) to close the debate on the question under discussion.

[MM/DC/2, continued]

(2) Any Member Delegation which has been given the floor on a procedural motion may only speak on that motion and may not speak on the substance of the matter under discussion.

Rule 29: Basic Proposal and Proposals for Amendment

(1) Document MM/DC/3 shall constitute the basis of the discussions in the Conference ("basic proposal").

(2) Any Member Delegation may propose amendments to the basic proposal.

(3) Proposals for amendment shall, as a rule, be submitted in writing and handed to the Secretary of the competent body (the Conference, meeting in Plenary, the committee or working group). The Secretariat shall distribute copies to the Delegations and the representatives of Observer Organizations represented in the body concerned. As a general rule, a proposal for amendment shall be considered and discussed or put to the vote in any meeting only if copies of it have been distributed at least three hours before it is called up for consideration. The Presiding Officer may, however, permit the consideration and discussion of a proposal for amendment even though copies have not been distributed or have been distributed less than three hours before it is called up for consideration.

Rule 30: Decisions on Competence

(1) If any Member Delegation moves that a proposal, duly seconded, should not be considered by the Conference because it is outside the competence of the Conference, such a motion shall be decided by the Conference, meeting in Plenary, and shall be put to the vote before the proposal is called up for discussion.

(2) If the motion referred to in paragraph (1) is made in a body other than the Conference, meeting in Plenary, it shall be referred for decision to the Conference, meeting in Plenary.

Rule 31: Withdrawal of Procedural Motions and Proposals for Amendment

Any procedural motion and any proposal for amendment may be withdrawn by the Member Delegation which has made it, at any time before voting on it has commenced, provided that no amendment to that motion or proposal has been proposed by another Member Delegation. Any motion or proposal which has thus been withdrawn may be reintroduced by any other Member Delegation.

Rule 32: Reconsideration of Matters Decided

When any matter has been decided by a body (the Conference, meeting in Plenary, a committee or working group), it may not be reconsidered by that body, unless so decided by the majority applicable under Rule 34(1)(iii). In addition to the proposer of the motion to reconsider, permission to speak on that motion shall be accorded only to one Member Delegation seconding and two Member Delegations opposing the motion, after which the motion shall immediately be put to the vote.

[MM/DC/2, continued]

CHAPTER VI: VOTING

Rule 33: Right to Vote

Each Member Delegation shall have the right to vote. A Member Delegation shall have one vote, shall represent only itself and shall vote only in its own name.

Rule 34: Required Majorities

(1) All decisions of all bodies (the Conference, meeting in Plenary, the committees and working groups) shall require a simple majority, except that the following decisions shall require a majority of two-thirds:

- (i) adoption of these Rules,
- (ii) adoption of any amendments to these Rules, and
- (iii) decision to reconsider, under Rule 32, a matter decided.

(2) In determining whether the required majority has been attained, only affirmative and negative votes shall be counted, and express abstentions, non-voting or absence during the vote shall not be counted.

Rule 35: Requirement of Seconding; Method of Voting

(1) Any proposal for amendment made by a Member Delegation shall be put to a vote only if it is seconded by at least one other Member Delegation.

(2) Voting on any question shall be by show of hands unless any Member Delegation, supported by at least one other Member Delegation, requests a roll-call, in which case it shall be by roll-call. The roll shall be called in the French alphabetical order of the names of the States, beginning with the State whose name is drawn by lot by the Presiding Officer. The Delegation of the European Communities shall be called after the Delegations of States have been called.

Rule 36: Conduct During Voting

(1) After the Presiding Officer has announced the beginning of voting, the voting shall not be interrupted except on a point of order concerning the actual conduct of the voting.

(2) The Presiding Officer may permit any Member Delegation to explain its vote or abstention either before or after the voting.

Rule 37: Division of Proposals

Any Member Delegation may move that parts of the basic proposal or of any proposal for amendment be voted upon separately. If objection is made to the request for division, the motion for division shall be put to a vote. In addition to the proposer of the motion for division, permission to speak on that motion shall be given only to one Member Delegation in favor and two Member Delegations against. If the motion for division is carried, all parts

[MM/DC/2, continued]

separately approved shall again be put to the vote, together, as a whole. If all operative parts of the basic proposal or of a proposal for amendment have been rejected, the basic proposal or the proposal for amendment shall be considered to have been rejected as a whole.

Rule 38: Voting on Proposals for Amendment

Any proposal for amendment shall be voted upon before voting upon the text to which it relates. Proposals for amendment relating to the same text shall be put to a vote in the order in which their substance is removed from the said text, the furthest removed being put to a vote first and the least removed being put to a vote last. If, however, the adoption of any proposal for amendment necessarily implies the rejection of any other proposal for amendment or of the original text, such other proposal or the original text shall not be put to the vote. If one or more proposals for amendment relating to the same text are adopted, the text as amended shall be put to a vote. Any proposal to add to, or delete from, a text shall be considered a proposal for amendment.

Rule 39: Voting on Proposals on the Same Question

Subject to Rule 38, where two or more proposals relate to the same question, the body (the Conference, meeting in Plenary, the committee or working group) concerned shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted.

Rule 40: Equally Divided Votes

(1) If a vote is equally divided on matters that require adoption by simple majority other than elections of officers, the proposal shall be regarded as rejected.

(2) If a vote is equally divided on a proposal for electing a given person as an officer, the vote shall be repeated if the nomination is maintained until either that nomination is adopted or rejected or another person is elected for the position in question.

CHAPTER VII: LANGUAGES AND MINUTES

Rule 41: Languages of Oral Interventions

(1)(a) Subject to paragraph (2), oral interventions made in the Plenary meetings of the Conference and in the meetings of the Main Committee shall be made in Arabic, English, French, Russian or Spanish, and interpretation shall be provided by the Secretariat into the other four languages.

(b) Subject to paragraph (2), oral interventions made in the meetings of any committee other than the Main Committee and in the meetings of any working group shall be made in English, French or Spanish, and interpretation shall be provided by the Secretariat into the other two languages.

[MM/DC/2, continued]

(2) Any Delegation may make oral interventions in another language, provided its own interpreter simultaneously interprets the interventions, if made in Plenary meetings of the Conference or in meetings of the Main Committee, into Arabic, English, French, Russian or Spanish, or, if made in meetings of any committee other than the Main Committee or in meetings of a working group, into English, French or Spanish. Interpretation into the other of the said languages by the interpreters of the Secretariat may be based on the interpretation given in one of the said languages.

(3) Any committee or working group may, if none of its members objects, decide to waive interpretation or to limit it to fewer languages than those referred to in paragraphs (1) and (2).

Rule 42: Summary Minutes

(1) Provisional summary minutes of the Plenary meetings of the Conference and of the meetings of the Main Committee shall be drawn up by the International Bureau and shall be made available as soon as possible after the closing of the Conference to all speakers, who shall, within two months after the making available of such minutes, inform the International Bureau of any suggestions for changes in the minutes of their own interventions.

(2) The final summary minutes shall be published in due course by the International Bureau.

Rule 43: Languages of Documents and Summary Minutes

(1) Any written proposal shall be presented to the Secretariat in English, French or Spanish. Such proposal shall be distributed by the Secretariat in English, French and Spanish.

(2) Reports of the committees and working groups shall be distributed in English, French and Spanish. Information documents of the Secretariat shall be distributed in English and French.

(3)(a) Provisional summary minutes shall be drawn up in the language used by the speaker if the speaker has used English or French; if the speaker has used another language, his intervention shall be rendered in English or French as may be decided by the International Bureau.

(b) The final summary minutes shall be made available in English and French.

(c) The text of the Protocol and of any recommendation or resolution, agreed statement or final act adopted by the Conference shall be made available in the languages in which it is adopted.

CHAPTER VIII: OPEN AND CLOSED MEETINGS

Rule 44: Meetings of the Conference and of the Main Committee

The Plenary meetings of the Conference and the meetings of the Main Committee shall be open to the public unless the Conference, meeting in Plenary, or the Main Committee, as the case may be, decides otherwise.

[MM/DC/2, continued]

Rule 45: Meetings of Other Committees and of Working Groups

The meetings of any committee other than the Main Committee and the meetings of any working group shall be open only to the members of the committee or working group concerned and the Secretariat.

CHAPTER IX: OBSERVERS

Rule 46: Observers

(1) Observer Delegations and representatives of Observer Organizations may attend the Plenary meetings of the Conference and the meetings of the Main Committee.

(2) Representatives of any Observer Organization may, upon the invitation of the Presiding Officer, make oral statements in the Conference, meeting in Plenary, and in meetings of the Main Committee, on questions within the scope of their activities.

(3) Written statements submitted by Observer Delegations or by representatives of Observer Organizations on subjects for which they have a special competence and which are related to the work of the Conference shall be distributed by the Secretariat to the participants in the quantities and in the languages in which such statements are made available.

CHAPTER X: AMENDMENTS TO THE RULES OF PROCEDURE

Rule 47: Amendments to the Rules of Procedure

With the exception of the present Rule, these Rules may be amended.

CHAPTER XI: FINAL ACT

Rule 48: Final Act

If a final act is adopted, it shall be open for signature by any Member Delegation.

[End]

MM/DC/3

March 10, 1989 (Original: English)

Source: THE DIRECTOR GENERAL OF WIPO

Basic Proposal for the Protocol

Editor's Note: This document contains the text of the Draft Protocol and the Notes referring to it. In the following, only the Notes to the Draft Protocol are reproduced, including the first part of the Notes entitled "Introductory Observations." The text of the Draft Protocol, when it differs from the final Text of the Protocol as adopted by the Diplomatic Conference, is reproduced in this volume on pages 10 to 44 (even numbers).

Introductory Observations

1. The international registration of marks (trademarks and service marks) under the Madrid Agreement is a well-functioning, almost 100 years old system.
2. Under the Madrid system--as it is today (Stockholm Act of 1967)--the owner of a registration in the national register of marks of his home country can obtain an international registration with the International Bureau of WIPO in Geneva. That international registration has an effect in all the member countries of the Madrid Union which the owner designates to that effect. True, any of the designated countries may refuse such an effect, but only on the same grounds on which it can refuse registrations in its national register and within the limits established by the Paris Convention; but it can do so--and this is important--only within one year from the date of the international registration. Also, if the national registration on which the international registration is based is cancelled within the first five years, the effect of the international registration is lost ("central attack"). But such occurrences are rare, so that most of the international registrations remain valid in most of the designated countries. All those which do remain so valid can then be renewed any number of times every 20 years through the simple payment of the required fees to the International Bureau. The amounts of both the registration and the renewal fees are set by the Assembly of the member States of the Madrid Union, and they are less per designated country than the average amount of the fees that must be paid for national registrations and renewals.
3. It is a pity that this truly useful and well-functioning system--presently used for some 13,000 registrations (corresponding to some 110,000 national registrations) and 4,500 renewals (corresponding to some 45,000 "national" renewals) per year--is accepted only by 27 countries. The Madrid system is open to any country of the Paris Union. There are 99 of them. In other words, 72 countries are still outside the system, and, among them, there are countries with a very high number of national registrations, such as Argentina, Australia, Brazil, Canada, China, Japan, the United Kingdom and the United States of America. Why are these countries not joining the Madrid system? There seem to be four main reasons. They are the following:

[MM/DC/3, continued]

(i) In the present Madrid system, international registrations must be based on national registrations. In many countries not members of the Madrid Union, obtaining a national registration may require more time than is acceptable for an applicant wishing to obtain promptly protection for his mark abroad. Furthermore, registration proceedings last more than six months in many countries not members of the Madrid Union; when they do, by the time the international application can be filed, the six-month priority period is exceeded and the priority is lost.

(ii) In the present Madrid system, the time limit for refusing the effect of the international registration by a designated Office is one year. In many countries not members of the Madrid Union, one year is considered to be too short, particularly in countries which carry out extensive examination and where applications must be published for possible opposition by third parties.

(iii) In the present system, the amount of the fees that reach, for each designation, a national office, is generally less than the amount that office receives under its own fee system. Many countries not members of the Madrid Union find this difficult, if not impossible, to accept.

(iv) In the present system, the central attack may lead to unjust results as it does when the national registration (which is the basis of the international registration) is cancelled (within the first five years) for reasons that are valid only in the country of that national registration and are not at all valid in the designated countries. Owners of marks in many countries not members of the Madrid Union seem not to be ready to accept such unjust results.

4. These impediments for certain countries to becoming a member of the Madrid system should be removed so that they, too, could adhere to the system. The removal of those impediments is the FIRST OBJECTIVE of the Protocol. But since the present members of the Madrid Union seem to be fully satisfied with the system as it is today, the changes in the system should apply only in the relations between new members and old members, and between new members, and should not apply between old members. (This is called "the safeguard clause"; it is contained in Article 9sexies.)

5. This is why the changes proposed to the Madrid system will take not the form of a revision of the Madrid Agreement (which would apply in all the relations of all (old and new) members), but the form of a Protocol that leaves the present Madrid Agreement intact.

6. In order to remove the four main impediments outlined above, the Protocol does the following:

(i) The Protocol allows that international registrations be based on national applications (and not only on national registrations) (Article 2(1)(a)).

(ii) The Protocol allows 18 months (instead of one year) for refusals and an even longer period in the case of oppositions (Article 5).

(iii) The Protocol provides that the national office of a designated country may, if it so desires, receive the full amount (or a substantial percentage of that amount: which of the two, is not decided in the Draft) of the fees that it charges for national registration (instead of the, generally, smaller amount under the present system).

[MM/DC/3, continued]

(iv) The Protocol allows the transformation of a failed international registration--failed, for example, because of central attack--into national applications in each designated country, and such national applications will have the filing date and, where applicable, the priority date of the international registration (Article 9quinquies).

7. As already stated, one of the objectives of the Protocol is to remove certain impediments to a wider acceptance of the Madrid system. In the preparatory work, two Protocols (A and B) were contemplated, and the removal of those impediments--in the ways just indicated--were contained in what was draft Protocol A.

8. But the Protocol has also a second objective. That SECOND OBJECTIVE of the Protocol is usually referred to as "the establishment of a link" between the Madrid system and the future regional trademark system of the European Community, a system which--at the time of the writing of this document--is not yet finalized but whose elements, relevant to the establishment of the link, are known with a high degree of certainty. The Community Trade Mark will be a mark registered in the Community Trade Mark Office, and each registration in that Office will have effect in all the countries (presently 12) of the European Community. The link would mean that a Madrid registration could be based on a Community application or registration and that the European Community could be designated in a Madrid registration. This results from Article 2 of the Protocol. By the way, nowhere does the Protocol mention the European Community by name but it is drafted in a way which permits the establishment of a link not only with the future Community system but also with other similar future systems. Naturally, it is necessary that the texts establishing the Community system provide for parallel provisions, and it is expected that this will be the case. In order to make the participation of the European Community in the Madrid system full and to put the Community Trade Mark Office in exactly the same position as the national offices of the member countries, the Protocol provides that not only States but also certain intergovernmental organizations can become party to the Protocol. The European Community is par excellence such an organization.

9. Offering the possibility to an organization, however important, to become a party to a treaty administered by WIPO is a significant innovation. Such an innovation is a beginning since doubtless other treaties in the field of intellectual property will follow the precedent that the Protocol will create whenever a regional system exists for the protection of intellectual property rights.

10. The four innovations enumerated above will, under the Protocol, apply also to intergovernmental organizations.

11. In the preparatory work, the "link" matter was regulated in what was designated as Protocol B. The draft of Protocol B also included all the innovations contemplated in draft Protocol A.

12. In the last of the meetings preparing the diplomatic conference (December 1988), it was decided that Protocols A and B should be merged. The draft Protocol contained in this document does just that. But it does it in such a way that the Protocol can come into effect and function even if the European Community would, eventually, choose not to establish the Community Trade Mark system or choose not to adhere to the Protocol (see Article 14(4)(a)). Then, of course, the provisions on the "link" would not be

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applied in practice. But all the other provisions, designed to attract new member States, would be operational and applied in practice.

Observations Concerning the
Totality of the Protocol

101. The Draft of the Protocol deals with the various subject matters in the same order as the Stockholm Act (1967) of the Madrid Agreement Concerning the International Registration of Marks. The numbering of the Articles is, subject to seven exceptions, the same in the Protocol as in the Stockholm Act. The exceptions are the following:

- Article 1(2) of the Stockholm Act is merged into Article 2 of the Protocol;

- Articles 9quinquies and 9sexies appear only in the Protocol;

- Article 16 of the Stockholm Act does not appear in the Protocol;

- Article 16 of the Protocol deals with the subject matter which in the Stockholm Act constitutes Article 17;

- Article 18 of the Stockholm Act does not appear in the Protocol;

- Articles 9, 9bis and 9ter of the Protocol, taken together, deal with almost the same matters as the Articles of the same numbers and Article 8bis in the Stockholm Act, but they deal with them in a somewhat different order;

- there is no Article with the number 8bis in the Protocol.

102. The language used in the Protocol follows closely the language of the Stockholm Act.

103. It would have been possible to improve both on the order in which the subject matters are dealt with and on the drafting. It was, however, considered preferable to follow in both respects the Stockholm Act because the text of that Act is familiar to the trademark offices of all the present member States of the Madrid Union and to tens of thousands of users of the Madrid system. Also, because the almost 100-year long application of the oldest provisions--and the more than 20-year long application of even the most recent of the provisions--lead to a generally accepted interpretation of the Madrid Agreement. Finally, language was changed only where necessary because States that will be party to both the Stockholm Act and the Protocol, as well as the users of both systems, will have to follow both--the Stockholm Act in respect of some States, and the Protocol in respect of other States (and in respect of Organizations)--and they will find their task easier if, in situations in which the solutions are the same, the language used is also the same or almost the same.

[MM/DC/3, continued]

Notes Concerning Article 1

104. The instrument proposed to be concluded is called a "Protocol" relating to the Madrid Agreement. The latter was concluded in 1891 and was last revised in Stockholm in 1967 ("the Stockholm Act"). The Protocol relates to this, the latest, Act of the Madrid Agreement. In order to underline that fact, the Draft refers to it as the "Madrid (Stockholm) Agreement." The present Notes refer to it as "the Stockholm Act."

105. The Protocol--unlike the new Acts or "revisions" of the various treaties administered by WIPO--is not intended to replace the Stockholm Act. This is why the proposed instrument is called a Protocol rather than an Act. It is to be noted that even if all the States party to the Stockholm Act acceded to the Protocol, that Act--and not the Protocol--will continue to apply in what generally is called the relations among States party to the Stockholm Act (see Article 9sexies).

106. It is proposed that the Protocol be open for adherence not only to States but also to certain intergovernmental organizations (see Article 14(1)(b)). Once they adhere, they are called "Contracting States" and "Contracting Organizations," respectively. The expression "Contracting Parties" covers both Contracting States and Contracting Organizations.

107. The Article under consideration parallels Article 1(1) of the Stockholm Act which states that "The countries to which this Agreement [i.e., the Madrid (Stockholm) Agreement] applies constitute a Special Union for the international registration of marks." (The Union is called "Special" to distinguish it from the Paris Union which is sometimes called the "General" Union.)

108. Although the Protocol, as already indicated, will not apply in the relations among States that are party to both the Stockholm Act and the Protocol, it will apply in the relations (i) between, on the one side, such States and, on the other side, States or Organizations that are party only to the Protocol and (ii) between States or Organizations that are party only to the Protocol. Because of this fact, and because the international registration system resulting from the Protocol is basically the same as the one existing under the Stockholm Act, it seems to be logical and practical to consider both kinds of States (as well as the Organizations) to be members of the same, the Madrid, Union. This is the idea that the Article under consideration expresses.

109. It is recognized that the rights and obligations of the States bound by the Stockholm Act and the rights and obligations of the Contracting Parties (an expression that covers, as already indicated, both States and Organizations) under the Protocol are not always the same, since the Stockholm Act and the Protocol differ from each other in certain respects. Although all will be members of the same Union, it is necessary that if there are questions to be decided by the Assembly--the intergovernmental organ of the Union--that are of interest to Contracting Parties only, or to States party to the Stockholm Act only, they do not interfere with each other. This is achieved by Article 10(ii). Nevertheless, it has to be recognized that the Assembly is an existing organ, solely governed by the Stockholm Act, and the admission to it of Contracting Parties that are not party to the Stockholm Act cannot be

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resolved without the consent of their present members. Such consent will be complete only once all the States party to the Stockholm Act will have adhered to the Protocol. Pending that situation--which may or may not occur--it is proposed that the States party to the Stockholm Act adopt a resolution during the diplomatic conference (which will negotiate and, hopefully, adopt the Protocol; hereinafter referred to as "the diplomatic conference") to the effect that even those of them which are not party to the Protocol accept the membership in the Union of States and Organizations that are party to the Protocol but not to the Stockholm Act. This would be, at least in theory, a transitional measure, since--as already stated--once all the States party to the Stockholm Act adhere to the Protocol, the acceptance, as members of the Union, of States and Organizations party only to the Protocol will result from the Article under consideration rather than from the proposed resolution of the diplomatic conference.

Notes Concerning Article 2

110. This Article parallels Article 1(2) and (3) and Article 2 of the Stockholm Act.

111. Ad paragraphs (1), (2) and (3): These paragraphs give answers to four main questions:

(i) What must be the basis of an application for international registration (hereinafter referred to as "an international application")?

(ii) Who is entitled to file an international application?

(iii) Where must the international application be filed?

(iv) In what territory has the international registration effect?

112. As to the question what must be the basis of an international application, the answer is given in paragraph (1) of Article 2 of the Protocol: it must be an application filed with the (national) Office of a Contracting State or an application filed with the (regional) Office of a Contracting Organization (both are called "basic application") or it must be a registration effected by the (national) Office of a Contracting State or a registration effected by the (regional) Office of a Contracting Organization (both are called "basic registration"). The applicant of the international application must be the same person who is the holder of the basic application, or the same person as the holder of the basic registration; the mark must be the same; and the goods and services in the list of the international application must be covered by the basic application or basic registration.

113. Whereas, under the Stockholm Act, an international application must be based on a national registration, under the Protocol an international application may be based also on a national (or regional) application. THIS IS THE FIRST OF THE FOUR MAJOR INNOVATIONS THAT THE PROTOCOL WILL INTRODUCE IN THE MADRID SYSTEM. (For the others three, see paragraphs 142, 184 and 200, below.) It is intended to remove what is generally considered a decisive

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obstacle to adherence to the existing Madrid system by some countries. The obstacle resides in the fact that the obtaining of a national (or regional) registration frequently takes too much time; in particular, it is frequently not possible within six months from the filing of the national (or regional) application and, whenever it is obtained only after that period, the right of priority (under Article 4A of the Paris Convention) is lost. By allowing--as the Protocol does--to file an international application on the basis of a national or regional application, the problem disappears; in particular, the risk of losing the right of priority is non-existent since six months is amply sufficient for the preparation and filing of the international application.

114. As to the question who is entitled to file an international application, the answer is given in paragraph (1) of Article 2 of the Protocol. It is to be noted that the nationality of those persons referred to in items (i) and (ii) of that paragraph who are entitled to file international applications by virtue of the location of their domiciles or their industrial or commercial establishments is irrelevant; in other words, such persons can be nationals of Contracting States or of non-Contracting States. Furthermore, it is to be noted that the State referred to in item (ii) must be a member of the Contracting Organization concerned but need not be a Contracting Party. Finally, it is to be noted that the expression "national" is defined neither in the Stockholm Act nor in the Protocol but, traditionally, it covers not only natural persons but also legal entities, the latter being considered "nationals" of the State the law of which governs them.

115. As to the question where the international application has to be filed, the answer is given in paragraph (2) of Article 2 of the Protocol: it must be filed with--or, more precisely, must be filed "through the intermediary" of--that Office with which the "basic application" was filed or by which the "basic registration" was effected. That Office is called the "Office of origin" (see paragraph (2) of this Article of the Protocol).

116. As to the question in what territory the international registration has effect, the answer is given in paragraph (1) of Article 2 according to which the effect of the international registration ("the protection") extends to the territory of the Contracting States and to the territory of the States members of the Contracting Organizations, provided, naturally, that the required designations are made at the time of the filing of the international application (see Article 3^{ter}(1)) or thereafter (see Article 3^{ter}(2)). However, there is an exception: according to the second sentence of Article 3^{bis}, it is not possible to designate the Contracting Party whose Office is the Office of origin (see the notes accompanying Article 3^{bis}).

117. It is to be noted that the rule contained in paragraph (1) of Article 2 is subject also to a further exception. That exception, contained in Article 9^{sexies}, consists of what is called the safeguard clause of the Stockholm Act. See the notes accompanying that Article.

118. Ad paragraph (3): This paragraph defines "Office" and "mark." It seems to be self-explanatory.

[MM/DC/3, continued]

Notes Concerning Article 3

119. Ad paragraph (1): It is Article 10(2)(a)(iii) of the Stockholm Act--which, by a reference contained in Article 10 of the Protocol, is incorporated in the Protocol--that speaks of the Regulations. The Regulations established under the Stockholm Act will have to be adapted, when the Protocol comes into force, to provide also for rules necessary for the implementation of the Protocol. The present Regulations provide for the form of the applications in Rule 8. The "particulars" to be certified are "all the particulars" (Rule 8(2)(xvii)), in particular that the applicant for the international registration is the same as the applicant of the basic application or the owner of the basic registration, as the case may be, as well as that the mark and that the goods and/or services are covered in the application for international registration as in the basic application or basic registration, as the case may be. The requirements as to (serial) numbers and dates, contained in the last two sentences of the paragraph under consideration, seem to be self-explanatory.

120. Ad paragraph (2): This paragraph seems to be self-explanatory.

121. Ad paragraph (3): This paragraph seems to be self-explanatory.

122. Ad paragraph (4): This paragraph seems to be self-explanatory.

123. Ad paragraph (5): This paragraph seems to be self-explanatory.

Notes Concerning Article 3bis

124. This Article completes the evolution of the answer to the question in which territories any given international registration has effect or, to use the traditional terminology (preserved also in the draft Protocol), "to" which territories the "protection" (given by the international registration) "extends." In the first stage of that evolution, that is from the beginning of the Madrid Agreement (1891) to the revision effected in Nice in 1957, every international registration had an effect in all Contracting States. In the second stage of that evolution, introduced by the Nice Act (1957), and still applicable in this respect, any Contracting State may require that it be expressly mentioned in the international application, with the consequence that if it is not so mentioned, the international registration has no effect in its territory. (This mentioning is sometimes called "designation," and although the term is not used in the Protocol, it is used--for the sake of simplicity--in the present Notes; the term used in the Nice and Stockholm Acts and the Protocol is "express request" to "extend"--hence the expression "territorial extension"--"the protection" to the Contracting State.) All the present member States of the Madrid Union have made use of this faculty so that, in this second phase, one needs, in fact, to designate each and every one of those States in which one desires protection. In the third phase of the evolution of this Article--the phase which will be introduced if the Protocol is adopted as proposed--the Contracting Parties will not be required to indicate that they will grant protection only if they are designated in the international application. The requirement of designation will, under the

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Protocol, automatically apply to all Contracting Parties. This requirement is worded in the Protocol as follows: "The protection resulting from the international registration shall extend to any Contracting Party only at the request of the person who files the international application or is the holder of the international registration" (emphasis added). This request--that, as already said, is called "designation" in the present Notes--is sometimes referred to (for example, in Article 3ter) as a "request for territorial extension." However, as already indicated in connection with Article 2 (see paragraph 117, above), it is not possible, under the second sentence of Article 3bis, to designate the Contracting Party whose Office is the Office of origin as defined in Article 2(2).

125. It is because of the automaticity of the requirement of designation that the introductory words of paragraph (1) and the totality of paragraph (2) of Article 3bis of the Stockholm Act are omitted in the Protocol.

Notes Concerning Article 3ter

126. Ad paragraph (1): This paragraph confirms what Article 3bis already provides for. The resulting redundancy is caused by the change that Article 3bis of the Protocol will bring about in what is Article 3bis(1) in the Stockholm Act.

127. Ad paragraph (2): This paragraph deals with what is sometimes called "later designation," that is, the designation of a Contracting Party not in the international application but in a separate document filed later, that is, after the international registration. It is to be noted that a later designation under the Protocol will be possible only in respect of an international registration effected under the Protocol. In other words, it will not be possible to make a later designation under the Protocol in respect of an international registration that was effected under the Stockholm Act.

Notes Concerning Article 4

128. Ad paragraph (1)(a): This paragraph is the provision that is the most important one of the Madrid system since it creates the legal effect of an international registration. That effect is the same as that of a national or regional registration. In other words, a registration effected in the International Register has the same effect as if the registration had been effected in the national or regional register of each designated Contracting Party. Naturally, the international application must satisfy the requirements prescribed by the Protocol and designate the Contracting Parties in which the effect is desired (hence the reference to Articles 3 and 3ter) and the international registration must not suffer a refusal (hence the reference to Article 5).

129. The effect starts on the date of the international registration, as defined in Article 3(4), or on the date of recordal of a territorial extension subsequent to the international registration, as referred to in Article 3ter(2).

[MM/DC/3, continued]

130. If, however, the Diplomatic Conference finds it desirable for some Contracting Parties to be able not to recognize the registration effect of international registrations as from the date referred to in the preceding paragraph, the following provision might be added to paragraph (1)(a) of Article 4: "However, any Contracting Party may declare, in the instrument referred to in Article 14(2) of this Protocol, that the protection of the mark in that Contracting Party shall be the same as if the mark had been the subject of an application filed with the Office of the said Contracting Party and that such protection shall, from the expiration of the time limit applicable under Article 5 of this Protocol or from any earlier time indicated in the declaration, be the same as if the mark had been registered by the said Office if, by the expiration of the said time limit, the said Office has not notified a provisional or final refusal to the International Bureau in accordance with Article 5 of this Protocol."

131. Ad paragraph (1)(b): The indication of classes of goods and services has to conform to the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (see Article 3(2) of the Protocol). The second sentence of the paragraph under consideration means that the classification of the goods and services as given by the applicant or corrected by the International Bureau (see Article 3(2) of the Protocol) has no binding effect on the designated Contracting Parties as regards the scope of protection.

132. Ad paragraph (2): The right of priority provided for in Article 4 of the Paris (Stockholm) Convention is six months for trademarks (Paris (Stockholm) Convention, Article 4C(1)), starting from the date of filing of the first application (Paris (Stockholm) Convention, Article 4C(2)). The formalities required by Article 5D of the Paris (Stockholm) Convention include, in particular, the production of a certified copy of the first application. The effect of the paragraph under consideration is, in essence, that if an international application claims the priority of an earlier national or regional application and is filed within six months, its effect will be retroactive to the filing date of the national or regional application. Furthermore, there will be no need for producing a certified copy of the national or regional application (since that application will be the application referred to in Article 3(1)(i) or (ii) of the draft Protocol, and the said Article already requires the indication of the date and serial number of the national or regional application and a corresponding certification by the Office of origin).

Notes Concerning Article 4bis

133. Ad paragraph (1): This paragraph--as well as paragraph (2)--is in essence the same as it is in the Stockholm Act but has been redrafted for greater clarity. It will be particularly important for the nationals of Contracting Parties that will become party to the Madrid system through adhering to the Protocol (and which are not party to the Stockholm Act): they will have the possibility to replace their registrations (national or regional) existing in Contracting Parties by an international registration and will, thereafter, have to monitor the renewal of only one registration (i.e., the international registration), instead of having to monitor the

[MM/DC/3, continued]

renewals of each national or regional registration that the international registration replaces. This simplified monitoring and, in many cases, lesser fees, are among the advantages of replacing by an international registration earlier national or regional registrations.

134. Ad paragraph (2): This provision guarantees that, by consulting the national and regional registers, the consulting party cannot be misled as to the true situation: he will be warned that he must, to know that situation, also consult the international register.

Notes Concerning Article 5

135. This, rather long, article is subdivided into six paragraphs; the content of each paragraph may be summarized as follows: paragraph (1) establishes the right of any designated office to refuse the effect of the international registration ("refusal") on the basis of certain grounds, some grounds being expressly excluded; paragraph (2) provides to whom the notification of refusal must be sent and fixes the time limit within which refusal may be notified by a designated office; paragraph (3) deals with the communication of a refusal, or the possibility of a refusal, by the International Bureau to the holder of the international registration as well as with the right to appeal against refusals; paragraph (4) deals with the publicity of the grounds of refusal; paragraph (5) provides for the consequence of any non-refusal within the time limit prescribed for refusal; paragraph (6) deals with the invalidation of a non-refused international registration.

136. Ad paragraph (1): "Applicable legislation," in the case of a regional Office, means the rules applicable to that Office; for example, in the case of the future (European) Community Trade Mark Office, it, probably, will be the Regulation that the Council of the European Communities will adopt.

137. "Extension to [a] ... Contracting Party, under Article 3ter(1) or (2) of this Protocol, of the protection resulting from the international registration" will, in the present Notes--for the sake of brevity--continue to be described by the word "designation." Article 3ter(1) deals with the designations contained in the international application, whereas Article 3ter(2) deals with "later" designations.

138. The notification is called a "notification of refusal" and its contents are described as a notification that says "that protection cannot be granted."

139. The Paris Convention enumerates certain grounds for which the registration of a mark cannot be refused (Articles 6, 6quinquies A and C), must be refused (Articles 6bis, 6ter) or may be refused (6quinquies B). The last sentence of the paragraph under consideration deals with legislations--still existing in some countries--which have, in their national laws, the requirement of "one registration per class" or which put limits on the number of goods or services or on the number of classes that can be covered by one and the same national registration. Such limitations are not applicable to international registrations. "Class" means class according to the International (Nice) Classification or any other (e.g., "national") classification (see Article 3(2) of the Protocol).

[MM/DC/3, continued]

140. Ad paragraph (2): This paragraph provides that any notification of refusal must be sent to the International Bureau, and it fixes the time limit within which any refusal must be notified to be effective. It follows from paragraph (5) that the refusal need not be "final" but may be merely "provisional," that is, it may need confirmation or it may be changed (by the national or regional office or by a quasi-judicial or judicial authority). The notification must contain "a statement of all grounds"; in other words, grounds not notified within the prescribed time limit cannot serve as a basis for a refusal.

141. Ad subparagraph (2)(a): As to the time limit within which a refusal--to be effective--must be notified, subparagraph (a) provides that, subject to subparagraphs (b) and (c), the time limit is one year. This is the rule also under the Stockholm Act. The year is to be counted from the date on which the national or regional office has been notified of its designation. Under the Stockholm Act, the rule cannot suffer any exception. Under the Protocol, the rule may suffer exceptions. Subparagraphs (b) and (c) provide for the exceptions.

142. SUCH EXCEPTIONS REPRESENT THE SECOND OF THE FOUR MAJOR INNOVATIONS OF THE PROTOCOL. (For the other three, see paragraph 113, above, and paragraphs 184 and 200, below.) The exceptions are intended to allow adherence to the Protocol by States that find that one year is too short for their offices to notify even provisional refusals.

143. Ad subparagraph (2)(b): In order to be able to apply the exceptions, a Contracting Party must make a corresponding declaration. The modalities of the declaration are provided for in subparagraph (d) (see below). The declaration is to the effect that the one-year time limit is replaced by 18 months.

144. Such a declaration is applicable "to international registrations made under this Protocol"; this means that the 18-month time limit may be applied (i) by any Contracting Party (having made the declaration) that is a party only to the Protocol (that is, is not a party also to the Stockholm Act) in respect of any and all international registrations and (ii) by any Contracting Party (having made the declaration) that is a party to both the Stockholm Act and the Protocol in respect only of international registrations whose Office of origin is an office of a Contracting Party that is a party to the Protocol only. This is so because, for any State party to both the Stockholm Act and the Protocol, an international registration whose Office of origin is an office of another State party to both the Stockholm Act and the Protocol is not an international registration "made under this Protocol" but one made under the Stockholm Act. This follows from the "safeguard clause" contained in Article 9sexies of the Protocol.

145. Ad subparagraph (2)(c): This subparagraph provides, in effect and in certain cases, for a time limit even longer than 18 months. It is available only if the refusal is based on an opposition, that is, is the result of a request made by a third party that the protection be refused. Although the refusal may, as already stated, be notified after the 18-month period, it may be so notified only if, before the expiration of that period, the possibility of oppositions being filed later is notified and the refusal will be effective only if it is notified within one month "from the expiration of the period allowed by the applicable law for filing oppositions." For example, if the law allows oppositions to be filed within three months from the publication of

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the mark by the national office, the refusal must be notified within four months (three plus the said one) from such publication.

146. This extended (more than 18-month) time limit is applicable in the same cases, and only in those cases, that are described in paragraph 144, above. This is so because the extension for cases of opposition is part of the declaration made under subparagraph (b) ("Such declaration [i.e., the declaration under subparagraph (b)] may also specify ..."; emphasis added).

147. Ad subparagraph (2)(d): As already indicated, the modalities of the declaration concerning the use of the exception permitted by subparagraph (b), or of the exceptions permitted by subparagraphs (b) and (c), are provided for in this subparagraph. This subparagraph also indicates the effective date of such declaration. The provisions seem to be self-explanatory.

148. The Regulations (which will be adopted by the Assembly of the Madrid Union once the Protocol enters into force) will have to fix other details concerning the declaration referred to in subparagraphs (b) and (c). The present intent of the International Bureau is to propose to the Assembly (once the Protocol comes into force) to fix the said details as follows:

"(a) Where the declaration referred to in Article 5(2)(b) or (c) of the Protocol is not made in the instruments referred to in Article 14(2) of the Protocol, it shall be sent to the Director General and shall be communicated by him to all Contracting Parties.

"(b) Any declaration referred to in Article 5(2)(b) or (c) of the Protocol may be withdrawn at any time. The decision of withdrawal shall be sent to the Director General and shall be communicated by him to all Contracting Parties. It shall have effect three months from the date of its communication, or at any later date indicated in the decision of withdrawal, in respect of international registrations effected on or after the date of effect of the withdrawal."

149. Ad subparagraph (2)(e): This subparagraph seems to be self-explanatory. The reason for it is that experience may show that the exceptional time limits are too short or unnecessarily long. They should, then, be changed and such change should not require an amendment of the Protocol, since such an amendment would necessitate the holding of a diplomatic conference and the deposit of instruments of adherence. Such a long and expensive procedure could, under this subparagraph, be replaced by "a unanimous decision of the Assembly."

150. Ad paragraph (3): Whereas paragraph (2) deals with the notification of the refusal by the national or regional Office to the International Bureau, the first sentence of this paragraph deals with the notification of the refusal by the International Bureau to the holder of the international registration. Such notification is effected through the transmittal of a copy of the notification made by the national or regional Office. Naturally, if the holder of the international registration has appointed a representative, the notification of refusal will be notified to that representative. Indeed, if the applicant or the holder of the international registration has appointed a representative, each reference to the applicant or holder has to be understood, throughout the Protocol, as a reference to the representative (see

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Rule 2(2) of the Regulations under the Stockholm Act). The only exception is to be found in Article 7(4) of the Stockholm Act, applicable under Article 7(2) of the Protocol: under that provision, both the holder of the international registration and his representative are reminded in advance of the date of expiration of the international registration.

151. The second sentence of the paragraph under consideration provides that the holder of the international registration has the right to the same remedies against any refusal (provisional or definitive) that he would have if he had filed a national or regional application with the Office making the refusal (rather than using the Protocol).

152. The third sentence of the paragraph under consideration deals with the notification of the information referred to in paragraph (2)(c)(i) by the International Bureau to the holder of the international registration. The notification consists of the transmittal of copies of the papers containing the information. The information referred to in paragraph (2)(c)(i) "is to the effect that there was a possibility of oppositions being filed after the expiration of the said 18-month time limit."

153. Ad paragraph (4): The official gazette of the Madrid Union publishes the fact that a refusal has been notified to the International Bureau but does not--at least under the present system--publish the grounds. This paragraph enables any person to request the International Bureau to let him know what the grounds are, and the International Bureau must then satisfy the request on the basis of the information that it received from the refusing Office.

154. Ad paragraph (5): This paragraph provides, in essence, that if the time limit(s) of notifying a refusal or a possibility of refusal are missed, the right to refuse is lost.

155. Ad paragraph (6): Whether the right to refuse was lost (under paragraph (5)) or not, the effects of an international registration may be always taken away ("invalidated"), but not without the holder of the international registration having been offered the opportunity of defending his rights. This is what, in essence, this paragraph means. It goes without saying--since it follows from the Paris Convention--that invalidation cannot be pronounced in cases in which the Paris Convention prohibits it.

Notes Concerning Article 5bis

156. In the Stockholm Act, Article 5bis provides, in essence, that no legalization or certificate other than one coming from the Office of origin can be required where documents are presented to the other offices proving the legitimacy of the use of certain elements that may be incorporated in a mark. Examples of such elements are armorial bearings, escutcheons, portraits, honorary distinctions, titles, trade names and names of persons other than the name of the applicant.

157. This Article of the Protocol incorporates into the Protocol, by reference and mutatis mutandis, Article 5bis of the Stockholm Act. "Mutatis mutandis" applies to the expressions "contracting countries" and "Office of the country of origin" appearing in the Stockholm Act; for the purposes of the Protocol, they should be read as "Contracting Parties" and "Office of origin," respectively.

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Notes Concerning Article 5ter

158. In the Stockholm Act, Article 5ter has three paragraphs:

paragraph (1) provides that "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" (emphasis added);

paragraph (2) provides that "the International Bureau may also, upon payment, undertake searches for anticipation among international marks" (emphasis added); and

paragraph (3) provides that "extracts from the International Register requested with a view to their production in one of the contracting countries shall be exempt from legalization" (emphasis added).

159. The Article of the Protocol under consideration (Article 5ter) incorporates, by reference and mutatis mutandis, the Article of the same number of the Stockholm Act. Mutatis mutandis applies only to the expression "contracting countries" appearing in paragraph (3) of the Stockholm Act; for the purposes of the Protocol, it should be read as "Contracting Parties."

160. It should be noted that the authorization provided for in paragraph (2) is not made use of at the present time by the International Bureau because the International Bureau found that its search service was redundant with the search services of numerous official and private services in the various countries and that its own service, from a financial viewpoint, was not self-supporting.

Notes Concerning Article 6

161. This Article is subdivided into four paragraphs; the content of each paragraph may be summarized as follows: paragraph (1) fixes the term of validity of international registrations; paragraph (2) provides for the independence--subject to "central attack"--of the international registration from the basic application or the basic registration (as the case may be); paragraphs (3) and (4) deal with what is generally referred to as "central attack."

162. Ad paragraph (1): The initial validity of an international registration is ten years. The ten years start with the date of the international registration. (The date of the international registration is defined in Article 3(4) of the Stockholm Act and of the Protocol and, as far as the Stockholm Act is concerned, is further elaborated in Rule 15 of the Regulations under the Stockholm Act.) The validity of the international registration, beyond the initial ten years, requires that the international registration be renewed. Renewal is regulated in Article 7 (see below).

163. Ad paragraph (2): To understand this paragraph, one has to note that the subsequent paragraph (paragraph (3)) provides, in essence, that if the basic application or basic registration fails before the expiration of five years from the date of the international registration, the international

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registration loses its effect, and it loses it in all the designated States or Organizations. In other words, before the expiration of that five-year period, the fate of the international registration depends on the fate of the basic application or basic registration. After the expiration of that period, even if the basic application or the basic registration fails, the international registration remains valid, i.e., it becomes "independent" from the fate of the basic application or the basic registration. This is the independence which paragraph (2) establishes.

164. Ad paragraph (3): As already stated, this paragraph establishes the said dependence until the expiration of the first five years: the effects of the international registration are lost ("the protection ... may no longer be invoked") if the basic application or the basic registration fails before the expiration of five years from the date of the international registration. This is provided for in the first sentence of the paragraph. Such failure may be caused, as far as a national or regional application is concerned, typically by that application's withdrawal or rejection and, as far as a national or regional registration is concerned (whether that registration is the basic registration or results from the basic application), typically by that registration's lapse, renunciation, revocation, cancellation or invalidation.

165. The loss of the effect of the international registration is only partial if the basic application's or the basic registration's failure is partial, e.g., concerns only some of the goods and services. This is the case not only if the limitation of the goods and services in the basic application or registration occurs after the international registration but also if it occurs before the international registration.

166. The second sentence of the paragraph provides for the same results where, for example, a third party brings, in the fourth year after the date of the international registration, an action, before an administrative authority or a court, for the cancellation of the basic registration, and the authority or court orders the cancellation two years later (that is, after the expiration of the five-year period). Another example is the case where the basic application is rejected within the five-year period, and the decision of rejection is the subject of an appeal; in such a case, the loss of the effect of the international registration occurs even if the decision of rejection becomes final after the expiration of the five-year period. A third example is the case where the basic application is the subject of opposition proceedings which are not finished by the expiration of the five-year period, and a decision of rejection is made, as a result of those proceedings, only after the expiration of the said period.

167. Ad paragraph (4): This paragraph obliges the Office of origin to request the International Bureau to cancel the international registration in case of a successful "central attack." In addition, in the case referred to in the second sentence of paragraph (3), the Office of origin must inform the International Bureau, within the five-year period, that the basic application or registration may fail after the expiration of that period. The Regulations to be established under the Protocol will prescribe the actions which the International Bureau will have to take when it receives such information. It should be noted that the effect provided for in paragraph (3) (i.e., "the protection resulting from the international registration may no longer be

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invoked") will take place even if the Office of origin fails, where the first sentence of paragraph (3) applies, to request the cancellation of the international registration or, where the second sentence of paragraph (3) applies, to transmit to the International Bureau the information referred to in that sentence and, where applicable, to request the cancellation of the international registration.

Notes Concerning Article 7

168. Ad paragraph (1): The Stockholm Act provides for a term of 20 years both for the initial registration (Article 6(1)) and for each renewal (Article 7(1)). (However, the Regulations under that Act allow the payment of the basic fee in two installments, each of them covering ten years. About 25% of the applicants make use of such a possibility.) The paragraph under consideration of the Protocol provides for a term of ten years both for the initial registration and any renewal. That term is not only the term provided for by the legislations of most (i.e., 21) of the 27 States party to the Madrid (Stockholm) Agreement but it is the term chosen by most of the countries adopting a new legislation on marks, whether members or not of the Madrid Union.

169. Most of the proceeds of the "basic fee" go to the International Bureau. The amount of the basic fee is the same for the initial period and for each renewal period; at the present time (and for 20 years), its amount is 670 Swiss francs. A "supplementary fee" (or "class fee") is due if the goods and services belong to more than three classes of the International (Nice) Classification; it is payable for each class in excess of three; its proceeds belong to the designated Contracting Parties. As many "complementary fees" (or "designation fees") are payable as the number of the designated Contracting Parties is; their proceeds belong to the designated Contracting Parties. The present amount of the supplementary fee is 68 Swiss francs per class (in excess of three classes), whereas the present amount of the complementary fee is 80 Swiss francs per designated country.

170. Ad paragraph (2): This paragraph incorporates into the Protocol, by reference, paragraphs (2), (4) and (5) of Article 7 of the Stockholm Act. (Paragraph (3) of Article 7 of the Stockholm Act was a transitional provision which is inapplicable since 1987; this is why it is not incorporated into the Protocol.)

171. Paragraph (2) of Article 7 of the Stockholm Act--incorporated by reference into the Protocol--provides that "Renewal may not include any change in relation to the previous registration in its latest form." The expression "previous registration" was justified as long as the Madrid Agreement considered each renewal a new registration. Since the revision of Nice (1957), a renewal does not create a new registration but merely prolongs the validity of ("renews") the international registration with the content which that registration has at the moment of the renewal.

172. Paragraph (4) of Article 7 of the Stockholm Act--incorporated by reference into the Protocol--provides that "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." The provision seems to be self-explanatory.

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173. Paragraph (5) of Article 7 of the Stockholm Act--incorporated by reference into the Protocol--provides that "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." In other words, if the fees payable for renewal are paid after the expiration of the validity of the registration, but not later than six months after that expiration, the validity of the international registration will not be lost, that is, will be maintained. One of the consequences of this provision is that one cannot assume that the validity of the international registration was lost because of failure of the payment of the renewal fee by the date on which that fee was due; one must wait six months to know whether the said validity was really lost.

Notes Concerning Article 8

174. Ad paragraph (1): This paragraph incorporates into the Protocol, by reference and mutatis mutandis, the totality of Article 8 of the Stockholm Act but it does so "subject to paragraph (2)" of the Article under consideration (that is, Article 8 of the Protocol).

175. Article 8 of the Stockholm Act deals with revenues, particularly fees, of which there are four kinds: national, basic, supplementary and complementary. (The last three are part of what is called--in contradistinction to the national fee--the "international" fee.) The said Article of the Stockholm Act consists of six paragraphs. Each of them is briefly summarized in the following paragraphs of the present Notes, and the applicability of each under the Protocol is, also in a summary fashion, indicated.

176. Paragraph (1) of Article 8 of the Stockholm Act provides that "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" (emphasis added). For the purposes of the Protocol, and by virtue of mutatis mutandis, the paragraph should be understood as meaning in essence that the Office of origin may require the payment of a fee (that could be called national or regional) at the moment when the applicant files, with that Office, his international application; such fee belongs to the said Office.

177. Paragraph (2) of Article 8 of the Stockholm Act provides that "Registration of a mark at the International Bureau shall be subject to the advance payment of an international fee which shall include ... a basic fee ... a supplementary fee [per class beyond three classes] ... [and] a complementary [i.e., designation] fee [per designation]" (emphasis added). These fees are briefly described in paragraph 171, above. It follows from Article 7(1) of the Stockholm Act and Article 7(1) of the Protocol that those fees are payable both for the (initial) international registration and also for each of its renewals.

178. Under the Protocol, in certain cases, the complementary fee and, under certain conditions--see paragraph 186, below--the supplementary fee are replaceable by what is called the designated office's "individual" fees. The "individual" fees system is provided for in paragraphs (2) and (3) of Article 8 (under consideration) of the Protocol; it is analyzed in paragraph 182, below. In cases where those two fees are not replaceable and,

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in fact, are not replaced by the "individual" fee, paragraphs (2), (3), (4), (5) and (6) of Article 8 of the Stockholm Act apply, mutatis mutandis, also under the Protocol. Even under the "individual" fee system, the provisions of Article 8(2) of the Stockholm Act remain applicable also under the Protocol as far as the basic fee is concerned.

179. Paragraph (3) of Article 8 of the Stockholm Act deals with the supplementary fee. It seems to be self-explanatory. It is incorporated in the Protocol as it is.

180. Paragraph (4) of Article 8 of of the Stockholm Act deals with the division--among the members of the Madrid Union--of the excess receipts of the International Bureau. "Excess receipts" are the receipts (particularly the basic fees) of the International Bureau connected with the international registration system (except the supplementary and complementary fees, since they do not belong to the International Bureau) minus the costs of the International Bureau. The excess is divided equally among the member countries. Paragraph (4) of Article 8 of the Stockholm Act is incorporated mutatis mutandis in the Protocol. By virtue of mutatis mutandis, the references to "countries party to this Act" should be understood as references also to the Contracting Parties under the Protocol.

181. Paragraphs (5) and (6) of Article 8 of the Stockholm Act deal with the division, among the countries party to that Act, of the supplementary and complementary fees. The said paragraphs are incorporated mutatis mutandis into the Protocol. They seem to be self-explanatory. By virtue of mutatis mutandis, references to "countries" should be understood as references to the Contracting Parties, provided they did not choose the "individual" fee system, since if they did so choose, they are not entitled to any share in the revenue produced under the Protocol by supplementary and complementary fees.

182. Ad subparagraph (2)(a): This subparagraph introduces the "individual fee system." It permits any Contracting Party to choose between (i) having the right to its own fees (or a certain percentage of them) and (ii) having the right to a share in the revenues produced by the supplementary and complementary fees. However, the individual fee system cannot be applied in respect of a Contracting Party having chosen it if that Party is also party to the Stockholm Act, in respect of international registrations that originate in another Contracting Party that, too, is also party to the Stockholm Act. This restriction follows from Article 9sexies of the Protocol (see below).

183. It is the right of the Contracting Party that chooses the individual fee system to fix the amount of the individual fee. There is, however, a ceiling that the amount cannot exceed. The present draft of the Protocol contains two ceilings: one would be the full amount of the fee of the national or regional Office; the other would be a fraction (e.g., 80%) of that fee. The diplomatic conference will have to choose between those ceilings. In other respects, subparagraph (a) seems to be self-explanatory.

184. IT IS TO BE NOTED THAT THE INTRODUCTION OF THE "INDIVIDUAL FEE SYSTEM" IS THE THIRD OF THE FOUR MAJOR INNOVATIONS OF THE PROTOCOL. (For the other three, see paragraphs 113 and 142, above, and paragraph 200, below.)

185. The amount of the individual fee for each registration or renewal would, for the Offices of some Contracting Parties, be higher than the (per registration, or per renewal) amount of the share of those Contracting Parties

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in the supplementary and complementary fees. This is particularly true for Offices which have or will have much higher fees than the world average. Some of the Offices in that position argue that it is impossible for them to accept amounts that are less, or much less, than their own fees, both for budgetary reasons and on account of a policy according to which foreigners should not get registrations and renewals for less money than nationals. On the other hand, the traditional system is defended by arguing that Offices have less costs with international registrations (since they do not have to register them in their own registries, since they do not have to publish them in their gazettes and since they can examine them with less effort) and that it is in the interest of domestic industry to pay less for international registrations and serving that interest fully deserves a sacrifice by those offices which, after all, should have the good of their own public uppermost in their mind. Naturally, where the traditional system will yield more income for the Office than the individual fee system, it may be expected that the Office will not choose the individual fee system.

186. The last sentence of paragraph (2)(a) deals with the situation of the applicant with respect to any designated Contracting Party having chosen the individual fee system, and provides that he does not have to pay a complementary fee with respect to such a Contracting Party (since he has to pay an individual fee with respect to it). As far as the supplementary fee is concerned, whether or not the applicant has to pay it depends on whether all or not all the designated Contracting Parties have chosen the individual fee system: in the former case, the applicant does not have to pay the supplementary fee, whereas, in the latter case, he has to pay it.

187. Ad subparagraph (2)(b): This provision seems to be self-explanatory.

Notes Concerning Articles
9, 9bis and 9ter

188. The subject matters treated in these three Articles (9, 9bis and 9ter) of the Protocol are the same as those treated in the Articles bearing the same numbers in the Stockholm Act and in Article 8bis of the said Act. However, the order and the coverage of some of the Articles have been somewhat changed in order to render the Articles simpler.

Notes Concerning Article 9

189. This Article of the Protocol concerns the subject matters regulated in Article 9bis and Article 9ter of the Stockholm Act. It permits the recordal, in the International Register, of a change in the ownership of the international registration, provided that the new holder is a person who is a person that has the right to file applications for international registrations, that is, is a national of, is domiciled in, or has a real and effective industrial or commercial establishment in, a State that is a Contracting Party or a member of an Organization that is itself a Contracting Party (see Article 2(1)). When the transferee has no such right, see Article 9quinquies.

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190. The Article under consideration provides that the recordal of the change of ownership may be requested either by the person whose name is recorded in the International Register as the name of the holder, in other words the assignor, or by an "interested Office." The Regulations will specify the circumstances under which the "interested Office" is the Office of origin or is one of the Offices of the designated Contracting Parties and, in the latter case, which of those Offices it is. In any case, the assignee cannot himself request the recordal: he has either to convince or oblige by contract the assignor to do it or, if this is not possible (for example because the "assignor" is dead and the "assignee" is his heir), to ask an "interested Office" to do it. Furthermore, the Regulations will make it clear that, if the assignment concerns only part of the goods and services, the international registration will be split into two independent international registrations (both retaining, naturally, the date of the original international registration).

191. It is to be noted that since the Protocol provides that the recordal of the change of ownership may be asked for by the holder of the international registration or by an "interested Office" (to be specified in the Regulations), the Protocol does not say (as the Stockholm Act does in its Article 9bis(1) and (3)) that it can be asked for only by a certain Office and, in certain cases (including the case covered by Article 9ter(3) of the Stockholm Act), only with the consent of another Office. Furthermore, the Protocol does not say that "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" (Stockholm Act, Article 9bis(2)) since this idea is clearly implied in the proviso of the Article under consideration. Finally, the Protocol does not take over what are, in Article 9ter of the Stockholm Act, paragraph (1), second sentence, and paragraph (4). Those provisions simply recall rights and obligations that exist independently of the Madrid Agreement or its Protocol. Nevertheless, if the Diplomatic Conference finds their inclusion in the Protocol desirable, it could do so by using, for example, the following wording:

"Any Contracting Party shall have the right to refuse to recognize the validity of the assignment of an international registration in respect of some only of the goods and services listed in that registration where any of the goods and services that would be included in the assignee's registration are the same or similar to the goods or services which would remain in the assignor's registration.

"Any assignment is subject to Article 6quater of the Paris Convention for the Protection of Industrial Property."

192. It is to be noted that Article 6quater of the Paris Convention reads as follows:

"(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.

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"(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."

Notes Concerning Article 9bis

193. This Article of the Protocol covers subject matters regulated in Article 8bis and Article 9(3) of the Stockholm Act and gives a treaty basis to some of the provisions contained in Rule 20 of the Regulations under the Stockholm Act.

194. Items (i) to (iv) seem to be self-explanatory. Other relevant facts, mentioned in item (v), could include, for example, licenses. The Regulations will specify, in particular, who is entitled to request the records referred to in Article 9bis of the Protocol.

Notes Concerning Article 9ter

195. This Article of the Protocol covers subject matters regulated in Articles 8bis and 9(4) of the Stockholm Act. The Regulations that will be established under the Protocol will have to specify which records are subject to the payment of a fee and which are not. Since the Stockholm Act makes the recordal of renunciations exempt from the payment of fees, the Regulations will certainly allow a similar exemption from fees. For the other records, the Regulations under the Stockholm Act will certainly serve as a model for the Regulations that will be established under the Protocol.

Notes Concerning Article 9quater

196. In the Stockholm Act, Article 9quater provides, in essence, for the possibility of a group of Contracting States to substitute a common office for their national Offices and to regard the whole of their territories as one country; furthermore, the said Article allows to declare that all or part of the other substantive provisions of the Stockholm Act will apply accordingly. Belgium, Luxembourg and the Netherlands made use of this possibility, and the office that replaced their national Offices is the Benelux Trademark Office.

197. The Article under consideration of the Protocol incorporates into the Protocol, by reference and *mutatis mutandis*, Article 9quater of the Stockholm Act. "*Mutatis mutandis*" applies to the last two words ("contracting countries") of the Article; for the purposes of the Protocol, they should be read as "Contracting Parties."

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198. It is to be noted that if the trademark system of the European Community is established, it will not be--if it is going to be as presently planned-- a system to which Article 9^{quater} (whether as in the Stockholm Act or as in the Protocol) will apply, since in that system neither the domestic legislations on marks will be unified nor will the Community Trade Mark Office replace the national Offices; in that system, the domestic and the regional legislations, and the regional Office and the national Offices, will co-exist.

Notes Concerning Article 9^{quinquies}

199. This Article institutes what is generally called the possibility of "transformation," that is, the transformation of an international registration that has been cancelled into national or regional applications. A possibility of transformation is not provided in the Stockholm Act.

200. THE POSSIBILITY OF TRANSFORMATION IS INSTITUTED BY THE PROTOCOL, AND IT IS ONE OF THE FOUR MAJOR INNOVATIONS THAT THE PROTOCOL WOULD INTRODUCE IN THE MADRID SYSTEM. (For the other three, see paragraphs 113, 142 and 184, above.)

201. The possibility of transformation exists when the international registration has been cancelled as a result of a successful "central attack," that is, that the international registration was "cancelled at the request of the Office of origin under Article 6(4) of this Protocol."

202. The reason for instituting this possibility is that the failure of the basic application or the basic registration may be peculiar to the law of, or the circumstances prevailing in, the State or Organization of the basic application or registration and may be irrelevant under the law of, or the circumstances prevailing in, the designated Contracting Parties. If and where they are irrelevant, it is unreasonable and unjust to extend the failure to the international registration. The present system of "central attack" nevertheless so extends the failure; the Article under consideration mitigates the unreasonable and unjust result by allowing "transformation."

203. The Diplomatic Conference may wish not to limit the possibility of transformation to the sole case of a successful "central attack" and to open it to any case where the international registration is cancelled. If the Conference wishes so to open the possibility of transformation, the words appearing in square brackets ("or in case the international registration is cancelled for any other reason") will be retained and the square brackets will be deleted; otherwise, the said words will be omitted.

204. A typical case which would be covered by the words appearing within square brackets would be the cancellation of the international registration due to the loss of the right to file international applications (defined in Article 2(1) of the Protocol) by the holder of the international registration. Such loss may occur, for example, when the holder loses the nationality, the domicile or the establishment that qualified him to own international registrations. Or it may occur if the State or organization to

[MM/DC/3, continued]

the territory of which his eligibility for owing international registration was attached ceases to be a party to the Protocol. It seems only equitable to offer the possibility of transformation in those events because, as far as the holder is concerned, they may be totally independent of his will or wishes.

205. Another typical case which would be covered by the words appearing within square brackets would be the cancellation of the international registration due to the transfer of the rights of the holder--transfer, for example, through assignment or succession mortis causa--to another person who happens to be a person who is not entitled to own international registrations.

206. To make use of the possibility of the transformation, the (ex) holder of the international registration must file a national or a regional application for the national or regional registration of the same mark (i.e., the same as the one that is the subject matter of the lost international registration) with the designated Office.

207. The effect of that national or regional application is the same as the effect of any national or regional application except that the effect is retroactive to the date of the international registration and that, where the international registration enjoyed priority, the national or regional application enjoys the same priority.

Notes Concerning Article 9sexies

208. This Article is entitled "Safeguard of the Madrid (Stockholm) Agreement" because it preserves the status quo in certain situations. It does that by providing that where the Office of origin of an international application or registration is the Office of a State that is party to both the Protocol and the Madrid (Stockholm) Agreement, the provisions of the Protocol have no effect (i.e., the Protocol is inapplicable and, consequently, only the Stockholm Act--that represents the status quo--applies) as regards a State that is also party to both the Protocol and the Madrid (Stockholm) Agreement. In other words, in such a case, no request for territorial extension can be made under Article 3ter(1) or (2) of the Protocol with respect to such State. It is to be noted that, naturally, the Protocol does apply in the relations between a State that is party to both the Protocol and the Stockholm Act and any State or Organization that is party to the Protocol but is not party to the Stockholm Act (Organizations cannot even become a party to the Stockholm Act).

209. The Regulations will provide for the possibility of using one form only where international registration is applied for both under the Protocol and the Madrid (Stockholm) Agreement on the basis of the same basic registration.

210. Among the consequences of such a maintaining of the status quo between parties to both the Stockholm Act and the Protocol are the following: (i) an international application cannot be based on a national application (but only on a national registration) (see Article 2(1) of the Protocol), (ii) the time

[MM/DC/3, continued]

limit of the refusal cannot be longer than one year (see Article 5(2)(b) and (c) of the Protocol), (iii) the designated Office cannot receive an "individual fee" (but only a share in the revenue produced by supplementary and complementary fee) (see Article 8(2) of the Protocol) and (iv) one cannot "transform" an international registration into national applications (see Article 9quinquies of the Protocol).

211. The reason for the safeguard clause resides in the often repeated statements of the governments of the present member States of the Madrid Union, and the representatives of private associations using the present Madrid system, that the present system fully satisfies them as it is and that they wish that it continue, among themselves, without any change whatsoever. In particular, (i) the trademark owners say that the fact that they have to wait for a national registration is not detrimental to them, (ii) the trademark owners say that they see no need for the possibility of "transforming" an international registration into national applications, (iii) the trademark offices say that the one-year time limit for communication of (provisional) refusals is sufficient for them, and the trademark owners naturally prefer that period to a longer period (since applicants will sooner receive an indication of the chances of survival of their registrations) and, finally, (iv) the trademark owners look with disfavor on the nationally fixed amount of fees--because, in most cases, they will probably be higher than the internationally fixed fees and because the calculation of the fees due in any given case is simpler if the fee is uniform (as it is under the present system)--whereas the national offices say that they are ready to continue to receive the smaller amounts not only because international registration reduces their workload but also because it is in the interest of the country that its trademark owners obtain protection abroad at a lower fee even if, as a price of such advantage, the income of the national office is somewhat lower than it would be if it could charge its national fee.

Notes Concerning Article 10

212. Article 10 of the Stockholm Act contains the provisions usual for the Assemblies of the Unions administered by WIPO and a provision peculiar to the Madrid Union, namely that "the travel expenses and the subsistence allowance of one delegate for each member country ... shall be paid from the funds of the Special [i.e., the Madrid] Union" (paragraph (1)(c)).

213. This Article of the Protocol incorporates into the Protocol, by reference and mutatis mutandis, as well as subject to two understandings, Article 10 of the Stockholm Act. "Mutatis mutandis" applies to the expressions "(member) country," "Government" and "Agreement" appearing in the Stockholm Act; they should be read as "Contracting Parties," in the case of intergovernmental organizations as "the authorities" (which, in the case of the European Community, would mean the Commission of the European Communities), and "Protocol," respectively. The first understanding (item (i)) flows from Article 1 of the Protocol, whereas the second understanding (item (ii)) is explained in paragraph 109, above.

[MM/DC/3, continued]

214. Paragraph (3)(a) of Article 10 of the Stockholm Act provides that "Each country member of the Assembly shall have one vote." It follows from the combination of the first understanding, of Article 10(1)(a) of the Stockholm Act in its mutatis mutandis form and of Article 1 of the Protocol that an intergovernmental organization that becomes party to the Protocol will be a member of the Assembly and will have one vote in that Assembly. This is justified by the fact that, under the Protocol, the rights and obligations of a Contracting Organization are the same as the rights and obligations of a Contracting State.

215. It is to be noted that the Protocol--just like the Stockholm Act--is silent on the question in what languages the International Register is kept and in what languages the International Bureau will make its notifications and publish its Gazette. This question will be decided by the Assembly in the light of the identity of the parties to the Protocol. It is, however, to be assumed that, in any case, English and French will be such languages.

Notes Concerning Article 11

216. Article 11 of the Stockholm Act contains the provisions usual for the International Bureau.

217. This Article of the Protocol incorporates into the Protocol, by reference and mutatis mutandis, Article 11 of the Stockholm Act. "Mutatis mutandis" applies to the word "Agreement" appearing in paragraph (3)(a) of the Stockholm Act; it should be read as "Protocol."

Notes Concerning Article 12

218. Article 12 of the Stockholm Act contains the provisions usual for the finances of those kinds of the Unions administered by WIPO in which the member States pay no annual contributions to the International Bureau. The only financial obligation of the member States could consist in a payment or payments towards the working capital fund (paragraph (6)(a) and (b)); however, by virtue of paragraph (6)(d), the application of that obligation has been suspended and the working capital fund was constituted not by payments by member States but by a transfer from the reserve fund of the Union, constituted from the profits of the Union. It is to be expected that the said suspension will continue and that States and Organizations that will become members of the Union through adherence to the Protocol will never be asked to pay anything towards the working capital fund.

219. This Article of the Protocol incorporates into the Protocol, by reference and mutatis mutandis, Article 12 of the Stockholm Act and adds a proviso to it. "Mutatis mutandis" applies to the word "country" (appearing in paragraph (6)(a) and (b) and paragraph (8)) of the Stockholm Act; it should be understood as references to the Contracting Parties (which, by virtue of Article 14(1)(b) of the Protocol may be not only countries (States) but also certain intergovernmental organizations). The proviso fixes a contribution class according to the

[MM/DC/3, continued]

Paris Convention--for the unlikely case that a payment to the working capital fund would have to be made by a Contracting Party that is an Organization--for such an Organization. The class would be No. I (one), unless the Assembly fixes another class by unanimous decision; since class I is the highest, the Assembly could only fix a class lower than class I.

Notes Concerning Article 13

220. Article 13 of the Stockholm Act allows the amendment of certain provisions of that Act by the Assembly (rather than by a revision conference) and fixes the procedure of amendment. Those provisions are Articles 10, 11, 12 and 13.

221. This Article of the Protocol incorporates into the Protocol, by reference and mutatis mutandis, Article 13 of the Stockholm Act. "Mutatis mutandis" applies to the word "country" or "countries" (appearing twice in paragraph (1) and twice in paragraph (3)); those words should be understood as references to the Contracting Parties (which, by virtue of Article 14(1)(b) of the Protocol may be not only countries (States) but also certain intergovernmental organizations).

Notes Concerning Article 14

222. This Article establishes what entities may become Contracting Parties to the Protocol (paragraph (1)); furthermore, it provides that such entities may sign the Protocol (paragraph (2), first sentence); it then establishes the act that triggers becoming a party, namely the deposit of an instrument of ratification, acceptance, approval, formal confirmation or accession (paragraph (2), second sentence) and says where such instrument has to be deposited (namely, with the Director General; see paragraph (3)); it then establishes when the Protocol comes into force in respect of any entity that has deposited the required instrument (paragraph (4)); finally, it contains a provision as to the applicability of the Protocol to international registrations under the Protocol which were effected before the entity has become a party to the Protocol (paragraph (5)).

223. This Article of the Protocol differs from Article 14 of the Stockholm Act in two important respects: one is that it allows not only States but also certain intergovernmental organizations to become party to the Protocol, and the other is that the entry into force requires not only that a certain number of entities deposit their instruments of adherence but that at least one of those instruments must come from an entity (a State) that is already a member of the Madrid Union and at least one other of those instruments must come from an entity (a State or an intergovernmental organization) that is not yet member of the Madrid Union.

224. Ad paragraph (1): Tradition prevailing in WIPO is that only States may become party to a treaty administered by WIPO. The Protocol will allow also certain intergovernmental organizations to become a party to

[MM/DC/3, continued]

the Protocol. This is one of the major innovations that the Protocol would introduce. Any intergovernmental organization that wishes to become a Contracting Party has to meet two conditions; they are spelled out in subparagraph (b).

225. The first condition (contained in subparagraph (b)(i)) is that at least one of the member States of the organization must be a party to the Paris Convention; the provision--although perhaps not indispensable--parallels, albeit only to a limited extent, the requirement applicable in respect of each Special Union administered by WIPO according to which only States that are members of the Paris Union can join the Special Union.

226. The second condition (contained in subparagraph (b)(ii)) is that the organization must have "a regional Office for the purposes of registering marks with effect in all States members of such organization, provided that such Office is not a common Office within the meaning of Article 9^{quater} of this Protocol." The future (European) Community Trade Mark Office will meet these requirements. (The Benelux Trademark Office does not meet these requirements because it is a common Office within the meaning of Article 9^{quater}, as explained in paragraph 196, above.)

227. Enabling the European Community to become a member of the Madrid Union is one of the two main objectives of the creation of the Protocol. (The other main objective is to enable certain non-member States to join the Madrid Union.) By enabling the European Community to be a Contracting Party, the Protocol puts the future (European) Community Trade Mark Office--the trademark office of the European Community--on the same footing as the national trademark offices. This is indispensable since, from an operational viewpoint, the Madrid Union is a cooperative venture of trademark registries or offices: international applications must be based on an application or registration effected in one of them, and the refusal, if any, of the effects of the international registration must be notified by them.

228. The proviso excludes the Benelux Trademark Office and organizations in a similar situation, from eligibility for membership in the Madrid Union. The exclusion is based on tradition, flowing from the Stockholm Act (which does not give membership to the Benelux Office, and which requires that all the States members of it must be members of the Madrid Union).

229. Ad paragraph (2): This is a provision of the traditional kind and seems to be self-explanatory.

230. Ad paragraph (3): This is a provision of the traditional kind and seems to be self-explanatory.

231. Ad subparagraph (4)(a): According to this provision, the initial entry into force of the Protocol will require four adherences out of which at least one must be an adherence by a State member of the Madrid Union and out of which at least one adherence must be an adherence by an entity (State or Organization) not member of the Madrid Union. These requirements are justified by one of the main objectives that the Protocol has, namely, that it should enable entities outside the Union to join the Madrid Union. If the Protocol did not require that at least one

[MM/DC/3, continued]

adherence be the adherence of a non-member, the objective of seeing outsiders enter the Union would not be fulfilled, whereas if the Protocol did not require that at least one adherence be the adherence of a member, what new members would join would not be the Madrid Union but an entity that, as far as its membership is concerned, would be completely new, and not overlapping with the present Madrid Union.

232. The fact that a total of four (and not only two) adherences is required is justified only by the fact that the Protocol is intended to be a multilateral treaty, and not a treaty between two entities only. Whether four is too much (since even three would make it multilateral) or too little (since many treaties provide for a higher number) is a matter of the identity of the four: if they are among the entities having the highest number of trademark registrations they will create a volume of international registrations which will make the starting of the new system highly worthwhile. In the reverse case, four adherences may constitute a relatively small volume of activities, and one will have to wait for further adherences before the new system completely justifies itself.

233. Ad paragraph (5): This provision enables a newly adhering entity to exclude the possibility of its (necessarily "later") designation in respect of international registrations effected under the Protocol before that entity became a Contracting Party to the Protocol. The provision corresponds to the principle embodied, as far as the Stockholm Act is concerned, in Article 14(2)(d) and (f) of that Act. It is to be noted that creating a possibility of exclusion in respect of international registrations effected under the Stockholm Act is not necessary since parties to the Protocol have no obligations whatsoever in respect of international registrations effected under the Stockholm Act (and not under the Protocol).

Notes Concerning Article 15

234. Ad paragraph (1): This provision is of the usual kind and corresponds to Article 15(1) of the Stockholm Act. It seems to be self-explanatory.

235. Ad paragraph (2): This provision is of the usual kind and corresponds to the first sentence of Article 15(2) of the Stockholm Act. It seems to be self-explanatory.

236. Ad paragraph (3): This provision is of the usual kind and is identical with Article 15(3) of the Stockholm Act. It seems to be self-explanatory.

237. Ad paragraph (4): This provision is of the usual kind and corresponds to Article 15(4) of the Stockholm Act. It seems to be self-explanatory.

238. Ad paragraph (5): This provision corresponds to Article 15(5) of the Stockholm Act. It seems to be self-explanatory.

[MM/DC/3, continued]

Notes Concerning Article 16

239. Ad paragraph (1)(a): Whereas the Stockholm Act was signed only in one language (French) (see Article 17(1) of that Act), the Protocol will be signed also in English. The addition of English seems to be justified by the fact that, in international relations, English has now the same importance as French. This was not so when the Madrid Agreement was concluded almost a century ago, in 1891.

240. Ad paragraph (1)(b): Whereas the Stockholm Act (Article 17(1)(b)) leaves the determination of the languages in which the official texts have to be established entirely to the Assembly, the Protocol itself names seven languages (Arabic, Chinese, German, Japanese, Portuguese, Russian and Spanish) as languages in which official texts will have to be established. The choice of those languages is based on statistics: those are the languages in which the overwhelming majority of trademarks registered in the world are registered and published. Otherwise, the provision seems to be self-explanatory.

241. Ad paragraph (2): This provision is of the usual kind and corresponds to Article 17(2) of the Stockholm Act. "At Madrid" means, in practice, at the Ministry of External Affairs of Spain, in Madrid. Otherwise, this provision seems to be self-explanatory.

242. Ad paragraph (3): This provision is of the usual kind and corresponds to Article 17(3) of the Stockholm Act. It seems to be self-explanatory.

243. Ad paragraph (4): This provision is of the usual kind and corresponds to Article 17(4) of the Stockholm Act. It seems to be self-explanatory.

244. Ad paragraph (5): This provision is of the usual kind and corresponds to Article 17(5) of the Stockholm Act. It seems to be self-explanatory.

[End]

MM/DC/4

June 12, 1989 (Original: French)

Source: THE DELEGATION OF SWITZERLAND

Proposal by the Delegation of Switzerland

DRAFT ARTICLE 5(2) AND (3)

Article 5(2)(c) should be deleted.

Explanations

The appeal of the system for the international registration of marks lies notably in the fact that the time limit for refusal is uniform and relatively short. Article 5(2)(c) of the Basic Proposal departs from this principle and introduces a differentiated and unpredictable time limit (depending on the

[MM/DC/4, continued]

legislation applicable), which could prove very long (more than 18 months). It would for instance be sufficient merely to amend the applicable legislation to prolong the time limit for refusal. That time limit is a source of insecurity for applicants and holders of international registrations. Excessive extension of that period of insecurity runs counter to users' interests and could harm the reputation enjoyed by the international registration system. The possibility of replacing the time limit of one year with a time limit of 18 months is in itself a reasonable compromise which makes allowance for the various different examination systems (Article 5(2)(b)).

Adoption of the Swiss proposal would require nothing more than adaptation of the form of Article 5(2)(a), (d) and (e) (substitution of "subparagraph (b)" for "subparagraphs (b) and (c)") and Article 5(3) (deletion of the last sentence).

[End]

MM/DC/5

June 13, 1989 (Original: English/French/Spanish)

Source: THE DELEGATION OF THE EUROPEAN COMMUNITIES

Proposal by the Delegation of the European Communities

DRAFT ARTICLE 2

1. In paragraph (1), seventh and eighth lines, replace the words "the territory of the Contracting States and the territory of the States members of the Contracting Organizations" with the words "the territory of the Contracting Parties."

2. Add a new paragraph (4):

"(4) For the purposes of this Protocol, 'territory of a Contracting Party' means, where the Contracting Party is a State, the territory of that State and, where the Contracting Party is an Intergovernmental Organization, the territory in which the constituting treaty of that Intergovernmental Organization applies."*

* This text reproduces the wording of Article 2(vi) of the Washington Treaty on Intellectual Property in Respect of Integrated Circuits (document IPIC/DC/46).

[End]

MM/DC/6

June 13, 1989 (Original: French)

Source: THE DELEGATION OF THE SOVIET UNION

Proposal by the Delegation of the Soviet Union

DRAFT ARTICLES 3(1), 3ter(2) AND 4

Article 3(1)

(i) in the case of a basic application (basic applications), the date (dates) and the number (numbers) of that application (those applications),

(ii) in the case of a basic registration (basic registrations), the date (dates) and the number (numbers) of that registration (those registrations), as well as the date (dates) and number (numbers) of the application (applications) from which the basic registration resulted.

Article 3ter(2)

A request for territorial extension may also be made subsequently to the international registration effected under this Protocol. Any such request shall be presented on the form prescribed by the Regulations. It shall be immediately recorded by the International Bureau. The territorial extension shall bear the date on which the request for territorial extension was received in the Office of origin provided that the request for territorial extension was received by the International Bureau within a period of two months from that date. If the request for territorial extension has not been received within that period, the International Bureau shall record it as at the date on which it received the said request for territorial extension. The International Bureau shall notify such recordal without delay to the Office or Offices concerned. Such recordal shall be published in the periodical gazette of the International Bureau. The territorial extension shall cease to be valid on the expiration of the international registration to which it relates.

Article 4 (Effects of International Registration); paragraph (1)(a):

(1)(a) From the date of the international registration or of the territorial extension effected in accordance with the provisions of Articles 3 and 3ter of this Protocol, the protection of the mark in each of the Contracting Parties concerned shall, subject to Article 5 of this Protocol, be the same as if the mark had been registered by the Office of that Contracting Party.

[End]

MM/DC/7

June 13, 1989 (Original: Spanish)

Source: THE DELEGATION OF SPAIN

Proposal by the Delegation of Spain

DRAFT ARTICLE 4(1)(a)

(1)(a) From the date of the registration or recordal effected in accordance with the provisions of Articles 3 and 3ter of this Protocol, the protection of the mark in each of the Contracting Parties concerned shall, subject to Article 5 of this Protocol, be the same as if the mark had been filed directly with the Office of that Contracting Party.

[End]

MM/DC/8

June 14, 1989 (Original: English)

Source: THE DIRECTOR GENERAL OF WIPO

Suggestion by the Director General of WIPO

DRAFT ARTICLE 4(1)(a)

(1)(a) From the date of the registration or recordal effected in accordance with the provisions of Articles 3 and 3ter of this Protocol, the protection of the mark in each of the Contracting Parties concerned shall be the same as if the mark had been deposited direct with the Office of that Contracting Party. If no refusal has been notified to the International Bureau in accordance with Article 5(1) and (2) or if a refusal notified in accordance with the said Article has been later withdrawn, the protection of the mark in the Contracting Party concerned shall, as from the said date, be the same as if the mark had been registered by the Office of that Contracting Party.

[End]

MM/DC/9

June 14, 1989 (Original: English/French/Spanish)

Source: THE DIPLOMATIC CONFERENCE

Rules of Procedure adopted by the Diplomatic Conference

The text of the Rules of Procedure as adopted by the Diplomatic Conference is the same as the text appearing in document MM/DC/2, subject to the following changes:

1. Rule 23(1): this change only affects the Spanish text.
2. Rule 27: this change only affects the Spanish text.
3. Rule 28(1): this change only affects the Spanish text.
4. Rule 29(2): this change only affects the Spanish text.
5. Rule 34(1): this Rule reads as follows:

"(1) All decisions of all bodies (the Conference, meeting in Plenary, the committees and working groups) shall require a simple majority, except that the following decisions shall require a majority of two-thirds:

- (i) adoption of these Rules,
 - (ii) adoption of any amendments to these Rules,
 - (iii) decision to reconsider, under Rule 32, a matter decided,
- and
- (iv) adoption of the Protocol."

[End]

MM/DC/10

June 14, 1989 (Original: English/French/Spanish)

Source: THE DELEGATION OF THE EUROPEAN COMMUNITIES

Proposal by the Delegation of the European Communities

DRAFT ARTICLE 8(2)(a)

In Article 8(2)(a), first sentence, delete the words between square brackets "80% of" and add the following new sentence between the first and second sentences:

"When a Contracting Party sets or changes the amount of the individual fee, it shall take account of the savings resulting from it from the international registration procedure."

[End]

MM/DC/11

June 14, 1989 (Original: English/French/Spanish)

Source: THE DELEGATION OF THE EUROPEAN COMMUNITIES

Proposal by the Delegation of the European Communities

DRAFT ARTICLE 9quinquies

In the second and third lines of the Article delete the words between square brackets "or in case the international registration is cancelled for any other reason."

[End]

MM/DC/12

June 15, 1989 (Original: English)

Source: THE DIRECTOR GENERAL OF WIPO

Suggestion by the Director General of WIPO

DRAFT ARTICLE 6(3)

The second sentence of Article 6(3) would read as follows:

"The same applies if

- (i) an appeal against a decision denying the effects of the basic application,
- (ii) an action requesting the revocation, cancellation or invalidation of the registration resulting from the basic application or of the basic registration, or
- (iii) an opposition to the basic application

was in course at the time of the expiration of the five-year period and results after the expiration of the said period in a final decision of rejection, revocation, cancellation or invalidation of the basic application or the registration resulting therefrom, or the basic registration, as the case may be."

[End]

MM/DC/13

June 15, 1989 (Original: Spanish)

Source: THE DELEGATION OF SPAIN

Proposal by the Delegation of Spain

DRAFT ARTICLE 9

At the request of an interested party or of an interested Office ... (the remainder is unchanged).

[End]

MM/DC/14

June 15, 1989 (Original: Spanish)

Source: THE DELEGATION OF SPAIN

Proposal by the Delegation of Spain

DRAFT ARTICLE 16(1)(a) AND (b)

(1)(a) This Protocol shall be signed in a single copy in the English, French and Spanish languages, and shall be deposited with the Director General when it ceases to be open for signature in Madrid. The texts in the three languages shall be equally authentic.

(b) Official texts of this Protocol shall be established by the Director General, after consultation with the interested governments and organizations, in the Arabic, Chinese, German, Japanese, Portuguese and Russian languages, and in such other languages as the Assembly may designate.

[End]

MM/DC/15

June 15, 1989 (Original: English)

Source: THE DIRECTOR GENERAL OF WIPO

Suggestion by the Director General of WIPO

DRAFT ARTICLE 6(3) AND (4)

1. The first sentence of Article 6(3) would be followed by the following two sentences:

[MM/DC/15, continued]

"The same applies if

- (i) an appeal against a decision denying the effects of the basic application,
- (ii) an action requesting the withdrawal of the basic application or the revocation, cancellation or invalidation of the registration resulting from the basic application or of the basic registration, or
- (iii) an opposition to the basic application results, after the expiration of the five-year period, in a final decision of rejection, revocation, cancellation or invalidation of the basic application, or the registration resulting therefrom, or the basic registration, as the case may be, provided that such appeal, action or opposition had begun before the expiration of the said period. The same also applies if the basic application is withdrawn, or the registration resulting from the basic application or the basic registration is renounced, after the expiration of the five-year period, provided that, at the time of the withdrawal or renunciation, the said application or registration was the subject of a proceeding referred to in item (i), (ii) or (iii) and that such proceeding had begun before the expiration of the said period."

2. Article 6(4) would read as follows:

"(4) The Office of origin shall, as prescribed in the Regulations, notify the International Bureau of the facts and decisions relevant under paragraph (3), and the International Bureau shall, as prescribed in the Regulations, notify the interested parties and effectuate any publication accordingly. The Office of origin shall, where applicable, request the International Bureau to cancel, to the extent applicable, the international registration, and the International Bureau shall proceed accordingly."

[End]

MM/DC/16

June 16, 1989 (Original: English)

Source: THE DIRECTOR GENERAL OF WIPO

Suggestion by the Director General of WIPO

DRAFT ARTICLE 8(2)(a)

In Article 8(2)(a), delete "[80% of]" and insert, after the words "the equivalent of the amount," the words ", diminished by the savings resulting from the international procedure,".

[End]

MM/DC/17

June 16, 1989 (Original: English)

Source: THE DELEGATION OF THE FEDERAL REPUBLIC OF GERMANY

Proposal by the Delegation of the Federal Republic of Germany

DRAFT ARTICLE 15(5)

Article 15(5) should be supplemented by the following sentence: "Such party shall make provisions allowing the transformation of such international marks into national or regional registrations which shall be entitled to maintain the date of the international registration according to Article 3(4) of this Protocol and, if the international registration enjoyed priority, any such priority."

[End]

MM/DC/18

June 19, 1989 (Original: English/French/Spanish)

Source: THE DELEGATION OF THE EUROPEAN COMMUNITIES

Proposal by the Delegation of the European Communities

DRAFT ARTICLE 5(2)(c), (d) AND (e)

(2)(c) Introduction and point (i) unchanged from MM/DC/3, page 37.

(ii) the notification of the refusal based on an opposition is made within a time limit of not more than seven months from the date on which the opposition period begins. If the opposition period expires before this time limit of seven months, the notification must be made within a time limit of one month from the expiration of the opposition period.

(d) Unchanged from document MM/DC/3, pages 37 and 39.

(e) Upon the expiration of a period of ten years from the entry into force of this Protocol, the Assembly referred to in Article 10 of this Protocol shall examine the operation of the system established by the present paragraph (2). Thereafter, the provisions of the present paragraph (2) may be modified by a unanimous decision of the said Assembly.

[End]

MM/DC/19

June 19, 1989 (Original: English/French/Spanish)

Source: THE DELEGATION OF THE EUROPEAN COMMUNITIES

Proposal by the Delegation of the European Communities

DRAFT ARTICLE 14(1)(b)(ii)

In paragraph (1)(b) amend subparagraph (ii) as follows:

(ii) that organization has a regional Office for the purposes of registering marks with effect in the territory of the organization;

[End]

MM/DC/20

June 19, 1989 (Original: English)

Source: THE CREDENTIALS COMMITTEE

Report (Prepared by the Secretariat of the Conference)

1. The Credentials Committee (hereinafter referred to as "the Committee"), established on June 12, 1989, by the Diplomatic Conference for the Conclusion of a Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (hereinafter referred to as "the Conference"), met on June 16, 1989.
2. The delegations of the following States members of the Committee attended the meeting: Austria, Czechoslovakia, Italy, Morocco, Soviet Union.
3. The Committee unanimously elected Mr. Lev E. Komarov (Soviet Union) as Chairman and Mr. Marco G. Fortini (Italy) and Mr. Abderrahim Bendaoud (Morocco) as Vice-Chairmen.
4. In accordance with Rule 9(1) of the Rules of Procedure adopted by the Conference on June 12, 1989 (hereinafter referred to as "the Rules of Procedure"), the Committee examined the credentials, full powers, letters or other documents of appointment presented for the purposes of Rules 6 and 7 by delegations of States members of the Special Union for the International Registration of Marks (Madrid Union) and of the States members of the European Communities not members of the Madrid Union and by the Delegation of the European Communities, participating in the Conference in accordance with Rule 2(1)(i) of the Rules of Procedure (hereinafter referred to as "Member Delegations"), by delegations of States members of the International (Paris) Union for the Protection of Industrial Property other than those members of **the Madrid Union and the European Communities, participating in the Conference** in accordance with Rule 2(1)(ii) of the Rules of Procedure (hereinafter

[MM/DC/20, continued]

referred to as "Observer Delegations"), and by the representatives of intergovernmental and non-governmental organizations, participating in the Conference in accordance with Rule 2(1)(iii) of the Rules of Procedure (hereinafter referred to as "representatives of Observer Organizations").

5. The Committee found that credentials and full powers, in due form, were presented by the following Member Delegations: Denmark, German Democratic Republic, Greece, Hungary, Italy, Liechtenstein, Luxembourg, Morocco, Mongolia, Portugal, Soviet Union, Spain, Switzerland, United Kingdom, Yugoslavia (15).

6. (a) The Committee found that credentials, in due form, were presented by the Member Delegations of Algeria, Austria, Bulgaria, Czechoslovakia, Democratic People's Republic of Korea, France, Germany (Federal Republic of), Netherlands, Viet Nam and the European Communities (10), as well as by the Observer Delegations of Cameroon, Finland and Sweden (3).

(b) The Committee noted that, in accordance with established practices, a designation of representation implied, in principle, in the absence of any express reservation, the right of signature, and that it should be left to each delegation to interpret the scope of its credentials.

7. The Committee noted that a communication

(i) in telex form, containing credentials and full powers had been received from the Member Delegation of Belgium,

(ii) in facsimile form, containing credentials had been received from the Member Delegation of Ireland and from the Observer Delegation of the Republic of Korea, and

(iii) in telex form, containing credentials had been received from the Member Delegation of Egypt and from the Observer Delegations of Argentina and Uruguay.

The Committee was of the view that such communications could be accepted, as credentials and full powers or as credentials, as the case may be, on the understanding that the originals thereof would be received before the final vote on the text to be adopted by the Conference.

8. The Committee found that the letters or documents of appointment presented by the representatives of the following Observer Organizations were in due form:

(a) Intergovernmental Organization: Benelux Trademark Office (BBM) (1);

(b) Non-governmental Organizations: Benelux Association of Trade Mark and Design Agents (BMM), European Communities Trade Mark Practitioners' Association (ECTA), European Association of Industries of Branded Products (AIM), Association française des praticiens du droit des marques et des modèles (APRAM), International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP), International Association for the Protection of Industrial Property (AIPPI), Bundesverband der Deutschen Industrie e.V., Federal Republic of Germany (BDI), Center for the International Study of Industrial Property (CEIPI), International Chamber of

[MM/DC/20, continued]

Commerce (ICC), Chambre des spécialistes en marques et modèles, France (CSMM), Federal Chamber of Patent Attorneys, Federal Republic of Germany (FCPA), Chartered Institute of Patent Agents, United Kingdom (CIPA), Colegio Oficial de Agentes de la Propiedad Industrial, Spain (COAPI), Committee of National Institutes of Patent Agents (CNIPA), Committee Against Counterfeiting (COLC International), De Danske Patentagenters Forening, Denmark (DPAA), Deutsche Vereinigung für gewerblichen Rechtsschutz und Urheberrecht, Federal Republic of Germany (DVGR), European Federation of Pharmaceutical Industries' Associations (EFPIA), European Federation of Agents of Industry in Industrial Property (FEMIP), International Federation of Industrial Property Attorneys (FICPI), World Federation of Advertisers (WFA), Max-Planck-Institute for Foreign and International Patent, Copyright and Competition Law (MPI), Institute of Trade Mark Agents, United Kingdom (ITMA), Italian National Institute for the Defense, Identification and Certification of the Authenticity of Trademarks, Italy (INDICAM), Pharmaceutical Trade Marks Group, United Kingdom (PTMG), Trade Marks, Patents and Designs Federation, United Kingdom (TMDPF), Union of Industrial and Employers' Confederations of Europe (UNICE), Union des fabricants pour la protection internationale de la propriété industrielle et artistique, France (UNIFAB), Union of European Practitioners in Industrial Property (UEPIP), The United States Trademark Association (USTA) (30).

9. The Committee noted that communications, in the form of documents issued in the name of the Embassies in Madrid or the Permanent Missions in Geneva or the Ministries competent for industrial property matters of the Governments of several Member Delegations and Observer Delegations, designating representatives to the Conference, had been received by the Secretariat. The Committee was of the view that it was for the Conference, meeting in Plenary, to decide on whether those documents were sufficient to constitute credentials within the meaning of Rule 6 of the Rules of Procedure.

10. The Committee expressed the wish that the Secretariat should bring Rules 6 ("Credentials and Full Powers"), 7 ("Letters of Appointment") and 10 ("Provisional Participation") of the Rules of Procedure to the attention of Member or Observer Delegations not having presented credentials or full powers and of the representatives of Observer Organizations not having presented letters or other documents of appointment.

11. The Committee decided that a report on its meeting should be prepared by the Secretariat and issued as its report, to be presented by the Chairman of the Committee to the Conference, meeting in Plenary.

12. The Committee authorized its Chairman to examine any further communications concerning Member Delegations, Observer Delegations or Observer Organizations which might be received by the Secretariat after June 12, 1989, and to report thereon to the Conference, meeting in Plenary, unless the Chairman deemed it necessary to convene the Committee to examine and report on those communications.

[End]

MM/DC/21

June 20, 1989 (Original: French)

Source: THE DELEGATIONS OF THE FEDERAL REPUBLIC OF GERMANY AND PORTUGAL

Proposal by the Delegations of the Federal Republic of Germany and Portugal

DRAFT ARTICLE 9^{sexies}

(1) Where, with regard to a given international application or a given international registration, the Office of origin is the Office of a State that is party to both this Protocol and the Madrid (Stockholm) Agreement, the provisions of this Protocol shall have no effect in the territory of any other State that is also party to both this Protocol and the Madrid (Stockholm) Agreement.

(2) Paragraph (1) shall cease to be applicable ten years after the date on which 14 States that are party to the Madrid (Stockholm) Agreement as of June 28, 1989, have deposited their instruments of ratification, acceptance, approval or accession.

[End]

MM/DC/22

June 20, 1989 (Original: English)

Source: THE ASSEMBLY OF THE MADRID UNION

Decision by the Assembly of the Madrid Union

Procedure and Draft Proposed by the Chairman of the Assembly of the Madrid Union, also in his capacity of Chairman of the Main Committee of the Diplomatic Conference

1. It is proposed that the Main Committee of the Diplomatic Conference give its advice on the annexed draft decision.

2. It is proposed that the Assembly of the Madrid Union hold an extraordinary session on the same day that the Madrid Protocol will be adopted, right after the adoption of that Protocol, with the following agenda:

(a) Opening of the Extraordinary Session of the Assembly by the Chairman of the Assembly

(b) Adoption of a Decision concerning the membership of Certain States and Organizations in the Madrid Union and the Assembly of that Union

[MM/DC/22, continued]

- (c) Adoption of the report of the Extraordinary Session
- (d) Closing of the session by the Chairman of the Assembly.

3. It is proposed that, at the beginning of the Extraordinary Session, the Assembly waive the normal requirements of its convocation for an extraordinary session. It is believed that such waiver is legally in order if it is done--as it is expected that it will be done--unanimously.

4. Should the said waiver not be decided unanimously, it is proposed that the Diplomatic Conference adopt a recommendation, addressed to the Assembly of the Madrid Union, asking the Assembly, when it meets at Geneva in September 1989, to adopt a decision along the lines of the annexed draft decision.

ANNEX
DRAFT DECISION

1. The Assembly of the Special Union for the International Registration of Marks (Madrid Union), meeting in extraordinary session at Madrid on June 28, 1989,
2. Noting Articles 1 and 10 of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks concluded at Madrid on June 28, 1989 (hereinafter referred to as "the Protocol"),
3. Decides to accept as members of the Madrid Union and of the Assembly of that Union States not party to the Madrid Agreement and any intergovernmental organizations as of the date on which such States and organizations become bound by the said Protocol, it being understood
 - (i) that, on matters concerning only countries that are party to the Madrid (Stockholm) Agreement without being party to the Protocol, States which are party to the Protocol without being party to the Madrid (Stockholm) Agreement and intergovernmental organizations party to the Protocol shall not vote in the Assembly of the Madrid Union and
 - (ii) that on matters concerning only States and intergovernmental organizations party to the Protocol, only those States and organizations shall vote in the Assembly of the Madrid Union.

[End]

MM/DC/23

June 20, 1989 (Original: English)

Source: THE DELEGATIONS OF BELGIUM AND THE NETHERLANDS

Proposal by the Delegations of Belgium and the Netherlands

DRAFT ARTICLE 9sexies

(1) Where, with regard to a given international application or a given international registration, the Office of origin is the Office of a State that

[MM/DC/23, continued]

is party to both this Protocol and the Madrid (Stockholm) Agreement, the provisions of this Protocol shall have no effect in the territory of any other State that is also party to both this Protocol and the Madrid (Stockholm) Agreement and, consequently, no request for territorial extension can be made, under Article 3ter(1) or (2) of this Protocol, with respect to any such State.

(2) Upon expiration of a period of [10/20 years] from the entry into force of this Protocol and after the date on which the [14th] State party to the Madrid (Stockholm) Agreement has deposited its instrument of ratification, acceptance, approval or accession, the Assembly referred to in Article 10 of this Protocol may, with a [...] majority, decide to what extent paragraph (1) remains applicable. In the Assembly, only Contracting Parties which are also party to the Madrid (Stockholm) Agreement shall vote.

[End]

MM/DC/24

June 20, 1989 (Original: English)

Source: THE DIRECTOR GENERAL OF WIPO

Suggestion by the Director General of WIPO

DRAFT ARTICLE 15(5)

(5)(a) Where a mark is the subject of an international registration having effect in the denouncing party at the date on which the denunciation becomes effective, the holder of such registration may file an application for the registration of the same mark with the Office of the denouncing party, which shall be treated as if it had been filed on the date of the international registration according to Article 3(4) of the Protocol or on the date of recordal of the territorial extension made under Article 3ter(2) and, in case where the international registration enjoyed priority, enjoy the same priority, provided that

(i) such application is filed within two years from the date on which the denunciation became effective,

(ii) the goods and services listed in the application are in fact covered by the list of goods and services contained in the international registration in respect of the denouncing party, and

(iii) such application complies with all the requirements of the applicable law, including the requirements concerning fees.

(b) The provisions of subparagraph (a) shall also apply in respect of any mark that is the subject of an international registration having effect in Contracting Parties other than the denouncing party at the date on which denunciation becomes effective and whose holder, because of the denunciation, is no longer entitled to file international applications under Article 2(1) of this Protocol.

[End]

MM/DC/25 Rev.

June 27, 1989 (Original: English)

Source: THE SECRETARIAT OF THE CONFERENCE

Draft of the Final Act (Prepared by the Secretariat of the Conference)

Editor's Note: This document contains the draft text of the Final Act which is identical to the text of the Final Act adopted by the Diplomatic Conference on June 27, 1989 (Document MM/DC/29) which is reproduced on page 51 of these Records.

[End]

MM/DC/26

June 26, 1989 (Original: English/French/Spanish)

Source: THE DRAFTING COMMITTEE

Draft Protocol submitted to the Main Committee

The Drafting Committee met under the chairmanship of Mr. Jean-Louis Comte (Switzerland) and submitted to the Main Committee the Draft Protocol as contained in this document.

Editor's Note: This document contains the draft text of the Draft Protocol as submitted to the Main Committee by the Drafting Committee. It is not reproduced in this volume. In the following are indicated only the differences between this text and the Final Text adopted by the Diplomatic Conference (see the odd numbered pages from 11 to 45 of these Records):

1. Article 2(1)(ii): In the Draft Protocol, the words corresponding to the words "in the territory of the said Contracting Organization." appearing in the Final Text read as follows: "in such a State."
2. Article 3(3)(ii): The text of this item is the same as in the Final Text, except that in the English text of the Draft Protocol, the word "notifications" reads "notification."
3. Article 3(4): The text of this paragraph is the same as in the Final Text, except that in the Spanish text of the Draft Protocol, the words "registro internacional" appear with capital letters.
4. Article 4(1)(a): The text of this subparagraph is the same as in the Final Text, except that in the Spanish text of the Draft Protocol, the word "efectuados" reads "efectuado."
5. Article 5(2)(d): The text of this subparagraph is the same as in the Final Text, except that in the Draft Protocol, the words corresponding to the words "entry into force of this Protocol" appearing in the Final Text read as follows: "entry into force of the Protocol."

[MM/DC/26, continued]

6. Article 5ter(1): The text of this subparagraph is the same as in the Final Text, except that in the English text of the Draft Protocol, the words "upon the payment of a fee" appearing in the Final Text read as follows: "against the payment of a fee."
7. Article 8(1): In the Draft Protocol, the text of this paragraph is the same as in the Final Text, except that the word "national" appears in front of the word "fee".
8. Article 8(7)(b): The text of this subparagraph is the same as in the Final Text, except that in the Draft Protocol, the words corresponding to the words "entry into force of this Protocol" appearing in the Final Text read as follows: "entry into force of the Protocol."
9. Article 9quater(2): The text of this paragraph is the same as in the Final Text, except that in the Draft Protocol, the words corresponding to the words "until three months" appearing in the Final Text read as follows: "until six months."
10. Article 9quinquies: The text of this Article is the same as in the Final Text, except that in the Draft Protocol, the words corresponding to the words "according to Article 3ter(2)" appearing in the Final Text read as follows: "made under Article 3ter(2)."
11. Article 12: In the Draft Protocol, the text of this Article is the same as in the Final Text, except that the words "of the said Agreement" do not appear in the Draft.
12. Article 15(5)(a): The text of this subparagraph is the same as in the Final Text, except that in the Draft Protocol, the words corresponding to the words "according to Article 3ter(2)" appearing in the Final Text read as follows: "made under Article 3ter(2)."

[End]

MM/DC/27

June 27, 1989 (Original: English/French/Spanish)

Source: THE MAIN COMMITTEE

Protocol adopted by the Main Committee on June 26, 1989

Editor's Note: This document contains the draft text of the Protocol as adopted by the Main Committee on June 26, 1989. It is not reproduced hereunder. The following is the only difference between this text and the Final Text adopted by the Diplomatic Conference on June 26, 1989 (see the odd numbered pages from 11 to 45 of these Records):

In Article 16(1)(b) of the text adopted by the Main Committee the word "Italian," appearing in the Final Text, does not appear.

[End]

MM/DC/27 Rev.

June 27, 1989 (Original: English/French/Spanish)

Source: THE DIPLOMATIC CONFERENCE

Protocol adopted by the Diplomatic Conference on June 27, 1989

Editor's Note: This document contains the text of the Protocol as adopted by the Diplomatic Conference on June 27, 1989. It is reproduced on the odd numbered pages from 11 to 45 of these Records.

[End]

MM/DC/28 Rev.

June 28, 1989 (Original: English)

Source: THE CREDENTIALS COMMITTEE

Second Report (Prepared by the Secretariat of the Conference)

1. The Credentials Committee (hereinafter referred to as "the Committee"), established on June 12, 1989, by the Diplomatic Conference for the Conclusion of a Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (hereinafter referred to as "the Conference"), met for a second time on June 26, 1989.
2. The present report complements, and when it is at variance with it, replaces the Committee's report issued after the Committee's first meeting (document MM/DC/20).
3. When the Conference, meeting in Plenary, discussed the Committee's first report on June 21, 1989, it decided that, as far as any State was concerned, its delegation's credentials and full powers should be accepted if they were signed by that State's Head of State, Head of Government or Minister for Foreign Affairs; credentials, but not full powers, should be accepted if they were contained in a note verbale of that State's Permanent Representative in Geneva or its Ambassador in Madrid, and should not otherwise be accepted, in particular, a communication emanating from a Minister other than the Minister for Foreign Affairs or from an official other than the Ambassador of an Embassy should not be treated as credentials. It was also decided by the Conference, meeting in Plenary, that facsimile and telex communications, if the above requirements as to their source were fulfilled, should be accepted.
4. Applying the above decision of the Conference to the documents received by it, the Committee found in order

(a) as far as Member Delegations are concerned,

(i) the credentials and full powers (that is, credentials for participating in the Conference and full powers to sign the Protocol) of the

[MM/DC/28 Rev., continued]

delegations of the following 18 States: Democratic People's Republic of Korea, Denmark, France, German Democratic Republic, Germany (Federal Republic of), Greece, Hungary, Italy, Liechtenstein, Luxembourg, Morocco, Mongolia, Portugal, Soviet Union, Spain, Switzerland, United Kingdom, Yugoslavia;

(ii) the credentials (without full powers) of the delegations of the following 10 States and one intergovernmental organization: Algeria, Austria, Belgium, Bulgaria, Czechoslovakia, Egypt, Ireland, Netherlands, Romania, Viet Nam, European Communities;

(b) as far as Observer Delegations are concerned,

(i) the credentials and full powers of the delegation of one State, namely, Republic of Korea;

(ii) the credentials (without full powers) of the delegations of the following 14 States: Argentina, Burundi, Cameroon, China, Finland, Japan, Lebanon, Libya, Nigeria, Senegal, Sweden, United States of America, Uruguay, Zaire.

5. It is recalled that in its first meeting, the Committee noted that, in accordance with established practices, a designation of representation implied, in principle, in the absence of any express reservation, the right of signature, and that it should be left to each delegation to interpret the scope of its credentials.

6. The Committee recommends to the Conference, meeting in Plenary, to accept or confirm the acceptance of the credentials and full powers of the delegations mentioned in paragraph 4, above.

[End]

MM/DC/29

June 27, 1989 (Original: English)

Source: THE PLENARY OF THE DIPLOMATIC CONFERENCE

Final Act adopted by the Diplomatic Conference on June 27, 1989

Editor's Note: This document contains the text of the Final Act as adopted by the Plenary of the Diplomatic Conference on June 27, 1989; it is reproduced on page 51 of these Records.

[End]

MM/DC/30

June 28, 1989 (Original: English)

Source: THE SECRETARIAT OF THE CONFERENCE

Signatures. Memorandum by the Secretariat of the Conference (Protocol; Final Act)

The following Delegations signed, on June 28, 1989, the following instruments adopted at the Diplomatic Conference:

1. PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS

Belgium, Democratic People's Republic of Korea, Denmark, Egypt, France, German Democratic Republic, Germany (Federal Republic of), Hungary, Italy, Liechtenstein, Luxembourg, Mongolia, Morocco, Portugal, Soviet Union, Spain, Switzerland, United Kingdom, Yugoslavia (19).

2. FINAL ACT

Austria, Belgium, Bulgaria, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Egypt, France, German Democratic Republic, Germany (Federal Republic of), Greece, Hungary, Ireland, Italy, Liechtenstein, Luxembourg, Mongolia, Morocco, Netherlands, Portugal, Romania, Soviet Union, Spain, Switzerland, United Kingdom, Viet Nam, Yugoslavia, European Communities (28).

[End]

MM/DC/DC/1

June 22, 1989 (Original: English/French)

Source: THE SECRETARIAT OF THE CONFERENCE

Draft Protocol submitted to the Drafting Committee by the Secretariat of the Diplomatic Conference

Editors' Note: This document contains the text of the Draft Protocol submitted to the Drafting Committee by the Secretariat of the Conference. It is not reproduced hereunder.

[End]

MM/DC/INF/1

June 28, 1989 (Original: English/French)

Source: THE SECRETARIAT OF THE CONFERENCE

List of Participants

Editors' Note: This document contains the list of participants. It is not reproduced here. For the list of participants, see pages 335 to 351 of these Records.

[End]

MM/DC/INF/2 Rev.

June 15, 1989 (Original: English/French)

Source: THE SECRETARIAT OF THE CONFERENCE

Officers and Committees

Editors' Note: This document contains a list of officers and members of the Conference, the Credentials Committee, the Main Committee, the Drafting Committee and the Steering Committee. For the full list of officers of the Conference, see pages 352 and 353 of these Records.

[End]

MM/DC/INF/3

June 28, 1989 (Original: French)

Source: THE DIRECTOR GENERAL OF WIPO

Address by Dr. Arpad Bogsch, Director General of WIPO, at the Close of the Madrid Diplomatic Conference on June 28, 1989

Mr. Under-Secretary and other distinguished representatives of the Spanish Government,
Mr. President,
Honorable Delegates,
Ladies and Gentlemen,

At the close of the Diplomatic Conference for the Conclusion of a Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, allow me, in the name of the International Bureau of the World Intellectual Property Organization and also in my own name, to express thanks and to say a few words on the significance of the work accomplished by this Conference.

[MM/DC/INF/3, continued]

The thanks of WIPO go primarily to the Government of Spain, first for the actual idea of extending the invitation to hold the Conference on Spanish soil, and then for having prepared and taken care of the technical aspects of its organization. As there were no conference halls available, the Government decided to make new ones: the part of the INI building where our meetings have been going on is indeed practically new. Everything has been transformed and restored at very great expense by Spain. The renovation has been a success, and we are grateful to the Spanish authorities and the architect for that.

But we are also, and above all, grateful to Señor Don Julio Delicado Montero-Rios, the President of the Diplomatic Conference and Head of the Delegation of the host country. Mr. Delicado is well known for having built up a practically new Registro, the modernity and efficiency of which is truly an example to the world. The very honorable place that the Spanish Registry of Industrial Property occupies today among the industrial property offices of the world, and the respect and prestige that Spain derives therefrom, are the personal achievement of Don Julio. Yet it is not only through his achievements at the national level that Mr. Delicado has enhanced Spain's prestige. At the international level he has done and continues to do remarkable work: he has brought about close cooperation with the Spanish-speaking countries of America; specialists from the Registry take a very active part in the WIPO development cooperation program for the benefit of developing countries; Mr. Delicado effected Spain's entry into the European Patent Organisation, and is on the point of bringing Spain into the PCT Union; and now, by extending the invitation to hold this Diplomatic Conference in Madrid, Director General Delicado has assured Spain of a decisive place in international cooperation in the trademark field.

For all that, dear Don Julio, dear Mr. Delicado, we thank you and congratulate you.

You have entrusted certain tasks concerning this Conference to a number of the officials on your staff at the Registro. All should be mentioned, but as the list would be too long if they were, allow me at least to mention Mr. Alberto Casado and Mr. Miguel Hidalgo, who both played particularly important roles in the Spanish contribution to this Conference.

The Spanish contribution has been made not only by the Government but also by the private sector, and more especially by the industrial property attorneys and agents. The eminent representative of this profession, the leader on this as on so many other international occasions, is Mr. Alberto Elzaburu, who gave this Diplomatic Conference the moral support of the Spanish private sector, a support that is essential in an area in which and for which nothing can be done without cooperation from the owners of marks and their representatives. Our thanks therefore go to Mr. Alberto Elzaburu, whose efficiency and courtesy, whose great standing also with his foreign counterparts and whose firm desire that the Conference should succeed have contributed so much to its actual success.

The Conference has succeeded because both Government and interested groups are convinced of the usefulness of the Protocol that you have just adopted, and because the draft Protocol was sound, well written and well balanced in its approaches. This good preparation of the draft is the fruit of three years of preparatory work carried on in committees of experts convened and organized by WIPO and presided over by Mr. Alexander von Mühlendahl, Deputy Head of the Delegation of the Federal Republic of Germany. He played a decisive part in the success of this Conference, for which I commend him and thank him.

[MM/DC/INF/3, continued]

The success of the Conference is moreover due to the always constructive cooperation of all the Government Delegations, the Delegation of the European Communities and all the observers from non-governmental organizations, and also to the excellence of the Chairman and Vice-Chairmen of its Committees. Congratulations and thanks go to Mr. Jean-Claude Combaldieu of France, who took on the arduous but satisfying task of presiding over the Main Committee. He carried out that task with the utmost skill and finesse, and I thank him for it.

I also address very special thanks to the Chairmen of the other two Committees, namely Mr. Lev Komarov of the Soviet Union, Chairman of the Credentials Committee, and Mr. Jean-Louis Comte of Switzerland, Chairman of the Drafting Committee. They performed particularly important tasks, and clearly did so to the satisfaction of all concerned, as the results submitted were ratified by the Plenary practically as proposed by Mr. Comte's and Mr. Komarov's Committees.

As it is obviously impossible to name everybody, allow me at least to thank the Vice-Presidents of the Diplomatic Conference, namely Mr. Albrecht Krieger of the Federal Republic of Germany, Mr. José Mota Maia of Portugal, Mr. Joachim Hemmerling of the German Democratic Republic, Mr. Victor Tarnofsky of the United Kingdom, Mr. Nguyen Duc Than of Viet Nam and Mr. Blagota Žarković of Yugoslavia.

Finally, I should like to express my thanks to my WIPO colleagues, especially to Mr. Alfons Schäfers, Deputy Director General, to Mr. François Curchod, a true specialist and eminent lawyer, who played a decisive role in our substantive discussions, to Mr. Gust Ledakis, the main organizer at the diplomatic level and a leading specialist in international law, Mr. Maugué and Mr. Qayoom, Mrs. Graffigna-Sperling, Mr. Pérez-Fernández, Miss Derqué, Mr. Niinomi, Mrs. Damond, Mr. Claa and all our secretaries, who without exception worked enthusiastically and in the best traditions of our diplomatic conferences.

In conclusion, allow me to say a few words on the Protocol itself, which you adopted yesterday and which a number of you are going to sign in a moment.

The Protocol contains what all of us have always wanted, that is, the means whereby countries at present outside the Madrid Union may come into it--and among those countries Denmark, Greece, Ireland and the United Kingdom in particular--and the means whereby simultaneous use may be made of the Madrid system and the future European Community system.

The reason why I have mentioned these four countries by name is that they have a status equal to that of the members of the Madrid Union at this Conference. It is my firm hope however that other countries not members of the Madrid Union will also accede to the system. Without the United States of America, without Japan, without the Nordic countries and without those developing countries that are not yet party to it, the Madrid system will not be a global system. I have not mentioned China as it is on the point of joining. International trade needs a global system. Such a system will be achieved sooner or later, in one way or another. I hope, after this Conference, that it will be achieved sooner--before the end of the 20th century--and that it will be achieved in the Madrid manner, that is, by way of the Protocol that you have just created. In the attainment of this objective, your role, from now on, is to ratify the Protocol, while the role of the professional and other interested groups is to prevail upon governments and parliaments to take the decisions necessary for ratification to occur.

[MM/DC/INF/3, continued]

As for the International Bureau of WIPO, we are going to do our utmost to make the Protocol still more attractive and useful. We shall do this by proposing for your consideration regulations, application forms and a fee system, all of which will make the use of the Protocol simple, economic and legally as safe as possible.

This task will be accomplished at meetings that will be convened by WIPO from next year onwards. You, the Governments and the European Community, and also non-governmental organizations, will be invited to those meetings.

The meeting will serve to complete, at the practical level, the success of the work done by this Conference.

I invite you to devote to those future meetings the same attention and the same goodwill as have characterized this Conference and the preparations for it.

[End]

MM/DC/INF/4

June 28, 1989 (Original: English/French)

Source: THE SECRETARIAT OF THE CONFERENCE

List of Documents of the Diplomatic Conference

Editors' Note: This document contain the final list of documents of the Diplomatic Conference. It is not reproduced here. For the full list of the Conference documents, see pages 55 to 58 of these Records.

[End]

SUMMARY MINUTES

PLENARY OF THE DIPLOMATIC CONFERENCE

President: Mr. J. Delicado (Spain)

Secretary: Mr. A. Schäfers (WIPO)

<u>First Meeting</u>
<u>Monday, June 12, 1989</u>
<u>Morning</u>

Opening of the Conference by the Director General of WIPO

1. Mr. BOGSCH (Director General of WIPO) opened the Diplomatic Conference for the Conclusion of a Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks and welcomed the participants. He congratulated the architect who had successfully transformed and modernized the premises where the Diplomatic Conference was held.

Address by the Representative of the Government of Spain

2. Mr. ARANZADI (Minister of Industry and Energy, Spain) thanked the Director General of WIPO and welcomed all the participants on behalf of the Government of Spain. He declared that the present Diplomatic Conference was particularly relevant to his country since it was the second time that a Diplomatic Conference was held in Spain in the field of industrial property. He recalled that the first Diplomatic Conference was precisely the one which gave birth to the Madrid Agreement Concerning the International Registration of Marks of April 14, 1891. Like his predecessor in 1890, the Marqués de la Vega de Armijo, he said that his Government was honored by the designation of Madrid as the forum for the present Diplomatic Conference. He thanked the countries and WIPO for having entrusted his country with the organization of the Conference. He believed that Madrid, being the cradle of the Agreement, was the most appropriate place to confer a new dynamism to the Madrid Union soon entering in the 21st century. He stated that the 30 delegates representing a little more than 15 States in the Madrid Conference of 1890 could not imagine all the consequences resulting from the setting up of the Madrid Agreement. Today, the Madrid Agreement constituted a growing mechanism of international cooperation which promoted commercial interchanges by facilitating the registration of marks. According to the WIPO statistics for the year 1988, 13,000 international registrations were effected and extended to the States belonging to the Madrid Agreement. The effect of those 13,000 international registrations was the same as that of some 110,000 national registrations. He believed, nevertheless, that one should not content oneself with the successes achieved so far but rather aim for higher objectives. One of these objectives was the extension of the geographic scope of the Madrid Union, so as to embrace in the future not only the European Community countries which were not yet members of the Agreement but also other countries of great interest to the universality of this Agreement and which, for a variety of reasons, could not adhere to it in its present form. The other great objective was the establishment of links

between the Madrid Agreement and the future Community Trade Mark. There were many who had expressed themselves in favor of such links as, for instance, the international professional associations representing especially the users of the international registration system and the future possible users of the Community Trade Mark. Furthermore, being almost in the year 1992, which should bring about even closer ties in the Community, the need for a Community Trade Mark system was increasing steadily. He declared that the Madrid Agreement at present did not provide for a supranational mark but, in fact, provided for a plurality of national marks. He considered, however, that marks, since they represented values which were essential in commerce for the enterprises, should be granted a multinational protection besides the present international registration facilities. Today, there were many enterprises which had their commercial activities directed towards the external markets and, in this regard, the international cooperation in the specific field of marks should be carried out even in a closer way between members of the Madrid Union, and with those countries that might adhere to the Madrid Agreement. He was aware that the difficult task in the present Diplomatic Conference was to try to find, in harmony and with mutual respect, a formula capable of ensuring for all countries a position of justice and equity. Many national interests were at stake, and this represented what the jurists called jus personae, the rights of a person, which followed this person wherever he or she went. He said that his country was in a specially delicate position because, being the host country, it should keep an adequate sense of equilibrium. Therefore, he asked the Conference to bear in mind his country's position and consider its allegations with a flexible view. He insisted again on the goodwill which delegations and representatives needed to perform their duties in order to achieve the objective aimed at. Undoubtedly, the consensus was easier to find in 1890 but the participants in the present Diplomatic Conference, even in an infinitely greater number, could count on a valuable advantage since the present exercise consisted in improving and innovating something that already existed, namely, the Madrid Agreement. He expressed the hope that the work on the Protocol would be fruitful and he wished the participants a pleasant stay in the capital of Spain. In the name of the Spanish Government, he declared the Conference open.

3.1 Mr. BOGSCH (Director General of WIPO) thanked the Minister of Industry and Energy of Spain in the name of all those present in the room.

3.2 He said that item 1, "Opening of the Conference by the Director General of WIPO," and item 2, "Address by the Representative of the Government of Spain," of the draft agenda (document MM/DC/1) had taken place.

[Suspension]

Election of the President of the Conference

4. Mr. BOGSCH (Director General of WIPO) asked for a proposal in respect of item 3, "Election of the President of the Conference," of the draft agenda (document MM/DC/1).

5. Mr. MOTA MAIA (Portugal) proposed Mr. Delicado Montero-Rios (Spain) for the post of President of the Conference.

6. Mr. KOMAROV (Soviet Union) supported the proposed candidature of Mr. Delicado.

7. Mr. LI (Democratic People's Republic of Korea) also supported the proposal by the Delegation of Portugal.

8. Mr. COMBALDIEU (France) added his support to the proposal of Mr. Delicado as President of the Conference.

9. Mr. FOUAD (Egypt) supported the election of Mr. Delicado as President of the Conference.

10.1 Mr. BOGSCH (Director General of WIPO) noted that no other delegation asked for the floor.

10.2 He declared that Mr. Delicado Montero-Rios, the Alternate Head of the Spanish Delegation, was elected by acclamations to the post of the President of the Diplomatic Conference.

10.3 He asked the latter to take the chair of the President.

11. The PRESIDENT thanked the Director General of WIPO and welcomed the delegates. He noted that the Madrid Agreement had been created in view of the need to substitute the multiplicity of national applications for a simpler and more economical mechanism, an international application which would have the same effects as if the mark had been filed in each of the Contracting States. Recognizing that the Agreement had achieved those objectives, he further noted, however, that the first objective of the proposed Protocol was to remove any obstacle which could work as a barrier against the adherence of new member States. The second essential objective of the Protocol was the creation of a link between the system of international registration and the regional registration systems administered by intergovernmental organizations and, in particular, a link with the future system of the Community Trade Mark. Such intergovernmental organizations were granted the possibility of becoming party to a treaty administered by WIPO, which was a precedent which could facilitate accession in the future to other industrial property treaties by intergovernmental organizations.

Consideration and Adoption of the Rules of Procedure of the Conference

12.1 The PRESIDENT opened the discussion on item 4 of the draft agenda, "Consideration and adoption of the Rules of Procedure of the Conference" (document MM/DC/1), on the basis of document MM/DC/2.

12.2 He submitted Rule 1 for consideration and noted that it did not give rise to any comments. He declared Rule 1 adopted.

13. Mr. BOGSCH (Director General of WIPO) noted, in connection with Rule 2, that, after the meeting of the Preparatory Committee, two other non-governmental organizations, namely the Colegio Oficial de Agentes de la Propiedad Industrial, Spain, and the Chartered Institute of Patent Agents, United Kingdom, had applied to be admitted as observers. He recommended the admission of those two non-governmental organizations as observers.

14.1 The PRESIDENT supported the admission of the two non-governmental organizations. Noting that no objections were raised, he declared that both organizations were admitted as observers.

14.2 Continuing to examine each rule of the Rules of Procedure, he noted that no Delegation asked for the floor in respect of Rules 2 to 22, 24 to 26, 28 and 30 to 33, and he declared that those Rules had been adopted.

14.3 As to Rules 23, 27 and 29, the Chairman proposed certain modifications in their Spanish texts, namely, that in Rules 23 and 29 "Delegación" be replaced by "Delegación miembro" and that in Rule 27 the word "levantamiento" be replaced by "aplazamiento." With those modifications, Rules 23, 27 and 29 were adopted.

14.4 He then put Rule 34 into discussion.

15. Mr. KOMAROV (Soviet Union) proposed to supplement paragraph (1) of Rule 34 with a fourth subparagraph, reading as follows : "(iv) adoption of the Protocol."

16. Mr. PROŠEK (Czechoslovakia) supported the proposal made by the Delegation of the Soviet Union.

17.1 The PRESIDENT noted that no objections were raised to the amendment proposed by the Delegation of the Soviet Union, and declared that Rule 34 was adopted as amended.

17.2 He then declared that Rules 35 to 48 were adopted without opposition.

18. Mr. CASADO (European Communities) stated that his Delegation had decided not to make use of its right to vote following from Rule 33.

19. The PRESIDENT took note of the statement made by the Delegation of the European Communities. He further noted that no more delegations asked for the floor as regards the Rules of Procedure.

20. The Rules of Procedure of the Diplomatic Conference were adopted as proposed in document MM/DC/2, subject to the corrections in the Spanish text of Rules 23, 27 and 29, and the amendment in the text of Rule 34 in all languages, as indicated in paragraphs 14.3 and 17.1, above.

[Suspension]

Election of the Vice-Presidents of the Conference, of the Members of the Credentials Committee and of the Members of the Drafting Committee

21.1 The PRESIDENT resumed the meeting and opened the discussion on items 5, "Election of the Vice-Presidents of the Conference," 7, "Election of the members of the Credentials Committee" and 8, "Election of the members of the Drafting Committee," of the draft agenda (document MM/DC/1).

21.2 He announced the proposals made by the ad hoc Nominations Committee, consisting of the Delegations of Egypt, the Federal Republic of Germany, the Soviet Union, Switzerland and the United Kingdom, under the chairmanship of the President of the Conference: for Vice-Presidents of the Conference: the Federal Republic of Germany, the United Kingdom, Yugoslavia, Viet Nam, Portugal and the German Democratic Republic; for the Main Committee: France as

Chairman, and Hungary and Algeria as Vice-Chairmen; for the Credentials Committee: Italy, Morocco, Czechoslovakia, the Soviet Union and Austria as members, with the Soviet Union as Chairman and Italy and Morocco as Vice-Chairmen; for the Drafting Committee: the United Kingdom, Switzerland, Spain, the Soviet Union, the Federal Republic of Germany and Egypt as members, together with France, Chairman of the Main Committee, as ex officio member of the Drafting Committee, and with Switzerland as Chairman and Egypt and the Federal Republic of Germany as Vice-Chairmen.

22. The PRESIDENT noted that no delegation asked for the floor with respect to the proposals of the Nominations Committee.

23. The Vice-Presidents of the Conference, the members of the Credentials Committee and the members of the Drafting Committee were elected as proposed by the Nominations Committee.

<p>Second Meeting Monday, June 12, 1989 Afternoon</p>

Consideration and Adoption of the Agenda of the Conference

24. The PRESIDENT put into discussion item 6 of the draft agenda, "Consideration and adoption of the agenda of the Conference" (document MM/DC/1).

25. Since no comments were made, the PRESIDENT declared that the agenda was adopted, as contained in document MM/DC/1.

Consideration of the First Report of the Credentials Committee

26. As to item 9 of the agenda, "Consideration of the first report of the Credentials Committee" (document MM/DC/1), the PRESIDENT stated that the Credentials Committee had not had time to meet and that, therefore, item 9 had to be postponed to a later stage.

Opening Declarations

27. Referring to item 10 of the agenda, "Opening declarations by Delegations and by Representatives of Observer Organizations" (document MM/DC/1), the PRESIDENT asked those delegations that so wished to take the floor.

28. Mr. PUSZTAI (Hungary) congratulated the President on his election and thanked the Government of Spain for its hospitality. Stressing the importance of broadening the membership of the Madrid Agreement, he supported the basic proposal presented by WIPO.

29. Mr. COMTE (Switzerland) congratulated the President on his election, and on behalf of his Government, addressed thanks to the Spanish authorities and to the Director General of WIPO. The Swiss Delegation supported the efforts to be made on the one hand to broaden the scope of the Madrid Union and on the other hand to establish links between the international mark and the future Community Trade Mark, even if it should prove necessary to make certain alterations to the present system of international registration. Nevertheless, the Swiss Delegation intended that the essence of the principles on which the appeal of the system was based should be preserved.

30. Mr. TARNOFSKY (United Kingdom) congratulated the President on his election and thanked the Government of Spain for its hospitality as well as the International Bureau of WIPO, particularly the Director General, Mr. Bogsch, for the preparation of the Conference. Although the Madrid Agreement had clearly been of great value to those countries belonging to it there was still a large number of countries which were not members. The draft Protocol had been set out to devise a system which would overcome the problems that States like his own had with the existing Agreement. In this connection, he indicated that his country would have problems with the time limits and the fees established by the existing Agreement. However, as the draft Protocol would not seek to establish norms of substantive law nor to disturb any existing Agreement, his country would in principle be able to accept it. He stated that his Government hoped that the Conference would reach a successful conclusion and that his Delegation would do its best to ensure it.

31. Mr. FOUAD (Egypt) thanked the Spanish Government and WIPO for having prepared the Conference in Madrid and congratulated the President on his election. He expressed his optimism as regards the conclusion of the Protocol, the work of WIPO and its Director General.

32. Mr. COMBALDIEU (France) congratulated the President and expressed thanks to the Government of Spain. He mentioned the extremely favorable and optimistic frame of mind in which his Delegation was embarking on the present exercise, and hoped that the work would be approached in a pragmatic, international and useful way. To be pragmatic one would have to reason simply in discussion, avoid over-complicating things and never forget the future users, namely the industrialists who used the international mark; to be international one should work in a spirit of cooperation and mutual concession; and to be useful one should make it possible for a maximum of countries to accede to the Protocol. Finally he indicated that his Delegation, and also others, would be making sure that there was no lessening of the attractiveness of the Madrid Union.

33. Mrs. MUÑOZ (Spain) congratulated the President on his election and stated that her country was very much interested in the geographical extension of the Madrid Agreement as well as in the creation of a link between this Agreement and the future system of the Community Trade Mark. The Spanish interested circles were very interested in the Madrid Agreement which had its fundamental concepts preserved despite its successive revisions. However, it would be of great interest if some of the provisions contained in the Protocol which would be applicable only to the relations between the present member States and those adhering to the Protocol could also be applied to the relations between the present member States of the Madrid Agreement.

34. Mr. KRIEGER (Federal Republic of Germany) congratulated the President on his election and, on behalf of his Delegation and his Government, expressed his gratitude to the Government of Spain for its invitation to the Conference and its hospitality, recognizing how difficult the preparations for the Conference had been. He also thanked the Director General of WIPO and his staff for the excellent preparation of the Conference. Recalling that that Conference was a milestone in the nearly 100-year history of the Madrid Union, he expressed the interest of his Delegation in the success of the Conference and stated that his Delegation would try to contribute to the achievement of a positive result.

35. Mrs. ABBAR (Morocco) congratulated the President on his election and thanked the Spanish Government for its hospitality and the Director General of WIPO for the organization of the Conference. She stated that her country agreed to have the Madrid Agreement amended in order that new States or regional economic groups could adhere to it and stressed the importance that the creation of links between the Madrid Agreement and the regional systems of trademark registration would have. She recalled that her country had been a member of the Madrid Union for more than 80 years and could only be pleased for having adhered to the Madrid Agreement because it brought Morocco undeniable advantages. Stating that Morocco would adopt a positive attitude towards the draft Protocol, she expressed her wishes for the success of the Conference.

36. Mr. FURSTNER (Netherlands) congratulated the President on his election and thanked the Spanish Government for its hospitality and Mr. Bogsch, Director General of WIPO, for the preparation of the flawless documents for the Conference. He noted that the Dutch industry had voiced some doubts concerning the extension of the Madrid system to new countries if this would lead to any harm to the old Madrid system. However, the Netherlands had a positive attitude and would fully cooperate to make the Conference a success.

37. Mr. LI (Democratic People's Republic of Korea) congratulated the President on his election, and also Mr. Bogsch, Director General of WIPO, and the members of the WIPO Secretariat for the excellent documents provided, which gave a general picture of the interests of the States party to the Paris Convention. He also thanked the Government of Spain and the Director General of the Spanish Industrial Property Office for their hospitality.

38. Mr. FORTINI (Italy) congratulated the President on his election and thanked the Government of Spain for the organization of the Conference in Madrid. He also commended the Director General of WIPO for the preparation of the Conference, and expressed the wish that it might contribute to a strengthening of the multilateral system and of the WIPO system. He said that Italy was present at the Conference not only to consider a purely technical subject, which might bring about an improvement in the Madrid Agreement and an increase in Madrid Union membership, but also to emphasize its faith in and attachment to the multilateral system and its support for WIPO.

39. Mr. ŽARKOVIĆ (Yugoslavia) congratulated the President on his election and expressed the gratitude of his Delegation to the Government of Spain for its hospitality. He thanked WIPO and its Director General, Mr. Bogsch, for their efforts in the organization of the Diplomatic Conference. Stating that the draft Protocol was a very good basis for future negotiations between all countries, whether members of the Paris Union or not, he recalled his

country's tradition in the protection of trademarks. He reminded that the international registration of marks was the first resolute step in overcoming the restrictions based on the principle of territorial effect of the protection of industrial property and expressed his Delegation's wish to make the Madrid Union really universal in its character, bearing in mind that the goal of the Protocol was to attract a majority of countries to the Madrid Union without affecting the existing relations of the member countries of the Madrid Union. He assured that the Delegation of Yugoslavia had come to Madrid with the intention to contribute to the successful completion of the Diplomatic Conference and to the signing of the Protocol.

40. Mr. MÜCK (Czechoslovakia) expressed the gratitude of his Delegation to the Government of Spain for its willingness to organize the Diplomatic Conference and for its hospitality, and he congratulated the President on his election. He recalled that his country had been a member of the Madrid Union since 1919 and had always considered the Agreement to be a highly effective and well-functioning instrument of international cooperation. Nevertheless, he recognized the need to adapt the Agreement to the changing requirements of the economic life, and considered the Protocol as a good instrument for a closer and more effective cooperation between member countries of the Paris Union.

41. Mr. KOMAROV (Soviet Union) congratulated the President on his election and expressed the gratitude of his Delegation to the Spanish Government for the preparatory work done to ensure the successful completion of the Conference. He stated that the goal of the adoption of the Protocol was the creation of a more attractive international system in the field of registration of marks by simplifying the registration procedure which should be more universal and less expensive as well as more flexible. Considering that the work had been significantly facilitated due to the extensive and fruitful preparatory work which had been done in particular by the International Bureau, he expressed his Delegation's hope to contribute to the successful result of the Conference in a spirit of constructive cooperation.

42. Mr. SCHWARTZ (European Communities) congratulated the President on his election and underlined the great importance the European Communities attached to the protection of intellectual property, having adopted several measures in this field and planning to adopt a Community Trade Mark in the near future. He welcomed the possibility for the European Communities to participate in the Conference, and subsequently, when the Community Trade Mark had been adopted, to become a Contracting Party to the Protocol. Stating that the main goal of the draft Protocol was the broadening of the Madrid Union, he considered that a balance should be found between the need to provide for a simpler procedure, to the benefit of enterprises and industrial property offices, and the respect for legal certainty and third parties' rights.

43. Mrs. MAYER-DOLLINER (Austria) congratulated the President on his election and thanked the Spanish Government for the preparation of the Conference. She stated that, although the doors would be opened to new members, the tradition of the Madrid Union and the principal elements of the Agreement should not be abandoned. She considered that the draft Protocol contained in document MM/DC/3 was an excellent basis for negotiations in order to do away with the obstacles to the acceptance of the present system, on the one hand, and, on the other hand, to widen possibilities of trademark protection by introducing a link between the Madrid system and the future

regional systems, in particular that of the European Communities. After having identified the main new features which would have to be dealt with, she expressed the agreement of her Delegation with the objectives of the Protocol, even if there were some difficulties to overcome and some compromises were necessary.

44. Mr. PEETERS (Belgium) congratulated the President on his election, and thanked both the Government of Spain for having made excellent arrangements for the holding of the Conference and the Director General of WIPO for the quality of the preparatory work. He pointed out that Belgium fully subscribed to the objectives that had determined the convening of the Conference, but also wished to see the system continue to operate, at least among the countries currently members of the Madrid Union, on those same foundations that had won it success in the first place. He pointed out that a fair balance would have to be struck between the desire to broaden the circle of participants and concern to preserve that which had made the system successful. Indicating that it was in that spirit that the Belgian Delegation would be taking part in the work, he expressed the wish that the same work might be crowned with success.

45. Mr. TSEDENDAMBA (Mongolia) congratulated the President on his election and expressed his Delegation's gratitude to the Government of Spain, to the International Bureau of WIPO, and to the Preparatory Committee for the work done in the preparation of the Conference. Noting that the goal of the draft Protocol was the extension of activities in the system of international registration of marks, he stated that his Delegation was of the opinion that the draft Protocol should become a document giving the opportunity to adhere to the existing system of the international registration of marks operating under the Madrid Agreement. Speaking on the future application of the provisions of the Protocol, he emphasized that the Protocol and its provisions should apply only to the relations between the States members of the Madrid Union and the States members of the Protocol without being members of the Madrid Agreement and to the relations among the latter.

46. Mr. MOTA MAIA (Portugal) congratulated the President on his election and thanked the Spanish Government and also Mr. Bogsch, Director General of WIPO, for the organization of the Diplomatic Conference. He indicated that his Delegation was favorably disposed towards the Protocol, even though some of the proposed new features did present problems. Finally he expressed confidence in the spirit of cooperation of all the participants, and the wish that the Diplomatic Conference might be fully successful.

47. Mr. CARSTAD (Denmark) congratulated the President on his election and expressed the gratitude of his Delegation to the Spanish Government for its invitation to the meeting and for the work of WIPO and its Director General, Mr. Bogsch, which had made the Conference possible. Recalling that Denmark was still not a member of the Madrid Union, he stated that his Delegation was looking forward to a positive result of the Conference, which would contribute to strengthen the international cooperation in the field of industrial property.

48. Mr. FITZPATRICK (Ireland) congratulated the President on his election and wished him every success for the coming two and a half weeks. He thanked the Spanish Government for taking the initiative to host the Conference and

the Director General of WIPO, Mr. Bogsch, and the staff of WIPO for having produced the draft Protocol for the Conference. He stated that the draft Protocol contained some features which, in his opinion, would favorably influence his country to join the international trademark registration system and he expressed his wishes for the success of the Diplomatic Conference.

49. Mr. NGONGANG OUANDJI (Cameroon) congratulated the President and thanked the Spanish Government, WIPO and the Director General of WIPO for the invitation addressed to his country to take part as an observer in the work of the Conference. He expressed the wish that a Protocol might be adopted that would serve the interests of all countries, including developing countries, and indicated that if that objective were achieved, his country would be able to join the family of Madrid Union member countries.

50. Mrs. TAO (China) congratulated the President on his election and thanked the Spanish Government for its hospitality and the excellent preparatory work on the Conference. She thanked WIPO and in particular its Director General, Mr. Bogsch, for the efforts that had been made to improve and develop the international system for the registration of marks, and hoped that the Protocol would allow new countries to join it. She indicated that her country had already taken the decision to accede to the Madrid Agreement, and that the instrument of accession would be deposited in the near future. Finally, she expressed her wish that the Diplomatic Conference might be successful.

51. Mr. LUOMA (Finland) congratulated the President on his election and thanked the Spanish Government for hosting the Conference and the staff of WIPO for the excellent background documentation prepared. He stated that his country had a clear interest in the process of revision of the Madrid system as it would likely produce cost savings for the trademark owners. Recalling that Finland had, so far, chosen not to join the Madrid Union, he indicated that the main obstacles faced by his country included the fact that, according to the present rules, international registrations could only be based on national registrations, not on national applications, and the 12-month time limit for refusal was considered to be too short. He also indicated that Finland had some hesitations regarding the present fee system. He noted with satisfaction that the Basic Proposal contained a number of elements which would certainly improve the present system and hoped that the Conference would bring about the necessary amendments which would enable more members of the Paris Union to join the Madrid system.

52. Mrs. BOWIE (United States of America) congratulated the President on his election and WIPO for the excellent work done in the preparation of the document for the Conference and expressed the appreciation of her Delegation to the Government of Spain for hosting the Diplomatic Conference. She wished the President the greatest success in concluding the Diplomatic Conference.

53. Mr. TAKAKURA (Japan) congratulated the President on his election and expressed the appreciation of his Delegation to the Director General of WIPO, Mr. Bogsch, and to the staff of the International Bureau for having prepared the Conference and to the Spanish Government for hosting it. He noted that, although his country was presently outside the Madrid Agreement, it had great interest in the discussions for the conclusion of a Protocol which could make it easier for countries like Japan to join it. Wishing every success for the Conference, he stated that his Delegation would continue to follow the discussions with great interest and attention.

54. Ms. MÖRNER (Sweden) congratulated the President on his election and wished him a great success in his work. Agreeing with what had been said by the delegate of Finland, she regretted that her country was not able to participate as a full member in the Conference since the solutions to what was called the four impediments in the introductory observations to the Basic Proposal contained in document MM/DC/3 were of great interest to her Delegation as well as to other countries not yet party to the Madrid Agreement. She thanked the Spanish Government for its invitation and expressed the gratitude of her Delegation towards all those who had made the Conference possible.

<p>Third Meeting Tuesday, June 13, 1989 Morning</p>

55. The PRESIDENT opened the meeting and stated that the Conference would continue to hear opening declarations.

56. Mr. SCHROETER (German Democratic Republic) joined the other speakers in expressing his congratulations. Recalling that his country had been a member of the Madrid Agreement for many years, he expressed its support for an extension of the scope of application of that Agreement which could promote cooperation and the development of trade relations between States. In this context he declared that his Delegation supported both the accession of more States to the Madrid Union and the proposal concerning the establishment of links between the Madrid Agreement and the regional trademark systems, in particular with the future regional trademark system of the European Communities. He stressed the great political and economic importance which his country attached to the recently established diplomatic relations with the European Communities and stated that his Delegation would highly appreciate it if, as a result of the establishment of the Community Trade Mark for the internal market of the European Communities, by 1992, a Madrid registration could be the basis for acquiring Community trade mark protection and the mark applied for or registered with the Community Trade Mark Office could form the basis for an international registration. In conclusion, he stated that his Delegation would work towards the successful outcome of the Diplomatic Conference.

57. Mr. VAN BAUWEL (Benelux Trademark Office) congratulated the President on his election and expressed the certainty that his personal qualities would be a decisive factor in the success of the Diplomatic Conference. After having recalled that the Benelux Trademark Office had been since January 1, 1971, and indeed still was, the only Office within the meaning of Article 9^{quater} of the Madrid Agreement, he expressed his satisfaction with the operation of the Agreement, but at the same time welcomed the efforts made by WIPO on the one hand to increase the number of member countries of the Madrid Union, and on the other hand to establish a link between the Madrid system and that of the future Community Trade Mark, which were the two objectives of the Protocol.

58. Mr. HARLÉ (AIPPI) congratulated the President on his election, and expressed his gratitude to the Spanish Government. He thanked the Director General of WIPO for the preparation of the Conference documents. After having expressed the support of AIPPI for the general principles enshrined in the Basic Proposal, he said that the changes brought about by the Protocol to the Madrid Agreement should be kept to a minimum, on account of the number of years during which the Madrid Agreement had operated to the satisfaction of the present member States and also to the advantage of the users of the Madrid system.

59.1 Mr. FISHER (FICPI and CIPA) on behalf of CIPA thanked the Conference for the admission of CIPA as an Observer Organization. He congratulated the Chairman on his election, thanked the Spanish authorities for their hospitality and wished the Conference every success. He noted that the advent of the Community trade mark was one which would require a change in the law of the United Kingdom and, therefore, it would seem entirely appropriate that the Protocol should have come about at that time.

59.2 Speaking on behalf of FICPI, he thanked the Conference for the invitation of FICPI as an Observer Organization. He congratulated the Spanish authorities on their initiative in hosting the Conference in the city which gave its name to the Madrid Union and, recalling the long path which had led to the Conference, he also congratulated WIPO for the work which, under the leadership of its Director General, Mr. Bogsch, had been put into the Basic Proposal. Recognizing the enormous task and responsibility which the member Delegations had in their hands, he asked them to bear in mind the interests of the users of the system and come to an agreement which would lead the international trademark system into the 21st century and which could itself last 100 years or more. Recalling that a user of the existing Madrid Union had told him that the existing system was quick, cheap and easy, he stated that if the delegations aimed for these three virtues they would be aiming in the right direction. On behalf of FICPI he congratulated the President on his election and hoped that FICPI could contribute in the discussions.

60. Mrs. KIK (UEPIP) joined the other speakers in congratulating the President on his election and the Spanish Government and the Director General of WIPO, Mr. Bogsch, for their excellent preparatory work. She expressed the support of UEPIP to the remarks made, in particular, by the Delegations of the Netherlands and Belgium that the safeguard clause of the Protocol was of utmost importance and hoped that UEPIP would be able to give some contributions to the successful result of the Conference.

61. Mr. HANSMANN (CNIPA), speaking on behalf of CNIPA and FCPA, congratulated the President on his election. He expressed the gratitude of both Organizations for having been invited to Madrid and his conviction that under the President's leadership the Conference would have a positive result. He noted that the preparatory documents were excellently drafted and announced that he would submit some general comments in a separate paper the following day.

62. Mrs. CHICOINE (USTA) congratulated the President on his election and Mr. Bogsch and the International Bureau of the World Intellectual Property Organization for the excellent preparatory work leading up to the Conference, and she thanked the Spanish Government for its hospitality. She expressed the

gratitude of the USTA for having been invited to participate as a non-governmental observer in the Conference and, in view of USTA's worldwide membership of two thousand corporations, law firms and other entities, stated that USTA would follow closely and with great interest the proceedings and deliberations of the Conference.

63. Mr. DE PASSEMAR (CEIPI) joined the other speakers in addressing his congratulations to the President, to the Spanish Government and to the Director General of WIPO. He said that CEIPI endorsed the statements made by the representatives of AIPPI and FICPI.

64. Mr. TURNER (ITMA) congratulated the President on his election and thanked WIPO for the organization of the meeting as well as the Spanish Government for hosting it. He noted that although ITMA generally welcomed the objectives of the proposals in the draft Protocol, in particular the proposal allowing an international application to be based on a national application and the proposal establishing a minimum 18-month period of refusal, there were two points which caused his organization some concern. The first one was the amount of national fees which he believed should be fully paid. The second point was the altered central attack system which seemed to have the effect of greatly extending the priority period, therefore creating a possibility of applications lasting for a long time. He stated that he would give comments in detail on various points as they would arise later and wished every success to the President and to the Conference as a whole.

65. Mr. TATHAM (TMPDF) congratulated the President on his election and thanked the Spanish authorities for their hospitality and excellent arrangements. He stated that TMPDF, as representing the interests of industry, saw considerable advantages in having access to an international registration system and welcomed the appearance of the Protocol which contained many advantages to British industry. He recalled that the discussions should never overlook the interests of the users nor the fact that what was under discussion was a Protocol, in other words a new agreement, and not the Madrid Agreement itself.

66. Mr. ELZABURU (COAPI) recalled that in the industrial property field the importance of a close cooperation between the administration and the agents was very well known. This cooperation was recognized not only at the national level but also at the international level as it could be noted from the great number of non-governmental organizations present at the Conference and, in particular, by the measures adopted by WIPO, which under the inspiring direction of Mr. Bogsch, promoted the geographical extension of industrial property systems in parallel with the creation of adequate professional structures. At the national level, the cooperation between the administration and the members of COAPI allowed him to closely follow the efforts of the Spanish authorities to prepare a satisfactory meeting at a time during which all adequate premises had already been taken for other meetings as a consequence of the obligations deriving from the Spanish presidency of the European Communities. Stressing the efficient work of the Spanish administration carried out under the dynamic direction of Mr. Julio Delicado and his highly skilled assistants, he recognized that those efforts were possible not only in view of the high interest the subject of that Conference originated but specially in view of the link existing between the city of Madrid and the oldest system of international trademark protection. He indicated that the efforts of the Spanish authorities were also reflected in

the modern infrastructure of its industrial property office. He noted the conscious option of the Spanish authorities for the old tradition of the quixotism, recalling its support for the international cooperation despite the large losses of fees that the Madrid Agreement represented for Spain and pointing out that the Spanish authorities and professionals were present at the Conference with that same spirit of compromise.

67. Mrs. BANDIN (ECTA) expressed the appreciation of her Delegation for the invitation received and congratulated the President on his election. She stated that ECTA, while supporting the efforts to extend the Madrid system by means of the Protocol, emphasized that the differences between the present Agreement and the Protocol should be as small as possible. She trusted she would be able to bring her Delegation's views on specific items during the course of the debates.

68. Mr. BOCKEN (EFPIA) joined the other speakers in the expression of congratulations, and said that, even though his organization supported the aims of the Protocol, it regretted that there had been no possibility of bringing about a less complex revision of the Madrid Agreement. He said that his organization did not agree with the dualist philosophy of the Protocol, which consisted in safeguarding the Madrid system completely and in introducing a parallel system that returned the registration of the international mark and the cancellation of that registration to the national procedure. He even felt that such a dual system was liable to hamper the success, if not actually lead to the failure of the desired extension of the Madrid Agreement, and therefore to the gradual abandonment of the Madrid system. He said that in EFPIA's view the extension of the international system should not be based on the principles embodied in the Protocol, in view of the fact that the Madrid Agreement was functioning satisfactorily. He said that his organization favored the creation of links between the two multilateral instruments, and that it supported the delegations that wished to limit the safeguard clause.

69. Mr. BOGSCH (Director General of WIPO) recalled the history of the efforts which had led to the Diplomatic Conference. He first noted that WIPO's attempts to have other countries than the present members of the Madrid Union to adhere to the Madrid Agreement had failed. Therefore, WIPO had embarked on what was known as the Trademark Registration Treaty (TRT), with the support of the United States of America, the United Kingdom, and many other countries which were not members of the Madrid Agreement. However, those countries which had been the most interested outside the Madrid Union to have an international system had not ratified the TRT. Thus, WIPO was faced with two possibilities, either to try to revise the TRT or to try to make the Madrid system acceptable to countries outside of that system. The second alternative was now before the Conference because of the continuous support for the present system by all the present member States. He noticed that some features in the draft Protocol now seemed to be appealing to some of the present members of the Madrid Union who wanted to see some changes among themselves. In his opinion, this was a great departure from the philosophy previously expressed by the present members of the Madrid Union according to which, even if the Diplomatic Conference reached agreement on the Protocol, the present members of the Madrid Union would not wish, in their mutual relations, to apply the Protocol but would wish to apply only the present Madrid Agreement. Should the Protocol have the same fate as the TRT, one would have to revert to the other alternative, namely the revision of the TRT or the setting up of another international trademark registration system outside the Madrid Union.

Fourth Meeting
Wednesday, June 21, 1989
Afternoon

Consideration of the First Report of the Credentials Committee

70. Mr. MOTA MAIA (Acting President) said that, according to the agenda of the Diplomatic Conference (document MM/DC/(1), the next item was item 9, "Consideration of the first report of the Credentials Committee." That report was to be found in document MM/DC/20. Mr. Mota Maia gave the floor to Mr. Komarov, Chairman of the Credentials Committee.

71. Mr. KOMAROV (Chairman of the Credentials Committee) presented the results of the work of the Credentials Committee, which held its session on June 16, 1989. He said that all the members of the Committee were present at that session: Austria, Czechoslovakia, Italy, Morocco and the Soviet Union. The Chairman and the Vice-Chairmen were elected following the recommendations made by the Nominations Committee. The Committee had examined the credentials and full powers of the delegations of States as well as the letters or other documents of appointment of representatives of Organizations present at the Conference. He added that paragraphs 5 and 6 of the report of the Committee contained in document MM/DC/20 concerned the States and that paragraph 8 concerned the Organizations. Paragraph 7 of the report related to those credentials and full powers which had been received in a facsimile form or in telex form. He further informed that after the session of June 16, the Secretariat had received the original of the credentials of the Observer Delegation of China and the originals of the credentials of the Member Delegation of Ireland and of the Observer Delegation of the Republic of Korea, but not the originals of the facsimile copies that were mentioned in paragraph 7 of the report. Furthermore, since the session of June 16, a notice had been received in telex form, containing the credentials of the Observer Delegation of Burundi. Moreover, in paragraph 9 of the report, it was noted that the Secretariat received from a number of governments communications which were not signed by the Head of the State, the Prime Minister, or the Minister for Foreign Affairs, as was usually the case, but which were sent respectively by the Embassies in Madrid, by the Permanent Missions in Geneva, or by the Ministries dealing with industrial property, including trademarks. He considered that the Plenary of the Diplomatic Conference should decide whether such communications were sufficient to be accepted as credentials. He finally referred to paragraph 10 of the report and expressed the hope that the Delegations which had not yet presented credentials or full powers, as well as the Organizations which had not yet transmitted their letters of appointment, would do so without delay.

72. Mr. MOTA MAIA (Acting President) said that there were certain matters in the report that called for a decision by the Plenary. He proposed that each of those matters be analyzed.

73. Mr. COMBALDIEU (France) said that he had just handed the Secretariat his Delegation's full powers for signature of the Protocol. He asked the Assembly to take note of that fact.

74. Mr. MOTA MAIA (Acting President) thanked Mr. Combaldieu. He went on to say that the first three paragraphs of the Credentials Committee's report presented no problem. He noted that there were no requests to speak, and that the first three paragraphs of the report could be considered adopted. He proceeded to paragraph 4 of the report, and noted that there were again no requests to speak, so that paragraph 4 could also be considered adopted. He opened discussions on paragraph 5.

75. Mr. BOGSCH (Director General of WIPO) said that in view of the information given by the Delegation of France the reference to that country should be inserted in the list in paragraph 5 of document MM/DC/20 and taken out of the list in paragraph 6(a).

76. Mr. MOTA MAIA (Acting President) asked whether, after the Director General's clarification, anyone else wished to speak on paragraph 5. He noted that such was not the case, and considered that the paragraph in question could be approved. He opened discussions on paragraph 6(a), on credentials, and, noting that no one was asking for the floor, considered that it too could be approved. He noted further that paragraph 6(b) presented no difficulties and could be approved. As for paragraph 7 of the report, on communications received by telex, facsimile, etc., he mentioned that the Chairman of the Credentials Committee had announced the receipt, in the meantime, of the originals of the credentials of the Delegations of China, Ireland and the Democratic People's Republic of Korea. He then gave the floor to the Delegation of Belgium, whose credentials and full powers had been sent in the form of a telex.

77. Mr. WINTERBEECK (Belgium) said that he had been informed that credentials in due form would be handed very shortly to the Secretariat of the Conference.

78. Mr. MOTA MAIA (Acting President) asked the Delegations of Argentina, Egypt and Uruguay whether they had any news of their credentials. He noted that such was not the case.

79. Mr. FORTINI (Italy) considered that the sending of credentials or full powers by telex or facsimile should be accepted.

80. Mr. MOTA MAIA (Acting President) recalled that in practice it was at least necessary to confirm credentials and full powers sent initially by telex, facsimile or in any other form.

81. Mr. KOMAROV (Chairman of the Credentials Committee) believed that the question of the validity of the credentials transmitted in a non-traditional form should be decided by the Plenary. He added that, if it was decided that these credentials be temporarily accepted until the receipt of the official document, the Credentials Committee would proceed to check the credentials unless it was decided otherwise by the Plenary.

82. Mr. BOGSCH (Director General of WIPO) said, with respect to the proposal made by the Delegation of Italy, that it would be necessary that the Secretariat confirm that those telexes were signed by the proper authority.

83. Mr. KOMAROV (Chairman of the Credentials Committee) believed that his Committee had enough time to prepare a short report where all those questions would be solved, before the Conference adopted a final decision. He stressed the need for everybody to speed up the required procedures.

84. Mrs. TAO (China) said that China had also submitted its credentials and that therefore its name should be added to paragraph 6.

85. Mr. MOTA MAIA (Acting President) said that he agreed with what the Delegation of China had just said.

86. Mr. Tae Joon KIM (Republic of Korea) said that his Delegation had also submitted its credentials signed by the Foreign Minister of its country and, therefore, requested that the name of his country be included in paragraph 6(a).

87. Mr. MOTA MAIA (Acting President) said that the request of the Republic of Korea would be granted.

88. Mr. BOGSCH (Director General of WIPO) said that for the other countries, for which no information had been received on who had signed the telexes, the decision had to be postponed until information was given by the Credentials Committee. He added that there would be a supplementary report on those cases.

89. Mr. MOTA MAIA (Acting President) opened discussions on paragraph 8, and noted that it gave rise to no comment and could therefore be considered approved. He opened discussions on paragraph 9.

90. Mr. FORTINI (Italy) considered that communications signed by ministers or other authorities not institutionally designated as representative of the will of a State vis-à-vis other States should not be accepted. He added that a communication could be signed by an Ambassador representing a State or by a Minister for Foreign Affairs. He did not however consider communications signed by economic counsellors acceptable.

91. Mr. DIENG (Senegal) asked whether a communication addressed to the International Bureau of WIPO by a Minister for Foreign Affairs could be considered valid credentials.

92. Mr. MOTA MAIA (Acting President) replied in the affirmative, and mentioned that the problem arising in connection with paragraph 9 had to do with communications signed by a minister other than the Minister for Foreign Affairs, notably the minister responsible for industrial property.

93. Mr. LEDAKIS (Secretary of the Credentials Committee) said that with respect to Senegal the Secretariat had received a note verbale from the Permanent Mission in Geneva.

94. Mr. COSTA DE MORAIS SERRÃO (Portugal) said that his Delegation was able to support the statement made by the Delegation of Italy, with the reservation that communications signed by a Prime Minister should be acceptable in the same way as those signed by a Minister for Foreign Affairs.

95. Mr. MOTA MAIA (Acting President) said that it seemed to be agreed that a communication could be signed by the Ambassador of a Permanent Mission to the United Nations in Geneva.

96. Mr. FORTINI (Italy) said that, with regard to ambassadors, he made no distinction between the Ambassador accredited to the international organizations in Geneva and the Ambassador accredited to a country and posted in Madrid, for instance.

97. Mr. BOGSCH (Director General of WIPO) said that it could be agreed that, in the next report, those who had presented documents issued under the authority of an Ambassador in Geneva or in Madrid, whether in the form of a letter signed by the Ambassador or in the form of a note verbale, would be accepted. He added that in the next report the anonymous countries referred to in paragraph 9 should be identified so that a decision could be taken as to whether they would be admitted to vote and sign.

98. Mr. MOTA MAIA (Acting President) asked Mr. Komarov, Chairman of the Credentials Committee, whether he wished to add anything.

99. Mr. KOMAROV (Chairman of the Credentials Committee) considered that a final decision should not yet be taken in respect of the invalidity of the documents signed by the Ministers competent on the questions of industrial property.

100. Mr. MOTA MAIA (Acting President) proposed that communications already submitted by Ambassadors be accepted and that for communications about which there were doubts the Credentials Committee submit another report. He noted that there were no objections to his proposal. He opened discussions on paragraph 10, and noted that there were no requests to speak and that the item could be considered approved. He further noted that the same was true of paragraphs 11 and 12.

101. Mr. BOGSCH (Director General of WIPO) summed up the situation by saying that in the next report there would be a proper grouping of telexes and facsimiles, according to who sent or signed them. He added that their validity, or invalidity, would depend on the sender or signatory. Furthermore, in the next report, there would be a list of delegations which had received credentials from Ambassadors, Foreign Ministers, Heads of States and Prime Ministers. Any credentials signed by the Minister for Foreign Affairs or an authority having a higher rank would be accepted, whereas the others would not be accepted, unless the Plenary later decided otherwise.

102. Mr. KIM Yu Chol (Democratic People's Republic of Korea) said that the credentials and full powers of his Delegation would be presented to the Credentials Committee on the following day.

103. Mr. NZINAHORA (Burundi) considered that the credentials of his Delegation had been validly presented, as they were in the form of a telex from the Minister for Foreign Relations of his country.

104. Mr. MOLDOVEANU (Romania) congratulated the Presidency of the Diplomatic Conference, and thanked it for the efforts that were being made to bring about the conclusion of a Protocol that served the interests of all those present. He also thanked the Director General of WIPO and his staff for the efforts that they had made in the course of the preparatory work and the current debates. He added that the Delegation of Romania welcomed the reforms written into the Protocol as compared with the Madrid Agreement system, and ended his statement by thanking the Spanish authorities for the excellent way in which the work of the Diplomatic Conference was being conducted.

105. Mr. MOTA MAIA (Acting President) said that the statement by the Delegation of Romania should be regarded as having been made under item 10 of the agenda.

<p><u>Fifth Meeting</u> <u>Tuesday, June 27, 1989</u> <u>Morning</u></p>
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106.1 The PRESIDENT said that work would continue with the consideration of the texts proposed by the Main Committee (item 11 of the agenda), followed by consideration of the second report of the Credentials Committee (item 12 of the agenda) and finally the adoption of the Protocol (item 13 of the agenda) and the Final Act (item 14 of the agenda). He announced that the Assembly of the Madrid Union would meet in extraordinary session immediately after the present meeting.

Consideration of the Texts Proposed by the Main Committee

106.2 The President moved onto item 11 of the agenda, "Consideration of the texts proposed by the Main Committee" (document MM/DC/1), and gave the floor to Mr. Combaldieu, Chairman of the Main Committee.

107. Mr. COMBALDIEU (Chairman of the Main Committee) recalled that a document MM/DC/27, approved by consensus at the last meeting of the Main Committee, had been distributed. He added that all the delegations present supported the text of the Protocol as submitted to the present Plenary meeting. He added that he had no particular comments to make.

108.1 The PRESIDENT, noting that no delegation had asked for the floor, thanked Mr. Combaldieu for the work that he had thus completed as Chairman of the Main Committee, and suggested considering the text of the Protocol as appearing in document MM/DC/27. He said that, if questions arose while it was being considered, the text of document MM/DC/27 would be revised once again.

108.2 The President asked, article by article, whether delegations had comments to make, and noted that that was not the case up to and including Article 15.

108.3 The President gave the floor to the Delegation of Italy concerning Article 16.

109. Mr. FORTINI (Italy) said that he wished to share the impressions that had been made known to his Delegation by Italian parliamentary circles regarding the text of the Protocol. He mentioned that Article 16(1)(b), which gives a list of the languages in which official texts may be drawn up, did not mention Italian. He noted however that subparagraph (b) provided that the Assembly could specify translations in languages other than those mentioned. He added that the fact of Italian not being mentioned could complicate the procedures of ratification by the Parliament of his country. He therefore asked whether it would be possible to add Italian to the languages named in Article 16(1)(b).

110.1 The PRESIDENT, noting that the Delegation of Italy had not been able to speak at the appropriate time to request the inclusion of Italian in the list of languages in which official texts of the Protocol would be established by the Director General, proposed including that language in the list. Noting that there was no opposition to the proposal, he asked the Secretariat to draw up a revised document in which Italian would be included in Article 16(1)(b).

Adoption of the Protocol

110.2 The President moved on to item 13 of the agenda, "Adoption of the Protocol" (document MM/DC/1), and submitted to the Conference the whole text of the Protocol with the amendment made to its Article 16(1)(b) (see paragraph 110.1); noting that no observation was made, he declared the Protocol adopted.

Consideration of the Second Report of the Credentials Committee

110.3 Proceeding to item 12 of the agenda, "Consideration of the second report of the Credentials Committee" (document MM/DC/1), the President asked Mr. Komarov, Chairman of the Credentials Committee, to give an account of the report in order that the Assembly might consider it and decide on its approval.

111. Mr. KOMAROV (Chairman of the Credentials Committee), presented the report on the second session of the Credentials Committee contained in document MM/DC/28 and said that he was ready to answer questions on that report.

112. Mr. BOGSCH (Director General of WIPO) indicated that a clerical mistake had to be corrected in the report, on page 2, paragraph 3, line 5 of the English text. The words "should be accepted" should replace the words "could be accepted." In addition, in paragraph 4(b)(ii), dealing with the Observer Delegations, 13 delegations instead of 12 should be indicated, the country missing being the United States of America.

113.1 The PRESIDENT asked whether there were any observations on what the Director General had just said. Noting that such was not the case, and before embarking on consideration of the text, he formally thanked Mr. Komarov and the other members of the Credentials Committee for the report that they had submitted to the Plenary.

113.2 The President noted that there were no observations on the six paragraphs of the report. He therefore declared the report of the Credentials Committee adopted with the amendments made to paragraphs 3 and 4(b)(ii) thereof (see paragraph 112 above).

Adoption of the Final Act

114. The PRESIDENT moved on to item 14 of the agenda, "Adoption of any recommendation, resolution, agreed statement or final act" (document MM/DC/1), and proposed consideration of the Final Act, which appears in document MM/DC/25 Rev. He drew the Conference's attention to the fact that it was traditional to adopt a final act at every diplomatic conference, but that such an act was devoid of all legal effect. He asked the delegates whether they had any observations to make on the text, and gave the floor to the Director General, who wished to give some explanations on the subject.

115. Mr. BOGSCH (Director General of WIPO) stated that a final act at the end of a diplomatic conference had no legal significance and did not oblige any State to do anything. He added that it just noted the presence of delegations. He called also the attention of the delegations on Article 48 of the Rules of Procedure, which said that the Final Act was open for signature by any Member Delegation. Therefore, the Member Delegations which had credentials would be able to sign the Final Act, which would be open for signature at the same time as the Protocol.

116. The PRESIDENT thanked the Director General for his explanations concerning the Final Act, and asked the delegations whether they approved the Act and whether it could therefore be considered adopted. Noting that there were no observations, he declared the text of the Final Act adopted, and closed the meeting.

[Suspension]

<u>Sixth Meeting</u>
<u>Wednesday, June 28, 1989</u>
<u>Afternoon</u>

Closing Declarations

117. The PRESIDENT declared the meeting open and proceeded to item 15 of the agenda, "Closing declarations by Delegations and by Representatives of Observer Organizations" (document MM/DC/1). He announced that Mr. Fernando Panizo, Under-Secretary at the Ministry of Industry and Energy, would take the floor on behalf of the Spanish Administration to make a final statement concerning the Diplomatic Conference.

118. Mr. PANIZO (Spain) congratulated the Diplomatic Conference on the success achieved in the adoption, after days of intense effort, of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks. His congratulations were addressed both to the

national delegations and representatives of international organizations and to all those who had been involved in the technical work of the Conference, without whom it would never have properly taken place. He likewise thanked the National Institute of Industry, and especially its President, Mr. Jorge Mercader, for their hospitality and for having made the headquarters of the Institute available to the Conference, and wished to mention specially the spirit of cooperation that they had shown. Emphasizing how much the spirit of compromise shown by all the delegations had made it possible to bring about a favorable result, he expressed the wish that the adoption of the Protocol might help attain the two objectives of the Conference, which were to secure the accession of new States to the international registration system provided for in the Madrid Agreement, and to establish a link with the future Community Trade Mark. He expressed his certainty that the Protocol would make it far easier for businesses to secure protection for their marks in new countries. He concluded by conveying the satisfaction felt by the Spanish Government, which for the second time had offered its territory for the holding of a Diplomatic Conference on the Agreement concerning the international registration of marks, and observed that the name of the city of Madrid would now be associated both with the Protocol and with the actual Agreement concerning the international registration of marks.

119.1 Mr. BOGSCH (Director General of WIPO), speaking in the name of WIPO, thanked the Government of Spain for having had the idea of holding the Diplomatic Conference in its country and also for having prepared and taken care of the technical organization of the Conference. He recalled that the buildings in which the Conference had been taking place were practically new, and that they had been converted so that it could take place under the best possible conditions. He also emphasized WIPO's indebtedness to Mr. Julio Delicado Montero-Rios, President of the Diplomatic Conference and Alternate Head of the Delegation of Spain. He added that Mr. Delicado was well known for having set up a practically new Registry which was truly an example to the world for its modernity and efficiency, and that it was thanks to him that the Spanish Industrial Property Office enjoyed great respect and great prestige throughout the world, and that close cooperation had been established with the Spanish-speaking countries of the American continent. Mentioning that Spain had joined the European Patent Organisation and was preparing to accede to the PCT, he went on to say that the holding of the present Diplomatic Conference in Madrid assured Spain of a prominent place in international cooperation in the field of marks.

119.2 Mr. Bogsch added that WIPO's thanks went also to Mr. Delicado's collaborators, and notably to Mr. Alberto Casado and Mr. Miguel Hidalgo, who had both played particularly important parts in the Conference. He emphasized moreover that the Spanish contribution had also involved the private sector, including industrial property specialists, and in that connection he mentioned Mr. Alberto Elzaburu, who had given the moral support of the Spanish private sector to the Diplomatic Conference.

119.3 Mr. Bogsch recalled that the writing of the draft Protocol had taken three years of preparatory work, in Committees of Experts convened and organized by WIPO and presided over by Mr. Alexander von Mühlendahl, Deputy Head of the Delegation of the Federal Republic of Germany, and he therefore wished to congratulate and thank the latter for the decisive role that he had played in the success of the Conference. He also said that the success of the Conference was the result of the always constructive cooperation of all the Government Delegations, the Delegation of the European Communities and the observers from non-governmental organizations, not to mention the excellence of the chairmen and vice-chairmen of the various committees. In that connection he thanked and congratulated Mr. Jean-Claude Combaldieu, of France,

who had chaired the Main Committee. He also thanked Mr. Lev E. Komarov, of the Soviet Union, Chairman of the Credentials Committee, and Mr. Jean-Louis Comte, of Switzerland, Chairman of the Drafting Committee, who had carried out particularly important tasks, and done so to everyone's satisfaction. He added that, although he was unable to name everyone, he also wished to thank the six Vice-Presidents of the Diplomatic Conference, namely Mr. Albert Krieger of the Federal Republic of Germany, Mr. José Mota Maia of Portugal, Mr. Joachim Hemmerling of the German Democratic Republic, Mr. Victor Tarnofsky of the United Kingdom, Mr. Nguyen Duc Than of Viet Nam and Mr. Blagota Žarković of Yugoslavia. He also addressed thanks to his collaborators from the International Bureau of WIPO, especially Mr. Alfons Schäfers, Mr. François Curchod, Mr. Gust Ledakis, Mr. Pierre Maugué, Mr. Maqbool Qayoom, Mrs. Carlotta Graffigna-Sperling, Mr. Ignacio Pérez-Fernández, Miss Raymonde Derqué, Mr. Takeshi Niinomi, Mrs. Andrée Damond and Mr. Carlos Claa.

119.4 Mr. Bogsch considered that the Protocol, as adopted, should enable new countries to join the Madrid Union, notably Denmark, Greece, Ireland and the United Kingdom, and should provide the possibility of simultaneous use of the Madrid system and the future European Community Trade Mark system. He added that he hoped that other countries not members of the Madrid Union would also accede to the Protocol as, without the United States of America, Japan, the Nordic countries and the developing countries, the Madrid system could not be considered a universal system; he said that he had not mentioned China as it was on the point of becoming a member of the Madrid Union. Because he considered that international trade needed a universal system for the registration of marks which would come into being sooner or later, he stressed the role of interested groups and professionals in inducing governments and parliaments to ratify the Protocol. Finally he mentioned that meetings would be convened by WIPO from 1990 onwards for the drafting of Regulations, and that all the delegations present at the Diplomatic Conference, and also the non-governmental organizations, would be invited.

119.5 Mr. Bogsch invited the Under-Secretary to sign the Protocol and the Final Act. He then thanked the Under-Secretary.

[Suspension]

120.1 The PRESIDENT reopened the meeting and said that, before anything else, he wished to thank the Director General for the praise that he had expressed concerning him, by which he had been greatly moved, and regretted that he had been unable to do so in the presence of the Spanish authorities. He also wished to thank the Director General for the kind words that he had addressed to his country and to his collaborators.

120.2 The President gave the floor to delegates wishing to make closing statements.

121. Mr. COMBALDIEU (France), in the name of his Delegation, addressed thanks to the Spanish Government which had managed to host the Diplomatic Conference most successfully and in an extraordinarily pleasant, efficient and friendly manner. He also thanked the Spanish Industrial Property Office, and especially its President, Mr. Delicado Montero-Rios. As for the Protocol, he expressed the wish that it might breathe new life into the Madrid Agreement, so that new countries could adhere to the international system for the registration of marks. He concluded by also thanking WIPO, its

Director General, his collaborators and the International Bureau as a whole for the preparatory work that had been done. He added that his Delegation was profoundly attached to WIPO and to the great principles inherent in industrial property, namely the principle of multilateralism and also the national treatment principle, those being two fundamental rules that had to be preserved.

122. Mr. KRIEGER (Federal Republic of Germany) expressed the gratitude of his Government to the Government of Spain for inviting and hosting this Diplomatic Conference, reasserting thereby its responsibility not only for the old system of the Madrid Agreement created nearly 100 years before, but also for the further development of the worldwide protection of intellectual property in general. He also thanked the Government of Spain for organizing this Diplomatic Conference in such an impressive way and with such overwhelming courtesy, kindness and hospitality. He declared that the election of Mr. Delicado as President of the Conference was a visible and evident sign of the constructive role of Spain within the traditional system of the international protection of intellectual property. The Diplomatic Conference was a great success and should open optimistic perspectives for the further development of the Madrid Union. That success was due to the spirit of cooperation which had prevailed during the Conference. Each delegation, including the observer delegations, had played a constructive role with the confident and efficient help of Mr. Combaldieu, Chairman of the Main Committee, and Mr. Comte, Chairman of the Drafting Committee. The success was also due to the excellent and admirable preparation of the Conference, and he expressed his gratitude to the Director General of WIPO and his staff. The success of the Conference would be regarded as further proof and demonstration of the competence and efficiency of WIPO and would be the best possible basis for further developments in worldwide protection of intellectual property within the framework of WIPO. The Protocol which had been adopted was not only a very modern instrument for the protection of trademarks but was also important for the further development of the traditional system of protection of intellectual property in the world. That Diplomatic Conference was the third organized under the auspices of WIPO in 1989. Referring also to the Diplomatic Conference for the Conclusion of a Treaty on the International Registration of Audiovisual Works and to the Diplomatic Conference for the Conclusion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits, he said that all those Diplomatic Conferences led to positive results and should be evaluated as important steps in the development of the international protection of intellectual property as a whole. Although the role of WIPO had occasionally been contested, that new success would again be an important and positive contribution to the safeguarding and confirmation of the very well-deserved position of WIPO in the world and of its key role in the field of industrial property.

123. Mr. ILIEV (Bulgaria) stated that the Diplomatic Conference had done an excellent job since the document which had been approved proposed excellent solutions to new problems of harmony with the good solutions existing in the Madrid Agreement. The spirit of the discussions had been very constructive, and the success of the Conference was the result of excellent preparations by WIPO and excellent work done by the different chairmen. He concluded by saying that his Delegation would return to its country with a feeling of satisfaction.

124. Mr. COOPER (United Kingdom) expressed the satisfaction of his Delegation for that successful and important Diplomatic Conference, which had been conducted throughout in a spirit of cooperation by all delegations concerned. His country would be pleased to sign the Protocol which took

account of the United Kingdom trademark law. He thanked the Director General and the staff of the International Bureau for their immense efforts in the organization of the Conference, the work done in Madrid, but also for the invaluable preparatory work for the Conference. He also expressed special thanks to the Government of Spain for their most considerable contribution and for their hospitality. He congratulated the different chairmen and concluded that it had been a very successful conference from the standpoint of the United Kingdom.

125. Mr. VERSCHURE (Netherlands) stated that the Diplomatic Conference had shown to be an example of efficiency, cooperation and friendly spirit. Much of that was due to the Government of Spain, who had offered splendid facilities and proved to be an excellent host. He mentioned also the excellent preparatory work done by WIPO. He extended his gratitude to the different chairmen. He concluded by saying that for technical reasons his Delegation could not sign the Protocol on the same day, but his country would sign it in the near future, and hopefully before the end of 1989. He added that, thereafter, he would, with his colleagues from Belgium and Luxembourg, start the preparations for the ratification. Finally, he expressed the hope that the Protocol would be the final and decisive step towards a global treaty in the field of trademarks, which most countries wished to have.

126. Mr. KOMAROV (Soviet Union) declared that the success of the Conference had been completely achieved. The draft Protocol had been thoroughly discussed and, as a result, a number of important articles had been modified in a spirit of consensus. That spirit had been one of the decisive prerequisites to the success of the Conference, other important prerequisites being the wisdom and competence of the different chairmen. The International Bureau of WIPO had contributed to a large extent to the success of the Conference and its work, as always, had been highly effective and prompt and wisely guided by the Director General. He thanked the Government of Spain for the excellent conditions and hospitality. He finally extended the gratitude of his Delegation to all delegations for their cooperation and expressed the hope that the Protocol would be effective as soon as possible.

127. Mrs. LISAVAC (Yugoslavia) said that the Protocol about to be signed was a reflection of the success of the present Diplomatic Conference, crowning as it did years of effort within WIPO. She added that her Delegation was particularly pleased to have achieved, with the other delegations, a consensus which should be an inducement for the countries concerned to bring the Protocol into force as quickly as possible. She added that the Protocol would broaden the scope of the Madrid Agreement, which was one of the most successful international treaties in the industrial property field. She expressed the wish that other countries might accede to the Protocol, which was in effect the modernized version of the Madrid Agreement. She ended by thanking and commending the Spanish Government, and also Mr. Delicado, for the success and the excellent organization of the Diplomatic Conference.

128. Mr. BENDAOU (Morocco) said that it was thanks to the spirit of understanding and mutual sympathy that had prevailed during the work of the Conference that it had been so successful and that the Protocol had been adopted by consensus, without need for any voting. He added that the credit for that went to Mr. Delicado, President of the Conference, as it did to Mr. Combaldieu, Chairman of the Main Committee. He further wished to express thanks and congratulations on behalf of his Delegation to the various chairmen of the other committees, and also to the International Bureau of WIPO,

especially its Director General. His thanks and congratulations went likewise to the Spanish Government for its hospitality and for the favorable working conditions that it had provided for the Conference. He concluded by saying that his Delegation hoped that the greatest possible number of States and organizations would accede to the Protocol in the near future.

129. Mr. KIM Yu Chol (People's Democratic Republic of Korea), on behalf of his Delegation, thanked and congratulated all those who had worked to bring about the success of the Diplomatic Conference. He also thanked the Spanish Government for its hospitality, and the International Bureau of WIPO. He added that his Delegation had always wished to make the Madrid Union prosper, and to work together with WIPO on improving the protection of intellectual property.

130. Mr. WINTERBEECK (Belgium) thanked the President of the Conference, on behalf of his Delegation and his Government, for the excellent organization of the Diplomatic Conference and the satisfactory way in which it had taken place. His Delegation considered that the Conference had been a great success, thanks to the excellent preparatory work done by the International Bureau of WIPO and the national experts. The Protocol was an important stage in the development of an international system for the protection of marks, and the results achieved were notably due to the efforts made by the Spanish Government.

131. Mr. THOFT (Denmark) congratulated the President, the Director General of WIPO, the Government of Spain and all the delegations present for the very good results of the Conference. Those results were due to true cooperation with the International Bureau and the different working groups. Another reason for the success of the Conference was certainly due to its remarkable organization by the Spanish authorities. Last but not least was the readiness of all the delegations to agree on compromises where necessary. The participation of Denmark in that Conference had been of great importance to his country, since there was a growing interest to actually participate in the field of international industrial property protection. He recalled that the most recent development in his country in the field of industrial property had been the ratification of the European Patent Convention. He concluded by indicating that, after signing the Protocol, his country would be able to ratify it as soon as possible, together perhaps with the Madrid Agreement.

132. Mr. MEKIDECHE (Algeria) said that his Delegation subscribed to the thanks addressed to the President of the Conference for the manner in which he had conducted it. He added that his thanks went also to the Spanish authorities for their excellent welcome. His country wished moreover to thank the various committee chairmen for their efficient and important work, and the Director General of WIPO and his collaborators for their work on the preparation of the Conference and continuing work during it. He concluded by congratulating all the delegations for their cooperativeness, which had eventually made it possible to achieve the great success that the adoption of the Protocol clearly was.

133. Mr. MOTA MAIA (Portugal) thanked and congratulated the President of the Conference, and also the Spanish Government, for having taken the opportunity to propose the holding of the Diplomatic Conference in Madrid. He added that the remarkably warm welcome that had been extended to the various delegations

had greatly contributed to the success of their work. He also thanked and congratulated the Director General of WIPO, and his staff, for the successful adoption of the Protocol, which was remarkable for its timeliness and importance. He was equally pleased to see the European Communities participating for the second time as a delegation in its own right in the work of a WIPO Diplomatic Conference. He expressed the wish that such participation might be the start of a new form of cooperation between the European Communities and WIPO, not least in matters concerning the international registration of marks and the Community Trade Mark. He expressed pleasure that the work of the Diplomatic Conference should have ended in success, notably thanks to the concessions made by the delegations. He hoped that many States would regard the Protocol as solving the problems that had prevented them from acceding to the Madrid Agreement. The coming to fruition of the Protocol confirmed once again the importance of WIPO. With good cooperation between its member States, it was essential that the development of industrial property protection should continue. WIPO was the natural setting for industrial property, where conditions were best suited to it. He concluded by saying that his country would continue to work in cooperation with WIPO, and with other delegations that so wished, on the success of the Protocol, until the day came when there was a single, unified international instrument to manage the system for the international registration of marks.

134. Mr. PUSZTAI (Hungary) declared that his delegation was satisfied with the results of the Diplomatic Conference and also with its organization. He endorsed the various opinions of gratitude expressed by previous delegations and thanked the President for the work done during the Conference.

135. Mr. COMTE (Switzerland) thanked and congratulated, on behalf of his Delegation, all those who had contributed to the success of the Diplomatic Conference, and in particular the Spanish Government for its warm hospitality, the Delegation of Spain for the excellent organization, the President of the Conference for his wisdom and diplomacy and the Director General of WIPO and his staff. The suggestions made by the Director General of WIPO had contributed greatly to the success of the Conference. His Delegation was entirely satisfied with the results achieved, which were due not only to a consensus among the delegations but also to the support of the representatives of the interested groups who were the prospective users of the system introduced. He concluded with the wish that the Protocol might enjoy success proportionate to that of the Conference itself.

136. Mr. CASADO and Mr. SCHWARTZ (European Communities) addressed to Mr. Delicado the thanks and congratulations of the European Communities for the manner in which he had presided over the Conference and for the results that had been achieved. They also wished to thank and congratulate Mr. Combaldieu for the efficiency, kindness and sense of humor that he had shown in conducting the work of the Main Committee, and also Mr. Comte and Mr. Komarov, Chairmen of the Drafting Committee and Credentials Committee respectively. They said that all the delegations had shown a sense of compromise and goodwill during the work of the Conference, and that they themselves were certain, in the light of the results obtained, that the Protocol would be a success, emphasizing the fact that it was the answer to a real need. They added that the European Communities would do their utmost to contribute to the success of the Protocol, which moreover provided additional motivation for the Community's work on trademarks, which had been going on for many years, to be rapidly completed. In the near future, the European

Communities would have to join the Madrid Union in order that the link between the Community Trade Mark and the international registration of marks might be finally established. Their Delegation had greatly appreciated the opportunity given it of contributing to the work of the Conference. They thanked and congratulated the Spanish authorities, the President of the Conference and the Director General of WIPO and his staff for the excellent work that had made the successful completion of the Conference possible. Finally they said that the importance attached by their Delegation to the Protocol was at the same time a reflection of its firm intention to contribute to the work conducted within the framework of WIPO.

137. Mr. FEELY (Ireland) thanked, on behalf of his Delegation, the Government of Spain for its generous hospitality. He also thanked the President for the manner in which he had guided the Conference to its successful conclusion. He extended his thanks to the chairmen of the various committees. He finally thanked the International Bureau of WIPO and, in particular, its Director General for the skillful and successful manner in which the Conference had been organized and successfully concluded. As regards the position of his Delegation, he hoped that his country would become party to the Protocol in the very near future. He concluded by indicating that his report to his Government would be optimistic and favorable.

138. Mr. NGUYEN (Viet Nam) expressed profound gratitude, on behalf of his Delegation, to the President of the Conference and to the chairmen of the committees for their praiseworthy efforts which had made it possible, in a spirit of cooperation and mutual understanding, for the Conference to succeed. He considered that the text of the Protocol was good and stated that his Delegation would do its utmost to have it signed and ratified by the Government of Viet Nam. He concluded by thanking the Spanish Government for its warm hospitality and the excellent working conditions that it had provided, and also the Director General of WIPO and his team for the excellent preparatory work.

139. Mr. ECONOMOU (Greece) said that his Delegation wished to join the previous speakers and thank and congratulate those who had organized the Conference, as well as those who had successfully managed its work. He likewise thanked and congratulated the Spanish authorities and Delegation, and also the International Bureau of WIPO, for their excellent collaboration.

140. Mr. TSEDENDAMBA (Mongolia) declared that his Delegation associated itself with joy with all the words of gratitude and satisfaction which had previously been expressed by other delegations. He thanked the Spanish authorities for their warm hospitality and the excellent working conditions. He also expressed the gratitude of his Delegation to the President of the Conference, to the International Bureau and to the Director General. Undoubtedly the Conference had reached its goal due to the efforts and goodwill of all the participants. That demonstrated the unanimity and efforts of all States and Organizations towards the further improvement and broadening of the existing system of the international registration of trademarks and towards the strengthening of its effectiveness. He concluded by saying that the Protocol which had been adopted constituted a good basis and he thanked again all participants for their cooperation.

141. Miss JONES (Argentina) thanked the Spanish Government for having acted as host to the Diplomatic Conference, and also all those who had contributed to its success, highlighting at the same time the work done by the Director General of WIPO. Argentina's aim, like that of the other developing countries, had always been to arrive at balanced solutions which allowed for the different levels of development of the various countries. Her country, although it was not party to the Madrid Agreement, was studying with a great deal of interest the initiative that had led to the adoption of the Protocol by the Diplomatic Conference.

142. Mr. NGONGANG OUANDJI (Cameroon) said that his Delegation, which was present in an observer capacity, felt bound to congratulate and address thanks to WIPO for all the efforts that had been made to bring about the success of the Conference. He also thanked the Spanish Government, and also the President of the Conference, for the excellent organization thereof. The presence of Cameroon at the Conference testified to his country's growing interest in the work that had been done at Madrid, and had moreover been done in an environment of global, fair and equitable cooperation which made allowance for the industrialization needs of all parts of the world, especially developing countries. His country, which intended to put in hand a pragmatic program of industrialization and scientific research, had taken on a leading role within OAPI, of which it was a member and whose headquarters were on its territory, in Yaoundé. He ended by saying that he intended to continue, in the OAPI framework, his promotion of more substantial cooperation with WIPO, and also to establish close relations with the countries party to the Madrid Agreement and future adherents to the Protocol.

143. Mrs. TAO (China), on behalf of her Delegation, thanked and congratulated the President of the Conference and the chairmen of the committees for their excellent work. She also thanked the Director General of WIPO and his staff, and all those who had worked to make the present Diplomatic Conference a notable success. Her country, as a future member of the Madrid Union, was also interested in the Protocol, which would probably be signed once her Government had examined it. China's decision to accede to the Madrid Agreement showed its intention to continue and strengthen exchanges and cooperation in the field of intellectual property protection. She ended by repeating her Delegation's thanks to the Spanish Government for its hospitality and for the organization of the Conference.

144. Mr. ENÄJÄRVI (Finland) declared that his Delegation had followed the discussions of the Conference with great interest and considered the Protocol as a remarkable achievement of international cooperation in the field of trademarks. The outcome of the Conference seemed to be very satisfactory, and most of the problems which had been raised by his Delegation had been solved. The Protocol would be reexamined in order to check whether its provisions corresponded to his country's legislation and practice regarding the registration of trademarks. If the conclusions were favorable, his country would consider signing the Protocol. He extended the gratitude of his Delegation to the President of the Conference and to the chairmen of the various committees, as well as to the International Bureau of WIPO and its Director General. He concluded by thanking also the Government of Spain for having hosted the Conference.

145. Ms. BOWIE (United States of America) expressed the appreciation of her Delegation to the Spanish Government for its graciousness and the hospitality

they had extended to the Conference and its participants. She also congratulated the President of the Conference and the chairmen of the various committees and also the Director General of WIPO and his staff for the excellent work done, which had led to the successful conclusion of the Conference. She concluded by indicating that her Delegation had appreciated having an opportunity to be an observer.

146. Mr. ELZABURU (COAPI), speaking in his capacity as Vice-President of Spain's Official College of Industrial Property Agents, emphasized that the Spanish industrial property professionals were the usual representatives of Spanish industry, and especially the smaller industries, and declared that he wished to salute the success of the Diplomatic Conference. He addressed his thanks to the Director General of WIPO, whose decisive role he emphasized, and also to the Spanish Office and to its Director General, Mr. Delicado, and his highly qualified collaborators. Mentioning that the Spanish Trademark Office was one of the most efficient and up-to-date, and that its automated operations and its trademark search system had been the envy of a number of foreign delegations, he expressed the desire that the Spanish infrastructure and Spanish experience in the field of the international protection of marks might be taken into account when the time came for new systems for the regional protection of marks to be introduced. He concluded by thanking the President for his magnificent work during the Conference, and expressed pleasure at having been able to participate in its eventual success.

147. Mr. BAZ (UEPIP) expressed pleasure at the satisfactory outcome of the work of the Conference and at the spirit of compromise that had been shown throughout the discussions. He congratulated the Spanish organizers for having provided an adequate infrastructure and organized receptions and various other events that had promoted friendly relations among the participants. He addressed his thanks to WIPO and to its Director General for all the preparatory work that had been done. He finally expressed satisfaction with the excellent atmosphere that had prevailed during the Conference, thanks to the cooperation of all the participants, and declared himself satisfied that the Observer Organizations had been given an opportunity to make their opinions known as representatives of interested groups, and thereby contribute to the results achieved.

148. Mr. BERCOVITZ (ATRIP) addressed thanks to the Spanish Government and to WIPO, and expressed pleasure at having had the opportunity to attend the Conference as an observer.

149. Mr. SONN (FICPI) declared that he was not only speaking in the name of FICPI, but also in the name of all the other international bodies representing interested circles which had already left the Conference. Those international bodies represented the users of the Madrid Agreement and he expressed his thanks to all delegations for having listened to their representatives. He also thanked WIPO and its Director General for enabling the interested circles to be heard in international meetings and conferences and expressed his gratitude to the President of the Conference and the chairmen of the various committees. He said that the international circles had always worked in favor of a multilateral trademark agreement which would cover more countries than the present Madrid Agreement and he considered that the Protocol should be regarded as an important step in that direction.

Closing of the Conference

150. The PRESIDENT announced that item 16 of the agenda had been reached, namely "Closing of the Conference by the President." He expressed his gratitude and esteem to all those who had taken part in the Conference, considering that, for his part, he had done no more than his duty to the best of his ability. He was of the opinion, as indeed were a number of delegations, that one of the reasons for the success of the Conference had been the favorable climate in which the discussions had taken place, and wished to say that the delegations had intervened in an active, constructive and friendly manner during the two weeks of the Conference. As President of the Diplomatic Conference and representative of the Spanish Government, he addressed thanks to the members of all the participating delegations, and in particular wished to thank Mr. Combaldieu, Chairman of the Main Committee, for the skill with which he had conducted the work of that Committee. He also wished to thank Mr. Comte, Chairman of the Drafting Committee, and Mr. Komarov, Chairman of the Credentials Committee, for the effectiveness of the work done in connection with the Conference. Finally he said that the Diplomatic Conference owed a great deal to Mr. Arpad Bogsch, Director General of WIPO, who had always managed to devise proposals acceptable to all delegations whenever difficulties had arisen on certain subjects or on certain articles of the Protocol, and he included in those thanks all the staff of the Secretariat, who with their ability, speed and efficiency had greatly contributed to the success of the Conference and the adoption of the Protocol. He also addressed thanks to the interpreters and technicians, who had helped overcome the difficulties inherent in the work of a Conference held in several languages, and indeed all those persons who had contributed to the success of the Conference. Expressing the wish that the Protocol would contribute to the protection of marks in new countries by means of the international registration system and that, when the time came, it would also permit the establishment of links between the Madrid Agreement and the Community Trade Mark, he concluded by noting that all the objectives of the Diplomatic Conference and of the Protocol had been achieved, and declared the Diplomatic Conference closed.

MAIN COMMITTEE OF THE DIPLOMATIC CONFERENCE

Chairman: Mr. J.-C. Combaldieu

Vice-Chairmen: Mr. F. Mekideche (Algeria)
Mr. G. Pusztai (Hungary)

Secretary: Mr. F. Curchod (WIPO)

<p><u>First Meeting</u> <u>Tuesday, June 13, 1989</u> <u>Morning</u></p>
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Election of the Chairman and Vice-Chairmen

151.1 Mr. BOGSCH (Director General of WIPO) indicated that the ad hoc Nominations Committee had proposed France as the Chairman and Algeria and Hungary as Vice-Chairmen of the Main Committee. Mr. Combaldieu, France, would be the Chairman, and Mr. Mekideche, Algeria, and Mr. Pusztai, Hungary, would be Vice-Chairmen. He noted that no one asked for the floor and declared that the following were elected unanimously as officers of the Main Committee: Mr. Combaldieu as Chairman and Mr. Mekideche and Mr. Pusztai as Vice-Chairmen.

151.2 He congratulated the elected officers and asked Mr. Combaldieu to take the chair.

152. The CHAIRMAN declared the first meeting of the Main Committee to be open.

153. The CHAIRMAN noted that the preliminary statements had revealed differing opinions on the Protocol, but hoped that, with the support of the Conference, he would be able to find a solution to each problem.

Article 1: Membership in the Madrid Union

154. The CHAIRMAN opened the discussion on Article 1 and asked the Director General to present that Article.

155.1 Mr. BOGSCH (Director General of WIPO) noted that Article 1 intended to maintain the unity of the Madrid Union, even though there would be two texts if the Protocol were adopted. The Protocol introduced the great innovation that under Article 14(1)(b) certain intergovernmental organizations could become members of the Madrid Union and party to the Protocol when two conditions were fulfilled, namely, that at least one of the member States of such an organization was a party to the Paris Convention and that such organization had a regional Office for the purpose of registering marks with effect in all its member States, provided that such Office was not a common Office within the meaning of Article 9^{quater} of the Protocol. Accordingly,

the establishment of the Community Trade Mark Office could allow the European Community to become a member of the Madrid Union while the Benelux Trademark Office could not become such a member because the future community system contemplated the parallel existence of national Offices and the Community Trade Mark Office whereas the Benelux Office had replaced the national Offices.

155.2 Calling the attention to Note 109, on page 12 of document MM/DC/3, he remarked that the Assembly of the Madrid Union should express its agreement because it might be that one or more of the present member States would not become party to the Protocol.

156. Mr. KOMAROV (Soviet Union) stressed the importance of Article 1 which would give a universal character to the system of registration of marks.

157. Miss VIDAUD (France) stressed the importance of Article 1 of the Protocol. The provision possessed a clear link with both the institutional provisions, that was to say the Assembly, and the problems attaching to the safeguard clause. She consequently proposed that examination of Article 1 be postponed to the end of the general discussion on the Protocol to enable the Conference to first work on the technical content of the Protocol and subsequently examine the problems connected with safeguarding the Madrid Agreement, the institutional problems relating to the Assembly and the principle of setting up a single Union.

158. Mr. COMTE (Switzerland) stated that his Delegation was able, in principle, to adopt Article 1 and to accept its implications. However, his Delegation also wished to take into account the remarks made by the Delegation of France and to return to the Article once the Conference had discussed the substantive provisions.

159. Mr. BOGSCH (Director General of WIPO) recalled that the Conference could always rediscuss the articles which had already been adopted and, therefore, he believed that the Main Committee could proceed with the adoption of Article 1 with that reservation.

160. The CHAIRMAN supported the suggestion made by the Director General and proposed that the wording of Article 1 be approved since the Conference would have the possibility of reexamining it, if necessary, at a later stage. He noted that the suggestion met with no objections (continued in paragraph 1031).

Article 2: Securing Protection through International Registration

161. The CHAIRMAN opened the discussion on Article 2.

162. Mr. BOGSCH (Director General of WIPO) stated that there was a proposal made by the European Communities which had not been printed yet and, therefore, he was going to read the text of that proposal to the Conference. The Delegation of the European Communities proposed that, in paragraph (1), 7th and 8th lines of the Basic Proposal in document MM/DC/3, the words "the territory of the Contracting States and the territory of the States members of the Contracting Organizations" be replaced by the words "the territory of the Contracting Parties." In the end of the Article, a fourth paragraph was

proposed by the said Delegation, reproducing the wording of Article 2 of the Washington Treaty on Intellectual Property in Respect of Integrated Circuits, that is: "For the purposes of this Protocol, 'territory of a Contracting Party' means, where the Contracting Party is a State, the territory of that State and, where the Contracting Party is an Intergovernmental Organization, the territory in which the constituting treaty of that Intergovernmental Organization applies." The Director General recalled that the European Communities proposal was the only one on Article 2 which had been submitted in writing.

163. Mr. SCHWARTZ (European Communities) explained the proposal by his Delegation and pointed out that certain parts of the territory of the Community Member States were excluded from the Treaty that had established the Communities and it was therefore not correct to say that the territory in respect of which the European Communities would have to guarantee the protection of the marks was equivalent to the whole of the territory of its Member States. He observed that the wording proposed by his Delegation reproduced that of Article 2(vi) of the Washington Treaty on Intellectual Property in Respect of Integrated Circuits, which referred to the constituting treaties of intergovernmental organizations.

164. Mr. KOMAROV (Soviet Union) underlined the importance of Article 2 which would create for the applicant advantages of procedural and time-saving character when acquiring the rights of protection of marks in the Contracting States as well as in the States members of the Contracting Organizations.

165. Mr. FOUAD (Egypt) proposed the deletion of any reference to a mere application in Article 2, so that the international registration of marks would be limited to the marks which had been effectively registered in the country of origin. He stated that otherwise products having an unacceptable quality could be introduced in the local market.

166. The CHAIRMAN requested the Delegation of Egypt to explain its proposal.

167. Mr. FOUAD (Egypt) explained that his Delegation could not accept an international registration based only on a mere application because otherwise a mark for a medicine, for instance, could be the object of an international registration although it had not been registered in the country of origin.

168. The CHAIRMAN pointed out that it constituted one of the basic innovations of the Protocol and that if the proposal by the Delegation of Egypt, under which an international application could only be based on a national registration, were to be adopted, that would condemn the Protocol from the outset. He suggested that the matter be discussed at a later stage.

169. Mr. KOMAROV (Soviet Union) asked to receive clarifications in connection with the intervention of the Delegation of the European Communities which referred to the wording of the Treaty concluded in Washington. He recalled that the Washington Treaty expressly limited the notion of intergovernmental organizations to those organizations which had legislated in the field of intellectual property in respect of integrated circuits and, therefore, it was not clear whether the same notion would apply to the

Protocol. Another point that needed clarification was the provision of paragraph (4), as proposed by the Delegation of the European Communities, concerning the territory on which the Protocol would have legal effect in respect of the intergovernmental organizations. He recalled that during the session of the Drafting Committee in Washington where that language had been introduced, the Delegation of France stated that it could be construed as referring to only the six States members of the European Communities that originally signed the treaties constituting the European Communities. This interpretation could lead to a misunderstanding if applied to the Protocol.

170. The CHAIRMAN said that such an interpretation was not correct since the territory to which the Treaty establishing the European Communities applied was not restricted to the six States that had originally signed the Treaty, but covered also those States that had subsequently acceded to the Treaty. He therefore felt that the wording proposed by the European Communities was perfectly correct.

171.1 Mr. PROŠEK (Czechoslovakia) stated that the new law on trademarks which had been in force in Czechoslovakia since January 1, 1989, provided for the possibility of basing an international application on a national application. Consequently, his Delegation did not have any difficulties in connection with paragraph (1)(i) of Article 2 of the Protocol and could accept it.

171.2 As to paragraph (4) proposed by the Delegation of the European Communities, he stated that he reserved his final position until he had had time to study the proposal in a written form.

172. Mr. KARAYANEV (Bulgaria) supported the explanations given by the Chairman and by the Delegation of the Soviet Union. Article 2 expressed a trend in the development of domestic laws and of international legislation in respect of marks. He concluded by expressing his support for Article 2 as given in the Basic Proposal.

173. The CHAIRMAN asked the Delegation of Bulgaria whether it accepted the change proposed by the Delegation of the European Communities, that referred to the territory of the Contracting Parties.

174. Mr. KARAYANEV (Bulgaria) stated that his Delegation accepted, in principle, the text proposed by the Delegation of the European Communities.

175. Mrs. ABBAR (Morocco) stated that her Delegation preferred the provision as contained in the Madrid Agreement since it allowed the Office of origin to operate some selection of marks. However, her Delegation was prepared to accept the possibility of basing an international registration on a national or regional application and also to accept the amendment proposed in respect of Article 2(4).

176. Mrs. MAYER-DOLLINER (Austria) stated that her Delegation could accept the principle of basing an international registration on an application in a Contracting Party. Furthermore, she reserved her position on the proposal of the European Communities until she had seen that proposal in writing.

177. Mr. TARNOFSKY (United Kingdom) expressed the support of his Delegation to the principle of basing an international registration on an application filed with the Office of origin for the reasons which had been very clearly expressed in Note 113 of document MM/DC/3. If the applicants had to wait for a time before their mark was actually registered, this could result in the loss of priority under Article 4 of the Paris Convention.

178. Mr. COMTE (Switzerland) stated that his Delegation was able to adopt Article 2(1) of the Basic Proposal, including the amendment proposed by the Delegation of the European Communities. He further emphasized that an international registration based on a simple national application would mean that it was for the applicant to assume the risks involved in possible refusal of his application.

179. Mr. MOTA MAIA (Portugal) stated that his Delegation was fully satisfied with the Madrid Agreement even if it only provided the possibility of filing an international application on the basis of a national registration. However, that did not mean that no changes should be made to the Madrid system. The innovation that consisted in basing an international registration on a national application interested not only those States that were not yet party to the Madrid Agreement, but also the States already party to the Agreement. His Delegation therefore fully supported that innovation.

180. The CHAIRMAN noted that no other delegation wished to take the floor and that the proposal by the Delegation of the European Communities had been submitted to the Conference in the meantime as document MM/DC/5. He asked the Delegations of Austria and Czechoslovakia, that had withheld their decision on the proposal, whether they were able to take a position.

181. Mrs. MAYER-DOLLINER (Austria) indicated that the text proposed by the Delegation of the European Communities was the same text that her Delegation had agreed upon in the Washington Treaty and, therefore, her Delegation would not have any difficulties with it.

182. Mr. PROŠEK (Czechoslovakia) stated that his Delegation was ready to accept the text proposed by the Delegation of the European Communities.

183. The CHAIRMAN asked whether the Delegation of Egypt was prepared to withdraw its objection to the text proposed by the Delegation of the European Communities and if other delegations were opposed to that text.

184. Mr. FOUAD (Egypt) stated that he could withdraw his objection if the mark whose international registration was sought was the subject of a reservation, namely, that if the application for a mark was rejected in the country of origin it could not be internationally registered.

185. Mr. PROŠEK (Czechoslovakia) stated that his Delegation would not object against the essence of draft paragraph (2) of Article 2 of the Protocol, but would prefer, from a linguistic point of view, to substitute the notion of "Office of origin" by the notion of "Office of the country of origin" which he considered to be more acceptable and clear.

186. Mr. BOGSCH (Director General of WIPO) explained that in most cases the Delegation of Czechoslovakia would be correct because the mark of origin would mostly come from a national Office, that is to say the Office of the country of origin. However, the terminology "Office of origin" had been used in order to cover also the regional Offices and not only the national Offices.

187. Mr. DE LAS HERAS LORENZO (Spain) proposed to merge items (i) and (ii) of paragraph (1) because those two items would have common requirements concerning the nationality, the domicile, or the industrial or commercial establishment of the applicant for an international registration and, therefore, there would be no need to complicate the text with two separate items. He indicated that the proposal of his Delegation could be submitted to the Drafting Committee because it was a formal one and would not change the substance of Article 2(1)(i) and (ii).

188. The CHAIRMAN asked the Delegation of Spain to submit its proposal in writing to the Drafting Committee.

189. Article 2(1)(i) and (ii) was adopted subject to possible amendment by the Drafting Committee and with the amendment proposed by the Delegation of the European Communities in document MM/DC/5.

190. The CHAIRMAN noted that there were no objections to Article 2(2).

191. Article 2(2) was adopted as given in the Basic Proposal.

192. The CHAIRMAN opened the discussion on Article 2(3).

193. Mr. HARLÉ (AIPPI) stated that his Organization was particularly interested in having a clear definition of "Office of origin" in order to avoid any possible confusion and also to avoid a text suggesting that the applicant could choose the Office of origin at his convenience. For that reason, AIPPI strongly supported the proposal made by the Delegation of Spain.

194. Mr. BOGSCH (Director General of WIPO) pointed out that those were two different questions. The Delegation of Spain had proposed to telescope paragraph (1)(i) and (ii) and that was left to the Drafting Committee. The definition of what was a basic application or a basic registration was clear: it meant that the Office of origin was that office in which the basic application was filed, or the basic registration registered. There would be only one such Office and therefore there would not be any risk of confusion.

195. Mr. HARLÉ (AIPPI) stated that he was not altogether satisfied since AIPPI's concern was to avoid any interpretation that would permit an Office of origin to be chosen from among the various contracting States and organizations. He held that an applicant should only be able to choose between the Office of his country and that of the organization to which his country belonged, but not be able to choose as the Office of origin the national Office of another State. If such a choice were possible, there would be a risk of confusion. That could not occur under the present text of the Madrid Agreement which was very clear in that respect.

196. Mr. BOGSCH (Director General of WIPO) noted that that was not a question of clarity but rather a question of choice. The wording of the proposed text was different from the Madrid Agreement because it eliminated the hierarchy of national Offices. He recalled that during the preparatory meetings it had been found that the existing hierarchical system was not necessary.

197. The CHAIRMAN stated that the matter was now perfectly clear and noted that no other delegation had questions in respect of paragraph (3).

198. Article 2(3) was adopted as given in the Basic Proposal.

199. The CHAIRMAN opened the discussion on the new paragraph (4) of Article 2 as proposed by the Delegation of the European Communities in document MM/DC/5 and noted that no comments were forthcoming.

200. Article 2(4) was adopted as given in the proposal by the Delegation of the European Communities (document MM/DC/5).

Article 3: International Application

201. The CHAIRMAN opened the discussion on Article 3 and asked the Director General to present that Article.

202. Mr. BOGSCH (Director General of WIPO) stated that it would not be necessary to present Article 3 because it was one of the most simple articles of the Protocol, although somewhat long. On the other hand, he informed the Committee that there was a proposal by the Delegation of the Soviet Union, which had not been printed yet. He asked the Delegation of the Soviet Union to introduce its proposal recalling that the other delegations could reserve their position, once again, until its submission in writing.

203. Ms. GORLENKO (Soviet Union) stated that her country treated with great respect and interest the principle according to which the provisions of the Stockholm Act of the Madrid Agreement should be preserved to a maximum. Nevertheless, she considered it possible for her Delegation to make its proposal which referred to the case where the basis of an international application would not be a single national registration or a single national application but several national applications or several national registrations. Among such national applications and national registrations there could exist an application or registration having a priority under Article 4 of the Paris Convention. Paragraphs (1)(i) and (ii) should be modified to cover such cases.

204. Mr. BOGSCH (Director General of WIPO) explained that, in his opinion, the proposal made by the Delegation of the Soviet Union meant that, if there were several applications or several registrations for the same mark in the Office of origin, for the reason that that country only allowed a national application to be filed in one class of goods whereas the international application would allow it to embrace several classes of goods, then the international application could refer to several applications or registrations

of the same mark in the Office of origin as the basis of that international application. It was important to note that the applications or the registrations had to be in the same Office of origin and relate to the same mark. If his understanding was correct, he would see no impediment or objection to the proposal of the Soviet Union.

205. Ms. GORLENKO (Soviet Union) stated that the Director General had correctly understood the proposal of her Delegation. She added that her Delegation would not insist that its proposal be reflected as a special provision in the text of the Protocol because it could also be reflected in the Regulations which would be established after the adoption of the Protocol.

206. The CHAIRMAN felt that one solution would be to deal in the Regulations, that would be adopted following adoption of the Protocol, with the matter covered by the proposal by the Delegation of the Soviet Union. He noted that the suggestion met with general approval.

207. Mrs. MAYER-DOLLINER (Austria) stated that there would be another case which could be covered by that provision, because in some countries, for example in Austria, in one application or in one registration there could be two or several priority dates and such an application or registration could be the basis for an international registration. In such a case, it would be necessary to notify and to certify several dates for the same application or registration but only one number. She believed that it was only a drafting point.

208. Mr. BOGSCH (Director General of WIPO) suggested that, just like in the case of the proposal of the Delegation of the Soviet Union, that detail should be left to the Regulations.

209. Ms. GORLENKO (Soviet Union) recalled that her Delegation had indicated that among those applications which could form the basis of an application for international registration, one application could have a priority under Article 4 of the Paris Convention.

210. Mr. PROŠEK (Czechoslovakia) stated that his Delegation would like to go back to the beginning of Article 3(1), in order to make some comments of a drafting nature though the proposal as it stood could be considered as acceptable. His Delegation would like to include in the second sentence of Article 3(1) the notion that "the particulars appearing in the international application" also comprised the priority right. Therefore, the sentence should read "the Office of origin shall certify that the particulars appearing in the international application, including the priority right, correspond to the particulars appearing, at the time of the certification, in the basic application or basic registration, as the case may be."

211. Mr. BOGSCH (Director General of WIPO) stated that the contents of the certification made by the Office of origin, including possibly the right of priority, could be specified in the Regulations because otherwise the false impression that one element was more important than another would be created.

212. The CHAIRMAN noted that the Delegation of Czechoslovakia accepted the suggestion made by the Director General.

213. Mr. KARAYANEV (Bulgaria) supported the proposals made by the Delegations of Czechoslovakia and the Soviet Union.

214. Mrs. MUÑOZ CAPARRÓS (Spain) supported the proposal made by the Delegation of Austria indicating that it would be important to the Offices which only admitted the registration of a mark in one class while the international registration could be based on several registrations or applications. She believed that it would not be too complicated to change the wording of Article 3 in order to add some plurals instead of leaving the matter to the Regulations.

215. Mr. von MÜHLENDAHL (Federal Republic of Germany) recalled that one should change the language of the Madrid Agreement only where it was necessary. That approach had been followed in Article 3(1) of the Basic Proposal and was correct in that case. There was a plural in the existing Article 3 of the Madrid Agreement merely because it referred to the dual dates of filing and registration which had to be given and not because of a duality or plurality of marks. Therefore, he would not support the approach of making more specific the language of the Madrid Agreement because there had never been a problem, in practice, of using a multiplicity of marks as a basis for obtaining an international registration. The Regulations could contain specific Rules where there would be a multiplicity of applications or registrations being used as a basis for an international registration or in case of multiple priorities. He wondered whether the Conference should really embark on the way of making a more perfect Protocol when the approach had been so far to stay with the text of the Madrid Agreement as closely as possible. He supported the Director General in approaching that matter as an issue to be provided for in the Regulations, if it was felt to be necessary.

216. Mr. BOGSCH (Director General of WIPO) stressed that in Article 3(1) of the Basic Proposal the singular was used with respect to "filing" and "registration," and recognized that that was not in contradiction with the interpretation given by the Delegation of the Federal Republic of Germany.

217. The CHAIRMAN noted that the Madrid Agreement worked very well with the interpretation given both by the Delegations of Austria and Spain and by the Delegation of the Soviet Union, supported by the Delegation of Bulgaria. He therefore asked those Delegations whether they could accept the original text of Article 3 on the condition that their concerns would be taken into account in the Regulations.

218. Miss VIDAUD (France) asked whether it would not be more efficient to refer that type of problem to the Drafting Committee. She emphasized that, in fact, the concern of those Delegations to add a formulation in the plural was aimed at approaching as closely as possible to the present text of the Madrid Agreement.

219. The CHAIRMAN did not agree with the Delegation of France, observing that if delegations could not agree on a wording at that juncture, it would be even more difficult for the Drafting Committee to do so. He felt it was preferable to already have an exhaustive discussion on that item.

220. Mr. BOGSCH (Director General of WIPO) recalled that the Delegation of the Soviet Union had already accepted that that problem be dealt with in the Regulations and that the plural that was under discussion had nothing to do with the plural used in the Madrid Agreement.

221. The CHAIRMAN asked the Delegation of Austria whether it was able to accept the wording in the Basic Proposal.

222. Mrs. MAYER-DOLLINER (Austria) stated that her Delegation could accept it.

223. The CHAIRMAN noted that the Delegations of Bulgaria and Spain accepted the wording of the Basic Proposal.

224. Ms. GORLENKO (Soviet Union) confirmed that her Delegation had already stated that that point should be reflected in the Regulations.

225. Mr. BOCKEN (EFPIA) asked whether an international registration based on several national applications covering differing classes could be cancelled in part for one of those classes if the corresponding national application were refused.

226. Mr. BOGSCH (Director General of WIPO) confirmed that that would be the case.

227. The CHAIRMAN noted that there were no further observations on Article 3(1).

228. Article 3(1) was adopted as given in the Basic Proposal.

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229. The CHAIRMAN opened the discussion on Article 3(2).

230. Mr. VAN BAUWEL (Benelux Trademark Office) felt it would be useful for Article 3(2) to require the applicant to state not only the classes of the Classification established by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, but also the goods and services, preferably using the terms from the alphabetical list of goods and services of that Classification.
231. Mr. BOGSCH (Director General of WIPO) suggested that the question should be left for the Regulations.
- 232.1 The CHAIRMAN pointed out that the matter was already regulated in the Regulations under the Madrid Agreement, in Rule 8(2)(xii).
- 232.2 He noted that there were no further observations on Article 3(2).
233. Article 3(2) was adopted as given in the Basic Proposal.
234. The CHAIRMAN opened the discussion on Article 3(3) and noted that no observations were forthcoming.
235. Article 3(3) was adopted as given in the Basic Proposal.
236. The CHAIRMAN opened the discussion on Article 3(4).
237. Mr. DE LAS HERAS LORENZO (Spain) proposed to delete in paragraph (4) the reference to Article 2 of the Protocol and replace it by a general reference to the Protocol and its Regulations because otherwise the text would give the impression that every application filed according to Article 2 should be immediately registered by the International Bureau even if the requirements of Article 3 or the requirements of the Regulations had not been complied with.
238. Mr. von MÜHLENDAHL (Federal Republic of Germany) explained that his understanding of the Madrid Agreement had always been that the reference to Article 1 in paragraph (4) of Article 3 would basically mean the satisfying of the rules of the Madrid Agreement itself. In his opinion, one could only register what was in conformity with the formalities required under the Madrid Agreement and the only thing that was done in the Protocol was to replace the reference to Article 1 with a reference to Article 2, because Article 2, in the Protocol, was basically corresponding to Article 1 in the Madrid Agreement itself. Agreeing, on substance, to what had been said by the Delegation of Spain, he strongly suggested staying with the text as it had been proposed on the argument that a broad reference to the Protocol and to the Regulations would create a basis for arguments e contrario in areas where no problems had existed so far.
239. The CHAIRMAN supported the explanation given by the Delegation of the Federal Republic of Germany and asked the Delegation of Spain whether it could also accept that explanation.

240. Mr. DE LAS HERAS LORENZO (Spain) stated that he was not entirely satisfied with that explanation because the text and the wording of the Madrid Agreement could always be improved without fear of interpretations e contrario once the reasons for such improvements would be reflected in the Records of the Conference.

241. The CHAIRMAN confirmed that the debate would be reflected in the Records of the Conference, but questioned the usefulness of amending the proposed text if the debate were to confirm current practice under the Madrid Agreement.

242. Miss VIDAUD (France) observed that her Delegation was unable to agree fully with the Delegation of Spain and that its concerns were closer to those expressed by the Delegation of the Federal Republic of Germany. Professional circles in France were worried by the idea of the same mark being subject to differing texts, even if a new drafting gave more clarity to the present text of the Madrid Agreement. They would prefer, in those cases where there were no modifications as to substance, that texts be adopted that were as close as possible to the Madrid Agreement in order to avoid diverging interpretation between the Madrid Agreement text and the Protocol text. She emphasized in conclusion that her Delegation wished to maintain the text of the Protocol as given in the Basic Proposal since that text was closer to the wording of the Madrid Agreement.

243. The CHAIRMAN noted that the Delegation of Spain was willing to withdraw its proposal and that there were no further observations on Article 3(4).

244. Article 3(4) was adopted as given in the Basic Proposal.

245. The CHAIRMAN opened the discussion on Article 3(5).

246. Miss VIDAUD (France) drew delegations' attention to the possible links between the problems of publication of an international mark and the provisions on refusal. She felt that there could be a link between publication of an international mark, countries that had an opposition procedure and the time limit for refusal.

247. Mr. DE LAS HERAS LORENZO (Spain) asked whether the reference to the "applicant" in the last line of paragraph (5) should be substituted by a reference to the "owner of the international registration" because the International Bureau would be in fact notifying the interested Offices that the mark had been registered.

248. The CHAIRMAN, whilst noting that the comments made by the Delegation of Spain were well founded, stated that the question was above all whether there should be a departure from the text of the Madrid Agreement, that used the term "applicant," to adopt terminology that could be a possible source of ambiguity.

249. Mr. BOGSCH (Director General of WIPO) stated that the respect for the text of the Madrid Agreement, particularly when that text was not quite correct, should not be considered as a dogma. He supported the proposal made by the Delegation of Spain, noting that the person referred to in paragraph (5) was not anymore the applicant but the owner of the international registration.

250. The CHAIRMAN suggested that the Records of the Conference should mention that the amendment concerned was simply to improve the wording, but implied no substantive change, and asked whether other delegations wished to support the proposal made by the Delegation of Spain.

251. Mr. MOTA MAIA (Portugal) stated that his Delegation was able to support the proposal by the Delegation of Spain and asked the Chairman to explain his position in respect of that proposal.

252. The CHAIRMAN said that he was trying to put himself in the place of the users of the system who were not present at the Conference and who therefore would not be aware of the fact that the new term used in the Protocol meant the same thing as that used in the Madrid Agreement.

253. Mr. von MÜHLEND AHL (Federal Republic of Germany) stated that his Delegation had not a restrictive approach as regards what one could do in the Protocol. In the present case there were good reasons to depart from the term used in the Madrid Agreement, and he declared that his Delegation could join those delegations which would support a reference to the holder of the international registration rather than to the applicant.

254. Miss VIDAUD (France) was of the opinion that the Protocol would only be attractive to the present users of the Madrid Agreement if it did not depart too far from that Agreement. That was why the Delegation of France considered that, even if the Agreement contained minor drafting errors, the present text should be maintained and that changes should only be made where justified by the substance.

255. Mr. HARLE (AIPPI) pointed out that, on adoption of the Madrid Agreement in 1891, an application for registration and a registration of a mark were exactly the same thing in most countries since marks were immediately registered. He observed that Article 3bis of the Madrid Agreement already referred to the proprietor of the mark. He felt that the text of the Madrid Agreement had to be improved since users would not be misled if the Protocol corrected the text of the Agreement on some points.

256. Mr. BOGSCH (Director General of WIPO) agreed with the explanation given by the Representative of AIPPI. He believed it to be more realistic to use the term proposed by the Delegation of Spain, proposal which had been supported by several delegations, and hoped that the said proposal would be accepted.

257. The CHAIRMAN stated that a majority of delegations clearly supported the proposal by the Delegation of Spain.

258. Mr. FITZPATRICK (Ireland) stated that he was inclined to agree with the Delegation of France and proposed the maintenance of the text appearing in the Basic Proposal.

259. Mr. von MÜHLENDahl (Federal Republic of Germany) stated that, in his opinion, the Delegation of Ireland had overlooked that Article 3 contained a series of different steps in a process. It contained firstly the filing of the application for international registration at the International Bureau with all the particulars and the certification, the colors in paragraph (3) and, in paragraph (4), the fact that the application for international registration resulted in a registration and having as date, either the date of the application for international registration in the country of origin or the date on which the International Bureau received the international application. Only after that registration would come paragraph (5) which had nothing to do anymore with the procedure between the applicant and the Office of the country of origin or the applicant and the International Bureau since, at that time, the mark had already been registered.

260. Mrs. MAYER-DOLLINER (Austria) stated that her country also belonged to those countries that were in favor to preserve the Madrid Agreement but, despite that fact, her Delegation could support the proposal of the Delegation of Spain, in particular for the reasons given by the Delegation of the Federal Republic of Germany.

261. Mr. FURSTNER (Netherlands) stated that it was not very important to his Delegation whether the words "applicant" or "holder" would be used.

262. Mr. BOGSCH (Director General of WIPO) supported the statement of the Delegation of the Federal Republic of Germany, stressing that at a certain moment an applicant would become the holder of a registration. Therefore, calling the holder of a registration an applicant would not be correct in English and languages other than French which do not have an equivalent to the ambivalent French expression "déposant."

263. Mr. DE PASSEMAR (CEIPI) supported the position expressed by the Delegation of the Federal Republic of Germany. He held that changes should be accepted only if they were not likely to cause difficulties or lead to ambiguity. He was therefore in agreement with replacing the term "applicant" by the expression "holder of the international registration."

264. Mr. TATHAM (TMPDF) supported the view expressed by the Delegation of the Federal Republic of Germany.

265. The CHAIRMAN said that he would submit the amendment proposed by the Delegation of Spain to the Drafting Committee.

266. Article 3 was adopted subject to a possible amendment of paragraph (5) by the Drafting Committee.

Article 3bis: Territorial Effect

267. The CHAIRMAN opened the discussion on Article 3bis and noted that no comments were forthcoming.

268. Article 3bis was adopted as given in the Basic Proposal.

Article 3ter: Request for "Territorial Extension"

269. The CHAIRMAN opened the discussion on Article 3ter and announced that a proposal had been made by the Delegation of the Soviet Union (document MM/DC/6). He asked that Delegation to present its proposal.

270. Ms. GORLENKO (Soviet Union) said that the proposal of her Delegation was aimed at reaching a uniformity between Article 3(4), which gave the definition of the date of international registration, and the definition, contained in Article 3ter(2), of the date on which the territorial extension should be effective. The date of validity of the territorial extension should be determined in the same manner as the date of validity of the international registration, since in the countries for which the territorial extension had been filed it would have the meaning of an international registration.

271. Mr. von MÜHLENDahl (Federal Republic of Germany) understood the Soviet proposal as attempting to achieve a harmony between Article 3(4) and Article 3ter(2). However, the situations covered under those Articles were different. Under Article 3(4) the possibility to benefit from the filing date of the application for international registration in the country of origin, provided that the application had been received by the International Bureau within a period of two months from that date, was given in view of the risk of losing the right of priority established by Article 4 of the Paris Convention. Under Article 3ter(2) the question of priority would no longer apply because the mark would already be registered in the country of origin and as an international registration. That was the reason why Article 3ter(2) of the Basic Proposal stayed with the existing text of the Madrid Agreement instead of giving an additional two-month period. Behind that was the need to create a balance between the interests of the holder of the international registration and the interests of those who had acquired rights in the country which is the subject of the territorial extension prior to the recordal of that extension by the International Bureau. He suggested that an additional step facilitating subsequent territorial extensions should not be taken because it would unbalance the situation in favor of the holder of the international registration. Therefore, he would appreciate if the Delegation of the Soviet Union would be in a position to reconsider its approach which would depart from the situation existing under the Madrid Agreement.

272. Mr. MOTA MAIA (Portugal), whilst understanding the concern for harmonization expressed by the Delegation of the Soviet Union, also considered that the situations covered by Articles 3(4) and 3ter(2) were different. He therefore supported the text in the Basic Proposal.

273. Mr. COMTE (Switzerland) stated that his Delegation would like to see the discussion on the proposal by the Delegation of the Soviet Union postponed till the following meeting.

274. Mr. FURSTNER (Netherlands) stated that his Delegation fully shared the analysis which had been made by the Delegation of the Federal Republic of Germany. Under Article 3ter(2), there was no question about priority and, therefore, he also hoped that the Delegation of the Soviet Union could reconsider its proposal.

275. Mr. FITZPATRICK (Ireland) stated that his Delegation also shared the analysis of the Delegation of the Federal Republic of Germany and preferred the text as it appeared in the Basic Proposal.

276. Mr. KOMAROV (Soviet Union) stated that the Delegation of the Federal Republic of Germany had raised certain new aspects in connection with the proposal of his Delegation. Hence, his Delegation would like to have the opportunity to reexamine its position.

277. Mr. BOGSCH (Director General of WIPO) suggested to suspend the discussions on the proposal of the Delegation of the Soviet Union until after the break.

278. The CHAIRMAN supported the suggestion made by the Director General and asked whether delegations wished to speak on other points in Article 3ter.

279. Mrs. MAYER-DOLLINER (Austria) noted that the words "through the intermediary of the Office of the country of origin" which appeared in the Madrid Agreement had been left out in Article 3ter of the Protocol. She asked whether those words had been left out because they were not needed or because the application for international registration and the request for territorial extension would be treated differently.

280. Mr. BOGSCH (Director General of WIPO) explained that the territorial extension could be requested at any time, even many years after the international registration had been effected. If such extension comes later than five years after the international registration had been effected, the mark had no longer any connection with the Office of origin.

281. Mrs. MAYER-DOLLINER (Austria) stated that her Delegation and the interested circles of her country would prefer that the wording of the Protocol, with respect to that point, should follow the text of the Madrid Agreement.

282. Mr. von MÜHLENDahl (Federal Republic of Germany) remarked that if one compared the Records of the Nice Diplomatic Conference of 1957 with the Act adopted by the said Conference, it would be possible to notice that the drafting at that time had not adequately taken into account the basic decision of the Nice Conference that the international registration should become independent of the registration in the country of origin. Therefore, the structure of the Madrid Agreement, in many instances, had remained the same as it was before the Nice Diplomatic Conference of 1957 even though the decision had been taken in the said Conference to cut the links between the registration in the country of origin and the international registration after five years. Other examples could be found in Article 4bis and Article 9bis.

The Basic Proposal would facilitate the procedural approach to those problems because it did not specify that the Office of a particular country should be the necessary intermediary and it left to the Regulations the details on how a territorial extension should be requested. He recalled that it could well be that the provisions for the period of the initial five years would be different from the provisions for the period following those five years and, if specific rules should be adopted for a specific case, they would be better suited for the Regulations rather than for the Protocol. Hence, the position of his Delegation would be to stay with the Basic Proposal and leave the details on how to administer those specific cases to the Regulations.

283. The CHAIRMAN asked the Delegation of Austria whether it shared that opinion and could accept the proposal by the Delegation of the Federal Republic of Germany.

284. Mrs. MAYER-DOLLINER (Austria) stated that after having heard the explanations of the Delegation of the Federal Republic of Germany and of the Director General, she understood that there would be two different cases, one within the period of dependency and another one after that period. If, for the first period the intermediary of the Office of origin would remain, she could then agree with the proposal of the Delegation of the Federal Republic of Germany and leave that question to the Regulations, provided that that understanding would appear in the Records of the Conference.

285.1 The CHAIRMAN stated that the matter of the Office of origin as intermediary would be dealt with in the Regulations and that the discussion on that item would be reflected in the Records of the Conference as requested by the Delegation of Austria.

285.2 He said that discussion on Article 3^{ter} would be resumed at a later stage (continued in paragraph 291).

Article 4: Effects of International Registration

286. The CHAIRMAN opened the discussion on Article 4 and asked the Director General to present that Article.

287.1 Mr. BOGSCH (Director General of WIPO) stated that Article 4 was one of the most important ones because it defined the effects of the international registration. The present text of the Madrid Agreement said that the effect of the international registration was that of a "dépôt," a word which could not be accurately translated into English. The term "filed" meant that an application had been deposited, but the fact of a "dépôt" was much more than filing, and the real effect, 100 years ago in the French system, was much closer to that of registration than that of mere filing. Under the Madrid Agreement, an international trademark registration, unless it was refused, would have the same effect as if it had been registered by the national Office. Therefore, the International Bureau had put in the Basic Proposal what it considered to be the correct translation of the word "dépôt" and its intended effect. However, as some countries did not share the same opinion, an alternative text for Article 4(1)(a) had been proposed in Note 130, page 28 of document MM/DC/3, using the word "application" as a translation to the word "dépôt," although the International Bureau did not really believe that alternative to be necessary.

287.2 He informed that there was also a proposal by the Delegation of Spain which was under reproduction. That proposal would replace, in the last line of Article 4(1)(a), the words "registered by" by the words "filed directly with." In his opinion, that approach would be incomplete, and if the notion of filing was used as a translation for the word "dépôt" one would have to say, at least, what had been said in Note 130 because otherwise the whole international registration system would be put into doubt.

288. The CHAIRMAN pointed out that there was a further proposal, that of the Delegation of the Soviet Union (document MM/DC/6), in which it was proposed that the words "of the registration or recordal" in paragraph (1)(a) be replaced by the words "of the international registration or of the territorial extension effected."

289. Mr. BOGSCH (Director General of WIPO) remarked that that proposal was connected with the proposal on Article 3ter which would be discussed only after the break.

290. The CHAIRMAN proposed that the meeting be suspended and discussion resumed on Article 4 once Article 3ter had been adopted (continued in paragraph 295).

Article 3ter: Request for "Territorial Extension" (continued from paragraph 285)

291. The CHAIRMAN reopened the meeting and resumed the discussion on Article 3ter.

292. Ms. GORLENKO (Soviet Union) stated that her Delegation could withdraw its proposal on Article 3ter(2) and, consequently, its proposal on Article 4 which was directly connected with Articles 3 and 3ter.

293. The CHAIRMAN asked whether the delegations were able to accept the text of Article 3ter and noted that there were no objections.

294. Article 3ter was adopted as given in the Basic Proposal.

Article 4: Effects of International Registration (continued from paragraph 290)

295. The CHAIRMAN resumed the discussion on Article 4 and asked the Delegation of Spain to present its proposal (document MM/DC/7).

296. Mr. DELICADO MONTERO-RIOS (Spain) stated that the text of Article 4(1)(a) of the Basic Proposal would bring an essential modification to the Madrid Agreement and to the object and purpose of the international registration system. In his opinion, according to Article 4(1) of the Madrid Agreement, the international registration had the same effect as a mark filed directly with the Office of the Contracting State and its main advantage consisted in the replacement of a multiplicity of filings requiring

complicated and costly formalities by the filing of a single application. In that connection, he recalled the history of that Article and the clear distinction existing in several articles of the Madrid Agreement between the words "filed" and "registered." Besides, he believed that the text of the Basic Proposal would create a difference of treatment between those who would file their marks nationally and those who would file their marks through the international registration system, while the present text of the Madrid Agreement had never raised difficulties.

297. Mr. SCHWARTZ (European Communities) supported the proposal by the Delegation of Spain.

298. Mrs. MAYER-DOLLINER (Austria) stated that her country had applied the interpretation given by the Secretariat for a long time and had never had any difficulties with it. In the French text of the Madrid Agreement, which was the only authentic text, the term "déposée" could refer either to a registration or to an application. Nevertheless, she recognized that two different legal positions had been expressed and, consequently, it would be necessary to bring those different interpretations into line. Having overcome initial difficulties, her Delegation was now in a position to accept the text of the Basic Proposal.

299. Mr. BOGSCH (Director General of WIPO) further explained the differences between the expressions "dépôt," "demande" and "enregistrement." Pointing out that the only possible translation of the word "déposée" would be the term "deposited," which would not mean anything in the English-speaking countries, he suggested that, if the term "deposited" were to be retained, a clarification be given to the effect that, unless the protection was finally refused under Article 5 of the Protocol, the protection of the mark in the Contracting Party concerned should be the same as if the mark had been registered by the Office of that Contracting Party.

300. The CHAIRMAN asked the Director General to detail his suggested text.

301. Mr. BOGSCH (Director General of WIPO) stated that Article 4(1)(a) could read: "From the date of the registration or recordal effected in accordance with Articles 3 and 3ter of this Protocol, the protection of the mark in each of the Contracting Parties concerned shall be the same as if the mark had been deposited directly with the Office of that Contracting Party. Unless protection has been finally refused under Article 5 of the Protocol, the protection of the mark in the Contracting Party concerned shall be the same as if the mark had been registered by the Office of that Contracting Party."

302. Mr. DELICADO MONTERO-RIOS (Spain) stated that his Delegation would like to have some time to consider the suggestion of the Director General.

303. Mr. DE LAS HERAS LORENZO (Spain) stated that the new text suggested should be redrafted because, although it followed the lines of the proposal of his Delegation, its second sentence dealt with a problem which had already been solved in Article 5(5) of the Madrid Agreement. The Records of the Nice

Diplomatic Conference, on page 246, had clarified that the loss of the right of refusal of the Office of a given country referred to in Article 5(5) would create a legal situation identical to that resulting from a registration in that country.

304. Mr. BOGSCH (Director General of WIPO) stated that the aim of the additional sentence proposed for Article 4(1)(a) was to specify, as already apparent in the Nice Act of the Madrid Agreement, that the absence of a refusal notified to the International Bureau would in all cases amount to registration of the mark. He added that such a statement would have to be explicit to ensure that no ambiguity remained for the new member States.

305. The CHAIRMAN proposed that examination of the suggestion made by the Director General be postponed and then resumed on the basis of a document prepared by the International Bureau.

306. Mr. MOTA MAIA (Portugal) agreed with the Delegation of Spain that the suggestion made by the Director General should be reflected on. He further wondered whether, in the second part of the suggestion relating to the absence of final refusal, the date as from which the effects of registration were to begin should not be mentioned.

307. Mr. BOGSCH (Director General of WIPO) said that the remark made by the Delegation of Portugal was correct and that the text suggested by the International Bureau would mention the fact that in the absence of final refusal the effect of national registration would be retroactive to the date of international registration.

308. The CHAIRMAN noted that no delegation had comments to make on other points in respect of Article 4 and proposed that adoption of the Article be postponed to a later time. There were no objections to that proposal (continued in paragraph 329).

Article 4bis: Replacement of a National or Regional Registration by an International Registration

309. The CHAIRMAN opened the discussion on Article 4bis and asked the Director General to present that Article.

310. Mr. BOGSCH (Director General of WIPO) stated that Article 4bis of the Basic Proposal did not differ in essence from the present text of the Madrid Agreement. He noted that that Article was particularly important for the nationals of Contracting Parties which would become members of the Madrid Union through adhering to the Protocol because they would then have the possibility to replace their national or regional registrations by an international registration.

311. Mrs. MUÑOZ CAPARRÓS (Spain) remarked that the proposed text did not include the safeguard appearing in the end of Article 4bis(1) of the Madrid Agreement, which read: "without prejudice to any rights acquired by reason of such earlier registrations." She proposed the inclusion of that safeguard in Article 4bis(1) of the Basic Proposal.

312. Ms. GORLENKO (Soviet Union) supported the proposal made by the Delegation of Spain.

313. Mrs. MAYER-DOLLINER (Austria) stated that her Delegation supported the proposal made by the Delegation of Spain.

314. Miss VIDAUD (France) pointed out that, as regards the substance, her Delegation altogether shared the points of view put forward by the Delegations of Spain, the Soviet Union and Austria.

315. Mr. PROŠEK (Czechoslovakia) stated that his Delegation supported the proposal of the Delegation of Spain.

316.1 Mr. von MÜHLEND AHL (Federal Republic of Germany) recalled the history of Article 4bis of the Madrid Agreement and the fact that it had not been uniformly applied by the Madrid Union countries. Some countries would allow the coexistence of a national registration with the international registration and would require the renewal of the national registration if the owner of the mark wanted to rely on the preexisting rights created by the national registration. Therefore, the Conference should make it clear in the text of the Protocol or in some other way that it should no longer be necessary to renew the coexisting or preexisting national registrations which were identical to the international registration.

316.2 As to the proposal of the Delegation of Spain, he stated that his Delegation could join the other delegations which had supported it, although that principle was so self-evident that stating it could create the impression that there were doubts on whether the preexisting rights could be defeated by a later international registration.

317. Mr. BOCKEN (EFPIA) supported the proposal by the Delegation of Spain.

318. The CHAIRMAN noted that the majority of delegations could accept the introduction into Article 4bis(1) of the Basic Proposal of the words "without prejudice to any rights acquired by reason of such earlier registrations" which were contained in Article 4bis(1) of the Madrid Agreement and asked the Director General whether he had any objections to introducing those words, other than those expressed by the Delegation of the Federal Republic of Germany, or whether there were technical reasons for the lack of those words in the Protocol.

319. Mr. BOGSCH (Director General of WIPO) stated that, in his opinion, one could very well maintain that sentence. The only reason for which it had been left out had been explained by the Delegation of the Federal Republic of Germany.

320. The CHAIRMAN nevertheless wondered whether the maintenance of acquired rights, although automatic, should not be expressed in the Protocol as had been done in the current text of the Madrid Agreement.

321. Miss VIDAUD (France) asked why in the Basic Proposal the words "remplacement" and "remplacé" were used in the title of Article 4bis and in paragraph (1) of that Article, respectively, whereas the text of the Madrid Agreement used "substitué." She further asked whether the content of items (i), (ii) and (iii) of paragraph (1), which were very detailed, should not rather be included in the Regulations under the Protocol, which would be easier to modify in future than the text of the Protocol.

322. The CHAIRMAN said, as far as the first question by the Delegation of France was concerned, that it could be left to the Drafting Committee, although it would be desirable for the French version of the Protocol to use the same terminology as used in the Madrid Agreement. As for the second question raised, which was more a question of substance, the Chairman gave the floor to the Director General.

323. Mr. BOGSCH (Director General of WIPO) said that he would be in agreement with using the word "substitué" in the French text of Article 4bis of the Protocol. On the other hand, he felt that, for the sake of clarity, items (i), (ii), (iii) of paragraph (1) should remain in the text of the Protocol. Finally, he did not see how the conditions that were the subject of those items could be amended by the Regulations.

324. The CHAIRMAN noted that no delegation supported the suggestion made by the Delegation of France in respect of items (i), (ii) and (iii) of paragraph (1) and that they would therefore be maintained in the body of the text of the Protocol.

325. Mr. IANNANTUONO (Italy) asked why the words "or his successor in title" used in Article 4bis(1) of the Madrid Agreement had been deleted in the text of paragraph (1) of the Basic Proposal.

326. Mr. BOGSCH (Director General of WIPO) explained that, under Article 4bis(1) of the Basic Proposal, the same person had to be the holder of the national or regional registration and of the international registration and that the concept covered both the original holder and a possible successor in title. He felt that all alternatives were covered by the proposed wording.

327. The CHAIRMAN noted that there were no other observations on Article 4bis.

328. Article 4bis was adopted with the addition in paragraph (1) of the words "without prejudice to any rights acquired by virtue of the latter."

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Article 4: Effects of International Registration (continued from paragraph 308)

329. The CHAIRMAN opened the discussion on the suggestion made by the Director General in respect of Article 4(1)(a) (document MM/DC/8) and asked him to present that suggestion.

330. Mr. BOGSCH (Director General of WIPO) explained that the wording of the suggestion contained in MM/DC/8 differed slightly from the oral presentation that had been made, particularly in respect of the beginning of the second paragraph which, for more clarity, started with the word "if." The first sentence was the same as that in the proposal by the Delegation of Spain (document MM/DC/7) in which the key words were "deposited direct." He explained that, under the second sentence of his suggestion, an international registration would have a deposit effect until it was known whether the registration was affected by a refusal.

331. Mr. KRIEGER (Federal Republic of Germany) expressed the support of his Delegation to the suggestion of the Director General.

332. Mr. TARNOFSKY (United Kingdom) stated that the suggestion contained in document MM/DC/8 was also acceptable to his Delegation.

333. Mr. DELICADO MONTERO-RIOS (Spain) stated that his Delegation could accept the first sentence of the suggestion of the Director General but was concerned with the words "as from the said date" in the second sentence of that suggestion. He explained that in Spain the effects of a registration were different from the effects of an application and were not retroactive to the date of the application. Therefore, his Delegation would like to have the second sentence of the Director General's suggestion amended, if possible, by deleting the words "as from the said date."

334. Mr. BOGSCH (Director General of WIPO) replied to the Delegation of Spain by pointing out that it concerned the very essence of an international registration system. Under the Madrid Agreement system, the fact that the international registration had the effect of a national registration, subject to the possibility of a refusal, made it unnecessary to undertake registration in the member States. He concluded by saying that it had to be clear that once any doubt as to the validity of a registration in a designated country had been lifted the registration effect in that country was equivalent to a national registration made on the date of the international registration.

335. The CHAIRMAN asked the Delegation of Spain whether its reaction was positive to the reply given by the Director General on the basic question of the effect of an international registration.

336. Mr. DELICADO MONTERO-RIOS (Spain) explained that his Delegation was concerned with the fact that the Spanish national marks would have the effect of a registration only after the date of their granting while the marks filed through the international system would have the effect of a registration from the date of the filing of the international application with the Office of the country of origin, which was normally the date of the international registration.

337. Mr. BOGSCH (Director General of WIPO) pointed out to the Delegation of Spain that, under the Madrid Agreement, a State did not register a mark. It could refuse the effect of the international registration for its territory, but did not have to confirm its effects. The international registration possessed a date and that date never changed.

338. Ms. GORLENKO (Soviet Union) expressed the support of her Delegation to the suggestion of the Director General, which clarified the language of draft Article 4(1)(a).

339. Mr. HEMMERLING (German Democratic Republic) joined the other speakers in supporting the suggestion of the Director General.

340. Mr. KARAYANEV (Bulgaria) was satisfied with the draft Article 4(1)(a) as suggested by the Director General and with the explanations given by the Director General.

341. Mr. THRIERR (UNIFAB) held the suggestion by the Director General to be altogether satisfactory both as regards form and substance. He stressed the essential aspect of the Director General's reasons, that is to say that, in the context of an international registration, the States did not effect a registration, but had the possibility of issuing a refusal, and that in the absence of such refusal, the mark was deemed to have been registered as from the date of the international registration.

342. The CHAIRMAN asked the Delegation of Spain whether it was able to accept the Director General's suggestion.

343. Mr. DELICADO MONTERO-RIOS (Spain) stated that his Delegation would prefer to include in the Records of the Conference its reservation concerning the second sentence of the suggestion of the Director General.

344. The CHAIRMAN said that the reservation by the Delegation of Spain had been noted and that there were no further objections in respect of Article 4(1)(a).

345. Article 4(1)(a) was adopted as suggested by the Director General (document MM/DC/8).

346. The CHAIRMAN noted that Article 4(1)(b) had not called forth any observations.

347. Article 4(1)(b) was adopted as given in the Basic Proposal.

348. The CHAIRMAN noted that Article 4(2) had not called forth any observations.

349. Article 4(2) was adopted as given in the Basic Proposal.

Article 5: Refusal and Invalidation of Effects of International Registration in Respect of Certain Contracting Parties

350. The CHAIRMAN opened the discussion on Article 5 and stated that delegations could make observations on the titles of articles. He proposed that paragraph (1) be discussed and asked the Director General to present that paragraph.

351. Mr. BOGSCH (Director General of WIPO) considered that paragraph (1) presented no difficulties.

352. Miss VIDAUD (France) raised a purely editorial point in respect of the French version of paragraph (1) which spoke of "l'Office d'une partie contractante à laquelle" which should have been "l'Office d'une partie contractante auquel."

353. The CHAIRMAN said that the mistake would be corrected.

354. Mr. SCHWARTZ (European Communities) suggested a number of slight editorial changes which could be looked at by the Drafting Committee. He proposed that the beginning of paragraph (1) should read as follows: "Where the legislation of the Contracting Party to which the Office belongs so authorizes, any Office..." He further proposed that the words "applicable legislation" in the third sentence of paragraph (1) be replaced by "legislation of the Contracting Party concerned." Finally, he suggested that the words "applicable law" in paragraph (2)(c)(ii) also be replaced by "legislation of the Contracting Party concerned."

355.1 The CHAIRMAN proposed that the matters raised by the Delegations of France and of the European Communities be referred to the Drafting Committee. He noted that there were no objections thereto.

355.2 He noted that there were no further comments forthcoming on paragraph (1).

356. Article 5(1) was adopted subject to possible editorial changes by the Drafting Committee.

357. The CHAIRMAN opened the discussion on paragraph (2) and asked the Director General to present that paragraph. He observed that there also existed a proposal for amendment of that paragraph made by the Delegation of Switzerland (document MM/DC/4).

358. Mr. BOGSCH (Director General of WIPO) explained that paragraph (2) of Article 5 would consist of three parts. Subparagraph (a) established the rule that the period permitted for refusal was one year. Subparagraphs (b), (c) and (d) dealt with a possible exception, which was an innovation vis-à-vis the present text; subparagraph (b) permitted a country to opt for an 18-month time limit instead of the 12-month time limit, subparagraph (c) dealt with the problem of opposition when it was not yet known whether an opposition would be forthcoming by the end of the expiration of one year or 18 months, and subparagraph (d) referred back to both subparagraphs (b) and (c) indicating how the corresponding declarations had to be made and when. Then, subparagraph (e) established that the time limits mentioned in subparagraphs (b) and (c) could later be modified by a unanimous decision of the Assembly, without having to convene a revision conference.

359. The CHAIRMAN requested the Delegation of Switzerland to present its proposal (document MM/DC/4).

360. Mr. COMTE (Switzerland) proposed that subparagraphs (a) and (b) be maintained, but that subparagraph (c) be deleted. He felt that the uniform period of time for refusals was one of the most attractive elements of the international registration system under the Madrid Agreement. The Madrid Agreement currently contained the uniform period of 12 months for a State to issue refusal, which could be simply provisional and which could be based, in particular, on opposition. It was therefore not a final decision that a State had to take within the 12-month period. That system worked even in those countries that provided for an opposition procedure, such as the Federal Republic of Germany. His country agreed that States should be able to enjoy a longer refusal period such as the 18-month time limit laid down in paragraph (2)(b) and felt that such a time limit ought to be sufficient for Offices to meet their obligations in all cases, including those in which there was an opposition procedure. His Delegation could see three reasons for deleting paragraph (2)(c): firstly, it would introduce varying time limits to the disadvantage of users and their representatives; secondly, it would amount, in a way, to a form of "deferred examination" which would extend the provisional protection and also, therefore, the period of uncertainty; thirdly, a treaty under the aegis of WIPO should attempt to harmonize the various systems and not constitute a kind of inventory.

361. Mr. KOMAROV (Soviet Union) supported the proposal made by the Delegation of Switzerland.

362. Mr. DELICADO MONTERO-RIOS (Spain) remarked that in paragraph (2)(a) of the Basic Proposal the words "within the period prescribed by their domestic law, and, at the latest," which appeared in Article 5(2) of the Madrid Agreement were missing. He would have liked to know whether those words had been left out because they were simply not necessary in view of the one-year deadline.

363. Mr. TARNOFSKY (United Kingdom) stated that paragraph (2)(c) was one of the major innovations of the draft Protocol. He remarked that the United Kingdom had an extensive *ex officio* examination system and in certain circumstances would need the extra time proposed under paragraph (2)(b).

After that period, the trade marks accepted by the Office of his country were open to opposition by interested third parties, and if the possibility of having such oppositions was deleted, it would completely deny an important element of his country's system. Therefore, his Delegation could not support the proposal of the Delegation of Switzerland to delete Article 5(2)(c).

364. Mr. HEMMERLING (German Democratic Republic) recalled that, as far as the refusal of protection of marks was concerned, the advantage of the Madrid Agreement was that the owner of the mark would know within 12 months whether important reasons for refusing the protection of his mark would exist. If some countries were not able to accept a period of 12 months, his Delegation could agree with a compromise solution of 18 months. However, a longer period of time would seem very problematic to his Delegation which shared the view expressed by the Delegation of Switzerland. In any case the Contracting Parties should be able to deal with opposition proceedings against the registration of marks in such a way that provisional refusals would be possible within the 18-month period.

365. Miss VIDAUD (France) pointed out that her country had always considered the 12-month time limit for issuing a refusal to be satisfactory, but within the framework of the Protocol to the Madrid Agreement and in a spirit of opening, France could accept the extension of that period to 18 months. The draft paragraph (2) therefore went beyond the French position and her Delegation thus fully supported the proposal by the Delegation of Switzerland to delete subparagraph (2)(c). As far as subparagraph (2)(a) was concerned, she went along with the Delegation of Spain and proposed that it conform to the wording of Article 5(2) of the Madrid Agreement.

366. Mr. PROŠEK (Czechoslovakia) recalled that although the one-year period for preliminary refusal of protection provided for in the Madrid Agreement was, from the point of view of trademark Offices, a very short period, the practice showed that the Offices of all the countries party to the Madrid Agreement managed to successfully cope with that provision. On the other hand, such a relatively short period was certainly very favorable for the applicant since it prevented legal insecurity. In the interest of reaching a compromise, his Delegation was ready to accept paragraph (2)(b) of the Basic Proposal which would meet the wishes of the Offices. However, in the opinion of his Delegation, paragraph (2)(c) of the Basic Proposal would create a significant legal insecurity and would complicate the processing of the application. Therefore, his Delegation supported the proposal of the Delegation of Switzerland.

367. Mr. KIM Yu Chol (Democratic People's Republic of Korea) felt that it was necessary to introduce uniform time limits for refusal and, consequently, gave the support of his Delegation to the proposal by the Delegation of Switzerland.

368. Mr. FITZPATRICK (Ireland) stated that his Delegation would support Article 5(2) of the Basic Proposal. He recalled that this provision had been formulated by WIPO as a result of lengthy discussions and preparations and could not be seen as a major surprise. He pointed out that the extension of the 18-month period required in the case of opposition would not mean that every mark was going to be opposed.

369. Mr. FURSTNER (Netherlands) stated that although his Delegation agreed that it would be better to have a uniform time limit of 12 months or 18 months, one should not forget that one of the aims of the Conference was to attract countries like the United Kingdom and Ireland to the Madrid system. If the proposal of the Delegation of Switzerland was accepted, the aims of the Protocol would not be reached.

370. The CHAIRMAN explained that the Article should be a compromise between the need to make concessions in order to attract countries to the Madrid Union and the need to maintain a degree of security for the users. He therefore wished that the interested circles should give their views.

371. Mrs. ABARIOTOU (Greece) supported Article 5(2) as given in the Basic Proposal since the additional time limit provided for in subparagraph (2)(c) was essential for her country.

372. Mr. BOGSCH (Director General of WIPO) stated that a decision concerning paragraph (2)(c) should take into consideration the risks of not being able to extend the Madrid Union's membership. Besides, in his opinion, the situation covered under paragraph (2)(c) would occur very rarely because, in the normal course of events, after 18 months most countries would be ready to say whether there was an opposition or not and that was all they had to say because the opposition itself would contain the grounds which had to be communicated. Therefore, the difference of degree of uncertainty would not be very important between the provision of refusal under the Madrid Agreement and the system proposed in paragraph (2)(c). In view of those two factors, he hoped that the delegations could find some compromise.

373. Mr. MEKIDECHE (Algeria) stated that deletion of paragraph (2)(c) amounted to those legislations that had an opposition system not being taken into account. He added that it was necessary to provide for an additional fixed period of time in the event of opposition.

374. Mrs. BOYTHA-FÜZESSÉRY (Hungary) stated that her Delegation supported Article 5(2) of the Basic Proposal following the comments made by the Director General.

375. Mr. KRIEGER (Federal Republic of Germany) stated that, although his Delegation could agree with the proposal of the Delegation of Switzerland, the aim of the Conference was to enlarge the number of members of the Madrid Union, and, therefore the difficulties of the non-member States with regard to a possible accession to the Madrid Agreement should be taken into account. Noting that it would be absolutely necessary to come to a consensus on Article 5(2)(c), he informed the Committee that his Delegation and the Delegation of the United Kingdom were preparing a proposal introducing some slight amendments to the text of draft Article 5(2)(c). That proposal would not change the substance of Article 5(2)(c), which, in principle, could be supported by his Delegation.

376. The CHAIRMAN noted that the Delegation of the Federal Republic of Germany accepted the Basic Proposal subject to a number of changes. In his view, paragraph (2) as given in the Basic Proposal offered the most flexible solution with regard to the future Contracting Parties to the Protocol.

377. Mr. KRIEGER (Federal Republic of Germany) recalled that his Delegation and the Delegation of the United Kingdom were preparing a proposal which would not change the substance of Article 5(2)(c). Confirming that his Delegation could support the principle contained in draft Article 5(2)(c), he pointed out to the other delegations that the political aim of the Conference was the opening of the Madrid system to other countries presently outside it and, hence, everything should be done to achieve that aim.

378. Mrs. MAYER-DOLLINER (Austria) stated that her Delegation could support the declaration of the Delegation of the Federal Republic of Germany and, in principle, would be in favor of making every effort to find a compromise solution which would enable those countries presently outside the Madrid Union to join it.

379. Mr. VU (Viet Nam) stated that his country, which was a member of the Madrid Agreement, held the 12-month time limit for refusals to be most satisfactory, but that in a spirit of compromise an 18-month time limit could be acceptable under the terms proposed by the Delegation of Switzerland.

380. Mr. DELICADO MONTERO-RIOS (Spain) stated that the Diplomatic Conference should find a compromise solution which would allow the accession of new members to the Madrid Union. For that reason, his Delegation could support Article 5(2)(c) of the Basic Proposal.

381. Mr. ZOLBOOT (Mongolia) stated that, although Mongolia was satisfied with the 12-month period, the aim of the Conference was to solve the problem of enlarging the Madrid Union and, therefore, the interests of those countries which would like to join that Union should be taken into account. His Delegation could accept Article 5(2)(c) of the Basic Proposal.

382. Mr. HEMMERLING (German Democratic Republic) stated that, although his country was very satisfied with the Madrid Agreement system, it could accept Article 5(2)(c) of the Basic Proposal if it would facilitate the accession of new members to the Madrid Union. His Delegation also supported the time limit of one month provided in subparagraph (c)(ii).

383. Mrs. LISAVAC (Yugoslavia) stated that her country held the current system under the Madrid Agreement to be satisfactory, but that it was able to accept the Basic Proposal out of a concern for compromise with regard to the countries that were not yet members of the Madrid Union.

384. Mr. PEETERS (Belgium) stated that the proposal by the Delegation of Switzerland was valuable since it maintained the concept of uniform time limits. On the other hand, for some countries, the deletion of subparagraph (c) would raise problems that were difficult to overcome.

Although the Basic Proposal could be discussed, it was necessary to maintain a degree of certainty as to the time limit for refusal and, therefore, he reserved his position pending the proposals to be made by the Delegations of the United Kingdom and of the Federal Republic of Germany.

385. Mr. KARAYANEV (Bulgaria) stated that, though his country had always held the 12-month period to be satisfactory, it was necessary to achieve a solution that was acceptable to the countries not yet members of the Madrid Union. Consequently, he was able to accept the text given in the Basic Proposal.

386. Mr. ENÄJÄRVI (Finland) stated that, in view of the provisions of the legislations of the Nordic countries, his Delegation would very much like to see Article 5(2)(c) of the Basic Proposal adopted.

387. Ms. MÖRNER (Sweden) stated that her country as the other Nordic countries had an opposition system and would occasionally need an extra time limit beyond the 18-month period. She understood those delegations which worried about a system with too many different and unpredictable time limits as those worries had been expressed even by the Swedish industry. Therefore, she would like to raise the possibility of fixing those extra time limits to a certain period of time as, for instance, three or six months, instead of having the unpredictable time limit suggested in draft Article 5(2)(c).

388. Mrs. ABBAR (Morocco) stated that her Delegation was willing to accept paragraph (2) as given in the Basic Proposal if that was the only way of attracting new countries to the Madrid Union, although it held, as did the Delegation of Switzerland, that subparagraph (2)(c) extended the period of uncertainty.

389. Mr. IANNANTUONO (Italy) stated that his country was perfectly satisfied with the Madrid Agreement as it stood, but that to enable other countries to accede, his Delegation was willing to look at a compromise solution that would ensure legal security whilst at the same time remaining attractive for new countries.

390. Mr. BOGSCH (Director General of WIPO) stated that, in his opinion, the proposal made by the Delegation of Sweden would not work because it would require that fundamental changes be introduced in some national systems as, for instance, the British system and the system in the United States of America. According to the British system, the Patent Office would undertake a very thorough *ex officio* examination, which sometimes could last a very long period of time. How thorough and good the examination of the British Office was could be shown by the fact that about only one percent of the applications was subject to an opposition. In the United States of America, the Patent and Trademark Office had no problems in publishing the application for opposition purpose within the 18-month period but, when there was a prospective opponent, the parties involved were the masters of the time limits and could even agree with the Patent and Trademark Office to delay the actual filing of the opposition in order that a settlement be reached.

391. Mr. MOTA MAIA (Portugal) stated that his Delegation was willing to look at an equitable compromise. He proposed that the discussion of paragraph (2) be suspended.

392. Mr. SHANDA-TONME (Cameroon) stated that the provision given in the Basic Proposal was satisfactory, but that it would perhaps warrant additional explanations by the Director General. He added that a short suspension of the meeting could prove useful.

393. The CHAIRMAN pointed out that the aim of the Conference was not to revise the Madrid Agreement, in which case the proposal by the Delegation of Switzerland could have met with a broad consensus, but a meeting to establish a Protocol to that Agreement in order to attract new members to the Madrid Union. He added that seven delegations supported the proposal by the Delegation of Switzerland and that 13 delegations, whilst acknowledging the value of the proposal by Switzerland, wished that a compromise be found. He invited the non-governmental organizations representing the interested circles to give their views.

394. Ms. KIK (UEPIP) stated that her Delegation could accept the insecurity involved for the users and support Article 5(2)(c) of the Basic Proposal.

395. Mr. BOCKEN (EFPIA) fully approved the proposal by the Delegation of Switzerland since he felt that subparagraph (2)(c) of the Basic Proposal lessened the attractiveness of the Protocol. If certain countries wished to maintain a specific system, they would have to find the technical means of doing so or amend their system. He pointed out that his Delegation nevertheless remained open to any new suggestions, on condition that they be clear.

396. Mr. TATHAM (TMPDF) stressed that the United Kingdom would not become a member of the Protocol if the proposal of the Delegation of Switzerland was adopted. He further stated that, firstly, draft Article 5(2)(c) was introduced to take into account a very small minority of cases and although the huge majority of trademarks examined and published in the United Kingdom went through registration without any opposition whatsoever, those minority cases had to be taken into account. Secondly, he also believed that there was already a degree of uncertainty in the Madrid Agreement. Thirdly, those countries which were calling for certainty in the Basic Proposal already had the opportunity to object to an international registration when the mark was published in the Gazette "Les Marques internationales" and that opportunity arose well before the 12-month period, giving therefore the opportunity, for those who wished, to object unofficially and contact the owner of the mark at that stage. Lastly, he wanted to point out that the wording of draft Article 5(2)(c)(ii) did not fully take account of the procedure in the United Kingdom and the United States of America for obtaining extensions of time after a mark had been opposed and, consequently, he believed that that text needed to be amended in some way.

397. Mr. HARLÉ (AIPPI) mentioned that AIPPI had just held its three-yearly Congress in Amsterdam where, in particular, a resolution had been adopted that mainly concerned the basic items under discussion in the draft Protocol. As in the proposal by the Delegation of Switzerland, the AIPPI resolution approved an extension of the period from 12 to 18 months, but no longer. AIPPI could not accept an additional extension in the event of opposition, but was not against looking for a compromise. The resolution adopted in Amsterdam suggested, for certain countries, the possibility of adopting a provisional opposition system following publication in "Les Marques internationales," thus enabling the 18-month time limit to be respected. He added that the system in the United States of America, which permitted an extension of the opposition period, also warranted reflection when looking for a compromise.

398. The CHAIRMAN pointed out that the aim was to achieve a compromise and not to attempt to persuade certain States to amend their legislation.

399. Mr. HARLÉ (AIPPI) nevertheless noted that in any event certain States would have to amend their legislation if they wished to become party to the Protocol.

400. Mrs. TAO (China) pointed out that her country was to accede to the Stockholm Act to the Madrid Agreement. She added that her Delegation was able to accept paragraph (2) as given in the Basic Proposal in order to increase the effectiveness of the system of international registration of marks.

401. Mr. DE PASSEMAR (CEIPI) stated that the aim for legal security was the most important factor and that subparagraph (2)(c) of the Basic Proposal did not give such security. He nevertheless acknowledged that it should be possible to find a compromise.

402. Mr. von MÜHLENDahl (Federal Republic of Germany) remarked that the legal certainty which was supposed to exist under the Madrid Agreement was not in fact a reality and, therefore, was not an argument which should be raised. Although under the Madrid Agreement there was the certainty that all grounds for refusing a mark had to be notified to the International Bureau, either finally or provisionally, within 12 months, Article 5(6) of the Madrid Agreement made it clear that, even after the 12-month period, the protection that had been obtained as a result of the international registration could be invalidated and the question whether the invalidation was retroactive or not was not governed by the Madrid Agreement. The legal certainty that the users would have under Article 5(2)(c) of the Basic Proposal would be the same, if nothing had happened within the 18-month period, as presently under the Madrid Agreement after the 12-month period. He pointed out that Article 5(2)(c) of the Basic Proposal was not a mandatory provision, but applied only to countries which wanted to make use of it. If there were countries which wanted and needed that additional faculty, he wondered whether, on balance, it would not be worthwhile to have those countries in the Madrid Union with the system of draft Article 5(2)(c), rather than having them outside the said Union. In conclusion, he urged the delegations to be open to a compromise so as to develop a system of international trademark protection which could be the system of the future.

403. Mr. ELZABURU (COAPI) supported the declaration of the Delegation of the Federal Republic of Germany. He recognized that the Spanish administration had had on several occasions serious difficulties to exercise its faculty of refusal within the 12-month period provided for in Article 5 of the Madrid Agreement. He stressed that the system provided in the Madrid Agreement did not offer juridical certainty, but, on the other hand, the Protocol would bring several practical advantages, and increase the quality of the system and the number of member States in the Madrid Union. His Organization therefore supported Article 5(2) of the Basic Proposal.

404. The CHAIRMAN decided to suspend the meeting and to resume the discussion on Article 5(2) at the following meeting (continued in paragraph 405).

<p><u>Fourth Meeting</u> <u>Wednesday, June 14, 1989</u> <u>Afternoon</u></p>

Article 5: Refusal and Invalidation of Effects of International Registration in Respect of Certain Contracting Parties (continued from paragraph 404)

405. The CHAIRMAN opened the meeting and resumed the discussion on Article 5(2).

406. Mrs. BANDIN (ECTA) stated that her Organization could accept the extension of the period for refusal to 18 months as proposed in Article 5(2)(b) of the Basic Proposal. However, ECTA considered that Article 5(2)(c) of the Basic Proposal could lead to very long delays and, therefore, proposed a maximum period of one year after the expiration of the 18-month time limit in which any refusal based on an opposition should be notified to the International Bureau.

407. Mr. TURNER (ITMA) stated that something had to be wrong with an application for it to be the subject of an opposition because a third party had to have what it considered to be conflicting rights. Besides, in the United Kingdom the right to sue a third party would arise only on the date of issuance of the certificate of registration by the Office and, if the opposition system were curtailed, reduced or made meaningless, the only alternative would be the courts with all the costs involved.

408. Mr. JOHNSON (FICPI) stated that, on the point of certainty, sometimes an opposition procedure, in addition to being less expensive than the court proceedings, could also lead to a stronger mark because, although the specification of goods could be more limited after the opposition, industry on both sides would know what the mark represented and that would bring clarity for all parties. Therefore, he stated that FICPI, as well as CIPA that he was also representing, supported Article 5(2) of the Basic Proposal.

409. Ms. CHICOINE (USTA) stated that the Director General was correct in his statement that, presently, examination was quite expedient in the United States and it was not unusual for a registration to be issued in 12 or 18 months. However, it was certainly possible for the examination process to extend significantly beyond that in certain cases because the law of the United States of America admitted extensions of time to file oppositions, by mutual agreement of the parties. She expressed her Delegation's hope that the decision which was going to be reached on that important issue and others like it would maintain a maximum flexibility. In that way, countries like the United Kingdom, the United States of America, Ireland and others, would not be foreclosed from considering the question of accession in the future to the Protocol.

410. Mr. MOLIJN (UNICE) stated that his Organization had reluctantly agreed with an extension to 18 months of the time limit to make the notification of the refusal. The majority of the industries in Europe had a lot of difficulties in accepting a further undetermined extension because it could take years before the applicant would get his notification and that was not acceptable. He noticed that the suggestion made by the Representative of ECTA would set a fixed limit and agreed that 18 months plus a certain period would give certainty as far as the length of the period was concerned and, in that connection, two-and-a-half years should be an absolute maximum as he believed that it was a term which could be met by all Offices.

411. Mr. KOMAROV (Soviet Union) stated that his Delegation supported the proposal made by the Delegation of Switzerland which had been supported by a number of countries and organizations. Recognizing that a compromise should be sought, he recalled, however, that in the process of the preparatory work to the Conference the 18-month period had already been proposed as a compromise. He believed that it would be very difficult to accept draft Article 5(2)(c), if it contained an element of uncertainty with respect to the time limits.

412. Mr. THRIERR (UNIFAB) held that the true problem was what would happen after the 18-month time limit. The advantage under the Madrid Agreement was the certainty given by the 12-month period, at least for the registration procedure. He added that, in order to reach a compromise and to ensure that the Protocol preserved its appeal, the new 18-month time limit should not be final, but it was nevertheless indispensable, to avoid any uncertainty, to set a limit beyond those 18 months for notifying refusal based on opposition, and not only a limit that could vary as was the case in subparagraph (2)(c) of the Basic Proposal.

413. Mr. BOGSCH (Director General of WIPO) remarked that it would be extremely difficult to imagine any fixed duration even if it were three or five years in addition because there were rare cases where even those terms would not be sufficient. Whatever additional period was provided, it would have to mean that the present and well-established practice of the United Kingdom would have to be changed. He recalled that, in the United Kingdom, the publication of the mark for opposition only occurred where a thorough ex officio examination had been completed. Thus, few applications were subject to opposition and, if only one percent of the applications in the United Kingdom would be subject to an opposition, at least half of those would be within the time limit which had been mentioned as the outer time limit.

414. Mr. von MÜHLENDahl (Federal Republic of Germany) stated that the analysis which had just been presented by the Director General was something that delegations should all take into account when thinking about further compromising on the Basic Proposal. On the other hand, he believed that it was quite clear for those who had been involved in the preparatory discussions to the Conference that the margin of possible compromise had almost been reached. In that sense, he agreed that it would be extremely difficult to get a fixed time period within which new countries would be in a position to notify both those grounds which had been discovered in the ex officio examination and the grounds that could be raised in an opposition. He asked those delegations which found the situation unsatisfactory to compare it with the situation which existed in those countries that were not in the Madrid system. A French or German company wishing to obtain trademark protection in the United Kingdom had to go through the national procedure and had absolutely no guarantee on the period within which a response would be given by the United Kingdom Office. However, if the United Kingdom would join the Madrid Union, along the lines of the Basic Proposal, the advantage for the users would be that within the 18-month period they would know whether or not the Office was going to raise or had raised grounds ex officio. Then, the only remaining uncertainty was whether in addition to the grounds raised ex officio there would be oppositions filed. Compared to the existing situation where there was no certainty at all the users would be getting a substantial improvement because the United Kingdom Office would have to complete the ex officio examination within 18 months or even less so that it could stay within the notification requirements of the system. His Delegation believed that the Basic Proposal had achieved a fair balance.

415. Mr. TARNOFSKY (United Kingdom) stated that his Delegation considered the possibility for the United Kingdom to join the Madrid Union as a procedural step which would open the national system to the Madrid member countries. That meant that the Madrid member countries would be able to enter the national system of the United Kingdom more easily than they could presently, simply by adding the United Kingdom to the list of countries in the Madrid application forms. He believed that that would be a valuable thing because around half of the applications filed in the United Kingdom, about 20,000, had a foreign origin. He largely agreed with what had been said by the Delegation of the Federal Republic of Germany and added that by acceding to the Protocol his country would be undertaking to issue, where applicable, a notification within the 18-month period. As regards legal uncertainty, he confirmed that in his country very few oppositions were filed. His Delegation could fully accept Article 5(2)(b) and (c) of the Basic Proposal.

416. The CHAIRMAN noted that there were no further requests to take the floor. He recapitulated that numerous delegations were able to go along with the Basic Proposal for Article 5(2). He felt, however, that some time was required for reflection if a compromise was to be achieved and suggested that the discussion on Article 5 be interrupted and that the meeting should move on to Article 5bis.

417. It was so decided (continued in paragraph 821).

Article 5bis: Documentary Evidence of Legitimacy of Use of Certain Elements of the Mark

418. The CHAIRMAN opened the discussion on Article 5bis.

419. Miss VIDAUD (France) considered that the wording of Article 5bis of the Madrid Agreement should be reproduced integrally in the Protocol, rather than to say that it should apply mutatis mutandis. She added that minor adjustments would be necessary and could be made by the Drafting Committee. She further said that the same comments were applicable to Article 5ter of the Protocol.

420. Mr. BOGSCH (Director General of WIPO) acknowledged that it was more practical to reproduce the wording of the Madrid Agreement, but that it could be psychologically preferable to simply include a reference thereto in the Protocol.

421. Mr. TARNOFSKY (United Kingdom) supported the proposal made by the Delegation of France. He believed that it would be much easier, for a practical purpose, not to have to refer to the Madrid Agreement, especially for countries not party to that Agreement.

422. The CHAIRMAN likewise stated that it would be preferable to have the full text of an article rather than a reference to another text.

423. Mr. BOGSCH (Director General of WIPO) commented that the proposal by the Delegation of France would diminish the Protocol aspect since the proposed draft aimed simply to amend certain of the provisions of the Madrid Agreement.

424. Mr. von MÜHLENDahl (Federal Republic of Germany) stated that, although he had no objection against the proposal of the Delegation of France, he believed that this problem should be examined once all the articles of the Basic Proposal had been discussed.

425. The CHAIRMAN felt, on the contrary, that the same problems would arise for other articles and that it would be preferable to settle it already.

426. Mr. DELICADO MONTERO-RIOS (Spain) supported the proposal made by the Delegation of France not only in respect of Article 5bis but also for all articles with a similar situation.

427. The CHAIRMAN felt that the proposal that had been made warranted examination and asked whether other delegations wished to speak.

428. Mr. BOGSCH (Director General of WIPO) explained that he was not opposed to the proposal by the Delegation of France, but considered that it was likely to change the nature of the Protocol by turning it practically into a new Act.

429. The CHAIRMAN held that the Director General had raised a true problem, but noted that the majority of delegations supported the proposal by the Delegation of France.

430. Article 5bis was adopted as proposed by the Delegation of France subject to the final wording to be drawn up by the Drafting Committee (see, however, the decision recorded in paragraph 445).

Article 5ter: Copies of Entries in International Register; Searches for Anticipation; Extracts from International Register

431. The CHAIRMAN opened the discussion on Article 5ter.

432. Miss VIDAUD (France) asked whether the decision of principle taken in respect of Article 5bis applied also to Article 5ter.

433. Mr. DELICADO MONTERO-RIOS (Spain) asked whether the Delegation of France wanted to modify its proposal or, as his Delegation had understood it, to make it also applicable in connection with Article 5ter.

434. The CHAIRMAN replied that the Delegation of France wished the decision taken for Article 5bis to apply also to Article 5ter and to other articles that could be in the same situation. He confirmed that such a decision had been taken for all the articles concerned.

435. Mr. SHANDA-TONME (Cameroon) asked whether account should not be taken, in Article 5ter(1), of the case of marks for which color was claimed as a distinctive element.

436. Mr. CURCHOD (Secretary to the Main Committee) felt that the matter could be dealt with in the Regulations under the Protocol. If color was claimed for a mark and the claim was entered in the International Register, any copy of entries in that Register would mention the claim.

437. The CHAIRMAN noted that there were no further requests to take the floor.

438. Article 5ter was adopted subject to the final wording to be drawn up by the Drafting Committee (see, however, the decision recorded in paragraph 445).

439. The CHAIRMAN announced, prior to beginning discussions on Article 6, that during the pause a delegation had asked him to present certain observations which did not, however, call into question the decision to adopt Articles 5bis and 5ter.

440. Mr. SHANDA-TONME (Cameroon) asked whether, in respect of Articles 5bis and 5ter, it would not be preferable to maintain the Basic Proposal and to provide that the text of the Madrid Agreement be annexed to the Protocol as was usual practice in international law particularly in the United Nations.

441. Miss VIDAUD (France) explained that the suggestion was based on purely practical considerations and was not intended to run counter to practice in international law as regards Protocols. To avoid any problem, she proposed to withdraw the proposal with regard to Articles 5bis and 5ter and to return to the texts of the Basic Proposal. She felt that the International Bureau should find a solution to ease the task of future users, such as to reproduce the corresponding text of the Madrid Agreement in the form of notes.

442. Mr. TARNOFSKY (United Kingdom) stated that he would like to reinstate the proposal that the Delegation of France had just withdrawn. He explained that Article 16(1)(a) of the Basic Proposal stated that the texts in the English and French languages were equally authentic while, in the Madrid Agreement, Article 17(1)(a) said that the Agreement was signed in a single copy in the French language only; therefore, how could one have an authentic text of the Protocol in English, with some provisions based, mutatis mutandis, on provisions of the authentic text of the Madrid Agreement which was in French. That difficulty would be avoided if the former proposal of the Delegation of France was accepted, that is, to have in the Protocol the full text of the articles under discussion.

443. Mr. von MÜHLENDAHL (Federal Republic of Germany) stated that he would like to consider that problem at a later stage. In his opinion, that question did not necessarily need to be decided identically for all provisions contained in the Basic Proposal and it could be useful to decide it when all the articles of the Basic Proposal had been discussed. Besides, he did not see a problem in the issue raised by the Delegation of the United Kingdom because there had been agreements concluded within the framework of Article 19 of the Paris Convention for the Protection of Industrial Property which were signed in a language other than the language in which the authentic text of the Paris Convention was signed.

444. Mr. DE LAS HERAS LORENZO (Spain) stated that, in his opinion, the inclusion of the text of the Madrid Agreement in the Protocol would not modify the juridical nature of the Protocol and, therefore, would not amount to a violation of the international laws governing the treaties.

445. The CHAIRMAN stated that his main concern in the present case was to comply with United Nations practice with regard to Protocols. In view of the small number of delegations that had spoken, he proposed that discussion on the use of the term mutatis mutandis be postponed and that discussion of Article 6 be commenced.

446. It was so decided (continued in paragraph 1250).

Article 6: Period of Validity of International Registration; Dependence and Independence of International Registration

447. The CHAIRMAN opened the discussion on Article 6 and asked the Director General to present the Article.

448. Mr. BOGSCH (Director General of WIPO) stated that Article 6, which was closely connected with Article 9quinquies, "Transformation of an International Registration into National or Regional Applications," incorporated the important feature referred to as "central attack." In the Preparatory Meeting, the prospective new members had strong hesitations concerning central attack but that concern had lessened with the introduction of Article 9quinquies which provided for the possibility to transform, under certain conditions, an international registration into national or regional applications enjoying the priority date of the international registration. That was a feature which had largely been copied from the proposal for a Council Regulation on Community Trade Marks and, hence, it was well known to the four prospective members of the Madrid Union which were members of the European Communities.

449. The CHAIRMAN opened the discussion on paragraph (1) and noted that there were no comments.

450. Article 6(1) was adopted as given in the Basic Proposal.

451. The CHAIRMAN opened the discussion on paragraph (2).

452. Mr. BOCKEN (EFPIA) asked whether dependence of an international registration, under the Protocol, existed not only in respect of the basic registration but also in respect of the basic application.

453. The CHAIRMAN replied that such was the case.

454. Mr. BOCKEN (EFPIA) observed that that was an extremely important modification to the system.

455. The CHAIRMAN explained that, as far as the principle was concerned, the modification had already been adopted in the discussions on preceding articles.

456. Mr. BOCKEN (EFPIA) considered that Article 6(2) went further than Article 2 since the principle of dependence was the cornerstone of the Madrid system.

457. The CHAIRMAN replied that all the delegations appeared to accept paragraph (2).

458. Article 6(2) was adopted as given in the Basic Proposal.

459. The CHAIRMAN opened the discussion on Article 6(3).

460. Mr. DE LAS HERAS LORENZO (Spain) stated that all those situations according to which the basic application or the basic registration would cease to produce effect had been enumerated and, perhaps, could be summarized in one sentence as in the Madrid Agreement. He proposed to substitute that enumeration by the words "when the juridical effects of the basic application or basic registration have ceased."

461. Miss VIDAUD (France) said that her Delegation's concerns were similar to those of the Delegation of Spain. She considered that a more general formulation, based on the current wording of the Madrid Agreement, would be preferable and, further, that it could stipulate that protection could no longer be invoked in part or in whole since cases could exist in which protection continued to have effect.

462. Mr. BOGSCH (Director General of WIPO) explained that the situation was different under the Protocol since it enabled international registrations to be based on applications for registration. An application could not lose all its legal effects, particularly as regards the right of priority. He added that the general formulation proposed by the Delegation of Spain could be used, on condition that an exception be provided in respect of the priority right.

463. Mr. von MÜHLENDahl (Federal Republic of Germany) stated that his Delegation supported the analysis which had been presented by the Director General. The terminology used by the Madrid Agreement ("no longer enjoys protection") was a terminology which could only be used where a registration was the basis for an international registration, but not in the case of an application. Therefore, one could either try to find a general expression which would cover both the application and the registration or, for those delegations which believed that the enumeration was insufficient, state which other possible events could be envisaged and, consequently, included in Article 6(3). The suggestion of his Delegation would be, unless one would really come up with a much better formulation, to stay with the Basic Proposal.

464. Mrs. MAYER-DOLLINER (Austria), referring to the last sentence of Article 6(3), asked whether it only covered proceedings which were in course before the expiration of the five-year period and resulted after that period in a final decision of rejection. She expressed her concern where the examination procedure would take more than five years and wondered whether in that case there would be a possibility to make use of the central attack system. She was of the opinion that a balance should be found between the interests of the applicant and those of his competitors.

465. Mr. DE LAS HERAS LORENZO (Spain) believed, despite what the Delegation of the Federal Republic of Germany had said, that the Drafting Committee could find a general expression which could substitute the enumeration used in Article 6(3). The proposal of his Delegation would be to say "when the basic application does not result in a registration, for whatever reason."

He justified that proposal by recalling that there were cases which would fall outside the exhaustive list contained in Article 6(3), as for instance, the possibility for a future Community Trade Mark to be withdrawn not only by the applicant but also ex lege in case a formality or another requirement had not been complied with.

466. The CHAIRMAN felt that the comments made by the Delegation of Spain affected matters of substance that were probably not within the terms of reference of the Drafting Committee.

467. Mr. BOGSCH (Director General of WIPO) stated that, if he had correctly understood the Delegation of Spain, an international registration would lapse in all those cases in which a basic application did not lead to a national registration within a period of five years, which was a quite new idea and which did not allow for the case in which an Office was behind in the examination of applications for national registration.

468. The CHAIRMAN asked the Delegation of Spain whether it agreed with the interpretation given by the Director General.

469. Mr. DE LAS HERAS LORENZO (Spain) stated that he did not agree with the interpretation given by the Director General. One should agree on the principle according to which Article 6(3) is applicable where the basic application does not result in a registration due to a legal ground, and the refusal, withdrawal or other event occurs before the expiration of the five-year period. He specified that he did not intend to cover the case of inactivity of the Office during the five-year period.

470. Mr. BOGSCH (Director General of WIPO) noted that the Delegation of Spain was now using the concept of "legal ground" and wondered whether a particular delay by an Office in the examination of applications constituted a legal ground. Paragraph (3), as given in the Basic Proposal, was clear and it was not desirable that an international registration should lose its effect for the simple reason that a basic application had not been examined within the five-year period due to a delay at the Office.

471. Mr. von MÜHLENDAHL (Federal Republic of Germany) stated that his Delegation had understood that the Delegation of Spain was looking for a general expression covering all the cases where a basic application had failed within the five-year period, instead of giving a list of those cases. However, the way the Delegation of Spain was describing it included the situation where the application had been pending for more than five years and had not resulted in a registration and that was, as the Director General had pointed out, contrary to the spirit of the Basic Proposal. His Delegation was still therefore convinced that the general approach was a better one. He also noticed that the term "withdrawal" was broad enough to cover both the voluntary withdrawal and the "deemed to be withdrawn" cases which had been mentioned. Finally, as regards the proposal of the Delegation of France to insert the words "in whole or in part" after the words "may no longer be invoked," he noticed that the question was already taken up at the end of the

first sentence of paragraph (3), where it was stated that the rejection in the country of origin or the loss of the effect applied in respect of all or some of the goods or services in respect of which the basic application or registration stood.

472. The CHAIRMAN agreed with the Delegation of the Federal Republic of Germany in respect of the reply to the proposal by the Delegation of France.

473. Mr. COMTE (Switzerland) preferred the wording of Article 6(3) as given in the Basic Proposal and said that if a delegation was able to show that a particular case was not covered, it was better to add that case than to try to find a general formula that could cover all cases.

474. Mr. FURSTNER (Netherlands) supported the text of draft Article 6(3) as it appeared in the Basic Proposal. His Delegation could not see any case which would fall outside the enumeration of Article 6(3).

475.1 The CHAIRMAN noted that the Delegation of Spain was willing to accept Article 6(3) as given in the Basic Proposal.

475.2 He asked the Director General to reply to the question put by the Delegation of Austria.

476. Mr. BOGSCH (Director General of WIPO) stated that the Delegation of Austria had raised an interesting point which perhaps was not crystal clear in the text of the Basic Proposal although it seemed to be rather clear during the preparatory meetings. He explained that the central attack effect would apply where proceedings were in course before the expiry of the five-year period and the final decision occurred after that expiry. However, that would not be the case if the examination procedure by the Office was still in course at the expiration of the five-year period, otherwise there would be no real time limit. He recognized that the second sentence of paragraph (3) should be reworded.

477. The CHAIRMAN asked whether the International Bureau could submit its proposal for the second sentence of paragraph (3) in writing to enable it to be adopted.

478. Mr. BOGSCH (Director General of WIPO) first wished to hear the reactions of the delegations.

479. Mr. von MÜHLEND AHL (Federal Republic of Germany) stated that when approaching the issue raised by the Delegation of Austria, one should keep apart a number of different cases and then try to establish a general approach which would cover all of them. The first situation concerned the case where the Office in the country of origin having received the application did not do anything. In that case, if the decision was given after the five-year period, the international registration would become independent. The second situation involved an application which had been rejected, where such a rejection was

still subject to appeal and the appeal procedure had not been decided before the expiry of the five-year period. In such a situation, the eventual rejection of the basic application would lead to the loss of the international registration. The third situation involved the filing of an opposition within the five-year period, where the decision concerning that opposition would only be rendered after the five-year period. In that situation, the filing of the opposition within the five-year period was sufficient to preserve the right to have the mark centrally attacked. The gap which remained concerned those Offices that would issue provisional refusals within the five-year period, on which the applicant could still lodge an appeal after the expiry of that period. However, as he believed that the number of cases in that situation would be insignificant, he wondered how much effort one should spend on trying to be more explicit than the text of the Basic Proposal.

480. Mr. KUNZE (AIM) stated that there was another typical case which could cause problems as far as the central attack was concerned. In some countries, if an application was examined and refused, the applicant could lodge an appeal and the whole procedure would probably take more than five years. If, as a result of the appeal, the mark was finally accepted, it could then be open for oppositions. In that situation, there would be no central attack because the opposition procedure had not been initiated within the five-year period, although the person that filed the opposition could not have done it earlier.

481. Mrs. BANDIN (ECTA) stated that according to the text of draft Article 6(3), if a pending application were withdrawn after five years, it would not affect the international registration. Besides, in the second sentence of draft Article 6(3) there was no reference to the cancellation of part of the list of goods. Her Delegation believed that an adequate text should be drafted to cope with those problems, particularly in order to make it clear that the international registration would have no effect if the basic application for any reason did not mature into a registration.

482. Mr. MOLIJN (UNICE) stated that it was quite exceptional to have the situation where nothing had happened within the five-year period and, therefore, in that situation the holder of the international registration should benefit from the inaction of the Office.

483. Mr. BERCOVITZ (ATRIP) stated that the last sentence of draft Article 6(3) did not cover all the possible proceedings that could take more than five years. A better approach could be to say that "the same would be applicable if proceedings initiated by a third party or against a decision rendered by the Office..." However, that wording would not cover the situation where the applicant would withdraw his application after the five-year period, thus avoiding the possibility of central attack.

484.1 Mr. von MÜHLENDahl (Federal Republic of Germany) noticed that the Representative of AIM had raised the question concerning a mark which could not be attacked because it had not been published for opposition purposes

before the expiration of the five-year period. In his opinion, that problem could be solved because the person who wanted to attack the basic application did not need to await the publication of the mark for opposition purposes, but could bring an action for the withdrawal of that particular application either before a court or, where available, before the Office as soon as he became aware of that mark through the international register.

484.2 As to the case described by the Representative of ATRIP, the last sentence of draft Article 6(3) certainly intended to cover it so that one could not avoid the effect of central attack by withdrawing the application and not having a final decision. However, if the wording of the last sentence of draft Article 6(3) was not clear to express it, he believed that the delegations should look into it again.

485. Mr. BOGSCH (Director General of WIPO) noted, with surprise, that nobody was challenging the maintenance of the central attack system anymore. He believed that if there were one or two cases which could escape the central attack system, that would not be of such a relevance because, as some speakers had already mentioned, those would be exceptional situations.

486. The CHAIRMAN asked whether the International Bureau intended to propose a new wording for the second sentence of paragraph (3).

487. Mr. BOGSCH (Director General of WIPO) replied that a new text would be proposed if such was the wish of the Chairman and of the Main Committee.

488. The CHAIRMAN suggested that the International Bureau should propose a new wording that would be examined at the beginning of the following session.

489. It was so decided (continued in paragraph 490).

<p>Fifth Meeting Thursday, June 15, 1989 Morning</p>
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Article 6: Period of Validity of International Registration; Dependence and Independence of International Registration (continued from paragraph 489)

490. The CHAIRMAN opened the meeting and resumed the discussion on Article 6 and on the new suggestion made by the Director General (MM/DC/12) concerning the new wording for the second sentence of paragraph (3) of the Basic Proposal. He asked the Director General to present that suggestion.

491. Mr. BOGSCH (Director General of WIPO) explained that instead of using the ambiguous words of the Basic Proposal "proceedings were in course" which could include the fact that the substantive examination was still in course, the proposed new text enumerated those proceedings in three points. The first one was an appeal against a decision denying the effects of the basic application, the second was an action requesting the revocation, cancellation or invalidation of the registration resulting from the basic application or of the basic registration, and the third was an opposition to the basic application. If one of those cases were in course at the time of the expiration of the five-year period and resulted after the expiration of the said period in a final decision of rejection, revocation, cancellation or invalidation of the basic application or the registration resulting therefrom, or the basic registration, as the case might be, the central attack effect would apply. Recognizing that there could be one or two cases which would not be covered by the new text proposed, he believed that at least 99% of the cases had been covered and that should be enough because otherwise the text would be too complicated.

492. The CHAIRMAN emphasized that the suggestion contained in document MM/DC/12 would seem to him to meet the concern of the Delegation of Austria.

493. Mr. DE LAS HERAS LORENZO (Spain) pointed out that the situation mentioned by the Representative of ATRIP concerning the withdrawal of the basic application or renunciation of the basic registration after the expiry of the five-year period, so as to avoid a final decision and the central attack effect, had not been covered by the suggestion contained in document MM/DC/12. That possibility of fraud should not remain open and, in his opinion, it would not be too complicated to add another sentence to the suggestion in order to cover that situation.

494. Mr. BOGSCH (Director General of WIPO) stated that the question raised by the Delegation of Spain concerned a very rare case which he believed unlikely to occur. Nevertheless, he invited the other delegations to express their views as to whether it was really worthwhile to deal with that case.

495. Mr. von MÜHLEND¹¹AHL (Federal Republic of Germany) stated that the suggestion which had been submitted had adequately solved the problem which had been raised by the Delegation of Austria. Noting that the Madrid Agreement did not deal with all the questions that had been raised--for instance what would happen if the owner of a mark voluntarily cancels his mark while an action is in course--he considered that the suggestion was much more explicit than the text of the existing Madrid Agreement. However, as he had mentioned before, it would not be rare to have a court action brought against the applicant in order to have his application withdrawn. Hence, he would like to include in the suggested Article 6(3)(ii) after the words "an action requesting," the words "the withdrawal of the basic application or." Apart from that proposal, which referred to a situation which was not rare under the legal system of his country, he could fully share the approach contained in the suggestion of the Director General.

496. Mrs. MAYER-DOLLINER (Austria) stated that she could fully agree with the opinion which had just been expressed by the Delegation of the Federal Republic of Germany. However, she noticed that the possibility of basing an international registration on an application had created new problems and she raised again the issue of balancing the interests of the applicant with the interests of the competitors.

497. Mr. BOGSCH (Director General of WIPO) stated that at that point one could even go along with the change that had been proposed by the Delegation of Spain. He recognized the significance of the issue raised by the possibility of basing an international registration on an application and declared that the Committee should consider whether the suggestion contained in document MM/DC/12 had to be amended.

498. The CHAIRMAN noted that two concepts were in opposition, one held by the advocates of the Madrid Agreement text and the other by the advocates of a broader concept allowing for the fact that the Protocol permitted an international registration to be based on an application and the fact that the rights deriving from an application were less certain than those deriving from a registered mark. He felt that a compromise would have to be found between a provision in general terms and a provision foreseeing all cases.

499. Mr. DE LAS HERAS LORENZO (Spain) stated that his previous intervention had not been correctly understood because the case which his Delegation had contemplated was not a rare one but one which raised the general issue of avoiding an act of fraud which would frustrate the action which had been brought not only against the basic application but also against the international registration.

500. Mr. BOGSCH (Director General of WIPO) stated that if the delegations wished to adopt a restrictive approach, he could propose to amend the text of draft Article 6(3) contained in document MM/DC/12 in the following way: first, the proposal of the Federal Republic of Germany should be accepted and item (ii) amended accordingly, in order to cover an action requesting the withdrawal of the basic application. Secondly, as to the question raised by the Delegation of Spain, he suggested to insert the words "or the renunciation or withdrawal" after the word "invalidation" so that the last five lines of draft Article 6(3) would read "was in course at the time of the expiration of the five-year period and results after the expiration of the said period in a final decision of rejection, revocation, cancellation or invalidation, or the renunciation or withdrawal, of the basic application or the registration resulting therefrom, or the basic registration, as the case may be."

501. The CHAIRMAN said that the Drafting Committee would check the wording of the two amendments and invited delegations to give their positions.

502. Mr. KARAYANEV (Bulgaria) stated that his Delegation could accept the text, as modified by the Director General.

503. Mr. CARSTAD (Denmark) stated that his Delegation could support the suggestion of the Director General because, although it was a stricter rule than that found in the Madrid Agreement, a certain balance had been found.

504. Mr. von MÜHLEND AHL (Federal Republic of Germany) wondered, as regards the addition suggested by the Delegation of Spain, how the obligation of notification contained in draft Article 6(4) would be carried out in the case of a voluntary withdrawal, cancellation, or renunciation of the basic application or registration. Besides, in case the applicant or the owner of the mark had voluntarily withdrawn his basic application or renounced his basic registration, he wondered how one would be able to establish a link between the action which had begun before the expiry of the five-year period and the voluntary withdrawal or renunciation. He recalled that the Madrid Agreement did not cover that situation and that had never been a problem in any country although that particular case was not related to the issue of whether the basis for the international registration had been an application or a registration. He considered that one of the qualities of the Madrid Agreement was that it did not spell out everything to its last detail, and wondered whether the same principle should not be applied to the Protocol.

505. The CHAIRMAN asked the delegations to explain how, in practice, an Office could have knowledge of a withdrawal.

506. Mr. DE LAS HERAS LORENZO (Spain) stated that the link between the withdrawal and the proceedings that were in course before the five-year period had been established by the suggestion of the Director General.

507. The CHAIRMAN again asked how an Office was informed of withdrawal following a procedure and whether the Office was able to notify the withdrawal to the International Bureau.

508. Mr. DE LAS HERAS LORENZO (Spain) stated that, as in a court proceeding where the interested party would communicate the judicial decision to the Office, it would be the person that initiated the action requesting the withdrawal of the basic application that would ask and see that a notification be sent to the Office which would then notify the International Bureau.

509. The CHAIRMAN wondered what would happen in the event of a voluntary withdrawal.

510. Miss VIDAUD (France) noted in respect of the discussions on paragraph (3) that it was not possible to foresee all possible cases with any accuracy and referred to her suggestion to prefer a general formulation similar to that used in the Madrid Agreement except that, in the case of the Protocol, the formulation would also apply to basic applications. She added that all those cases that had been mentioned were covered by the current text of the Madrid Agreement.

511. Mr. MEKIDECHE (Algeria) went along with the various suggestions made by the Director General and proposed that a general formulation be added such as: "or any other proceedings to terminate, in whole or in part, the effects of protection."

512. The CHAIRMAN stated that the proposal warranted reflection.

513. Mr. COMTE (Switzerland) said that his Delegation supported the proposal contained in document MM/DC/12 with the addition proposed in item (ii), but without that proposed for the end of paragraph (3). He felt that the existence of the concept of basic application made it difficult to envisage a general formulation or to refer to the text of the Madrid Agreement. He thought, along with the Delegation of the Federal Republic of Germany, that the only objective criterion that an Office could apply for notifying renunciation or withdrawal was the date on which it received the declaration of renunciation or of withdrawal.

514. Mrs. BANDIN (ECTA) stated that her organization together with AIM, UNICE, TMPDF and PTMG wanted to suggest the following amendments to the new version of the second sentence of draft Article 6(3): to add a new (i) saying "a provisional refusal" and, after (i), (ii), (iii) and (iv) say "was in course at the time of the expiration of the five-year period, or an opposition procedure only started after the expiration of the said period and results in a final decision of total or partial rejection, revocation, etc." She pointed out that all the organizations which she had mentioned had fully agreed with the inclusion of the withdrawal issue and offered to pass on to all the delegations and organizations their suggestion in writing.

515. The CHAIRMAN expressed some doubts as to the second suggestion made by the Representative of ECTA and also pointed out that suggestions made by observer delegations could only be taken up if they were repeated by a member delegation.

516. Mr. TURNER (ITMA) stated, as regards the first point raised by the Delegation of the Federal Republic of Germany, that the withdrawal had to be a positive act taken by the applicant or the owner of the registration and, therefore, the national Office would receive a letter or some other written evidence. He wondered whether the Delegation of the Federal Republic of Germany was trying to raise the possibility of abandonment of the basic application avoiding that the national Office take a positive action as a result. Moreover, he recalled that the Delegation of France had referred to the expression "legal protection has ceased" and, in this connection, he wanted to point out that in the United Kingdom a trademark application had no legal protection.

517. Mr. HARLÉ (AIPPI) thought, along with the Delegation of France, that the text of the Protocol should remain as close as possible to that of the Madrid Agreement. He suggested and hoped that the Delegation of France would take up the suggestion to state that if the basic application did not lead to a registration there would no longer be an international registration, even if more flexible measures had to be provided in respect of the five-year time limit.

518. Mr. von MÜHLENDAHL (Federal Republic of Germany) recalled that it had already been decided that an international registration could be based on a national application. The only thing that one had to do under draft Article 6 was to draw the consequences from that decision. As far as the basic registration was concerned, no consequence had to be drawn if one was satisfied with the Madrid Agreement. Therefore, there were just two points which remained open. The first one referred to the possibility of having an opposition filed only after the five-year period. In that case, he believed that any action which had not been brought within the five-year period would come too late, but those would be extreme and unlikely situations. Hence, no special provisions should be made in that connection. The second element which was remaining was the issue of withdrawal, renunciation or abandonment of an application or registration as the case would be. He wondered how the Office could be sure that that withdrawal, abandonment or cancellation was the result of an action which had been brought within the five-year period. His Delegation could fully support the statement made by the Delegation of Switzerland to the fact that no obligations which would be difficult if not impossible for the Office of origin to fulfill should be imposed.

519. Mr. DE LAS HERAS LORENZO (Spain) stated that he could not agree with the statement of the Delegation of the Federal Republic of Germany since the case his Delegation referred to was actually covered by the generic wording of Article 6 of the Madrid Agreement. He recalled that his Delegation had already proposed, with the support of the Delegation of France, the use of a general formula which would cover all the possibilities as in the Madrid Agreement.

520. The CHAIRMAN stressed his concern at the fact that member countries of the Madrid Union interpreted differently the provisions of the Madrid Agreement and pointed out the need to clarify that matter with regard to the future members of the Protocol.

521. Mr. TATHAM (TMPDF) stated that, although the Chairman had mentioned that observer delegations could only make interventions through their national delegations, Rule 46(3) stated that observer delegations could make written submissions on subjects for which they had a special competence and he believed that that was a subject upon which the interested circles did have a special competence.

522. The CHAIRMAN explained that it was a point of procedure that only member delegations could make proposals. He added that member delegations could take up suggestions or comments made by observer delegations.

523. Mr. BOGSCH (Director General of WIPO) explained that the true situation was that amendments could not be proposed by anybody other than the member delegations. Nevertheless, the interested circles could express their suggestions.

524. The CHAIRMAN resumed the discussion following a break and announced that the Director General had a compromise to suggest.

525. Mr. BOGSCH (Director General of WIPO) stated that he fully realized the difficulties which had been signaled by the Delegations of Switzerland and the Federal Republic of Germany on how the national Office could decide whether a withdrawal had been made because of an existing action or for other reasons, the consequence being that it could not take upon itself the responsibility of notifying the International Bureau that the international registration had to be cancelled. That problem could probably be solved by saying that if an application was withdrawn or renounced after the expiration of the five-year period, provided that one of the proceedings referred to in items (i), (ii) or (iii) had begun before the expiry of the said period, the central attack effect would apply. His suggestion at the end of paragraph (3) would read "The same also applies if the basic application is withdrawn, or the registration resulting from the basic application or the basic registration is renounced, after the expiry of the five-year period, provided that, at the time of the expiry of the said period and at the time of the withdrawal or renunciation, the said application or registration was the subject of any of the proceedings referred to in the preceding sentence."

526. The CHAIRMAN proposed that there be a discussion on the principle of that suggestion which, he felt, could obtain the approval of delegations.

527. Mr. FURSTNER (Netherlands) stated that his Delegation would like to study the suggestion made by the Director General and the idea which had been brought forward, perhaps by the Representative of AIPPI, to build, as in the Madrid Agreement, a system of dependency relating to the basic application which would disregard the time factor, that is, to add a general phrase providing that whenever an application would not lead to a registration, the international registration would fall.

528. Mr. BOGSCH (Director General of WIPO) stated that the suggestion of the Representative of AIPPI could make the dependency last maybe ten years, which was not compatible with the system according to which after the expiration of five years there would be independence.

529.1 The CHAIRMAN considered that the proposal by the Delegation of the Netherlands would constitute a revolution.

529.2 He asked the Delegation of Switzerland whether it could accept the new suggestion made by the Director General.

530. Mr. COMTE (Switzerland) stated that his Delegation fully supported that suggestion.

531. Mr. von MÜHLENDAHL (Federal Republic of Germany) stated that his Delegation was of the same view as the Delegation of Switzerland and could support the suggestion of the Director General. His Delegation was diametrically opposed to any suggestion of putting again into discussion, as a matter of principle, the decision concerning the possibilities of basing an international registration on an application and the consequences that that meant for dependency and independency.

532. Mrs. MAYER-DOLLINER (Austria) stated that her Delegation could support the suggestion of the Director General.

533. Mr. DE LAS HERAS LORENZO (Spain) stated that his Delegation would have preferred a general formula but could support the suggestion made by the Director General.

534. Mr. PUSZTAI (Hungary) stated that his Delegation was ready to approve the suggestion of the Director General.

535. Miss VIDAUD (France) stated that her Delegation was able to accept the Director General's suggestion despite its preference for a more general formulation.

536. Mr. CARSTAD (Denmark) stated that his Delegation could support the latest suggestion of the Director General.

537. Mr. KUNZE (AIM) stated that, although the principle according to which an application could be the basis for an international registration had already been accepted, that did not mean that one would have to stick to all sorts of disadvantages which would come from that possibility, but rather create a balance between all the interests involved. Two possibilities could solve that problem, namely to put all possible situations into the text or to create, as proposed by the Delegation of the Netherlands, a kind of a general clause covering all possible cases.

538. Mr. GEVERS (ECTA) supported the statement by the AIM Representative and said that the proposal by the Delegation of the Netherlands had to be taken into serious consideration.

539. Ms. KIK (UEPIP) stated that her Organization would also support the proposal of the Delegation of the Netherlands.

540. Mr. COX (PTMG) stated that, as the Conference had accepted without argument that an international registration be based on an application, it must be assumed to have accepted all the consequences which would flow from that acceptance. Therefore, even if the national application did not mature into a registration within five years, one had to accept that the international registration would stand in the other countries so as to avoid the uncertainty of not knowing, for an indetermined period of time, whether the international registration was in force.

541.1 The CHAIRMAN noted that there were no delegations opposed to the text suggested by the Director General. He proposed that it be accepted and that when a written document was submitted to the following meeting, the text be formally adopted.

541.2 He noted that there was no opposition to his suggestion.

541.3 He asked the Director General to reply to the question raised by the Delegation of the Netherlands and by the representatives of certain non-governmental organizations.

542. Mr. BOGSCH (Director General of WIPO) recalled that under the Madrid Agreement there was no absolute certainty because, even if a national registration was obtained, it could be annuled and, therefore, it was only a relative certainty. He pointed out that what was being discussed was the degree of certainty which was involved and, in his opinion, the difference in the degree of certainty or uncertainty was not so great that one should not go along with the suggestion he had made.

543.1 The CHAIRMAN added that if the five-year period were to be tampered with on the pretext that an international mark was to be filed on the basis of an application, the value of the Protocol would be diminished as also the attractiveness of an international mark.

543.2 He asked whether delegations wished to comment on the suggestion made by the Delegation of the Netherlands and whether the latter Delegation maintained its suggestion following the explanations given by the Director General.

544. Mr. FURSTNER (Netherlands) stated that he would like to know whether there was any support for the proposal of his Delegation. If there was none, he could withdraw it.

545.1 The CHAIRMAN asked whether any delegation supported the proposal by the Delegation of the Netherlands.

545.2 He noted that no support was forthcoming and that, following the very terms of the statement by the Delegation of the Netherlands, the proposal was withdrawn.

545.3 He considered the discussion on Article 6(3) to be terminated, subject to its formal adoption at the following meeting.

546. The CHAIRMAN opened the discussion on Article 6(4).

547. Mr. COMTE (Switzerland) suggested that the International Bureau should present to the following meeting a written proposal encompassing the revised paragraph (3) together with a new version of paragraph (4) taking into account the amendments made to paragraph (3).

548. Mr. BOGSCH (Director General of WIPO) replied that the proposal made by the International Bureau would comprise the new versions of both paragraphs (3) and (4).

549. The CHAIRMAN asked whether there were further comments on paragraph (4).

550. Miss VIDAUD (France) approved the proposal by the Delegation of Switzerland and also suggested that substantive discussion on paragraph (4) be postponed to the following meeting.

551. The CHAIRMAN felt that the Basic Proposal for paragraph (4) could already be discussed.

552. Mr. BOGSCH (Director General of WIPO) pointed out that there were only two changes to be made in paragraph (4), namely, the beginning of the second sentence should read "where paragraph (3), second or third sentence" and the beginning of the last sentence should read "where requested by the Office of origin to do so under the first, the second or the third sentence of this paragraph."

553. The CHAIRMAN said that paragraphs (3) and (4) would be formally adopted at the following meeting and asked delegations whether they had proposals in respect of paragraph (4), in order that the International Bureau could take them into account.

554. Mr. von MÜHLENDahl (Federal Republic of Germany) proposed that it be closely examined whether the reference to the third sentence should merely be added.

555. Mrs. MAYER-DOLLINER (Austria) proposed that, as there was a possibility in paragraph (3) to have the basic application or registration partially withdrawn or cancelled, that should also be reflected in paragraph (4).

556.1 The CHAIRMAN felt that the proposal by the Delegation of Austria warranted examination.

556.2 He noted that there were no further proposals with regard to paragraph (4).

557. Mr. BOGSCH (Director General of WIPO) supported the proposals made by the Delegations of the Federal Republic of Germany and of Austria and said that they would be incorporated in the new wording of paragraph (4).

558. Mr. HANSMANN (FICPI) suggested to add the words "totally or partially" after the word "cancel" in the Basic Proposal at lines two, seven and nine.

559. The CHAIRMAN noted that there were no more requests to take the floor and confirmed that Article 6(3) and (4) would be formally adopted once the revised version of document MM/DC/12 had been submitted (continued in paragraph 658).

Article 7: Renewal of International Registration

560. The CHAIRMAN opened the discussion on Article 7 and asked the Director General to present the Article.

561. Mr. BOGSCH (Director General of WIPO) indicated that the beginning of the first line of draft Article 7(1) should be amended to read, instead of "Any registration," "Any international registration."

562. The CHAIRMAN proposed that paragraphs (1) and (2) be discussed at the same time.

563. Mr. TATHAM (TMPDF), referring to the words "remind the proprietor of the mark and his agent" in Article 7(4) of the Madrid Agreement applicable under Article 7(2) of the Basic Proposal, asked whether the word "and" meant that a reminder had to be sent to two different addressees. He suggested that it would save costs if the provision would say "or his agent" or "the proprietor of the mark through his agent."

564. Mr. von MÜHLENDahl (Federal Republic of Germany) explained that the provision in Article 7(4) of the Madrid Agreement was the sole provision under which a communication was made to both the agent and the owner of the mark. The reason for that was the existing renewal period of 20 years under the Madrid Agreement. There could be an agent in the register who had long since disappeared and, as the renewal was a very important event in the life of a trademark registration, one should make every effort to inform those who were in danger of losing their rights. Therefore, he believed that it was a very fair approach and he wondered whether trademark owners were really wishing to discard it.

565. The CHAIRMAN pointed out that the present assembly was not qualified to interpret the Madrid Agreement, but to adopt a Protocol. He explained that the provisions of the Protocol extracted from the Madrid Agreement could be amended and said, in conclusion, that he was personally in agreement with the Delegation of the Federal Republic of Germany.

566. Mr. TARNOFSKY (United Kingdom) remarked that he had thought that the Representative of TMPDF, when reading out the unofficial English translation of Article 7(4) of the Madrid Agreement, would comment on the word "unofficial" because if the words "un avis officieux" from the original French text had been translated as "an unofficial notice" it was probably because that was an unofficial translation.

567. Mr. BOGSCH (Director General of WIPO) stated that the French text said "officieux" and the English text said "unofficial" which was a correct translation.

568. Mr. MOLIJN (UNICE) pointed out that although his Organization supported that the renewal time be brought from 20 to ten years in the Protocol, it believed that the fee should also be in line with the ten years rather than the 20 years.

569. Mr. BOGSCH (Director General of WIPO) stated that the International Bureau could guarantee that the proposal which would be made in that respect in the future Regulations would be in line with the desire which had been expressed by the Representative of UNICE. However, he could not guarantee what the Assembly would decide.

570. The CHAIRMAN noted that there were no further requests to take the floor.

571. Article 7 was adopted as given in the Basic Proposal, taking into account the suggestion by the Director General with regard to paragraph (1) and subject to paragraphs (2), (4) and (5) of Article 7 of the Madrid (Stockholm) Agreement replacing paragraph (2) of the Basic Proposal.

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Article 8: Fees for International Application and Registration

572. The CHAIRMAN opened the discussion on Article 8 and asked the Director General to present the Article. He pointed out that a proposal had been made by the Delegation of the European Communities (document MM/DC/10).

573.1 Mr. BOGSCH (Director General of WIPO) said that the first paragraph of Article 8 incorporated mutatis mutandis the whole Article 8 of the Madrid Agreement whereas paragraph (2) was new and introduced the possibility for certain States to apply their domestic fees. He explained that an alternative was proposed in paragraph (2) and that the Assembly would have to choose between the faculty for those States to require 80% only of the amount of their domestic fee or the whole of that amount.

573.2 He recalled that the Delegation of the European Communities had submitted a proposal (document MM/DC/10) to have in draft Article 8(2)(a) the words between square brackets ([80% of]) deleted and a new sentence between the first and second sentences of that subparagraph. However, in the English version of document MM/DC/10 there was an error in the second line of the proposed new sentence, where the word "from" appearing before "it" should be changed to "for," so that it should read "When a Contracting Party sets or changes the amount of the individual fee, it shall take account of the savings resulting for it from the international registration procedure."

574. The CHAIRMAN opened the discussion on paragraph (1) that applied, mutatis mutandis, Article 8 of the Madrid Agreement.

575. Miss VIDAUD (France) proposed that the discussion on paragraph (1) be postponed and that a start be made with paragraph (2) that comprised new elements.

576. The CHAIRMAN proposed that the order of the paragraphs be followed and that paragraph (1) be adopted first.

577. Mr. COSTA DE MORAIS SERRÃO (Portugal) stated that, in view of the special links between paragraphs (1) and (2), his Delegation supported the proposal made by the Delegation of France.

578. Mr. FITZPATRICK (Ireland) asked how Article 8(5) of the Madrid Agreement which was a provision on the division of the supplementary fees and the time at which that division should be made would apply in relation to the new regime provided for in Article 8(2)(a) of the Basic Proposal.

579. Mr. SHANDA-TONME (Cameroon) agreed with the Chairman that Article 8 should be examined in the order of the paragraphs.

580. The CHAIRMAN noted that there were no further requests to take the floor and proposed that the Director General should reply to the question put by the Delegation of Ireland.

581. Mr. BOGSCH (Director General of WIPO) explained that if a Contracting Party would choose the individual fee system instead of the share in the revenue produced by the supplementary and complementary fees, no complementary or supplementary fees would be payable in respect of the said Contracting Party, that is, that Contracting Party would not be interested in Article 8 of the Madrid Agreement.

582. Mr. FITZPATRICK (Ireland) asked at what point in time, according to Article 8(2) of the Basic Proposal, the national Office would receive the individual fee which was due when it was designated in an international application.

583. Mr. BOGSCH (Director General of WIPO) stated that if the Regulations would provide something similar to the Madrid Agreement it would be once a year.

584. Mr. FITZPATRICK (Ireland) stated that, if that matter could be left to the Regulations, he would not need to pursue it any further at that stage.

585.1 The CHAIRMAN noted that no further delegations wished to speak on paragraph (1) and proposed that it should be formally adopted at the same time as Article 8 as a whole to enable delegations to speak on the links between paragraphs (1) and (2).

585.2 He opened the discussion on paragraph (2)(a) of the Basic Proposal and on the proposal by the Delegation of the European Communities (document MM/DC/10).

586. Mr. PROŠEK (Czechoslovakia) stated that he would like to confirm the understanding of his Delegation that Article 8(2)(a) of the Basic Proposal would comprise the idea that any State which would become party to the Protocol was in a position to choose the system of individual fees but that that system would not apply among the States which were already party to the Madrid Agreement. In case that understanding was correct, he would like to have it included in the Records of the Diplomatic Conference in order to avoid any eventual misunderstanding in the future.

587.1 Mr. TARNOFSKY (United Kingdom) supported the proposal to delete "80% of," made by the Delegation of the European Communities in document MM/DC/10. He explained that the Office of his country could only charge international applicants less than national applicants if the international procedure were to prove itself as saving something for the said Office. Therefore, he would like to have the proposal of the Delegation of the European Communities amended so that it would not have the sense that there would necessarily be savings resulting from the international registration procedure, but that a Contracting Party should take into account any savings which could result from that procedure.

587.2 Referring to a suggestion that he had received from the Representative of FICPI that the fee should cover the first three classes designated in an application, he stated that he was not very keen on that idea because the applicant applying for a registration in one or two classes would have in some way to make up the difference and be charged a little more to account for those people getting three classes for the same fee.

588. Mr. SCHWAB (European Communities) stated that his Delegation was fully in favor of the European Communities having the possibility of opting for either the Madrid fee system or the individual fee system laid down in Article 8(2)(a) of the Basic Proposal. He believed that the Community Trade Mark Office should be able to charge a fee for each international registration or renewal of an international registration according to the individual fee system and, in principle, that fee could be set at the same level as the fee for obtaining a Community trade mark registration. Therefore, his Delegation could not support a ceiling of 80% of the said amount nor propose another percentage because, at that stage, it was not clear what savings would result from the international registration procedure. He pointed out, as an example, that there was not yet a decision on whether there would be a republication of the international registration or not. That was the reason why his Delegation had proposed a more general wording, making it clear that they were ready to take account of the savings resulting from the international registration procedure.

589. Mr. KOMAROV (Soviet Union) asked the International Bureau and the Director General to give further comments on Article 8(2)(a) of the Basic Proposal, in particular concerning the ceiling of 80% and the influence of the rate of fees on the attractiveness or unattractiveness of the system for the users, including Offices.

590. Mr. BOGSCH (Director General of WIPO) recalled that the provision contained in Article 8(2)(a) had not been invented by the International Bureau but was the result of three years of hard negotiations in the Committees of Experts. The present system in the Madrid Agreement would continue as a rule but all Contracting Parties that would become party to the Protocol could choose another system according to which a fee corresponding to the national fee would be payable. Besides, there was also the possibility of establishing a ceiling of 80% of the national fee or, according to the proposal by the Delegation of the European Communities, to take account of the savings resulting for a Contracting Party from the international registration procedure, a proposal that meant that the fee had to be less than the national fee. That system could be chosen by any country subject to the safeguard clause contained in draft Article 9^{sexies}, that is, the national fee could be applied by new Contracting Parties in their relations with the other Contracting Parties, but old Contracting Parties could apply the system only

in respect of new Contracting Parties. He pointed out that although the system would be more expensive in those countries which would choose the national fee system, it seemed to be an unavoidable price to be paid for the accession of certain countries to the Madrid system.

591. The CHAIRMAN was of the opinion that an international registration was less costly for a State than a national registration since the Office would be spared certain operations such as the administrative examination of applications, publication and, possibly, renewals of registrations. There was reason to deduct the cost of such operations from the costs borne by an Office in the case of national registrations. He pointed out that the proposal by the Delegation of the European Communities left it to the Contracting Parties to assess themselves the size of the savings they would make.

592. Mr. FITZPATRICK (Ireland), referring to draft Article 8(2)(a), stated that his country would also require 100% of the national fees because it could not discriminate between national and foreign applicants as it was not a government policy to subsidize any category of applicant. Only if there were real savings arising in respect of applications using the international procedure, new fees would then be set in order to reflect that situation. However, his country would first have to be sure that the savings did arise.

593. The CHAIRMAN asked the Delegation of Ireland whether it accepted the proposal by the Delegation of the European Communities (document MM/DC/10).

594. Mr. FITZPATRICK (Ireland) stated that his Delegation could not support the proposal of the Delegation of the European Communities because that text implied that savings would definitely arise and, therefore, it should be slightly reworded in the manner suggested by the Delegation of the United Kingdom.

595. Mrs. MAYER-DOLLINER (Austria) recalled that the Delegation of the European Communities, when referring to the difficulties in fixing the amount of the individual fee, mentioned the possible need of republishing the international registration. However, she believed that there would be no need to have such republication as it had already been agreed in the last sentence of draft Article 3(5) of the Protocol that the publicity referred to in that paragraph should be deemed to be sufficient for the purpose of all the Contracting Parties.

596. Mr. CARSTAD (Denmark) stated that his Delegation could support either the text of draft Article 8(2)(a) without the words between brackets "80% of" or the proposal of the Delegation of the European Communities if it were amended to include the word "any" before the word "savings." Regarding the republishing of the international registration, his Delegation expected that it should be possible and, therefore, in that specific situation there would not be any savings.

597. Mr. von MÜHLEND AHL (Federal Republic of Germany) recognized the importance of the fee income to maintain the trademark administration in many countries. Remarking that the accession of the European Communities to the Protocol was conditioned on the adoption of their proposal concerning draft

Article 8(2)(a) (document MM/DC/10), he stated that it was most important to have not only the States presently party to the Madrid Agreement adhering to the Protocol but also those countries which were presently outside the Madrid system. Referring to the issue of savings resulting from the international registration procedure, he pointed out that international registration would substantially contribute to facilitate the work of the designated Office as the International Bureau would receive the applications, classify goods and services according to the International Classification or see that the classification proposed by the applicant was in order, receive any supporting documents which the national Office might require, publish the international registrations, administer them, renew them and record changes. He calculated that under the system of his country, the work being taken over by WIPO would be in the neighborhood of 30 to 40%. Therefore, he believed that one should not dramatize the situation as there would be substantial savings for all and the countries presently outside the Madrid system would be able to join the Madrid Union. His Delegation could accept Article 8(2)(a) of the Basic Proposal with the amendments which had already been proposed.

598. Mr. HEMMERLING (German Democratic Republic) stated that, although the fee system of the Madrid Agreement had proved successful, special provisions could be adopted to meet the needs of certain countries. Therefore, his Delegation could accept, in principle, the individual fee system proposed in draft Article 8(2)(a). However, his Delegation believed that the individual fee should take into account the fundamental work which would be done by the International Bureau and, consequently, could not be so high as the amount the Offices of the Contracting Parties were entitled to in case of a registration of the mark in their own registers. He supported the proposal of the Delegation of the European Communities as contained in document MM/DC/10.

599. Mr. COMTE (Switzerland) said that his Delegation supported the Basic Proposal with the alternative in respect of 80%. He felt that the introduction of the idea of an individual fee constituted a basic modification of the Madrid Agreement that was intended to facilitate access to the system by other countries. The 100% alternative was indefensible, in his view, since it did not take into account the savings resulting from the work of the International Bureau and of the Office of origin. He added that, although Article 3(5) of the Protocol did not in fact prevent member States from republishing an international registration, such States could not, however, demand a supplementary fee for such republication. He finally explained that the 80% figure referred to in paragraph (2)(a) was only an estimate and could therefore be negotiated.

600. Mr. MOTA MAIA (Portugal) felt that the provisions in paragraph (2)(a) constituted a kind of negation of the international system since they departed from the principle of uniform provisions in respect of all Contracting Parties. He noted that adoption of the individual fee system would create a system of hybrid fees that could cause discrimination in respect of nationals of countries where the national fees were lower. He stated that his Delegation was willing to discuss a compromise, but that the call for a 100% rate did not seem to be going in that direction.

601. Mrs. MAYER-DOLLINER (Austria) stated that her Delegation could accept, as a compromise, the text of Article 8(2)(a) as appearing in the Basic

Proposal without the brackets, that is, with the ceiling "80% of." In the opinion of her Delegation, that would not be a discrimination against the national applicant because one should take into account not only the savings but also the advantages for the nationals which would use the Madrid system.

602. Mr. DELICADO MONTERO-RIOS (Spain) stated that his Delegation could accept, as a compromise, the text of Article 8(2)(a) of the Basic Proposal with the amendment made by the Delegation of the European Communities (document MM/DC/10).

603. The CHAIRMAN stressed that the provisions of paragraph (2)(a) were fundamental and held that States should go beyond their purely national interests and take into account the interests of the international community, particularly those of trade and industry.

604. Miss VIDAUD (France) stressed the sensitive nature of the fee issue both for Offices and users. As discussions stood, the point of view of her Delegation was similar to that expressed by the Delegation of Portugal as regards breaching the principle of uniformity. A two-fold system of fees was likely to complicate the system for users and to make it more expensive. She commented that her Delegation wished to work towards the achievement of a compromise on a Protocol text that was acceptable to the majority of States. As far as fees were concerned, the fact of requiring a fee equivalent to the national fee would amount to unjustified enrichment for an Office since it would not take into account the savings made by using the international registration system. She suggested that the present Madrid Agreement system be adapted by providing for a progressive increase in international fees and an adjustment of the coefficient for distributing the fees amongst Offices. That type of solution had the advantage, she felt, of not introducing the concept of individual fee into the Protocol since that concept was not in the spirit of the Madrid Agreement, but in fact resembled a very different treaty, i.e. the Trademark Registration Treaty (TRT).

605. Mr. KOMAROV (Soviet Union) stated that a compromise should be sought and his Delegation considered that one of the possibilities could be to supplement the proposal of the Delegation of the European Communities (document MM/DC/10) by adding in the end of that proposal the sentence "However, in any case, the individual fee must be lower than the national fee."

606. Mr. KARAYANEV (Bulgaria) stated that his Delegation had already expressed several times its satisfaction with the system established by the Madrid Agreement, which it considered to be just and well-balanced. Nevertheless, having in view the purpose of the Protocol and of the Conference, his Delegation agreed as a compromise to accept the system of individual fees subject to these fees being also well-balanced and meeting the requirements and interests of the Offices and of the users of the system. Therefore, his Delegation would fully share the considerations and opinions that had been expressed by the Delegations of Austria, Switzerland and the Soviet Union, and was ready to accept the text of Article 8(1) and (2)(a) as appearing in the Basic Proposal, if there was a limit of 80% on the national individual fee or with the additional sentence proposed by the Delegation of the Soviet Union.

607. Mr. IANNANTUONO (Italy) said that his Delegation supported the Basic Proposal as supplemented by the proposal made by the Delegation of the European Communities (document MM/DC/10) and as amended in the way proposed by the Delegation of the United Kingdom.

608. Mr. FURSTNER (Netherlands) stated that his Delegation could support the proposal of the Delegation of the European Communities in its original form because clearly there would be savings resulting from the international registration procedure.

609. Mr. SCHWAB (European Communities) explained that the aim for his Delegation was to set up a Community of Trade Mark Office that would pay for itself, which was why the European Communities could only accept a system under which all an Office's costs related to the handling of an international application were covered by the fees received by that Office. The proposal by his Delegation (MM/DC/10) nevertheless took into account the savings that would be made due to the international procedure, but did not propose a percentage, such as the 80% referred to in the Basic Proposal. He added that, as already mentioned by the Delegation of the Federal Republic of Germany, if large savings were made, the reduction could amount, for example, to 30%. His Delegation was therefore unable to accept a percentage established in advance. He further stated that his Delegation was able to accept the proposal made by the Delegation of the Soviet Union if that could help in finding a compromise.

610.1 Mr. PROŠEK (Czechoslovakia) thanked the Director General for his clarifications concerning the application of the individual fees in the relations between the countries party to the Madrid Agreement, on the one hand, and the Contracting Parties not party to that Agreement but party to the Protocol, on the other hand. However, he recalled that the said interpretation should be included in the Records of the Diplomatic Conference.

610.2 He expressed the support of his Delegation to the proposal of the Delegation of the Soviet Union in respect of supplementing the proposal of the Delegation of the European Communities.

611. Mr. BOBROVSZKY (Hungary) stated that the great innovation represented by the individual fee system was the price one had to pay for attracting more countries to the Madrid Union and, therefore, his Delegation could accept it. Furthermore, his Delegation could accept the proposal of the Delegation of the European Communities as amended by the Delegation of the Soviet Union.

612. Mr. PEETERS (Belgium) stated that his Delegation supported the proposal by the Delegation of the European Communities, implying that the individual fee charged by an Office in respect of an international registration would be necessarily lower than the fee charged for a national filing.

613. Mr. MOTA MAIA (Portugal) stated that his Delegation supported the proposal by the Delegation of the European Communities. Additionally, he

asked the International Bureau to tell him at what time an amendment made to the declaration referred to in the Basic Proposal would enter into force. He suggested that such amendment should take effect three months after receipt by the Director General.

614. Mrs. LISAVAC (Yugoslavia) held that the system of fees under the Madrid Agreement constituted one of the advantages of that Agreement for users. If a compromise safeguarding the spirit of the Madrid Agreement had to be found for the Protocol, it would have to ensure a reasonable relationship between the concept of individual fee and that of uniform fee.

615. Ms. GORLENKO (Soviet Union) supported the proposal of the Delegation of Czechoslovakia in respect of the inclusion, in the Records of the Diplomatic Conference, of the clarifications given by the Director General concerning the application of the individual fees in the relations between the countries party to the Madrid Agreement, on the one hand, and the Contracting Parties not party to that Agreement but party to the Protocol, on the other hand.

616.1 Mr. ZOLBOOT (Mongolia) joined the Delegations of Czechoslovakia and of the Soviet Union in requesting that the Director General's clarifications be included in the Records of the Diplomatic Conference.

616.2 Regarding the text of draft Article 8(2)(a), he stated that the proposal of the Delegation of the Soviet Union was the most acceptable one to his Delegation.

617. Mr. von MÜHLEND AHL (Federal Republic of Germany) noticed that as regards the individual fee system referred to in the Basic Proposal there was almost unanimous approval of the principle that one should not establish any percentage, although the individual fee should not be as high as the fee that would be paid on a national basis. His Delegation could also support that principle.

618.1 Mr. BOGSCH (Director General of WIPO) stated that the question which had been raised by the Delegation of Czechoslovakia was too important to be contained only in the Records of the Conference and, therefore, it should be reflected in the Treaty itself. He believed that the answer would be given by reading Article 8 in connection with Article 9sexies but, if any doubt would remain, then Article 9sexies should be clarified or amended.

618.2 Referring to draft Article 8(2)(a), he proposed to delete the words "but may not be higher than 80%," put a period after the word "declarations" and add a new sentence saying "Such amount shall be diminished by the equivalent of the savings resulting from the international procedure." He explained that the word "diminished" had the advantage of guaranteeing that the individual fee would be less than the national fee, while the words "take account of" used in the proposal of the Delegation of the European Communities were a little vague.

619. Mr. KOMAROV (Soviet Union) stated that, if there were no objections on agreeing that the ceiling would be less than 100%, then the exact drafting could be decided later on, because it would require additional discussions.

620. Mr. von MÜHLEND AHL (Federal Republic of Germany) stated that his Delegation shared the approach taken by the Delegation of the Soviet Union and was of the opinion that the provision should be drafted so as to allow a Contracting Party to fix the individual fee without having to take the amount of the national fee as a basis for calculation.

621. Mr. BOGSCH (Director General of WIPO) stated that he would agree to have first a decision on that principle and then prepare the corresponding text, which could be drafted in the way that had been suggested by the Delegation of the Federal Republic of Germany.

622. Mr. SCHWAB (European Communities) stated that his Delegation shared the view expressed by the Delegation of the Federal Republic of Germany and proposed the following wording: "Such amount shall be diminished by the savings resulting for it from the international registration procedure."

623. Mr. BOGSCH (Director General of WIPO) asked what the amount was to which reference was made in the last proposal by the Delegation of the European Communities.

624. The CHAIRMAN also felt that the wording of the proposal by the Delegation of the European Communities would have to be clarified.

625. Mr. BOGSCH (Director General of WIPO) suggested that it should be specified that each Contracting Party could set the amount of its individual fee and also that the fee would in no case be higher than the national or regional fee since the amount of the national fee was to be reduced by the amount of the savings made.

626. The CHAIRMAN asked that the last suggestion be submitted in a written proposal that could be discussed in the following meeting.

627. Mr. MOLIJN (UNICE) declared that his Organization considered the question of fees to be one of the most important items of the Protocol. His Organization preferred the present fee system under the Madrid Agreement. However, if the individual fee system under the Protocol was adopted as provided by Article 8(2), the individual fee should not be higher than 80% of the national fees of the relevant Contracting Parties. He wondered why the percentage of 80% could not be adopted, since it was known that an international registration system enabled savings to be made. He concluded that he could agree with the proposal made by the Director General except that, instead of the entire national fee, a maximum of 80% of the national fee should apply.

628. Mr. GEVERS (ECTA) felt that the suggestions made by the Delegation of France ought to be studied. If a compromise was necessary, a system was acceptable in which the individual fee would be a maximum of 80%. However, various questions had not yet been answered. Particularly to whom that fee would be paid, the currency in which it would be paid and the time at which a Contracting Party could change it.

629. The CHAIRMAN replied that most of the issues raised would be dealt with when examining paragraph (2)(b). He added that certain matters belonged to the Regulations.

630. Mr. TURNER (ITMA) indicated that he had problems to understand some of the comments made by the Delegation of France. He added that the comments made by the Representative of UNICE relating to the 80% of the national fee were not in line with the general consensus expressed by the member delegations.

631. Mr. HARLÉ (AIPPI) stated that AIPPI primarily defended the interests of users and pointed out that, in the Resolutions adopted at the 1986 London Congress, AIPPI had given its preference to a system of uniform fees as they existed under the Madrid Agreement, since the establishment of a system of fees that differed from State to State would deprive the Agreement of the simplicity that was one of its main advantages. He added that AIPPI was nevertheless aware of the fact that, for certain States, a uniform fee could not be maintained. For those States, AIPPI would accept compensation in the form of a surcharge on the designation fee paid by the applicant, but such surcharge would have to be set at a level that made use of the international system financially more advantageous than a national filing. He considered that the proposal by the Delegation of the European Communities created a system that was preferable to the Basic Proposal since it referred to the actual costs borne by the Offices and not to their national fees. He pointed out, however, that he was not instructed by AIPPI to accept the proposal by the Delegation of the European Communities.

632. Mr. JOHNSON (FICPI) declared that his Organization agreed with the general framework of the Basic Proposal. On the question of fees, his Organization was prepared to be flexible as long as the individual fee system took into account the savings resulting from the international registration system.

633. Mr. KUNZE (AIM) noticed that some delegations wished to have an individual fee equivalent to the national fee even if savings could be made through the international registration system. His Organization considered that new countries adhering to the system should recognize the concessions made by the Madrid Union countries, and take into account the savings resulting from the work carried out by the International Bureau which did not have to be carried out by national Offices. He added that, although his Organization would not insist, he would prefer, as proposed by the Representative of UNICE, an individual fee equivalent to 80% of the national fee.

634. Mr. BOEKEL (BDI) declared that his Organization could support what had been said by the Representative of UNICE.

635. Mr. BOCKEN (EFPIA) strongly supported the position taken by the Representative of UNICE, which was the most realistic.

636. Mr. HANSMANN (FCPA) considered that if the Contracting Parties to the Protocol had the possibility to collect individual fees instead of the uniform fees existing under the Madrid Agreement, that should not result in a two-registration system.

637. Mr. TATHAM (TMPDF) declared that his Organization supported what had been underlined by the Representative of UNICE.

638. Mr. BOGSCH (Director General of WIPO) considered that the percentage of the savings made by Offices could vary from one Contracting Party to another and that a reference to any saving resulting from the international procedure might be preferable than indicating a precise figure such as 80% of the national fee. As regards the risk of a two-registration system, he declared that it should be possible to have a single application form covering both a registration under the Madrid Agreement and a registration under the Protocol.

639. The CHAIRMAN proposed that the debate be adjourned and repeated that the International Bureau would submit a new proposal in respect of Article 8(2)(a) for the following meeting.

640. It was so decided (continued in paragraph 641).

<u>Seventh Meeting</u>
<u>Friday, June 16, 1989</u>
<u>Morning</u>

Article 8: Fees for International Application and Registration (continued from paragraph 640)

641. The CHAIRMAN opened the meeting and put up for discussion the suggestion made by the Director General with regard to Article 8(2)(a) (document MM/DC/16).

642. Mr. TARNOFSKY (United Kingdom) indicated that the statements given by the delegations of States members of the Madrid Union on the savings made by their Offices because of the international procedure did not demonstrate that the international procedure would necessarily lead to savings in his national Office. This was the reason why his Delegation could accept the suggestion of the Director General (document MM/DC/16) which avoided giving a precise percentage figure which could not be accepted by his Delegation.

643. Mr. FITZPATRICK (Ireland) declared that his Delegation could agree with the statement just made by the Delegation of the United Kingdom and, in a spirit of cooperation, go along with the suggestion of the Director General.

644. Mr. CARSTAD (Denmark) declared that his Delegation could support the suggestion contained in document MM/DC/16.

645. The CHAIRMAN asked whether any delegations had difficulties with the suggestion made by the Director General (document MM/DC/16) or were opposed to it.

646. Mr. KOMAROV (Soviet Union) considered that the suggestion contained in document MM/DC/16 deserved attention since a number of delegations which had certain doubts had expressed their agreement with it. He added that his Delegation still had a problem and wondered who would decide if savings existed or not, what would be the volume of the savings, and whether everything would be left in the hands of the Offices of the Contracting Parties to decide.

647. The CHAIRMAN, speaking as the head of an Office, said that the Office itself would determine the amount of savings achieved, under the supervision of its authorities, particularly its financial controllers.

648. Mr. BOGSCH (Director General of WIPO) agreed with the explanation given by the Chairman. He added that there would be a moral pressure on each Office adopting the individual fee system to explain why no savings were made in view of the existence of the international procedure.

649. Mr. KOMAROV (Soviet Union) considered that the comments of the Director General and the Chairman clarified the issue. He indicated that he did not envisage the question of fraud by Offices, but solely the fact that each Office had its own system with respect to finance and therefore it would be difficult to harmonize the question of savings. He added that, in any case, his Delegation could support the suggestion contained in document MM/DC/16.

650. Mr. KIM Yu Chol (Democratic People's Republic of Korea) supported the suggestion contained in document MM/DC/16, which he held to be the fairest and most constructive.

651.1 The CHAIRMAN noted that there was no opposition to the suggestion made by the Director General and that there were no further comments on paragraph (2)(a). He considered paragraph (2)(a) adopted and proposed that paragraph (2)(b) be examined in order that the whole of Article 8 could subsequently be given formal adoption.

651.2 He opened the discussion on paragraph (2)(b) and gave the floor to the Director General.

652. Mr. BOGSCH (Director General of WIPO) declared, in response to a previous question on paragraph (2)(b) raised by the Delegation of Portugal, that any declaration made in accordance with paragraph (2)(a) and any change thereof would come into effect three months after it had been received by the International Bureau.

653. Mr. von MÜHLENDAHL (Federal Republic of Germany) considered that subparagraph (b) allowed in fact a certain degree of latitude to States making the declarations. States could choose a later date than the above-mentioned three months if they indicated in the declaration the specific date on which it should come into effect.

654. The CHAIRMAN stated that the time limits for entry into force should not be too lengthy.

655. Mr. BOGSCH (Director General of WIPO) pointed out that the words "or at any later date" were contained in paragraph (2)(b). He added that, in any event, a declaration could not take effect within a period of less than three months.

656. The CHAIRMAN noted that there were no further requests to take the floor.

657. Article 8 was adopted as given in the Basic Proposal and as amended in accordance with the suggestion contained in document MM/DC/16 and subject to paragraph (1) being replaced by the text of Article 8 of the Madrid (Stockholm) Agreement, with the necessary adaptation to be undertaken by the Drafting Committee.

Article 6: Period of Validity of International Registration; Dependence and Independence of International Registration (continued from paragraph 559)

658. The CHAIRMAN pointed out that paragraphs (3) and (4) still had to be formally adopted after examining the new suggestion by the Director General (document MM/DC/15). He asked the Director General to present the document.

659. Mr. BOGSCH (Director General of WIPO) declared that, according to paragraph (4), many facts and decisions relevant under paragraph (3) had in fact to be notified by the Office of origin to the International Bureau. He added that the Regulations under the Protocol would describe in detail the notifications and requests which had to be addressed to the International Bureau.

660. The CHAIRMAN asked the delegations to deal firstly with the first part of document MM/DC/15 in which two new sentences were suggested for the end of Article 6(3). He asked whether the suggestion met the various objections raised by the delegations.

661. Miss VIDAUD (France) stated that her Delegation would not oppose the suggestion which seemed to meet with a degree of consensus. She nevertheless emphasized her regret at the fact that the proposed wording was so precise and enumerative.

662. Mr. DE LAS HERAS LORENZO (Spain) wondered whether there was not a mistake with respect to the presentation of paragraph (3) in

document MM/DC/15. This error concerned the reference to the "first sentence of Article 6(3)." He added that the reference should be to the last sentence and not to the first.

663. The CHAIRMAN explained that document MM/DC/15, as formulated, gave the text of the two new sentences that were suggested for inclusion following the first sentence of Article 6(3) of the Basic Proposal and that the second sentence of paragraph (3) of the Basic Proposal would be deleted.

664. Ms. GORLENKO (Soviet Union) declared that her Delegation could support the suggestion of the Director General as contained in document MM/DC/15.

665.1 The CHAIRMAN noted that there were no further comments on the suggestion contained in document MM/DC/15 with regard to paragraph (3).

665.2 He opened the discussion on the suggestion by the Director General with regard to paragraph (4) (document MM/DC/15).

666. Mr. COMTE (Switzerland) stated that the new version of paragraph (4) satisfied him since it was clearer and more concise.

667. The CHAIRMAN asked the Director General whether it would not be clearer in paragraph (4) to use the words "in whole or in part" rather than "to the extent applicable."

668. Mr. BOGSCH (Director General of WIPO) replied that the words "to the extent applicable" seemed more exact to him since a registration remained fully in force even if certain goods or services were deleted from the list.

669. Mr. DE LAS HERAS LORENZO (Spain) considered that the terms "totally or partially" were well-known and used in a number of legislative texts of different countries. Those words were probably clearer than the words "to the extent applicable" suggested in document MM/DC/15.

670. Miss VIDAUD (France) stated that her Delegation had reacted in the same way as the Delegation of Spain. She wondered whether it was not a matter for the Drafting Committee, which could also make some improvements to paragraph (3). If, on the other hand, the matter of the words "to the extent applicable" was to be dealt with by the Main Committee, she would fully support the Delegation of Spain in its wish to amend the terminology.

671. The CHAIRMAN noted that no further delegation wished to speak and wondered whether that question of terminology should be referred to the Drafting Committee or whether it could be settled at once.

672. Miss VIDAUD (France) wondered whether it should not be concluded that it was an editorial matter. She added that it had to be left to the Drafting Committee to ensure that the Protocol always used the same expressions.

673.1 The CHAIRMAN proposed that, for the moment, the wording of paragraph (4) should be left as suggested by the Director General, on the understanding that editorial changes could of course be made by the Drafting Committee.

673.2 He asked whether any delegations were opposed to the adoption of paragraphs (3) and (4). He noted that such was not the case.

674. Article 6(3) and (4) was adopted as amended in document MM/DC/15.

Article 9: Recordal of Change in the Ownership of an International Registration

675. The CHAIRMAN opened the discussion on Article 9 and announced a proposal by the Delegation of Spain (MM/DC/13). He asked the Director General to present the Basic Proposal.

676. Mr. BOGSCH (Director General of WIPO) indicated that the main question to be answered with respect to Article 9 related to the consequence of a change in ownership when the new holder was not entitled to file international applications. As regards the proposal of the Delegation of Spain (document MM/DC/13), he wondered who could be an interested party apart from the holder of the international registration and how the International Bureau could control that an interested party had a right to request the recordal of a change in ownership.

677. Mr. DE LAS HERAS LORENZO (Spain) explained that the proposal made by his Delegation was based on the fact that, normally, when an international registration was transmitted, the acquirer was the person most interested in the assignment being entered in the International Register since it was his wish to exercise his owner's rights and to be able to invoke those rights against others. He felt it therefore justified to provide that entry of transmission may be requested not only by the owner entered in the Register, who was the assignor, but also by the acquirer.

678. Mr. von MÜHLENDahl (Federal Republic of Germany) declared that the question of recordal of transfers and assignments of marks could not be solved at the international level the same way as it was at the national level. Although his Delegation had sympathy for the approach of the Delegation of Spain, he believed that it could not be adopted at the international level. The International Bureau was not in a position to decide on the legality of a transfer or an assignment. He supported the flexible approach taken in the Basic Proposal and considered that the Regulations would precisely specify what was to be understood by the terms "interested Office." He concluded by indicating that his Delegation did not favor an obligation which would be put on the International Bureau to examine the validity of documents relating to a transfer or an assignment of a mark.

679. Mrs. MAYER-DOLLINER (Austria) declared that her Delegation fully agreed with what had been stated by the Delegation of the Federal Republic of Germany. She was of the opinion that, to overcome some of the difficulties, the recordal of a transfer should be done through the intermediary of the Office, the latter being able to control the validity of the transfer.

680. Mr. BOGSCH (Director General of WIPO) agreed that difficulties could arise and indicated that the Office of origin was not always able to undertake an investigation as regards a possible transfer of the mark, in particular where the registration of the mark in the Office of origin was no longer in force. He added, with respect to the proposal of the Delegation of Spain, that the role of the International Bureau did not extend for instance to checking, in case of inheritance, which heir became the true owner of the mark.

681. The CHAIRMAN asked the Delegation of Austria whether it was convinced by the arguments of the Director General. He felt it was difficult to envisage working through the Office of origin where the mark no longer existed in the country of origin.

682. Mrs. MAYER-DOLLINER (Austria) indicated that she was convinced only to a certain extent. Her Delegation would like to find in Article 9 of the Protocol something similar to Article 9bis of the Madrid Agreement and especially when that Article indicated that the transfer should be notified to the International Bureau by the Office. She further considered that it could be dangerous if the right to an international trademark registration resulting from a transfer depended upon a decision of the International Bureau.

683. Mr. BOGSCH (Director General of WIPO) said that, in his view, it was not necessary for a request for entry of a change to automatically go through an Office.

684. The CHAIRMAN pointed out that the Basic Proposal gave the possibility of submitting the request for entry of a change of ownership by either the person in whose name the international registration was entered or an interested Office.

685. Mr. DE LAS HERAS LORENZO (Spain) said that the problem was a difficult one but, in the example given by the Director General, it should be possible to solve it by providing that a request by any interested party other than the registered owner should be submitted through the Office competent for the Contracting Party to which such interested party belonged.

686. Mr. BOGSCH (Director General of WIPO) noted that the proposal by the Delegation of Spain, as subsequently modified by that Delegation, corresponded in substance to the Basic Proposal.

687. The CHAIRMAN noted that the words "at the request of an interested party," proposed by the Delegation of Spain in document MM/DC/13, could not be accepted by all of the delegations.

688. Mr. DE LAS HERAS LORENZO (Spain) said that the registered owner, who was the person who transferred the mark, could make a direct request to the International Bureau to enter the transfer, but if the person asking for entry was the successor in title, the entry would have to be requested through the interested Office, that was to say, in the case in point, by the Office of the Contracting Party competent for that successor in title.

689. The CHAIRMAN thought that the new suggestion hardly differed from the Basic Proposal.

690. Mr. BOGSCH (Director General of WIPO) summarized the state of discussions by saying that the new proposal by the Delegation of Spain made a distinction between three cases, i.e.: "at the request of the person in whose name the international registration stands" or "at the request of some other interested person through the intermediary of an interested Office" or again "at the request of an interested Office."

691. Mr. DE LAS HERAS LORENZO (Spain) stated that, starting with the idea that the registered owner could directly request entry and the successor in title could also request entry through an interested Office, it would be superfluous to say that entry could also be requested directly by an interested Office. The text could be simplified to read: "at the request of the person in whose name the international registration stands or of his successor in title through the intermediary of an interested Office."

692. The CHAIRMAN noted that, under those circumstances, the possibility of an Office itself requesting entry would be suppressed.

693. Mr. MEKIDECHE (Algeria) was willing to support the position of the Delegation of Spain as it had been presented prior to the last intervention by that Delegation. He added that he preferred the use of the words "interested party" to those used in the Basic Proposal, since an interested party was a legal concept that referred to a person who had a right in the mark.

694. Mr. KARAYANEV (Bulgaria) declared that his Delegation supported, in principle, the text of Article 9 as drafted in the Basic Proposal. He added that that provision should only deal with essential aspects. He proposed that the beginning of the Article could read as follows: "Upon request of the holder of an international registration or other interested persons or Offices," the rest of the Article remaining unchanged. He concluded by indicating that details relating to this provision should be dealt with in the Regulations.

695. Mr. KUNZE (AIM) declared that he could support the proposal made by the Delegation of Spain as revised. The original proposal by the Delegation of Spain enabling all interested parties to request directly a recordal before the International Bureau went too far. On the other hand, he considered the Basic Proposal to be too restrictive. It was important for interested parties to have the possibility to present a request through their Office. He added that the latter possibility was not only important in case of inheritance, but also in more frequent cases such as merging of companies.

696. Mr. BOGSCH (Director General of WIPO) asked the Representative of AIM whether the use of the terms "through the intermediary of the interested Office" meant that such Office could refuse to transmit the request for recordal or whether it was obliged to proceed with the transmission.

697. Mr. KUNZE (AIM) answered that the Office must examine, and therefore could refuse, the request for recordal of a transfer or assignment. In case of refusal, the trademark would remain in the name of the former owner. He added that to avoid the International Bureau having to examine requests, it was necessary to provide that only registered owners of marks might address themselves directly to the International Bureau. With respect to any other interested party, the request should be made through the intermediary of the national Office.

698. Mr. BOGSCH (Director General of WIPO) said that Article 9 should be drafted as follows: "through the intermediary and with the approval of an interested Office."

699. The CHAIRMAN emphasized the fact that, in the Basic Proposal, the interested party itself made the request whereas, if the formulation "through the intermediary of the Office" were used, the latter would no longer be acting directly and that would be tantamount to transferring responsibility to the International Bureau.

700. Mr. IANNANTUONO (Italy) said that his Delegation supported the Basic Proposal since it held that the International Bureau, contrary to a national Office, was not in a position to verify the accuracy of facts relating to a change of ownership.

701. The CHAIRMAN emphasized that it was a fundamental issue on which delegations would have to reach agreement.

702. Mr. von MÜHLENDAHL (Federal Republic of Germany) indicated that his Delegation shared the view expressed by the Delegation of Italy and considered that Article 9 of the Protocol should not try to solve every case because it ran the risk of being either too broad or too restrictive. Recalling that it had been accepted that where the request for recording an assignment was presented by the registered owner, the said request could be presented directly to the International Bureau, he added that, in any case, where the international registration was still within the five-year period of dependency from the basic registration or application, the Regulations should provide that, in that case, the Office of origin should be involved in the recordal of an assignment or transfer. In the case where the request was not presented by the registered owner of the mark, the main role should be played by an Office and the main question was whether that Office had to check and certify the validity of the request. He concluded that his Delegation was happy with the text of Article 9 as it stood in the Basic Proposal.

703. Mrs. MAYER-DOLLINER (Austria) declared that her Delegation fully agreed with what had been expressed by the Delegation of the Federal Republic of Germany, it being understood that the Regulations would indicate the role of the Office of origin as it had been pointed out by the said Delegation.

704. The CHAIRMAN did not think that the proposal by the Delegation of Spain could be entirely referred to the Regulations since it dealt with a matter of substance. He noted that the Delegation of Spain still maintained its proposal, that was supported by the Delegation of Algeria.
705. Mr. MEKIDECHE (Algeria) repeated that there was a matter of substance to be settled in respect of the right of the registered owner or of an assignee to have a change of ownership entered. He stated that, in his country, an interested party had to go through the Office which, for its part, would act in respect of the International Bureau. He felt that intervention by the Office would also simplify the task of the International Bureau.
706. Mr. TARNOFSKY (United Kingdom) declared that his Delegation supported entirely the statement made by the Delegation of the Federal Republic of Germany.
707. Mr. KUNZE (AIM) considered that, in Article 9 of the Basic Proposal, there existed no obligation on an Office to notify something to the International Bureau. He added that in the Madrid Agreement it was indicated that the national Office should notify the International Bureau and, in fact, that obligation was missing in Article 9 of the Basic Proposal.
708. Mr. BOGSCH (Director General of WIPO) asked the Representative of AIM whether he meant that an Office had to notify the request of recordal to the International Bureau only if it was convinced that the request was justified.
709. Mr. KUNZE (AIM) indicated that he only wished Article 9 of the Protocol to be similar to the relevant provisions of the Madrid Agreement.
710. The CHAIRMAN emphasized that an Office took on a responsibility since it was not obliged to notify an entry in respect of which it had doubts. In order to find a solution, he suggested that the beginning of Article 9 should read as follows: "at the request of the person in whose name the international registration stands or of an ex officio interested office or at the request of an interested person." He explained that, in the event of a request submitted by an interested person, it was the Office that had to take the responsibility of accepting or refusing that request and that the International Bureau made the entry on the instructions of an Office.
711. Mr. DE LAS HERAS LORENZO (Spain) expressed the satisfaction of his Delegation with the text suggested by the Chairman, but wished to know the reason for which the term ex officio was used since, in any event, an Office had always to act at the request of the interested party.
712. The CHAIRMAN replied that "ex officio" could concern, in particular, the case of a court decision.

713. Mr. BOGSCH (Director General of WIPO) wondered which rule would be applicable where the basic registration was transferred within the last five years. Could the Office of origin hide that transfer and omit to inform the International Bureau?
714. Mr. SHANDA-TONME (Cameroon) felt that the suggestion by the Chairman provided the beginnings to a solution. In order to simplify the verification work carried out by the Office, he proposed that the words "interested person" be replaced by "duly interested person."
715. Mr. BOGSCH (Director General of WIPO) said that he was basically in agreement with the Delegation of Cameroon since an interested person should be able to justify his right to act.
716. The CHAIRMAN emphasized that the word "request" implied an examination by the Office prior to a decision to transfer or not to transfer.
717. Mr. MEKIDECHE (Algeria) supported in principle the suggestion by the Chairman and put the question whether, in fact, the Office of origin was not always interested.
718. Mr. BOGSCH (Director General of WIPO) gave an example of a case in which the Office of origin could be no longer truly interested, particularly if, following the death of the owner, two heirs were dependent on two States that both differed from the State of origin. Those two heirs could wish to separately effect renewal of the international registration and, in such case, the International Bureau could not verify which of the two requests for renewal was acceptable. In some cases, therefore, there could be more than one interested Office.
719. Mr. SHANDA-TONME (Cameroon) considered that the matter was fundamental and had to be settled in the Protocol and not in the Regulations since it concerned problems of private international law disputes. He confirmed that the Chairman's suggestion was adequate in his view.
720. Mr. von MÜHLENDahl (Federal Republic of Germany) declared that his Delegation supported the suggestion made by the Chairman.
721. The CHAIRMAN asked whether any delegations opposed his suggestion. He noted that such was not the case and asked whether any delegations wished to speak on other points concerning Article 9.
722. Mr. DE LAS HERAS LORENZO (Spain) referred to the final part of the Article that laid down that if the acquirer or the new owner was not entitled to file international applications, the transfer would not be entered in the International Register. The only sanction provided for was non-entry. Article 9bis(3) of the Madrid Agreement stipulated, in such cases, that an international registration could be cancelled. He wondered why that sanction had been omitted in the Basic Proposal.

723. Mr. BOGSCH (Director General of WIPO) expressed the opinion that one should be careful not to cancel automatically the international registration.

724. Mr. von MÜHLENDAHL (Federal Republic of Germany) declared that he agreed with the remark made by the Director General. He considered that, if the request was not accepted, the registration should not be cancelled but should remain in the name of the former registered owner. He added that his Delegation approved the fact that Article 9 of the Basic Proposal did not include the provisions contained in Article 9bis(3) of the Madrid Agreement which resulted in an unjust solution. He concluded by indicating that only Courts could decide whether an international registration should be cancelled.

725. Mr. DE LAS HERAS LORENZO (Spain) was not at all convinced by the explanations given by the Delegation of the Federal Republic of Germany. According to him, the logical consequence would have to be cancellation since the new owner had no rights. If there was no cancellation, that would lead to an apparently valid international registration which, in fact, could be annulled by reason of its transfer to a non-entitled assignee.

726. Mr. BOGSCH (Director General of WIPO) declared that there was no guarantee that an international register reflected the true facts. For instance, under the Madrid Agreement, if an international registration owned by a national of Spain was transferred to a national of the United Kingdom established in the United Kingdom, it would be a mistake to request the recordal of the transfer since such a request would be refused in view of the fact that the United Kingdom was not a member of the Madrid Union.

727. Miss VIDAUD (France) pointed out that the case of transfer of an international registration to an assignee not able to enjoy the Madrid Agreement arrangements had already been heard by the French courts. The judge had held that the assignment was valid *inter partes*, but that the rights deriving from that assignment could not be exercised by the beneficiary. However, such beneficiary could then assign his rights to a person entitled under the Madrid Agreement and the latter would recover all rights, particularly that of entering the assignment, although the international mark had been assigned to him by a person not entitled under the Madrid Agreement.

728. Mr. DE LAS HERAS LORENZO (Spain) considered the explanations given by the Delegation of France to be most convincing.

729. The CHAIRMAN noted that there were no further requests to take the floor.

730. Article 9 was adopted as given in the Basic Proposal with the amendments suggested by the Chairman in paragraph 710 above, subject to any editorial changes that the Drafting Committee might make.

Article 9bis: Recordal of Certain Matters Concerning an International Registration

731. The CHAIRMAN opened the discussion on Article 9bis and asked the Director General to present the Article.

732. Mr. BOGSCH (Director General of WIPO) indicated that Article 9bis of the Basic Proposal was a mere list of facts or legal events which the international register should reflect. He added that details relating to that provision would be contained in the Regulations.

733. Mrs. MAYER-DOLLINER (Austria) noted that in Article 9bis the only reference to the Regulations appeared in item (v) and she wondered whether the Regulations would also deal with items (i) to (iv). She believed that, in view of the explanatory notes given by the International Bureau in document MM/DC/3 as regards Article 9bis, the Regulations should cover items (i) to (v).

734. Mr. BOGSCH (Director General of WIPO) declared that the latter statement of the Delegation of Austria was correct. He suggested to amend the first line of Article 9bis so that it read as follows: "The International Bureau shall, as provided in the Regulations, record in the International Register..."

735. The CHAIRMAN said that his interpretation was the same as that of the Delegation of Austria.

736. Mr. BOGSCH (Director General of WIPO), returning to that matter, felt that it would be preferable to have a general provision at the end of the Protocol stating that the details would be dealt with in the Regulations.

737. The CHAIRMAN was in agreement with the Director General and asked whether other delegations wished to speak on Article 9bis.

738. Miss VIDAUD (France) asked why Article 9bis of the Basic Proposal contained details that, under the Madrid Agreement, appeared in the Regulations. She pointed out that it was much easier to modify regulations than the text of a treaty since the latter could only be amended in a diplomatic conference. In particular, she wondered whether items (i) and (ii) were not rather a subject for the Regulations.

739. Mr. BOGSCH (Director General of WIPO) stated that the corresponding Articles of the Madrid Agreement had never been held particularly clear. He added that the International Bureau had attempted to remedy that lack of logic in the text of the Protocol, particularly with a view to the future Contracting Parties to the Protocol that were not party to the Madrid Agreement.

740. The CHAIRMAN asked whether other delegations had comments to make on Article 9bis. He noted that such was not the case.

741. Article 9bis was adopted as given in the Basic Proposal.

Article 9ter: Fees for Certain Recordals

742. The CHAIRMAN opened the discussion on Article 9ter.

743. Mr. GEVERS (ECTA) was agreed that it be left to the Regulations to state the type of entry for which fees had to be paid, as also the amount of such fees. He nevertheless observed that nothing was said as regards the type of fee. He wondered whether there would be a uniform fee as under the Madrid Agreement or, on the contrary, individual fees as provided for in Article 8 of the Protocol.

744. Mr. BOGSCH (Director General of WIPO) explained that Article 9ter concerned only those fees levied by and for the International Bureau.

745. Mr. GEVERS (ECTA) asked whether, under the Protocol, there would be one single fee for entry of a modification, as was presently the case under the Madrid Agreement, or whether the Contracting Parties would have the possibility of also requiring the payment of individual fees.

746. Mr. BOGSCH (Director General of WIPO) stated that individual fees could only exist at the time of registration or renewal. Where a change was entered, that was done in the International Register and was subject to payment of an international fee thus making the entry of that same change in the registers of the designated Contracting Parties superfluous. Nevertheless, those Contracting Parties could, if they so wished, republish the entry in their national or regional gazettes.

747. Mrs. MAYER-DOLLINER (Austria) considered that, as provided in Rule 33 of the Regulations under the Madrid Agreement, the Protocol or its Regulations should provide an exemption from fees with respect to the notification of a voluntary renunciation.

748. M. BOGSCH (Director General of WIPO) indicated that the Regulations under the Protocol would contain a Rule relating to the exemption from fees.

749. Mr. von MÜHLEND AHL (Federal Republic of Germany) declared that his Delegation fully supported the interpretation given by the Director General as regards the effects of any recordals effected in the International Register in the Contracting Parties where the mark enjoyed protection. He further indicated that, according to his Delegation, Article 9ter only related to fees due to the International Bureau.

750. Mr. BOGSCH (Director General of WIPO) considered that Article 9^{ter} was clear since it referred to Articles 9 and 9^{bis} relating to records effected by the International Bureau.

751. Mr. JOHNSON (FICPI) said that his Organization supported the proposal that no fee should be paid in case of voluntary renunciation.

752.1 The CHAIRMAN repeated that the matter would be dealt with in the Regulations.

752.2 He asked whether other delegations wished to speak on Article 9^{ter}. He noted that such was not the case.

753. Article 9^{ter} was adopted as given in the Basic Proposal.

<u>Eighth Meeting</u>
<u>Friday, June 16, 1989</u>
<u>Afternoon</u>

Article 9^{quater}: Common Office of Several Contracting States

754. The CHAIRMAN opened the meeting and the discussion on Article 9^{quater}. He asked the Director General to present the Article.

755. Mr. BOGSCH (Director General of WIPO) explained that Article 9^{quater} of the Basic Proposal was similar to the same article in the Madrid Agreement. He added that that Article was intended to take care of situations similar to the one relating to the Benelux Trademark Office. He added that the Protocol would have to be ratified by Belgium, Luxembourg and the Netherlands, but their ratification should be followed by a notification indicating that the Benelux Trademark Office constituted the common Office of those States and that the whole of their respective territories should be deemed to be a single State for the purposes of the application of the Protocol.

756. Mr. PEETERS (Belgium) stated that his Delegation was in agreement with what had just been said by the Director General.

757. Mr. VAN BAUWEL (BBM) confirmed the accuracy of what the Director General had said in respect of the Benelux Trademark Office.

758. The CHAIRMAN noted that there were no further requests to take the floor.

759. Article 9quater was adopted as given in the Basic Proposal.

Article 9quinquies: Transformation of an International Registration into National or Regional Applications

760. The CHAIRMAN opened the discussion on Article 9quinquies and asked the Director General to present the Article. He said that there was a proposal by the Delegation of the European Communities (document MM/DC/11).

761. Mr. BOGSCH (Director General of WIPO) indicated that Article 9quinquies dealt with one of the four fundamental changes in the present Madrid system since it mitigated the effects of the central attack if an international registration was cancelled on the request of the Office of origin, generally speaking within five years from the date of registration. Under the Madrid system, after the cancellation of the registration in the country of origin, the international registration lost its effects in all the designated countries even where the reasons for the cancellation in the country of origin did not apply in the designated countries. He added that since the results of the central attack were not always justified, it was proposed in Article 9quinquies that, in case of cancellation in the country of origin and in certain circumstances, the applicant or the holder of the international registration be allowed to apply for national or regional registrations in the Contracting Parties which were designated. Naturally, with respect to those national or regional applications, the applicant would have to go through exactly the same procedure as if there had been no international registration, including the payment of fees and the conformity with the national or regional legislation. He further indicated that those national or regional applications would be, under certain conditions provided in items (i), (ii) and (iii), regarded as if they had been filed on the date of the international registration. He also indicated that, in Article 9quinquies of the Basic Proposal, that system should be applicable not only in the case of central attack, but also for other reasons resulting in the non-validity of the international registration, the latter proposal having been put in brackets. For example, if the text in brackets appearing in Article 9quinquies was adopted, the possibility of transformation would be applicable if an international registration was transferred or assigned to the national, etc., of a State not yet party to the Protocol.

762. The CHAIRMAN began the discussion on the Article, particularly in respect of the maintenance or deletion of the sentence in square brackets. He repeated that there was a proposal by the Delegation of the European Communities (document MM/DC/11) requesting deletion of the words "or in case the international registration is cancelled for any other reason" given in square brackets.

763. Mr. SCHWARTZ (European Communities) declared that his Delegation supported the major innovation which that Article introduced in order to mitigate the effects of a successful central attack. That possibility of transformation of an international registration into national or regional registrations was considered justified. He added that, according to the proposal contained in document MM/DC/11, his Delegation proposed the deletion of the text appearing in brackets in the second part of Article 9quinquies of the Basic Proposal, because it was considered that the possibility of transformation should be limited to the sole case of a successful central attack.

764. Ms. GORLENKO (Soviet Union) declared that her Delegation supported the principle of Article 9quinquies of the Basic Proposal. She added that the possibility of transformation should not be extended beyond the successful results of a central attack and that, therefore, the text appearing in brackets should not be included.

765. Mr. von MÜHLENDahl (Federal Republic of Germany) declared that his Delegation supported the principle of Article 9quinquies. The possibility of transformation should be limited to cases of a successful central attack and, therefore, his Delegation favored the deletion of the text appearing in brackets in the Basic Proposal. He further explained that the use of the terms "successful central attack" was probably incorrect, since a transformation into a national or regional application could be done whether or not the cancellation of the registration in the country of origin resulted from an attack. He concluded by indicating that Article 9quinquies had to be considered as a minimum, since the only obligation for designated Contracting Parties was to accept a corresponding application. In fact, if in a given designated Contracting Party the registration had already been examined, the new application resulting from transformation would need only to be re-registered but not reexamined.

766. Mr. BOGSCH (Director General of WIPO) stated that a decision to delete the text appearing in brackets in Article 9quinquies would be regrettable. He wondered why the possibility of transformation should not be allowed in all cases as long as the conditions fixed in Article 9quinquies (i), (ii) and (iii) were fulfilled.

767. Mr. FURSTNER (Netherlands) declared that his Delegation could, in principle, support the possibility of transformation as provided by Article 9quinquies. He added that his country, as member of the European Communities, supported the deletion of the terms appearing in brackets. He concluded by indicating that if the possibility of transformation into a national or regional application was important, the rights of the other users of the system, and mainly the owners of prior rights, should also be taken into account.

768. Mr. BOGSCH (Director General of WIPO) asked where the owners of prior rights came in.

769. Mr. von MÜHLENDahl (Federal Republic of Germany) stated that at one time he had considered the text appearing in brackets in Article 9quinquies to be justified for reasons of equity, as said by the Director General. He added that, as explained by the Delegation of France, a holder of an international registration, who was not entitled to own it, might transfer it again to someone who was. Furthermore, there existed examples which, in his opinion, justified the deletion of the text appearing in brackets. He wondered, for instance, whether the possibility of transformation into national or regional applications, according to the text appearing in brackets, would be applicable in cases such as transformations after a voluntary cancellation of the international registration by its owner following an agreement with the owner of a prior right, or after the non-renewal of the international registration.

770. Mr. DE LAS HERAS LORENZO (Spain) stated that his Delegation supported, on that point, the proposal made by the Delegation of the European Communities. The phrase in square brackets should be deleted since, according to the explanatory notes to the Basic Proposal, it referred to cases in which the international registration was cancelled not as the result of a central attack, but for some other reason.

771. Mr. COMTE (Switzerland) stated that Article 9quinquies was indispensable, particularly since the draft for the Community Trade Mark contained a similar system. His country did not wish to go further than the European Communities and, consequently, his Delegation was able to accept the proposal contained in document MM/DC/11. He concluded by explaining that for his Delegation it was obvious that an international registration could only be transformed into a national application and not into a national registration.

772. Miss VIDAUD (France) said that, for her Delegation, it was one of the most important innovations in the Protocol as compared with the Madrid Agreement. She added that her Delegation supported the proposal by the European Communities to delete the phrase between square brackets in the Basic Proposal.

773. The CHAIRMAN noted that the proposal by the European Communities was supported so far by all the delegations that had spoken.

774. Mr. KARAYANEV (Bulgaria) declared that his Delegation supported the text of Article 9quinquies as it stood in the Basic Proposal.

775. The CHAIRMAN asked the Delegation of Bulgaria for its position on the words between square brackets.

776. Mr. KARAYANEV (Bulgaria) indicated that he supported Article 9quinquies including the text appearing in square brackets.

777. Mr. MOLIJN (UNICE) said that his Organization had always supported the central attack system in the Madrid Agreement and the vast majority of UNICE also supported the transformation system as proposed in Article 9quinquies. He concluded that, for the sake of certainty of the system, the text appearing in brackets should be deleted.

778. Mr. KUNZE (AIM) declared that his Organization supported the principle of a transformation clause as provided by Article 9quinquies. Furthermore, he added that he would like to come back to the question of the procedure relating to applications resulting from the transformation. If the international registration had already been examined by the Offices of the designated Contracting Parties, there was no need to reexamine identical national or regional applications resulting from the transformation. He believed, nevertheless, that for the latter applications the possibility of

opposition by third parties should remain open. Therefore, a distinction should be made between examination on absolute and relative grounds, a second examination being available for the latter. Finally, as regards the text appearing in brackets, he considered that it should be omitted.

779. Mr. TURNER (ITMA) said that he had certain doubts with respect to the text appearing in brackets, mainly as regards the question of priority. He referred to the statement made by the Delegation of the Federal Republic of Germany, and wondered how an Office would deal with an application resulting from a transformation and enjoying a priority resulting from an international registration dating 15 years back. In view of this uncertainty, he could support the proposal of the Delegation of the European Communities to delete the text appearing in square brackets in Article 9quinquies.

780. Mr. BOCKEN (EFPIA) confirmed that his Organization was opposed to the transformation procedure since it was not sufficiently advantageous to users and appeared too complicated. The system proposed by the Protocol considerably reduced the dissuasive effect of central attack. EFPIA had suggested in the past, in order to remedy the unjust effect of central attack, that the effect of cancellation of the international registration be limited to the designated countries in which the third-party mark, on which the central attack was based, was in fact protected. He noted with regret that the International Bureau had not followed that suggestion which should, nevertheless, be acceptable to the member countries of the Madrid Union.

781. Mr. TATHAM (TMPDF) said that his Organization was originally in favor of retaining the words in square brackets in Article 9quinquies. He added that after having heard the interventions of the Delegations of the Federal Republic of Germany and Spain he could now agree with the deletion of those words.

782. Mr. HARLÉ (AIPPI) pointed out that AIPPI had accepted the principle of transformation at its Congresses in London and Amsterdam. He nevertheless emphasized that application of that principle required adaptation of domestic laws particularly with respect to the recognition of a new term of priority. As for the phrase in square brackets, he felt, after hearing the various explanations that had been given, that it should be deleted as proposed by the Delegation of the European Communities.

783. Mr. JOHNSON (FICPI) declared that his Organization fully accepted and approved the principle of transformation embodied in Article 9quinquies of the Basic Proposal. His Organization would support the principle that transformation was available, regardless of the grounds for cancellation of the international registration. Furthermore, he added that there should be no reexamination since the transformation process should immediately lead to a national registration.

784. Ms. MÖRNER (Sweden) declared that from a point of view of a non-member of the Madrid Union, the deletion of the text appearing in square brackets in Article 9quinquies would be a pity, since the effective use of the transformation system would be very narrow and would not cover in particular the case where the person who inherited the international registration was not entitled to be the owner of such registration.

785. The CHAIRMAN noted that there were no further requests to speak and that, with one exception, all delegations that had spoken had supported the proposal by the Delegation of the European Communities (MM/DC/11). He asked the Delegation of Bulgaria whether it maintained its opposition to deleting the phrase in square brackets.

786. Mr. KARAYANEV (Bulgaria) declared that, in view of the clarifications given by other delegations, he could withdraw his proposal to retain the text appearing in square brackets in Article 9quinquies of the Basic Proposal.

787. The CHAIRMAN asked whether any delegations wished to speak on other points concerning Article 9quinquies.

788. Mr. DE LAS HERAS LORENZO (Spain) said that Article 9quinquies presented transformation as if it were a fact, whereas it was a right of the owner. He proposed that the word "files" be replaced by the words "shall have the right to file."

789. The CHAIRMAN asked whether other delegations supported that proposal.

790. Mr. von MÜHLENDahl (Federal Republic of Germany) said that the right to file an application in any national or regional system was not affected by the Protocol. Article 9quinquies of the Protocol provided only, in case of transformation, for the preservation of the priority date of the international registration under certain conditions listed in items (i) to (iii). He asked, therefore, the Delegation of Spain to reconsider its proposal of redrafting Article 9quinquies.

791. Mr. DE LAS HERAS LORENZO (Spain) announced that his Delegation was in agreement with the observations made by the Delegation of the Federal Republic of Germany. It felt that the matter could be left to the Drafting Committee in view of the fact that agreement appeared to exist on substance that the possibility of transformation had to be conceived as a right of the owner of the international registration.

792. Miss VIDAUD (France) considered that there was no true problem of substance. She emphasized that Article 9quinquies, when read as a whole, provided a reply to the matter raised by the Delegation of Spain.

793. The CHAIRMAN said that he agreed with the explanations given by the Delegation of France.

794. Mr. JOHNSON (FICPI) suggested that in Article 9quinquies the term "cancelled" should be followed by the words "totally or partially," or any other similar terms.

795. Mr. BOGSCH (Director General of WIPO) said that it might be desirable that the Drafting Committee examine whether it was necessary to insert the words "totally or partially."

796. The CHAIRMAN wondered whether that question could be settled without it being necessary to refer it to the Drafting Committee.

797. Mr. BOGSCH (Director General of WIPO) considered that the Drafting Committee should be given responsibility for standardizing the overall text of the Protocol.

798.1 The CHAIRMAN noted that no delegation raised objections and therefore decided to refer the matter to the Drafting Committee.

798.2 He resumed the discussion and asked the Delegation of Spain whether its position had changed.

799. Mr. DE LAS HERAS LORENZO (Spain) proposed that the words "that application shall be treated" in the seventh line of Article 9quinquies in the Basic Proposal be replaced by the words "shall be entitled to have that application treated."

800. The CHAIRMAN noted that, according to the proposal by the Delegation of Spain, it would also be necessary to insert after the words "international registration" in the fourth line of Article 9quinquies of the Basic Proposal, the words "and who files an application for the registration of the same mark." Furthermore, the proposal by the Delegation of Spain should read: "...had effect, shall be entitled to have that application treated as if it had been filed..." He repeated that the purpose of the proposal was to demonstrate the fact that a national application deriving from transformation was retroactive back to the date of the international registration constituted a right. He asked whether any delegations supported the proposal by the Delegation of Spain.

801. Miss VIDAUD (France) wondered, to begin with, whether the whole matter was not one for the Drafting Committee. She proposed that a new sentence should be started, reading: "Such application shall then be treated as if it had been filed..."

802. Mrs. MAYER-DOLLINER (Austria) asked whether the text of Article 9quinquies left national legislations free to consider the mark as transformed as an application or a registration. She said that, according to her understanding, countries would be free to decide.

803. The CHAIRMAN confirmed that, under the Basic Proposal as drafted, it was the Office that decided the manner in which the application deriving from transformation would be treated. He repeated that the Delegation of the Federal Republic of Germany had expressed the wish that Offices should register an application without again carrying out an examination. The

Delegation of Switzerland, on the other hand, considered that the procedure would have to start again from the beginning for such applications. He noted that those constituted opposing positions on a problem that the Protocol did not seek to regulate. He wondered whether it would not be better to leave it to each Office to decide how to treat a national application deriving from an international registration.

804. Mr. von MÜHLENDahl (Federal Republic of Germany) said that he considered the point raised by the Delegation of Austria to be a very important one from a practical point of view. He considered that Article 9quinquies of the Basic Proposal only obliged Contracting Parties to accept the priority date effect, and Contracting Parties were free to go or not to go beyond that obligation and treat the transformation of the international registration as a national registration.

805. The CHAIRMAN returned to the matter raised by the Delegation of Spain and did not think that the proposal by the Delegation of France could resolve it.

806. Mr. KOMAROV (Soviet Union) asked whether the Delegation of Spain could agree to transfer its question to the Drafting Committee.

807. Mr. DE LAS HERAS LORENZO (Spain) was in agreement with the proposal made by the Delegation of the Soviet Union.

808.1 The CHAIRMAN, after having noted that there were no objections, decided to refer the matter to the Drafting Committee.

808.2 He asked if any delegations wished to raise other points in respect of Article 9quinquies.

809. Mr. TURNER (ITMA) agreed that the right of transformation was attached to the person, and not to the application, as indicated by the Delegation of Spain.

810. Mr. BERCOVITZ (ATRIP), referring to the statement by the Delegation of Austria, expressed doubts as to the interpretation given by the Delegation of the Federal Republic of Germany. Article 9quinquies in fact afforded a right to the owner of an international registration but, by establishing provisions on transformation and on the manner in which it would be carried out, also afforded a right to third parties. Indeed, since transformation had to be effected in the form of an application, all those rights that a third party might have with regard to an application would have to be maintained.

811. Mr. BOGSCH (Director General of WIPO) indicated that the Drafting Committee might either follow the proposal put forward by the Delegation of Spain or maintain Article 9quinquies as appearing in the Basic Proposal.

812. The CHAIRMAN confirmed his agreement with the last intervention by the Director General.

813. Mr. von MÜHLENDAHL (Federal Republic of Germany) considered that the problem of the nature of the application resulting from a transformation still remained. In his country and under the Madrid Agreement, an international registration had the effect of both a national application and a national registration as of the date of the international registration, which meant that his country went beyond the obligations established by the Madrid Agreement. He added that the interpretation of the Protocol given by the Representative of ATRIP would challenge his country's approach and could not therefore be supported.

814. Mr. DE LAS HERAS LORENZO (Spain) felt that the problem raised affected the very basis of the right of transformation. The new concept appeared to derive from the right of transformation contained in the European Patent Convention. Under that Convention, once a European patent application had been duly filed, it had the effect in each of the designated countries of a regular national filing and, therefore, it was possible to subsequently exercise the right of transformation into a national application. As for the international registration of a mark under the Protocol, that produced in each designated Contracting Party the effect of a regular national filing which was effectively transformed into an international registration once there was no longer any possibility of refusal provided for in Article 5 of the Protocol. There were no reasons to reexamine an application when the national registration effect had already occurred in the designated Contracting Parties.

815. Mr. COMTE (Switzerland) felt that there was a misunderstanding on that point. He explained that it was not the international registration that was transformed since it had already been cancelled in the preceding three months. What remained was the possibility, by filing national applications, of enjoying the date on which the international registration had been made. He added that Article 9quinquies obliged the Office to make a number of verifications with regard to an application for registration submitted to it under that Article meaning that such application had to be examined by the Office even if certain Contracting Parties were able to use a simplified procedure.

816. Mr. BOGSCH (Director General of WIPO) said that all the essence of the problem had been very clearly stated and condensed by the Delegation of Switzerland. He confirmed that the fate of the application resulting from the transformation was not regulated in the Protocol, leaving therefore Contracting Parties free to decide on that matter.

817.1 The CHAIRMAN thought that it was clear that national Offices were free to go beyond what was laid down in Article 9quinquies and to subject applications deriving from cancelled international registrations to any type of procedure they wished.

817.2 He noted that there were no further requests to take the floor with regard to Article 9quinquies.

818. Article 9quinquies was adopted subject to deletion of the phrase given in square brackets in the Basic Proposal and subject to any amendments made by the Drafting Committee (see, however, paragraphs 1195 and 1196).

Article 9sexies: Safeguard of the Madrid (Stockholm) Agreement

819. The CHAIRMAN said that various delegations wished to have more time to examine that Article. He therefore proposed that examination be postponed.

820. It was so decided (continued in paragraph 1048).

Article 5: Refusal and Invalidation of Effects of International Registration in Respect of Certain Contracting Parties (continued from paragraph 417)

821. The CHAIRMAN resumed the discussion on Article 5, particularly in respect of paragraph (2)(c).

822. Mr. FOUAD (Egypt) explained that the Office of his country experienced difficulty with the 12-month time limit laid down by the Madrid Agreement, which was held to be too short. He stated that his Delegation considered Article 5 of the Basic Proposal to be balanced and could therefore fully approve it.

823. Mr. CASADO CERVIÑO (European Communities) stated that his Delegation had examined with great interest both the content of the Basic Proposal in respect of Article 5 and the views expressed during discussions on the preceding days and, more particularly, those in respect of paragraph (2)(c) of that Article. It intended to present a proposal which it felt reflected the suggestions that had been made. The proposal would be based on three main elements: the first basic element was the Article itself contained in the Basic Proposal and which could be considered acceptable in its principle. However, during the discussions, it had been observed that the content of paragraph (2)(c) could lead to some uncertainty from a legal point of view. Even if that view had not been shared by the majority, the problem had been raised and, in order to achieve a solution, the Delegation of the European Communities would propose a new wording for item (ii) of paragraph (2)(c). In addition, to take into account the varying opinions that had been expressed, his Delegation would propose an amendment to paragraph (2)(e). The main aim of that amendment would be to provide that the content of paragraph (2) could be modified by unanimous decision of the Assembly, on expiry of a predetermined period and after the working of the system set up in that paragraph (2) had been verified. Paragraph (2) of Article 5, as given in the Basic Proposal, effectively comprised a degree of complexity. The simple system under the Madrid Agreement, in which a 12-month period was given to refuse the effects of an international registration, was replaced by a three-tier system. In subparagraph (a), the 12-month time limit was maintained. In subparagraph (b), it was laid down that the one-year time limit could be replaced by an 18-month time limit. Finally, in subparagraph (c), what could be referred to as a flexible time limit was set up, which could be used by those countries having an opposition procedure. That was a complex system that it would be appropriate to evaluate some time after the entry into force of the Protocol.

824. The CHAIRMAN said that the proposal to be submitted by the Delegation of the European Communities with regard to Article 5(2) would be examined at the following meeting.

825. Mr. BOGSCH (Director General of WIPO) said that he had only counted two amendments in the proposal put forward by the Delegation of the European Communities, and not three.

826. Mr. CASADO CERVIÑO (European Communities) stated that the proposal comprised three elements and not three amendments: the first element was Article 5(2) of the Basic Proposal; the second element was the modification of item (ii) of paragraph (2)(c) and the third element was the modification of paragraph (2)(e). As for the period after which the Assembly could effect a verification of the system set up by subparagraphs (a) to (d) of paragraph (2), a period of ten years as from the entry into force of the Protocol would seem appropriate. The idea behind the proposal by the Delegation of the European Communities with regard to paragraph (2)(e) was to give a long enough period of time to be able to verify the true operation of the new system.

827. The CHAIRMAN noted that there were no further requests to take the floor and postponed continued examination of Article 5 to the following meeting (continued in paragraph 828).

<p><u>Ninth Meeting</u> <u>Monday, June 19, 1989</u> <u>Morning</u></p>

828.1 The CHAIRMAN opened the meeting and resumed the discussion on Article 5 of the Protocol. He repeated that paragraph (1) had already been adopted and that discussion bore on paragraph (2). In that respect, he drew the attention of the delegations to the proposal to modify paragraphs (2)(c) and (2)(e) submitted by the Delegation of the European Communities (document MM/DC/18).

828.2 He opened the discussion on paragraph (2)(a) of the Basic Proposal.

829. Miss VIDAUD (France) thought it opportune to repeat in paragraph (2)(a) an element contained in Article 5 of the Madrid Agreement laying down that notification of refusal had to be effected within the time limit laid down by domestic legislation. She said she would like the International Bureau to explain why that element had not been included in the wording of the Basic Proposal.

830. Mr. BOGSCH (Director General of WIPO) said that, to his knowledge, there was no country that laid down in its legislation a time limit shorter than that referred to in the Madrid Agreement. He pointed out that, in any event, the International Bureau would not be in a position to check whether such a time limit had been respected.

831. Miss VIDAUD (France) explained that current French law gave a three-month time limit for the examination of absolute grounds of refusal in the case of nationally filed marks. That time limit also applied to international registrations that designated France. She pointed out that her Delegation interpreted the text of the Madrid Agreement as an obligation on States to apply the same treatment to international marks as to national marks within, of course, the 12-month time limit laid down by the Madrid Agreement. It was for that reason that she suggested reintroducing the idea that notification of refusal had to be made within the time limit laid down by domestic law.

832. Ms. GORLENKO (Soviet Union) also asked why the text of the Protocol was departing from the text of the Madrid Agreement on that point and why the wording "before the expiration of one year from the date on which the extension referred to in paragraph (1) has been notified to that Office by the International Bureau" was different from the wording of the text of Rule 17(1) of the Regulations under the Madrid Agreement, which did not use the term "notified." She proposed that the words "has been notified to that Office by the International Bureau" be replaced by the words "has been recorded in the International Register."

833. Mr. DE LAS HERAS LORENZO (Spain) said that his Delegation altogether shared the argument put forward by the Delegation of France and wished to support the proposal to insert into the text of paragraph (2)(a) the words "within the period prescribed by their domestic law" that existed in the Madrid Agreement.

834. The CHAIRMAN noted that there was no opposition to the proposal by the Delegation of France and therefore asked the International Bureau to insert into the text of paragraph (2)(a) of the Protocol a phrase similar to that contained in the Madrid Agreement to the effect that grounds for refusal had to be notified within the time limit laid down by national law.

835. Mr. von MÜHLENDahl (Federal Republic of Germany) suggested that, as regards the proposal by the Delegation of France, instead of the terms "national law," it would be more accurate to use the words "the law applicable to that Office."

836. The CHAIRMAN opened the discussion on the proposal by the Delegation of the Soviet Union to include at the end of paragraph (2)(a), following the words "the extension referred to in paragraph (1)," the words "has been recorded in the International Register" to replace the words "has been notified to that Office by the International Bureau."

837. Mr. PROŠEK (Czechoslovakia) declared that his Delegation supported the proposal put forward by the Delegation of the Soviet Union.

838.1 The CHAIRMAN pointed out that the period of time that elapsed between recording of a mark in the International Register and notification was a few days only and was therefore very short.

838.2 He further stated that the Drafting Committee would take into account the proposal by the Delegation of the Federal Republic of Germany.

838.3 He finally noted that there was no opposition to the proposal by the Delegation of the Soviet Union and asked the International Bureau to take account of that proposal.

839. Article 5(2)(a) was adopted subject to the amendments resulting from the proposals by France, the Soviet Union and the Federal Republic of Germany.

840. The CHAIRMAN opened the discussion on paragraph (2)(b). He noted that there were no requests to take the floor with regard to that paragraph.

841. Article 5(2)(b) was adopted as given in the Basic Proposal.

842. The CHAIRMAN opened the discussion on paragraph (2)(c) and reminded the Committee that there was a proposal by the Delegation of the European Communities (document MM/DC/18). He asked the Delegation of the European Communities to present its proposal.

843. Mr. CASADO CERVIÑO (European Communities) said that the proposal by the Delegation of the European Communities with regard to paragraph (2)(c)(ii) aimed at setting precise time limits in order to strengthen legal security. It was possible to set a period during which third parties could file an opposition and the time limit within which a refusal based on opposition had to be notified to the International Bureau. It was proposed that any notification of refusal based on opposition would have to be made within a maximum period of seven months as from the date on which the opposition period began. It was possible that some countries would be able to notify such refusal to the International Bureau within a short period and, to make it quite clear that the seven-month period constituted a maximum, the proposal set out that where the opposition period expired before seven months were over, notification would have to be made within a period of one month as from expiry of that opposition period. The proposal by his Delegation with regard to paragraph (2)(e) was to stipulate that, after a ten-year period as from the entry into force of the Protocol, the Assembly referred to in Article 10 of the Protocol would examine the operation of the system established by Article 5(2) and could decide, where it held necessary, to modify the system on a decision to be taken unanimously.

844. The CHAIRMAN asked that discussion should be first limited to paragraph (2)(c). He pointed out that the proposal by the Delegation of the European Communities was supported by all the Community member countries.

845. Mr. COMTE (Switzerland) first pointed out, with respect to paragraph (2)(c), that there existed a proposal by his Delegation (MM/DC/4), which had been supported by seven delegations and which had not been withdrawn. He further asked for application of Rule 29(3) of the Rules of Procedure of the Diplomatic Conference to give delegations sufficient time for reflection before pronouncing on document MM/DC/18. He was not opposed to paragraph (2)(c) being discussed, but considered that his Delegation could not

give a final position until the following meeting. Finally, he explained that if his Delegation had to align its proposal on that of the Delegation of the European Communities in order to achieve a compromise, it would propose adding to paragraph (2)(c)(ii) a provision that in all Contracting Parties the beginning of the opposition should, for example, be 18 months at most after publication of the international registration.

846.1 The CHAIRMAN confirmed that paragraph (2)(c) would not be adopted until the following meeting.

846.2 He confirmed, with regard to paragraph (2)(c), that the proposal by the Delegation of Switzerland (document MM/DC/4) was to be rediscussed together with the proposal by the Delegation of the European Communities (document MM/DC/18).

847. Mrs. MAYER-DOLLINER (Austria) indicated that her Delegation had already agreed in principle with paragraphs (2)(c) and (2)(d) of the Basic Proposal. She added that, nevertheless, she would like to ask a few questions to the Delegation of the European Communities with respect to its proposal. In paragraph (2)(c)(i) of the Basic Proposal, she wondered whether the terms "possibility of oppositions" meant that the Office could send a general declaration, or that such declaration should contain precise information. She further stated that as regards paragraph (2)(c)(ii), her Delegation was flexible on the question of time limits for opposition since no such procedure existed in her country. Furthermore, she asked for an explanation on the use of the term "refusal" in item (ii) and said that it might probably be understood as a provisional refusal but not a final one because, at least with respect to the Basic Proposal, the time limit of one month would most certainly be too short for most Offices to take a final decision on an opposition.

848. Mr. BOGSCH (Director General of WIPO) answered, as regards the first question of the Delegation of Austria, that the declaration made by the Office according to paragraph (2)(c) would be of a general nature although the information on the possibility that oppositions may be filed after the expiry of the 18-month time limit would have, of course, to refer to a given international registration. As regards the second question, he said that the term "refusal" covered also provisional refusals.

849. Mr. SUGDEN (United Kingdom) declared that, as a member of the European Communities, his country fully supported the compromise proposal contained in document MM/DC/18. For his Delegation, the presence of paragraph (2)(c) was of particular importance. He explained that, in his country, small firms relied on the substantive examination carried out by the Office before considering a possible opposition. Of course, that compromise solution, and mainly the time limit of seven months, would oblige the United Kingdom to change its system. His country's present system incorporated the so-called threatened oppositions where extensions of time limits were sought by the parties with a view to conduct negotiations and eventually launch an opposition. Those sorts of arrangements would have to be changed and the United Kingdom would have to enforce clear time limits and, within those clear time limits, all grounds on which the opposition might be based would have to

be provided in a formal way so that they could be transmitted to the International Bureau. He further explained that the refusal would only be provisional because the Office would only be in a position to notify the grounds transmitted by third-party opponents. Finally, he confirmed that the information provided to the International Bureau pursuant to paragraph (2)(c)(i) would only be in general terms with respect to a given registration. If, on the contrary, no information was given to the International Bureau before the expiry of the 18-month time limit, it would be clear that the application had got through its examination and through any possible opposition period and that it was likely to be registered.

850. Mr. FITZPATRICK (Ireland) declared that his Delegation, like the Delegation of the United Kingdom, fully supported the compromise text put forward by the Delegation of the European Communities.

851. Mr. von MÜHLENDAHL (Federal Republic of Germany) declared that his Delegation supported the proposal of the Delegation of the European Communities, as contained in document MM/DC/18. As regards the declaration made by the Delegation of Switzerland, he considered that the Madrid system should integrate the different examination systems of countries relating to trademarks, namely, those providing for an examination on absolute grounds and those providing for an examination with respect to prior rights. He added that new countries would not join the Madrid system if the Protocol imposed the dominant approach used by continental European countries. He concluded by saying that, if a compromise solution was to be found, countries should be ready to change their approach and, in that respect, a good example had previously been given by the Delegation of the United Kingdom which had stated that the practice in its country would have to be amended so as to fulfill the obligations contained in Article 5(2) according to the proposal made by the Delegation of the European Communities, which it had supported.

852. Mrs. ØSTERBORG (Denmark) indicated that Article 5(2) of the Basic Proposal gave rise to many discussions in her country. She added that her Delegation had a clear preference and supported the proposal put forward by the Delegation of the European Communities, which constituted an important and attractive compromise.

853. The CHAIRMAN noted that there were no further requests to speak. He added that delegations appeared to accept the proposal by the Delegation of the European Communities, with the exception of the Delegation of Switzerland that wished further time to reflect.

854. Mr. HARLÉ (AIPPI) pointed out that his Organization was far from being in agreement with the possibility of extending the time limit, laid down in paragraph (2)(c), where there was possible opposition. He added, however, that in view of the compromise which the various member delegations appeared to have reached, AIPPI would be ready to go along with that.

855. Mr. TATHAM (TMPDF) declared that his Organization appreciated the significant changes that would have to be made in practice in the United Kingdom, if the compromise solution proposed in document MM/DC/18 was accepted. He added that those changes were acceptable.

856. Mr. MOLIJN (UNICE) declared that, although his Organization was very interested in having a maximum time limit as proposed by the Delegation of Switzerland, it was now ready to accept the proposal put forward by the Delegation of the European Communities which, although not ideal, solved most of the problems UNICE had with the Basic Proposal.

857. Mr. HANSMANN (FICPI) indicated that he could speak not only in the name of FICPI but also in the name of the Committee of National Institutes of Patent Agents (CNIPA) and the Federal Chamber of Patent Attorneys (FCPA) in the Federal Republic of Germany. He said that he appreciated the statement made by the Delegation of the United Kingdom and wondered what was the content of the information to be provided to the International Bureau according to paragraph (2)(c)(i).

858. Mr. KUNZE (AIM) considered that the proposal put forward by the Delegation of the European Communities constituted an important step, although Article 5(2) of the Protocol would still not indicate when the period for opposition ended. He added that, in a spirit of compromise, his Organization could accept the proposal contained in document MM/DC/18.

859. Mr. BOCKEN (EFPIA) held that the proposal by the Delegation of the European Communities met the wishes of EFPIA, which was therefore able to accept that compromise.

860. The CHAIRMAN noted that there were no further requests to take the floor. He added that the proposal by the Delegation of the European Communities with regard to paragraph (2)(c)(ii), given in document MM/DC/18, would seem capable of achieving unanimous acceptance, subject to the position that the Delegation of Switzerland would announce at the following meeting.

861. Mr. KOMAROV (Soviet Union) declared that his Delegation considered in a positive way the proposal put forward by the Delegation of the European Communities. He added, however, that he wished to hear the opinions of all delegations before giving his final agreement.

862.1 The CHAIRMAN repeated that paragraph (2)(c) would not be formally adopted until the following meeting, thus giving delegations the possibility of speaking again. He added that no delegation appeared to oppose the proposal by the Delegation of the European Communities, subject to the position expressed by the Delegation of Switzerland. He decided to postpone discussion and adoption of paragraph (2)(c) to the following meeting.

862.2 He opened the discussion on paragraph (2)(d) and noted that there were no requests to take the floor.

863. Paragraph (2)(d) was adopted as given in the Basic Proposal.

864. The CHAIRMAN opened the discussion on paragraph (2)(e) and pointed out that the Delegation of the European Communities had already presented its proposal contained in document MM/DC/18.

865. Mr. KOMAROV (Soviet Union) asked the Delegation of the European Communities whether, in their proposal for subparagraph (e), it was necessary to indicate a precise period of ten years.

866. Mrs. MAYER-DOLLINER (Austria) declared that her Delegation could agree with the principle laid down in subparagraph (e) of the Basic Proposal. She added that, however, she would be able to give her Delegation's final position after having heard the explanations given by the Delegation of the European Communities on their proposal. She considered also that the revision of some of the principles laid down in paragraph (2) could be dealt with in a diplomatic conference, but did not favor that solution. She further considered that the point raised by the Delegation of the Soviet Union should be taken into account. She concluded by indicating that, once a final decision had been taken on subparagraph (e), Article 10 of the Protocol relating to the duties of the Assembly of the Union should be amended.

867. The CHAIRMAN pointed out to the Delegation of Austria that Article 10 of the Protocol dealt in general terms with the functions of the Assembly. He added that neither Article 10 of the Madrid Agreement (Stockholm Act) nor Article 10 of the Protocol dealt with specific functions. He further mentioned that the proposal by the European Communities, with regard to paragraph (2)(e), went further than the corresponding paragraph in the Basic Proposal since, after the proposed ten-year period, the Assembly could modify the whole of paragraph (2).

868. Mr. BOGSCH (Director General of WIPO) confirmed that Article 10 of the Protocol dealt with the functions of the Assembly in a general fashion. As far as the proposal by the Delegation of the European Communities with regard to paragraph (2)(e) was concerned, he wondered whether it was really necessary to lay down that the Assembly, before proposing any modification, would carry out an examination.

869. Mr. CASADO CERVIÑO (European Communities) said that there were two alternatives, that given in the Basic Proposal, which consisted in not providing for an evaluation of the system established by paragraph (2), and that proposed by the Delegation of the European Communities in document MM/DC/18, which consisted in setting up evaluation machinery and stating the fact in the text of the Protocol. The Delegation of the European Communities felt in fact that it was necessary to evaluate the practical effects of the new system and its consequences for users. As for the ten-year period proposed for carrying out that evaluation, it took into account the fact that some countries would not immediately accede to the Protocol and that they would have to be given sufficient time to evaluate the system.

870. Mr. KOMAROV (Soviet Union) said that the reply and clarifications given by the Delegation of the European Communities corresponded in general to their understanding of the proposal and of the establishment of the ten-year period. He considered, however, that more flexibility could be put on the ten-year period. For instance, it could be decided that the Assembly could proceed with amendments before the ten-year period, if it was felt necessary.

871. Mr. BOGSCH (Director General of WIPO) considered that the ten-year period should be a minimum since enough time should be given to a number of Contracting Parties to join the Protocol and for the system to operate for a certain time.

872. The CHAIRMAN asked the Delegation of the Soviet Union whether it wished to amend paragraph (2)(e), as proposed by the Delegation of the European Communities, in order to specify "ten years at the earliest from the entry into force of this Protocol."

873. Mr. KOMAROV (Soviet Union) declared that, if complete flexibility was wanted, no time limit should be fixed. He added, however, that his Delegation did not consider that matter as being one of principle.

874. Mr. von MÜHLENDahl (Federal Republic of Germany) indicated firstly that, as a general rule, treaties were amended by a diplomatic conference and nothing in any of the provisions of the Protocol prevented the holding of a new diplomatic conference after a decision had been taken by the Assembly of the Union. The Contracting Parties which would become party to the Protocol would always be able, after its entry into force, to decide that the Protocol should be amended. He added that the new approach, contained in both subparagraph (e) of the Basic Proposal and of the proposal of the Delegation of the European Communities, allowed in certain instances the Assembly itself to amend the Protocol by a unanimous decision. He indicated that there existed some similar precedents in the administrative provisions of the Paris Convention, since the Stockholm Act of 1967, concerning, for instance, the establishment of the budget. He considered, however, that those possibilities should be limited and the ten-year minimum period, in subparagraph (e) of the proposal of the Delegation of the European Communities, should be considered as a safeguard. He added that the second important element in subparagraph (e), as proposed by the Delegation of the European Communities, was that the Assembly should proceed with a serious examination of the way the Protocol operated before amending subparagraphs (a) to (d). The mentioning of that preliminary examination by the Assembly was necessary. He finally declared that it could have been envisaged to put all the details relating to Article 5(2) in the Regulations of the Protocol and provide for the possible amendment of those Regulations.

875. Mr. COMTE (Switzerland) said that his Delegation accepted the first sentence in paragraph (2)(e) as proposed by the Delegation of the European Communities. As for the second sentence of that paragraph (2)(e), he wondered why, contrary to the Basic Proposal, a possibility had been provided for modifying paragraph (2)(a) that concerned the 12-month time limit.

876. Mr. KARAYANEV (Bulgaria) declared that his Delegation supported the considerations put forward by the Delegation of the Soviet Union since they appeared to be more flexible. He considered also that the ten-year period should be adopted as a minimum, in order to be able to gain experience. In that respect, the remark made by the Delegation of the Federal Republic of Germany, according to which the question could be solved in the Regulations to the Protocol, could be acceptable.

877. Mr. CASADO CERVIÑO (European Communities) explained that the proposal by the Delegation of the European Communities aimed simply to establish machinery that would permit the examination, in a general manner, of the whole system established in Article 5(2). For example, although there was no way of knowing now what would happen ten years after the entry into force of the Protocol, it could be imagined that all the States would be in favor of an 18-month period or would consider it pointless to lay down a flexible time limit or would prefer to return to a 12-month time limit. It was therefore the whole system that would have to be reviewed and not only one part of the system.

878. Mr. BOGSCH (Director General of WIPO), in response to the Delegation of Switzerland, pointed out that the modification of the 12-month time limit provided for in paragraph (2)(a) would only apply to States party to the Madrid Agreement which had also become party to the Protocol.

879. The CHAIRMAN noted that there were no further requests to take the floor. Before letting the non-governmental organizations express themselves, he asked the Delegations of Bulgaria and of the Soviet Union to reflect and to tell him whether they were able to accept paragraph (2)(e) as proposed by the Delegation of the European Communities or whether they wished to propose an amendment to that paragraph.

880. Mr. KUNZE (AIM) wondered whether the reference to paragraph (2)(a) should be maintained in paragraph (2)(e). That would enable the Assembly to modify the time limit of 12 months which was the one provided by the Madrid Agreement. He considered that the possibility of modification should only concern the new aspects provided by the Protocol in subparagraphs (b), (c) and (d).

881. Mr. von MÜHLEND AHL (Federal Republic of Germany) declared that some clarifications should be given as regards the intervention of the Representative of AIM. Subparagraph (e) of the Basic Proposal dealt only with the time limits, while, according to subparagraph (e) as proposed by the Delegation of the European Communities, the Assembly could decide after ten years to abolish the system provided by subparagraphs (b), (c) and (d), and to adopt a new general rule in subparagraph (a), which therefore would have to be amended. He added that the fact of including a reference to subparagraph (a), in subparagraph (e), did not automatically mean that the basic principles of the Madrid Agreement, like the 12-month time limit, would be abolished. The approach in subparagraph (e) should be as large as possible because it was not possible to predict how the system would operate after ten years.

882. Mr. BOGSCH (Director General of WIPO) noted that, according to the Delegation of the Federal Republic of Germany, it would be unlikely that the Assembly decide to amend the 12-month period fixed in the Madrid Agreement, but that that Delegation did not say that the 12-month time limit could not be amended.

883. Mr. KOMAROV (Soviet Union) stated that his Delegation would not insist on the question of the ten-year period, if a majority of delegations supported the proposal of the Delegation of the European Communities. However, his Delegation would have preferred, in subparagraph (e), that the Assembly could decide to amend subparagraphs (a) to (d) when it felt it was necessary.

884. Mr. KARAYANEV (Bulgaria) said that his Delegation completely agreed with the intervention made by the Delegation of the Soviet Union.

885. Mr. HANSMANN (FICPI) proposed that, if the time limits fixed in Article 5(2) were to be shortened, a unanimous decision of the Assembly would be sufficient while, on the contrary, if the time limits were to be extended, a diplomatic conference would be required.

886. The CHAIRMAN felt that the system proposed by the representative of FICPI appeared a little complicated.

887. Mr. HARLÉ (AIPPI) pointed out that, in its last resolution, AIPPI had suggested, for reasons of principle, that the time limits laid down in Article 5 of the Protocol should not be modified except by a diplomatic conference. He added that he could nevertheless accept the proposal by the Delegation of the European Communities.

888. The CHAIRMAN noted that there was no further opposition to adoption of paragraph (2)(e). He nevertheless suggested to the Drafting Committee that the words "dix années" be replaced by "dix ans" in the French version.

889. Article 5(2)(e) was adopted as proposed by the Delegation of the European Communities subject to any modifications made by the Drafting Committee.

890. The CHAIRMAN opened the discussion on paragraph (3) of the Basic Proposal.

891. Mr. DE LAS HERAS LORENZO (Spain) proposed that paragraph (3) should use the same wording as Article 5(3) of the Madrid Agreement, which required that the notice of refusal be transmitted to the Office of the country of origin and to the proprietor of the mark or his agent.

892. Mr. CURCHOD (Secretary to the Main Committee) pointed out that, with the exception of Article 7 of the Protocol in which the representative was expressly mentioned, the other articles of the Protocol, particularly Article 5(3), only made mention of the holder. There would doubtlessly be a provision in the Regulations under the Protocol, as was the case in the Regulations under the Madrid Agreement, that where a representative had been appointed by the holder, all notifications intended for the holder under the

Protocol would be addressed to his representative. He explained that, in the same way, all communications from a representative would be considered communications made by the holder. Consequently, the International Bureau had wished to simplify the wording of Article 5(3). As for the first part of the remarks made by the Delegation of Spain, he did not think that it would be necessary to mention the Office of origin as the recipient of refusal notifications since such refusals would only concern the holder and the Offices of the designated countries that had notified such refusal.

893. The CHAIRMAN asked the Delegation of Spain whether it withdrew its proposal.

894. Mr. DE LAS HERAS LORENZO (Spain) said that his Delegation was fully convinced by the Secretariat's explanations and, consequently, withdrew its proposal.

895. The CHAIRMAN noted that there were no further requests to take the floor with regard to paragraph (3).

896. Article 5(3) was adopted as given in the Basic Proposal.

897. The CHAIRMAN opened the discussion on paragraph (4) and noted that there were no requests to take the floor.

898. Article 5(4) was adopted as given in the Basic Proposal.

899. The CHAIRMAN opened the discussion on paragraph (5) and noted that there were no requests to take the floor.

900. Article 5(5) was adopted as given in the Basic Proposal.

901. The CHAIRMAN opened the discussion on paragraph (6) and noted that there were no requests to take the floor.

902. Article 5(6) was adopted as given in the Basic Proposal.

903. The CHAIRMAN noted that Article 5 had been adopted, with the exception of paragraph (2)(c) which would be discussed again at the following meeting (continued in paragraph 904).

Tenth Meeting
Monday, June 19, 1989
Afternoon

Article 5: Refusal and Invalidation of Effects of International Registration in Respect of Certain Contracting Parties (continued from paragraph 903)

904. The CHAIRMAN opened the meeting and reopened the discussion on Article 5(2)(c) for which there was a proposal by the Delegation of the European Communities (document MM/DC/18) and also a proposal by the Delegation of Switzerland (document MM/DC/4). He pointed out that the two proposals were incompatible and gave the floor first to the Delegation of Switzerland in order to know whether its position had changed in view of the fact that the proposal by the Delegation of the European Communities seemed to have obtained broad support.

905. Mr. COMTE (Switzerland) said that his Delegation, after having heard the views of the interested circles in its country, withdrew its proposal and would go along with the proposal by the Delegation of the European Communities on condition that it be fully accepted without modification. He held that it was a well-balanced proposal whose value depended on a juxtaposition of several elements.

906. The CHAIRMAN confirmed that, at the preceding meeting, a consensus had emerged in respect of the overall proposal by the Delegation of the European Communities.

907. Mr. VOULGARIS (Greece) confirmed that his Delegation supported the proposal by the Delegation of the European Communities.

908. Mr. PROŠEK (Czechoslovakia) said that, since the Delegation of Switzerland had withdrawn its proposal, his Delegation was in a position to accept the proposal of the Delegation of the European Communities.

909. The CHAIRMAN noted that all possible reservations with regard to Article 5 would seem to have been lifted and that there were no further requests to take the floor.

910. Article 5(2)(c) was adopted as modified by the proposal by the Delegation of the European Communities contained in document MM/DC/18.

Article 10: Assembly

911. The CHAIRMAN, after having noted that numerous delegations were not yet prepared to discuss Article 9sexies, opened the discussion on Article 10. He asked the Director General to present the Article.

912. Mr. BOGSCH (Director General of WIPO) said, firstly, that Article 10 was in relation with Article 1 of the Protocol, which had been reserved until the adoption of Article 10. He added that, with respect to the Assembly, Article 10 of the Madrid Agreement would apply mutatis mutandis, and that there would only be one Assembly, the same for all States bound only by the Madrid Agreement, for all States bound by both the Madrid Agreement and the Protocol and for all States and intergovernmental organizations only bound by the Protocol. However, with respect to votes, the situation would be different, depending on the instruments by which the members of the Assembly were bound and the subject matter of the vote.

913. Mr. DE LAS HERAS LORENZO (Spain) felt that, in item (ii), the expression "without being Contracting States" should be deleted since the matters that affected solely the countries party to the Madrid Agreement concerned equally those of such countries that were parties to that Agreement only and those that were party to both the Agreement and the Protocol. Thus, all countries party to the Madrid Agreement, whether party to the Protocol or not, should be able to vote in the case envisaged.

914. The CHAIRMAN felt that the proposal by the Delegation of Spain to delete, in item (ii), the words "without being Contracting States," was more of an editorial nature since those words did not change the effect of the provision in substance. He asked whether any other delegation supported the proposal by the Delegation of Spain.

915. Mr. BOGSCH (Director General of WIPO) also held that the proposal by the Delegation of Spain was of an editorial nature.

916. The CHAIRMAN asked whether any delegations opposed the proposal by the Delegation of Spain. He noted that such was not the case and that the phrase "without being Contracting States," in item (ii), was therefore deleted.

917. The CHAIRMAN asked whether any delegations wished to speak on other points in Article 10.

918. Mr. SUGDEN (United Kingdom) said that his Delegation had no objection to Article 10 in principle. He considered, as regards the words mutatis mutandis, that paragraph (3) of Article 10 of the Madrid Agreement could be rather complicated when applied to the Protocol. He asked, for instance, how the provision on the quorum of the so-called joint Assembly, as provided in paragraph (3)(c), was to be interpreted. He believed that the reference to "one-half" and "one-third" of the countries members of the Assembly meant one-half or one-third of those countries which were entitled to vote on a particular issue.

919. Mr. BOGSCH (Director General of WIPO) said that he fully agreed with the interpretation given by the Delegation of the United Kingdom. He added that the quorum and the majorities in the Assembly would be computed differently, according to the groups of Contracting Parties which were entitled to vote on a particular issue.

920. Mr. SUGDEN (United Kingdom) asked that the previous comments, made by the Director General, be reflected in the Records of the Conference. He added that there was probably no need to revise Article 10 but, mainly, to indicate how it should be interpreted for future use.

921. The CHAIRMAN said that the interpretation that had been given by the Director General would be included in the Records of the Diplomatic Conference.

922. Mr. KOMAROV (Soviet Union) asked, in relation with item (ii) of Article 10, what would be the status of the decisions adopted by the Assembly, and whether those decisions would only be applicable to the countries which had participated in a particular vote. He wondered, in that connection, how the notion of "unanimous decision of the Assembly" should be interpreted in respect of Article 5(2)(e) of the proposal of the Delegation of the European Communities which had been adopted.

923. The CHAIRMAN pointed out that it was not the International Bureau that would decide whether a given question concerned a given category of States, but that, on the contrary, it was the nature of the question that would determine which categories of States were concerned.

924. Mr. BOGSCH (Director General of WIPO) fully agreed with the comments made by the Chairman, with respect to the first question asked by the Delegation of the Soviet Union. He added that all countries interested by a particular question would be bound by a decision of the Assembly.

925. Mr. KOMAROV (Soviet Union) considered that the answer given by the Director General was clear, but added that his question was of a different nature, since he wondered whether a decision of the Assembly, on a particular issue and for a particular group of countries, would also bind the other groups of countries.

926. The CHAIRMAN replied that a decision on a question not concerning a given State could not be applicable in respect of that State. Only those States that would have to apply a decision would vote within the Assembly.

927. Mr. BOGSCH (Director General of WIPO) confirmed the reply given by the Chairman. He took the example of a possible amendment to Article 5(2): such amendment would require a unanimous decision of the Contracting Parties bound by the Protocol, whether they were bound by the Stockholm Act of the Madrid Agreement or not. He added that States party to the Madrid Agreement that were not yet a party to the Protocol could not participate in a vote amending Article 5(2) of that Protocol.

928. Mr. von MÜHLENDahl (Federal Republic of Germany) said that the unanimity required by the new approach under Article 5(2)(e) was subject to the rules provided in Article 10(3) of the Madrid Agreement relating to the determination of the quorum which should be one-half of the countries

interested in a particular matter. He also recalled that there existed a mechanism for reaching decisions, even if, at the time the decision was taken, no quorum existed. He added, in that respect, that item (ii) of Article 10 and, mainly, the last words: "only the latter shall vote in the Assembly" included also the process of written voting provided in Article 10(3)(c) of the Madrid Agreement.

929. Mr. BOGSCH (Director General of WIPO) said that he shared the interpretation given by the Delegation of the Federal Republic of Germany, in view of the mutatis mutandis provision.

930. The CHAIRMAN noted that there were no further requests to take the floor. He considered that Article 10 could be accepted subject to the decision to be taken by the Madrid Union Assembly.

931. Article 10 was adopted subject to the inclusion, in a form adapted to the Protocol, of the wording of Article 10 of the Madrid Agreement.

Article 11: International Bureau

932. The CHAIRMAN opened the discussion on Article 11 and asked the Director General to present the Article.

933. Mr. BOGSCH (Director General of WIPO) explained that the Article had to be reworded, for the same reason as the other articles of the Protocol that made the Madrid Agreement applicable mutatis mutandis.

934. The CHAIRMAN noted that no delegation was opposed to the text of Article 11 of the Stockholm Act of the Madrid Agreement applying mutatis mutandis.

935. Article 11 was adopted subject to possible inclusion, in a form adapted to the Protocol, of the text of Article 11 of the Madrid Agreement.

Article 12: Finances

936. The CHAIRMAN opened the discussion on Article 12 and asked the Director General to present the Article.

937. Mr. BOGSCH (Director General of WIPO) said that the wording of the Article took into account the fact that the European Communities, that could become a Contracting Party to the Protocol, were not a member of the Paris Union and that it was therefore difficult to foresee the contribution class to which they would belong. He added that the Basic Proposal stipulated that any Contracting Party that was an intergovernmental organization belonged to contribution class I. He finally explained that the provision was hypothetical since, so far, the Madrid Union Working Fund had been constituted not by payments from the member States, but by the Reserve Fund of that Union.

938. The CHAIRMAN noted that the Delegation of the European Communities could see no objection to belonging to contribution class I. He further observed that there were no further requests to take the floor.

939. Article 12 was adopted subject to modifications of an editorial nature to be made by the Drafting Committee.

Article 13: Amendment of Certain Articles of this Protocol

940. The CHAIRMAN opened the discussion on Article 13 and asked the Director General to present the Article.

941. Mr. BOGSCH (Director General of WIPO) said that the rule that would apply for the Protocol would be the same as for the Madrid Agreement. He explained that, under the Article, the adoption of amendments by the Assembly would require certain qualified majorities, whereas unanimity would be required to amend Article 5(2) of the Protocol.

942. The CHAIRMAN pointed out that, even if Article 13 were to be accepted, there would remain the possibility of reexamining it following the discussions that would take place on the possibility of amending articles of the Protocol that had not yet been examined.

943. Miss VIDAUD (France) thought that adoption of the Article should be postponed until all the provisions of the Protocol had been examined.

944. Mr. BOGSCH (Director General of WIPO) observed that it was a principle, in order not to increase the uncertainty with regard to States, in the treaties administered by WIPO to provide that the possibility of amending a text by the Assembly should be limited to administrative matters. He felt that the Protocol should not be an exception to that principle.

945. The CHAIRMAN asked whether any delegation supported the proposal by France. He noted that such was not the case.

946. Article 13 was adopted subject to what was recorded in paragraph 942 and subject to modifications of an editorial nature to be made by the Drafting Committee.

Article 14: Ratification and Accession; Entry Into Force

947. The CHAIRMAN opened the discussion on Article 14 and asked the Director General to present the Article. He announced that there was a proposal for amendment of Article 14(1)(b)(ii) presented by the Delegation of the European Communities (MM/DC/19).

948. Mr. BOGSCH (Director General of WIPO) stated that Article 14 of the Basic Proposal contained important innovations, since it made it possible for intergovernmental organizations to become members of the Madrid Union albeit

under two conditions: the first condition was that at least one of the member States of the organization must be party to the Paris Convention for the Protection of Industrial Property; the second condition was that the organization must have a regional Office for the purposes of registering marks having effect in all member States of such organization. He added that common Offices within the meaning of Article 9^{quater} of the Protocol, such as the Benelux Trademark Office, were not covered in Article 14. He referred to the proposal of the Delegation of the European Communities (document MM/DC/19) amending paragraph (1)(b)(ii), and awaited the explanations which would be given by that Delegation. Furthermore, he suggested that in paragraphs (2), (4) and (5), the terms "formal confirmation" be deleted, since it was erroneously believed that the European Communities deposited instruments of formal confirmation. He also suggested that the title of Article 14 should read "Becoming Party to the Protocol; Entry into Force." As regards paragraph (3), he said that it was a usual provision. Paragraph (4) dealt with the question of entry into force of the Protocol, and the important points were that four instruments should be deposited originating from at least one country party to the Madrid Agreement and at least one State or organization not party to the Madrid Agreement. He concluded that paragraph (5) was inspired by the present text of the Madrid Agreement and meant that any new Contracting Party could avoid having to extend protection to its territory for marks which were internationally registered before it became a member of the Madrid Union.

949.1 The CHAIRMAN noted that the Director General had amended the title of Article 14 in the Basic Proposal to read "Becoming Party to the Protocol; Entry Into Force" and stated that he would not open discussions on that change of title.

949.2 He opened the discussion on paragraph (1)(a) and noted that there were no requests to take the floor.

949.3 He opened the discussion on paragraph (1)(b) and pointed out that item (ii) of that paragraph was subject to a proposal for amendment submitted by the Delegation of the European Communities (document MM/DC/19). He asked the Delegation of the European Communities to present its proposal for amendment.

950. Mr. SCHWAB (European Communities) stated that his Delegation supported the text of Article 14 of the Basic Proposal, subject to a slight amendment to paragraph (1)(b)(ii). He added that Article 14 was fundamental since it enabled a link to be established between a mark deriving from an international registration and a future Community mark. He added that his Delegation was happy that the text of Article 14 would apply not only to the Community, but also to any other intergovernmental organization that set up a regional trademark office. He explained that the proposal contained in document MM/DC/19 aimed, essentially, to harmonize paragraph (1)(b)(ii) with the text of Article 2 of the Protocol as adopted, whose paragraph (4) defined the territory of intergovernmental organizations. Furthermore, the proposal contained in document MM/DC/19 wished to delete the phrase "provided that such Office is not a common Office within the meaning of Article 9^{quater} of this Protocol." His Delegation felt that it was not justifiable to exclude from possible accession to the Protocol an intergovernmental organization that set up a regional system of the Benelux type under which common legislation on trademarks would replace the national laws. He considered that the matter of the Benelux Trademark Office should not be regulated in Article 14 which dealt

with the matter of intergovernmental organizations that accede to the Protocol. In that context, he concluded by stressing the importance that his Delegation attached to the possibility for the European Communities to become a Contracting Party to the Protocol.

951. The CHAIRMAN drew attention to the fact that although Article 14 particularly concerned the European Communities, it could also concern other intergovernmental organizations.

952. Mr. BOGSCH (Director General of WIPO) asked the Delegation of the European Communities whether the deletion, in paragraph (1)(b)(ii) of the Basic Proposal, of the terms "provided that such Office is not a common Office within the meaning of Article 9^{quater} of this Protocol" would mean that the Benelux Trademark Office could become a Contracting Party and could, at the same time, be the subject of a notification of its member States pursuant to Article 9^{quater}.

953. Mr. SCHWAB (European Communities) replied that his Delegation's view was that the Benelux Trademark Office could not become a party to the Protocol, whereas the Benelux States could do so and, at the same time, take avail of the faculty offered by Article 9^{quater}. He added that, according to his Delegation, Article 14 implicitly assumed, as a prior condition for acceding to the Protocol, that an intergovernmental organization had international legal personality permitting it to accede. The Benelux Trademark Office did not have such legal personality and, consequently, the proposal contained in document MM/DC/19 should not raise any problems for it.

954. The CHAIRMAN asked the representative of the Benelux Trademark Office whether his Office possessed legal personality.

955. Mr. VAN BAUWEL (BBM) said that the Benelux Trademark Office possessed legal personality under a Protocol signed by the three Benelux States. He added that he nevertheless went along with the explanations given by the Delegation of the European Communities, particularly with respect to the deletion of the reference to Article 9^{quater} in paragraph (1)(b)(ii), which would raise no problems for the Benelux Trademark Office. That Office was indeed no more than an Office common to the three Benelux countries, responsible for administering the uniform Benelux Trademark Law, and it was the three Benelux States that, individually, were party to the Madrid Agreement.

956. The CHAIRMAN pointed out that, in that context, Article 9^{quater} spoke of a common Office and not of an organization.

957. Mr. BOGSCH (Director General of WIPO) wondered why it was necessary to avoid mentioning the fact that the Benelux Trademark Office could not accede to the Protocol. He added that mentioning the fact would avoid possible discussion in the future.

958. Mr. SCHWAB (European Communities) explained that, on the face of it, there was no reason to exclude the Benelux Trademark Office and also that the possibility should be left open for intergovernmental organizations to set up a system similar to that developed by the Benelux States.

959. Mr. von MÜHLENDahl (Federal Republic of Germany) stated that his Delegation supported the proposal put forward by the Delegation of the European Communities, and agreed with the explanations which had been given on that proposal. He also agreed with the fact that, with respect to the European Communities, it was most likely that the national legislation of their Member States would not be abolished in the near future. However, he added that, in the world, there existed other regional groupings of countries where the abolishment of national legislation was the goal and, if such countries agreed to create an intergovernmental organization having legal capacity, such an organization should be entitled to become a party to the Protocol. He added that the notion underlying the discussion was that an organization was not entitled to make use of both Articles 9quater and 14.

960. Mr. BOGSCH (Director General of WIPO) said that paragraph (1)(b)(ii) could be amended at the end to read "provided such Office has not been declared to be a common Office." Therefore, a common Office would have to choose between the two possibilities, either to be a common Office under Article 9quater, or to become a Contracting Party under Article 14. He concluded by indicating that, if the proposal of the Delegation of the European Communities had been correctly interpreted, the suggestion he had just made would answer their concern.

961. The CHAIRMAN, following a 15-minute break, resumed the discussion on paragraph (1)(b) and returned to the suggestion by the Director General with respect to the last part of item (ii), which would read as follows: "provided that such Office is not the subject of a notification under Article 9quater of this Protocol."

962. Mr. SCHWAB (European Communities) said that his Delegation was able to accept the suggestion made by the Director General.

963. Mr. FURSTNER (Netherlands) wondered whether the exclusion of a notification under Article 9quater of the Protocol extended to a notification under Article 9quater of the Madrid Agreement. He added that maybe the case where a notification had been made under Article 9quater of the Madrid Agreement should also be excluded.

964. The CHAIRMAN felt that there was no need to provide for such an exclusion.

965. Mr. BOGSCH (Director General of WIPO) declared that, under the Protocol, a new notification would be necessary with respect to the Benelux Trademark Office.

966. The CHAIRMAN approved what had been said by the Director General and asked what was then the position of the Delegation of the Netherlands.

967. Mr. FURSTNER (Netherlands) answered that he needed more time to think about the problem of the notification relating to the Benelux Trademark Office under Article 9quater of the Protocol.

968. Mr. DE LAS HERAS LORENZO (Spain) said that the aim of his intervention was simply to propose a differing wording in order to emphasize that the notification was made by the member countries of the Special Union in accordance with what was laid down in Article 9quater of the Madrid Agreement. The wording could, therefore, be as follows: "insofar as the member countries of such organization have made a notification under Article 9quater."

969. The CHAIRMAN felt that the proposal by the Delegation of Spain simply repeated what was already said in Article 9quater of the Protocol.

970. Mr. BOGSCH (Director General of WIPO) said that he had taken the Benelux Trademark Office as an example. If Belgium, Luxembourg and the Netherlands had made a notification under Article 9quater of the Protocol, that notification disqualified the Benelux Trademark Office to become a Contracting Party under the Protocol. Therefore, if no notification was made under Article 9quater, and if all the other conditions were fulfilled, the Benelux Trademark Office could become a Contracting Party. He finally wondered whether the Spanish translation of the relevant provision of Article 14 of the Protocol was sufficiently clear.

971. Mr. DE LAS HERAS LORENZO (Spain) repeated his proposed wording and explained that he had omitted the negative. The proposal should have read: "insofar as the member countries of such organization have not made a notification under Article 9quater," in view of the fact that, according to Article 9quater, it was the countries that had to make the notification.

972. Mr. BOGSCH (Director General of WIPO) emphasized that it was not necessary to say in Article 14(1)(b)(ii) that the notification was made by the States since that was already said in Article 9quater which had already been adopted.

973. Mr. von MÜHLENDAHL (Federal Republic of Germany) said that it was a pure drafting problem. As regards the proposal made by the Delegation of Spain, he considered that the wording proposed by the Director General should be retained, subject to drafting amendments to be dealt with by the Drafting Committee.

974. The CHAIRMAN considered that once the delegations were in agreement on the substance, the matter could be dealt with by the Drafting Committee.

975. Mr. BOGSCH (Director General of WIPO) said he agreed with the comments made by the Chairman.

976. The CHAIRMAN suggested that the proposal by the Delegation of the European Communities (document MM/DC/19) be adopted with the suggestion made by the Director General. He noted that there were no objections to that suggestion. He asked whether any delegation wished to speak on other points in paragraph (1)(b).

977. Mr. VOULGARIS (Greece) asked why, in paragraph (1)(b)(i), it was said that "at least one of the member States of that organization is a party to the Paris Convention for the Protection of Industrial Property." He held, for his part, that the Paris Convention should be applicable within the organization itself and that, for that reason, there would have to be a requirement that at least two member States of such organization be party to the Paris Convention.

978. Mr. BOGSCH (Director General of WIPO) explained that the aim was simply to establish a link between the intergovernmental organization and the Paris Convention for which it was sufficient that a single member State of such organization be a party to the Convention.

979. Mr. VOULGARIS (Greece) held, on the contrary, that if the Paris Convention were applicable to just one member State of an organization, it did not apply to the organization but to that single State. On the other hand, if the Paris Convention applied to two member States, it would be of application within the organization. However, he added that his Delegation did not consider that matter to be fundamental, but if that raised no problems for the other delegations he would prefer that paragraph (1)(b)(i) be amended in the way he had put forward.

980. Mr. SHANDA-TONME (Cameroon) thought that, although the question raised by the Delegation of Greece was important from a theoretical point of view, it had no practical implications under the Protocol and thus the explanation given by the Director General appeared convincing.

981. Mr. KARAYANEV (Bulgaria) said that his Delegation was also preoccupied by the wording of paragraph (1)(b)(i). He explained that up to now, in order to become party to a special agreement such as the present Protocol, each country had to be a member of the Paris Union and, therefore, to pay a certain contribution to that Union. Paragraph (1)(b)(i) would therefore represent a serious exemption from that principle.

982. The CHAIRMAN pointed out that paragraph (1)(b)(i) was intended to allow an intergovernmental organization of which one of the member States was party to the Paris Convention to accede to the Protocol.

983. Mr. BOGSCH (Director General of WIPO) thought that if a member State of the Paris Union became a member of an intergovernmental organization it would check that the texts governing such organization contained no provisions that were contrary to the Paris Convention. He added that several member States of an intergovernmental organization could obviously be party to the Paris Convention. Paragraph (1)(b)(i) concerned, in fact, the case of an intergovernmental organization of which no member State was party to the Paris Convention. In such case, the intergovernmental organization could not become a party to the Protocol.

984.1 The CHAIRMAN noted that there were no further requests to take the floor nor any opposition to accepting paragraph (1)(b) of the Basic Proposal, subject to the amendments foreseen for item (ii).

984.2 He opened the discussion on paragraph (2) and pointed out that the Director General had suggested that the words "or formal confirmation" be deleted from the Basic Proposal. He noted that there were no requests to take the floor on paragraph (2).

984.3 He opened the discussion on paragraph (3) and noted that there were no requests to take the floor.

984.4 He opened the discussion on paragraph (4)(a) and observed that the words "formal confirmation" had also to be deleted from that paragraph. He asked whether any delegations had comments to make.

985. Mr. von MÜHLEND AHL (Federal Republic of Germany) stated that his country intended to submit the present Protocol, as early as possible, to its national internal legislative process.

986. Mr. SUGDEN (United Kingdom) declared that, although his Delegation had made clear its interest in joining an international agreement, it could not yet make the same promises as those which had just been given by the Delegation of the Federal Republic of Germany. There were quite a number of pressures in his country to change the trademark law. The interest of his country was also conditional on there being a number of other countries interested in the Protocol. With respect to the entry into force of the Protocol, he wondered whether a system similar to the one which had been retained for the Patent Cooperation Treaty could not be adopted. A further condition to the entry into force of the Protocol could be that certain of the countries which had deposited an instrument would have to show that a certain number--which would have to be fixed--of trademark applications were filed each year with their Offices. That could be an alternative way of approaching the particular problem of entry into force of the Protocol and, although his Delegation was not going to oppose the ideas provided by the Basic Proposal, it was waiting to hear the reactions of the other delegations.

987. Mr. MOTA MAIA (Portugal) shared, more or less, the views expressed by the Delegation of the United Kingdom in respect of the conditions for entry into force of the Protocol. He asked the International Bureau why the number of four had been chosen for the instruments--of ratification, acceptance, approval or accession--where the Madrid Agreement required five. He proposed that the number of five be reinstated together with the condition that at least two States that had deposited an instrument were party to the Madrid Agreement. He proposed an additional condition under which, for each of the two above-mentioned States, the number of designations under Article 3ter of the Madrid Agreement would have to be equal to more than 10,000 a year, a figure based on the statistics established by the International Bureau. He pointed out that the latter idea was inspired by Article 63 of the Patent Cooperation Treaty (PCT). He concluded by saying that he was willing to submit a written proposal to the following meeting.

988. Mr. SHANDA-TONME (Cameroon) stated that the Protocol should take into account the interests of States with a less advanced technological level and considered that the proposal made by the Delegation of Portugal tended to divide States in accordance with differing criteria, which could not be accepted.

989. Mr. BOGSCH (Director General of WIPO) recognized that it was difficult to decide whether four instruments was, or was not, the right number. He added that to link the entry into force of the Protocol with a number of annual designations per country would, if that number of designations was for example 10,000, mean that only few countries party to the Madrid Agreement would qualify to contribute to the initial entry into force of the Protocol. Furthermore such a solution would be politically dangerous, since it would leave out certain categories of countries. He considered,

however, that if such a link was to be retained, the only reasonable solution would be for a country to indicate at the time of deposit of its instrument a global number of applications or registrations which had been filed with or registered by its Office during the preceding year, irrespective of the fact that such applications or registrations had been made under the Madrid Agreement. He declared that the proposed principle was totally new as it had never been raised before, and he considered that, if the discussions were to continue on that matter, the proposal ought to be presented in writing. As regards the Basic Proposal relating to the initial entry into force of the Protocol, he considered that it was workable, but that the entry into force might be slower than expected, since the Community Trade Mark system did not yet exist and the European Communities could join the Protocol only once such system existed. He concluded by stating that it would be preferable to stick to the conditions provided in the Basic Proposal.

990. Mr. von MÜHLEND AHL (Federal Republic of Germany) said that the present exercise should lead to a workable international trademark registration system compatible with the Madrid Agreement. He added that, although delegations could not, at present, undertake that their country would ratify the Protocol, it would be helpful to have their reaction on the results which were being achieved.

991. Mr. FICHTE (Austria) said that the present Diplomatic Conference had been convened to facilitate the accession of new States to adhere to the international trademark registration system. He added that he agreed with the statement made by the Director General and considered that paragraph (4)(a), relating to the entry into force of the Protocol, should not be amended. He concluded by indicating that adding new conditions would, as stated by the Delegation of Cameroon, prevent some States from joining the Protocol.

992. Mr. SUGDEN (United Kingdom) repeated that he could not make any promises on behalf of his country, or any predictions with respect to the future of the Protocol. He considered that it would be considerably easier to ratify a treaty on the basis that it looked as it would be an operational working treaty. For the latter reason, paragraph (4)(a), relating to the entry into force of the Protocol, was important. Referring to the statement made by the Delegation of Cameroon, there was no question of creating divisions between countries, since the number of registered trademarks was not representative of advanced technology. However, the Protocol should start with a reasonable number of trademark registrations, and its entry into force could be subject to the accession, or ratification, of countries representing in total a certain level of activity in the field of trademarks. He concluded that his Delegation would not consider the amendment of paragraph (4)(a) as a prerequisite to its overall attitude with respect to the Protocol.

993. The CHAIRMAN felt that if additional conditions of a quantitative nature were laid down for the entry into force of the Protocol, particularly as regards the number of registrations, that was likely to delay its entry into force.

994. Mr. BOGSCH (Director General of WIPO) considered that, if the ideas on the amendment of paragraph (4)(a) were to be discussed, a written proposal clarifying all the details should be put forward by a delegation.

995. Mr. MOLIJN (UNICE) said that his Organization was mainly concerned with the type of agreement which would result from the present discussions. He added that, for industry, the question of the safeguard clause was more important than the conditions of entry into force of the Protocol.

996. Mr. MOTA MAIA (Portugal) explained that the figure of 10,000 mentioned in his last intervention was simply an example.

997. The CHAIRMAN decided to suspend discussions and to resume them at the following meeting (continued in paragraph 998.1).

<p><u>Eleventh Meeting</u> <u>Tuesday, June 20, 1989</u> <u>Morning</u></p>

Article 14: Ratification and Accession; Entry Into Force (continued from paragraph 997)

998.1 The CHAIRMAN opened the meeting and reopened the discussion on Article 14(4)(a). He noted that there were no interventions.

998.2 He opened the discussion on paragraph (4)(b) and pointed out that the words "formal confirmation" were also to be deleted from the Basic Proposal. He noted that there were no requests to speak.

998.3 He opened the discussion on paragraph (5). He pointed out, as for the preceding paragraph, that the words "or formal confirmation" had been deleted from the Basic Proposal. He noted that there were no requests to speak.

999. Article 14 was adopted as given in the Basic Proposal subject to the amendments accepted for paragraphs (1)(b)(ii), (2), (4)(a), (4)(b) and (5).

Article 15: Denunciation

1000.1 The CHAIRMAN opened the discussion on paragraph (1) of the Article and noted that there were no requests to speak.

1000.2 He opened the discussion on paragraph (2) and noted that there were no requests to speak.

1000.3 He opened the discussion on paragraph (3) and noted that there were no requests to speak.

1000.4 He opened the discussion on paragraph (4) and noted that there were no requests to speak.

1001. The CHAIRMAN opened the discussion on paragraph (5) and announced that there was a proposal for amendment presented by the Delegation of the Federal Republic of Germany (document MM/DC/17). He asked the Delegation of the Federal Republic of Germany to present the proposal.

1002. Mr. von MUHLENDahl (Federal Republic of Germany) said that paragraph (5) of the Basic Proposal, which was practically identical to Article 15(5) of the Madrid Agreement, only obliged denouncing countries to continue protecting international marks which had been registered before the denunciation, and that until the expiration of the current period of protection. He considered that countries should have a liberal approach with respect to Article 15, and that a country which denounced should not be entitled to cancel or invalidate a registration with a view to avoiding the effect of protection which had existed in the country as a result of the international registration. The proposal put forward by his Delegation consisted of a method of preserving the rights which existed before the denunciation and was, in a way, similar to the approach taken in Article 9quinquies of the Protocol concerning the right of transformation into a national application or registration. The conversion should, in fact, be into a national registration since, before the denunciation, the mark had been protected in the denouncing country like a registration. He said that, however, the proposal of his Delegation was silent on the procedure leading to such national registration.

1003. Mr. DE LAS HERAS LORENZO (Spain) said that the proposal by the Delegation of the Federal Republic of Germany only took into account one part of the problem, the other part related to what happened to international registrations whose owners were nationals of the State that denounced the Protocol. A State that denounced the Protocol could not in fact accept to continue to protect on its territory the international marks that belonged to foreign nationals if it had no guarantee that the international registrations belonging to its nationals would continue to be protected in the countries that had not denounced the Protocol. It was a matter of the principle of equal treatment or, if preferred, the principle of non-discrimination, which was a general principle of international law.

1004. Mr. FURSTNER (Netherlands) said that his Delegation fully supported the proposal put forward by the Delegation of the Federal Republic of Germany. As regards the problem raised by the Delegation of Spain, he considered that it should be left to the responsibility of the denouncing State. He stressed the fact that it had the advantage of preventing States from denouncing the Protocol.

1005. Ms. GORLENKO (Soviet Union) said that her Delegation could also support the proposal made by the Delegation of the Federal Republic of Germany. She added that, in case of denunciation, the opportunity to transform the international mark into a national or regional registration was justified.

1006. Mr. BOGSCH (Director General of WIPO) said that he appreciated the proposal made by the Delegation of the Federal Republic of Germany. Such possibility of transformation, even in the case of denunciation, had been envisaged in the Basic Proposal, in the text in brackets which appeared in Article 9quinquies, but that text had been rejected by most delegations. He disagreed with the Delegation of the Netherlands, according to which the problem raised by the Delegation of Spain should be left to the responsibility of the denouncing State. He considered that the trademark owner should not be penalized because his Government had denounced the Protocol.

1007. Mr. DE LAS HERAS LORENZO (Spain) said that he agreed with what the Director General had said in respect of Article 9quinquies in part only. The words given in square brackets in that Article referred in fact to other more general hypotheses that could lead to fraud. As for the proposal by the Delegation of the Federal Republic of Germany, it should provide for equal treatment between the holders of international registrations whether they be nationals of member States other than the State that denounced the Protocol or of the State that denounced the Protocol. It was not a matter of restricting the possibility of denouncing the Protocol, but of inciting the denouncing State to fulfill the obligation laid down in Article 15(1). If no such incitement were given, a State that denounced the Protocol, knowing that its nationals would not be protected, would not be inclined to protect foreign nationals.

1008. The CHAIRMAN reminded the Delegation of Spain that, if it wished to make a proposal, it should submit a precise wording, rather than ideas.

1009. Mr. VOULGARIS (Greece) said that his Delegation supported the proposal by the Delegation of the Federal Republic of Germany. However, he added that the proposal needed to be supplemented in order to regulate the fate of international registrations originating in the country that denounced the Protocol.

1010. Mr. von MÜHLEND AHL (Federal Republic of Germany) considered that the proposal of his Delegation (document MM/DC/17) was different from Article 9quinquies, because Article 15 related to the situation in a Contracting Party which was no longer party to the Protocol. The basic idea behind that proposal was to protect trademark owners from denunciation of the Protocol by a Contracting Party. He added that the obligation to maintain the protection after denunciation should not exist on a reciprocal basis and disagreed, in that regard, with the Delegations of Greece and Spain.

1011. Mr. DE LAS HERAS LORENZO (Spain) felt that, if equality of treatment was not given, Article 15(5) would remain a dead letter since the State denouncing the Protocol would not respect the obligations placed on it if there were no guarantee of reciprocal treatment for its own nationals.

1012. Mr. VOULGARIS (Greece) suggested that the following phrase should be added after the proposal by the Federal Republic of Germany (document MM/DC/17): "The other parties shall make the same provisions for marks originating from the party that denounces the Protocol."

1013. The CHAIRMAN suggested to the Delegation of Greece that a formal modification be made to the suggestion, which would then read: "The other parties shall make the same provisions for marks originating in the party that denounces the Protocol."

1014. Mr. von MÜHLEND AHL (Federal Republic of Germany) emphasized that a multilateral treaty could not always balance the rights and obligations of Contracting Parties. According to his Delegation's proposal, each denouncing country would undertake a special obligation. He added that his Delegation

could not support the amendment proposed by the Delegation of Greece. In that respect, he noted that Article 15(5) of the Madrid Agreement, which provided for an obligation for denouncing countries, provided no obligations for countries remaining party to the Madrid Agreement. That situation had never been considered unbalanced and unjust, although the obligation only fell on the denouncing countries.

1015. Mr. BOGSCH (Director General of WIPO) proposed an example to illustrate the discussion which was taking place, with respect to the proposal made by the Delegation of the Federal Republic of Germany. If Monaco denounced the Madrid Agreement, it would, according to the proposal contained in document MM/DC/17, give the possibility to holders of international registrations in that country, originating from other member countries than Monaco, to request that the designation of Monaco be changed into a national registration. He added that, according to the proposal made by the Delegations of Greece and Spain, the national of Monaco, in the same situation, would have the right to go before national Offices of the other member countries to request the transformation of his international registration into national registrations, in each country where his international registration had effect. He added that, in the latter proposal, there was no condition of quantitative reciprocity. It was obvious, in the example of Monaco, that the number of international registrations originating from that country would be much smaller than the number of international registrations originating from other countries and designating Monaco.

1016. Mr. SUGDEN (United Kingdom) asked the International Bureau to explain more thoroughly the question of denunciation since, recently, a country had denounced the Madrid Agreement. With respect to international registrations which had become independent from the registration in the country of origin, it seemed surprising that a denunciation by the country of origin should result in the cancellation of the international registration with respect to all designated countries. He asked the International Bureau whether his understanding was correct.

1017. Mr. BOGSCH (Director General of WIPO) said that those international registrations, although independent from the registration in the country of origin, could no longer enjoy protection when such country had denounced the Protocol, because their holders were no longer entitled to own international registrations, like in the case of transfer to a national, etc., of a country not party to the Agreement.

1018. Mr. VOULGARIS (Greece) proposed that the words "marks of origin," that had been proposed by his Delegation, be replaced by the words "marks of which the Office of origin, within the meaning of Article 3 of the Protocol, is that of the party that denounces the Protocol." The suggestion made by his Delegation could therefore read as follows: "The other parties shall make the same provisions for marks whose Office of origin, within the meaning of Article 3 of the Protocol, is that of the party that denounces the Protocol."

1019. Mr. BOGSCH (Director General of WIPO) understood the proposal made by the Delegation of Greece, but suggested that it be worded differently in order

to speak of international registrations of which the holder was a national, etc., of a country that denounced the Protocol, and to avoid speaking of Office of origin since such Office had no further part to play after a certain number of years.

1020. The CHAIRMAN, following a 15-minute break, resumed the discussion and asked the Director General to summarize the situation in respect of Article 15(5).

1021. Mr. BOGSCH (Director General of WIPO) considered that the Committee should take a provisional decision, whether it wished to have in principle the proposal made by the Delegations of Greece and Spain drafted and, if so, the International Bureau would proceed accordingly. He added that, as regards the proposal made by the Delegation of the Federal Republic of Germany, it could partially be redrafted and it would, for instance, be preferable to provide that the transformation should be requested within a reasonable period, for example, one year after denunciation. He asked for guidance on those two questions, so that the International Bureau could prepare a draft.

1022. Mr. SUGDEN (United Kingdom) confirmed that his Delegation could, in principle, support the ideas put forward by the Delegations of Greece and Spain. He added, in respect of the suggestion made by the Director General, that his Delegation agreed that the provision relating to the right of transformation be drafted in terms of the individual owners of trademarks whose country of origin was the denouncing country, and that the said owners should have the right to request transformation for a certain limited time. Furthermore, if the proposal made by the Delegation of the Federal Republic of Germany was accepted, it should be written in terms of an overall time limit of, perhaps, one or two years.

1023. Mr. von MUHLEND AHL (Federal Republic of Germany) indicated that his Delegation's proposal provided that, in the denouncing country, the holders of international registrations were certain to continue enjoying protection at least until the expiration of the current period of protection of the registration. That already existed under the Madrid Agreement, but the proposal added a further obligation enabling, at the end of the period of protection, the holder to transform the international registration into national registrations in the designated countries. He further considered that the idea suggested by the Director General, relating to a limited time period within which the holder could operate the transformation, was not a very convincing approach. According to his Delegation's proposal, the holder of the registrations would not have to make up his mind, within a relatively short period of time, to decide whether he should transform into national registrations some, or all, of his previous international registrations. He stated that, of course, the wording of the proposal could be amended, but the principle behind it should remain unchanged. As regards the proposal made by the Delegations of Greece and Spain, the link between the non-denouncing countries and their obligation, with respect to international registrations no longer governed by the Protocol, could not be described by reference to the country or the Office of origin since, after five years, the international registration became independent and the notion of country of origin no longer existed. He added that, in fact, the proposal of the Delegations of Greece and Spain was similar, but in a different situation, to the system provided

for in Article 9^{quinquies}. He considered that it was, in fact, an enlargement of the right of transformation beyond the initial period of five years. He concluded by indicating, in response to a remark made by the Director General, that the International Bureau could not refuse renewal of a registration of a mark, even where the holder had no entitlement to renew.

1024. Mr. DE LAS HERAS LORENZO (Spain) felt that identical cases demanded equal legal treatment and that two general principles of international law were involved that were not taken into consideration by the proposal made by the Delegation of the Federal Republic of Germany. Firstly, the principle of reciprocity, and secondly, the principle of equal treatment of all persons. If the proposal made by the Delegation of the Federal Republic of Germany were to be applied that would amount to de facto discrimination in the legal treatment of the nationals of the State that denounced the Protocol. The principle of non-discrimination was indeed contained in Article 2(1) of the Universal Declaration of Human Rights and in Article 2(2) of the International Covenant on Civil and Political Rights. Consequently, he considered that the proposal by the Delegation of Spain was justified and proposed to add, following the proposal made by the Delegation of the Federal Republic of Germany, the following text: "The other Parties to the Protocol shall make the same provisions in respect of international marks of which the holders are nationals of the Party that denounces the Protocol or are domiciled or have a real and effective industrial or commercial establishment in that Party."

1025. Mr. VOULGARIS (Greece) considered that the matter to be resolved under paragraph (5) of Article 15 differed from that relating to central attack and to Article 9^{quinquies}. In the case of paragraph (5), it was in fact the denunciation of an international treaty and its effects. He considered that the adoption of the proposal by the Delegation of the Federal Republic of Germany as it stood would amount to "punishing" the party denouncing the Protocol. He added that his Delegation was in favor of introducing the notion of reciprocity, that it went along with the suggestion made by the Delegation of Spain and that it supported the suggestion made by the Director General. He thought, as far as the period for transformation into national applications was concerned, that it should begin not as from denunciation of the Protocol, but as from expiry of the term of protection of the international registration.

1026. Mr. SHANDA-TONME (Cameroon) stressed that the various suggestions presented by the Delegations of the Federal Republic of Germany, of Greece and of Spain ought to make it possible to reach a compromise and that the International Bureau should try to draft a proposal which could be examined at the following meeting.

1027. Mr. von MÜHLENDahl (Federal Republic of Germany) stated that his Delegation was willing to examine a proposal which would be prepared by the International Bureau. He added that he had merely pointed out some of the difficulties which had to be overcome in the interrelationship between the existing proposals. He considered that his Delegation had an approach to international treaties which was different from the approach presented by the Delegation of Spain and supported by the Delegation of Greece. He added that the principle of national treatment should be retained, but not the principle of reciprocity.

1028. Mr. SUGDEN (United Kingdom) declared that his Delegation's position, which was supportive to the Delegations of Spain and Greece, was certainly not based on the idea of reciprocity, but on the idea that the denunciation of a treaty of that sort was rather unusual in its effect in that it could cancel the rights of individuals going back to 20 years or even more. He added that that was relatively an unjust position as far as the holders of those international registrations were concerned. He added that the easiest way to rectify that unjust position was to allow transformation of those marks.

1029. The CHAIRMAN suggested that discussion be suspended in respect of Article 15(5) pending the written suggestion by the Director General that would be discussed at the beginning of the following meeting.

1030. It was so decided (continued in paragraph 1167).

Article 1: Membership in the Madrid Union (continued from paragraph 160)

1031.1 The CHAIRMAN pointed out that Article 1, stipulating that States party to the Madrid Agreement and the States or intergovernmental organizations party to the Protocol were members of the same Union, had already been adopted. He further pointed out that it was necessary to foresee a meeting of the Madrid Union Assembly to enable that Assembly to accept new members within its Union. He added that since the assembly of a union was, hierarchically, at a lower level than a diplomatic conference, adoption of Article 1 by the Diplomatic Conference could not depend on a decision by the Assembly. To make things clear, he explained that he had requested the Director General to make arrangements, immediately following adoption of the Protocol, for an extraordinary meeting of the Madrid Union Assembly to accept, in principle, the content of Article 1 to enable the Protocol to effectively enter into force and to enable the Contracting Parties to the Protocol to participate in the Madrid Union Assembly. He said that a document containing the draft agenda for that Extraordinary Assembly of the Madrid Union would be presented by the International Bureau subsequently (continued in paragraph 1271.2).

1031.2 He asked whether any delegations wished to obtain additional explanations. He noted that such was not the case and proposed that Article 16 of the Protocol be examined.

Article 16: Signature; Languages; Depositary Functions

1032. The CHAIRMAN opened the discussion on Article 16 and asked the Director General to present the Basic Proposal. He announced that there was a proposal by the Delegation of Spain in respect of paragraph (1) (document MM/DC/14).

1033. Mr. BOGSCH (Director General of WIPO) said that paragraph (1) concerned the languages in which the Protocol should be signed and provided that it should be signed in English and French, both languages being equally authentic. He added that, according to the proposal put forward by the

Delegation of Spain (document MM/DC/14), the Protocol should also be signed in Spanish. He said that, if the proposal of the Delegation of Spain were adopted, the term "Spanish" should be added in paragraph (1)(a) and deleted in paragraph (1)(b). He concluded by indicating that paragraphs (2) to (5) contained the usual treaty provisions relating to the signature, transmission, registration and notification of the Protocol.

1034. The CHAIRMAN opened the discussion on paragraph (1)(a) of the Basic Proposal and on the proposal by the Delegation of Spain (MM/DC/14) to add the Spanish language to the languages in which the Protocol was to be signed and which would be authentic. He asked the Delegation of Spain to present its proposal.

1035. Mr. DELICADO MONTERO-RIOS (Spain) stated that the proposal made by his Delegation (MM/DC/14) comprised two points: the first referred to the place at which the Protocol was to be deposited; the second was to include the Spanish language as a language in which the text of the Protocol would be signed. With regard to the first point, his Delegation thought that it had to be established with precision that the Protocol was to be deposited with the Ministry of Foreign Affairs of Spain for the period during which it would be open to signature, that was to say up to December 31, 1989. As from that date, the Protocol would be deposited with the Director General of WIPO. The first point in the proposal derived from the fact that paragraph (1)(a) provided for the Protocol to be drawn up in a single original copy, in English and in French, and to be deposited with the Director General. The view of his Delegation was that the Protocol should not be deposited with the Director General until the period during which it was open to signature in Madrid had expired. The second point in the proposal was that the Protocol be signed in a single original copy in the English, French and Spanish languages. The proposal did not claim, in relation to Article 16, to prejudge the matter of working languages for administering the Protocol, but referred to languages in which the text of the Protocol was to be signed. So far, the various acts of the Madrid Agreement had been signed solely in the French language. The Basic Proposal foresaw that the Protocol would be signed in the French language and in the English language, whereby the addition of English appeared justified by the fact that English had now assumed the same importance as French in international relations, which was not the case when the Madrid Agreement had been concluded almost a century ago in 1891. His Delegation had no objection to the addition of the English language, but wished to emphasize that the Spanish language was spoken by over 300 million people and that more than 20 Latin American countries had that language as their official language. Furthermore, the Spanish language was an official language of the United Nations and of various intergovernmental organizations. Finally, the Convention establishing WIPO had also been signed in the Spanish language. He therefore expressed the wish that the Protocol, which was to be signed in Madrid, may be signed in the Spanish language.

1036. The CHAIRMAN asked whether any delegation supported the proposal by the Delegation of Spain.

1037. Mr. MOTA MAIA (Portugual) pointed out that the matter of languages in which a treaty was to be signed was always a delicate affair. He understood the proposal by the Delegation of Spain, particularly since the present

Diplomatic Conference was taking place in Madrid at the invitation of the Spanish Government and that its purpose was to adopt a Protocol to an agreement concluded last century in Madrid also. He considered that his Delegation could accept the proposal by the Delegation of Spain on condition that the proposal went no further than adding the Spanish language to the languages in which the Protocol was signed and did not prejudice the question of the working language or languages to be adopted for the administration of the Protocol.

1038. The CHAIRMAN noted that the Delegation of Portugal supported the proposal by the Delegation of Spain. He proposed that the discussion on Article 16 be suspended until the following meeting (continued in paragraph 1039).

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Article 16: Signature; Languages; Depositary Functions (continued from paragraph 1038)

1039. The CHAIRMAN opened the meeting and reopened the discussion on paragraph (1)(a) of Article 16. He first gave the floor to the Delegation of the Federal Republic of Germany that had proposed an order motion.

1040. Mr. von MÜHLENDAHL (Federal Republic of Germany) said that his Delegation raised a point of order under Rule 28(1)(iii) of the Rules of Procedure. The motion was to adjourn the discussion on Article 16, and, especially, in respect of matters relating to languages, at least until the next session, or after the discussion on Article 9sexies was terminated.

1041. Mr. DELICADO MONTERO-RIOS (Spain) said that he saw no inconvenience in the discussion on Article 16 being adjourned to the following meeting and that he wished simply to give additional explanations on his preceding intervention to ensure that delegations had fuller information.

1042. Mr. COMTE (Switzerland) said that his Delegation supported the request made by the Delegation of the Federal Republic of Germany to adjourn discussion on Article 16. He added that additional explanations by the Delegation of Spain could nevertheless be useful and said that his Delegation was not opposed.

1043. The CHAIRMAN asked whether any delegation opposed the point of order raised by the Delegation of the Federal Republic of Germany.

1044. Mr. SHANDA TONME (Cameroon) asked the International Bureau to repeat the provision in the Rules of Procedure of the Conference relating to points of order.

1045.1 The CHAIRMAN said that it was Rule 28(1)(iii). He asked again whether any delegation opposed the point of order.

1045.2 He noted that such was not the case and stated that the point of order raised by the Delegation of the Federal Republic of Germany was upheld.

1046. Mr. DELICADO MONTERO-RIOS (Spain) emphasized that the proposal made by his Delegation simply requested that the text to be adopted by the Diplomatic Conference be signed in the Spanish language. He pointed out that the proposal was in no way related to the matter of working languages for administering the Protocol that was not to be examined by the Diplomatic Conference since it comprised aspects that were not only political, but also economic and which concerned the working of the Madrid Agreement.

1047.1 The CHAIRMAN stated that the discussions on Article 16 were suspended (continued in paragraph 1197).

1047.2 He said that Article 15(5) remained to be discussed, but noted that the document setting out the suggestion by the Director General was not yet available.

1047.3 He therefore suggested to return to Article 9sexies.

Article 9sexies: Safeguard of the Madrid (Stockholm) Agreement (continued from paragraph 820)

1048. The CHAIRMAN said that there were two proposals for modification of that Article as given in the Basic Proposal, one contained in document MM/DC/21, presented by the Delegations of Portugal and the Federal Republic of Germany, the other contained in document MM/DC/23, presented by the Delegations of Belgium and the Netherlands. He first asked the Director General to present Article 9sexies.

1049. Mr. BOGSCH (Director General of WIPO) said that Article 9sexies was the so-called safeguard clause. According to the Basic Proposal, the Protocol would have no effect in the relations between States that are party both to the Protocol and the Madrid Agreement. In other words, the main innovations of the Protocol would not be applicable between States party to the Madrid Agreement.

1050. The CHAIRMAN proposed, as was the custom, to first discuss the proposal that departed the furthest from the Basic Proposal and which, in his view, was the proposal that was contained in document MM/DC/21, presented by the Delegations of Portugal and the Federal Republic of Germany.

1051. Mr. von MÜHLEND AHL (Federal Republic of Germany) stated that the disadvantage of Article 9^{sexies}, as it appeared in the Basic Proposal, was to perpetuate the existence of two parallel systems and that the only way to get out of that problem for the States party to the Madrid Agreement having acceded to the Protocol was to denounce the Madrid Agreement. The idea behind the proposal of his Delegation and of the Delegation of Portugal was that, after a certain period of time had elapsed, and provided that a certain number of States party to the Madrid Agreement had acceded to the Protocol, the safeguard clause should cease to be applicable; thus, the Madrid Agreement and the Protocol could merge.

1052. The CHAIRMAN pointed out to the Delegation of the Federal Republic of Germany that it had forgotten, when presenting its proposal, to mention a further modification, i.e. the deletion in the Basic Proposal of the following phrase: "and, consequently, no request for territorial extension can be made under Article 3^{ter}(1) or (2) of this Protocol, with respect to any such State." He first asked the Director General to give his feelings on the proposal.

1053. Mr. BOGSCH (Director General of WIPO) asked the Delegation of the Federal Republic of Germany whether it would not be more exact to say that the old system would disappear in favor of the new system.

1054. Mr. von MÜHLEND AHL (Federal Republic of Germany) answered that, after the expiration of a long period during which the two systems would have operated in parallel, all countries could meet and decide whether the time had not come to merge the two systems into a single one.

1055. The CHAIRMAN held that it would be necessary to hold a further diplomatic conference to unify the two systems.

1056. Mr. BOGSCH (Director General of WIPO) explained that what had been said by the Delegation of the Federal Republic of Germany was not laid down in the proposal by the Delegations of Portugal and of the Federal Republic of Germany.

1057. The CHAIRMAN agreed with what the Director General had said and added, however, that the two systems could not merge without a new diplomatic conference.

1058. Mr. IANNANTUONO (Italy) said that his Delegation had reservations in respect of that proposal. It amounted to an automatic conclusion after a certain period of time and subject to certain conditions and that automatic effect ran counter to the safeguard of the Madrid Agreement. He considered, on the contrary, that the decision to apply the Protocol at the end of a certain period of time could only come from the Assembly.

1059. Mr. PROŠEK (Czechoslovakia) said that his Delegation could support paragraph (1) of the proposal made by the Delegations of the Federal Republic of Germany and Portugal, if it was more clearly drafted. According to his

Delegation, paragraph (1) should clearly indicate that the relations between a State party both to the Protocol and the Madrid Agreement, on the one hand, and a State party only to the Protocol or an organization party to the said Protocol, on the other hand, would be governed by the Protocol.

1060. Mr. MEKIDECHE (Algeria) stated that his Delegation was surprised to hear that the existence of a safeguard clause resulted from the fact that the States currently party to the Madrid Agreement were perfectly satisfied with the Agreement as it stood. He explained that, although his country fully approved the existence of an international registration system for marks, its satisfaction with the Madrid Agreement was not complete. On the contrary, his country held that the Protocol offered certain advantages and consequently his Delegation shared the concern of the Federal Republic of Germany. According to his Delegation, the safeguard clause, as drafted in the Basic Proposal, was too stringent and froze the situation for the future. He wondered in fact whether in order to enjoy the provisions of the Protocol, a State currently party to the Madrid Agreement would not have to denounce that Agreement. He added that a provision, that was not contained in the proposal in document MM/DC/21, should provide the possibility of passing more readily from the Madrid Agreement to the Protocol. He concluded by stating that his country wished to enjoy the advantages of the Protocol without having to denounce the Madrid Agreement.

1061. Mr. DE LAS HERAS LORENZO (Spain) held that the text proposed by the Delegations of the Federal Republic of Germany and of Portugal ran counter to a general principle of international treaty law that was contained in Article 30(3) and (4) of the Vienna Convention on the Law of Treaties of May 23, 1969. Under that principle, an earlier treaty applied only where its provisions were compatible with those of a later treaty, in other words applying the classical lex posterior derogat priori rule. Paragraph (4) materially concerned a different situation since it stipulated: "when the parties to the later treaty do not include all the parties to the earlier one," as might happen in the present case, the solution was as follows: (a) in relations between the States party to both treaties, the rule set out in paragraph (3), in other words lex posterior derogat priori, would apply; (b) in relations between a State party to both treaties and a State party to one only of the treaties, the reciprocal rights and obligations would be governed by the treaty to which both States were party. He therefore considered that there should be application of that principle, whereas the proposal contained in document MM/DC/21 amounted to a limitation of the sovereignty of States.

1062. The CHAIRMAN expressed some doubts as to the intervention by the Delegation of Spain since he did not feel that the safeguard clause in the Basic Proposal amounted to a limitation of the sovereignty of States.

1063. Mr. KARAYANEV (Bulgaria) said that the safeguard clause expressed the opinion of almost all the delegations of the States party to the Madrid Agreement, which had stated that they were satisfied with the present system. He added that the Protocol also contained a number of positive provisions which had always been considered innovative and which, in the opinion of his Delegation, showed the way to further improvements of the Madrid Agreement. His Delegation did not share the opinion according to which the countries which had become party to the Protocol should, after a certain period of time,

denounce the Madrid Agreement. The Protocol constituted an addition to the Madrid Agreement and should, therefore, serve as an instrument to gain experience in order to proceed with the improvement and the future revision of the Madrid Agreement.

1064. Miss VIDAUD (France) explained that, in the past, her Delegation had adopted more of a negative attitude towards the safeguard clause since it complicated the international registration system for marks in view of the fact that two texts could apply to one and the same mark. Article 9^{sexies}, as given in the Basic Proposal, amounted to freezing the existence of two parallel systems unless a new diplomatic conference was convened. On the other hand, the disappearance of the Madrid Agreement should not be foreseen since that Agreement worked well and States that were party to it were generally satisfied. What was needed was a period of reflection in order to see how the Protocol worked, particularly its provisions on individual fees and the period for refusal of an international registration, which the Assembly would be able to amend under certain circumstances. She concluded that, as the discussions stood, her Delegation was in favor of a safeguard clause accompanied by a certain degree of flexibility, and reserved the possibility of returning to that Article.

1065. The CHAIRMAN noted that none of the proposals made with regard to Article 9^{sexies} raised the matter of making the safeguard clause more flexible. He pointed to the proposal by the Delegations of Portugal and the Federal Republic of Germany in which it was suggested that after a period of ten years, and on condition that 14 States that were members of the Madrid Union had acceded to the Protocol, the safeguard clause would become inoperative. He added that the important element in that proposal was that the safeguard clause would automatically become inoperative. He explained that, on the other hand, the proposal by the Delegations of Belgium and the Netherlands (document MM/DC/23) did not contain an automatic feature and the Assembly's decision could only be taken if certain requirements were met.

1066. Mr. BOGSCH (Director General of WIPO) pointed out that there also existed the Basic Proposal for Article 9^{sexies}, which had not been contested during the years of preparation for the text of the Protocol. He wondered whether there remained any delegations that still supported the text of the Basic Proposal. He said that the issue was whether the Madrid Agreement would disappear, in the long term, whatever the conditions, or whether, on the contrary, it ought to be maintained.

1067. Mr. COMTE (Switzerland) stated that his Delegation supported, in principle, the Basic Proposal. He felt that the system deriving from the Madrid Agreement was able to survive in parallel with the system set up by the Protocol. He added, for the benefit of the Delegation of Spain, that sovereign States could include a clause in a treaty according to which earlier law would prevail over the new law. He stated that his Delegation was not in favor of the automatic feature contained in the proposal by the Delegations of Portugal and the Federal Republic of Germany. If it was necessary to have a possibility of revision, then it was preferable to leave that decision to the Assembly, once a certain period of time had elapsed, to make it possible to examine in the light of experience how the Protocol had worked. Any reexamination of the safeguard clause should only be carried out under certain conditions. He explained that, instead of speaking of a precise

number of States party to the Madrid Agreement that had acceded to the Protocol, it would be better to speak of a majority of the States party to the Madrid Agreement. He concluded by adding that his Delegation supported the Basic Proposal, but that, if that proposal did not achieve a sufficient majority, it was prepared to discuss another proposal, preferably that presented by the Delegations of Belgium and the Netherlands.

1068. Mrs. MAYER-DOLLINER (Austria) declared that there was no need to refer to the provisions of the Vienna Convention on the Law of Treaties. Furthermore, she confirmed that her country was very satisfied with the Madrid Agreement as it existed and that it was premature to decide now how the new system would function. Therefore, her Delegation had some hesitations with respect to the automatic abandonment of the Madrid system as proposed in document MM/DC/21. She added that she could agree with the comments made by the Delegation of Switzerland and that her Delegation was in favor of the proposal made by the Delegations of Belgium and the Netherlands (document MM/DC/23), which did not provide for an automatic abolishment of the Madrid Agreement. With respect to the part in brackets in the said proposal, her Delegation was flexible and would reserve its position.

1069. Mrs. LISAVAC (Yugoslavia) said that her Delegation supported the Basic Proposal and also the arguments presented by the Delegation of Switzerland.

1070. Mr. HEMMERLING (German Democratic Republic) said that the Madrid Agreement had proved to be successful and that it should be maintained as far as its substance was concerned. Therefore, his Delegation was in favor of the Basic Proposal. He considered that it was now difficult to determine when an examination of the operations under the Protocol could be done. However, his Delegation would not oppose the approach of limiting in time the safeguard clause, if the majority of delegations favored that approach.

1071. Mr. KARAYANEV (Bulgaria) confirmed that his Delegation supported the Basic Proposal and shared the comments made by the Delegation of Switzerland.

1072. Mr. MEKIDECHE (Algeria) said that his Delegation did not understand why delegations spoke of the forthcoming end of the Madrid Agreement as if the text of the Protocol had nothing to do with that Agreement. For his Delegation, the text of the Protocol was part of the Madrid Agreement and he would have wished, in that respect, that certain delegations that supported the Madrid Agreement as it presently existed would reply to the question of principle that he had previously raised as to the need to denounce the Madrid Agreement in order to fully apply the Protocol. He concluded by stating that the main question was to know whether passage from the Madrid Agreement to the Protocol would have to constitute a break or whether it could be achieved with a degree of flexibility.

1073. Mr. SHANDA-TONME (Cameroon) considered that the Protocol constituted a supplement to the Madrid Agreement, but that it would not automatically make an end with the Agreement. Nevertheless, Article 9^{sexies}, as drafted in the Basic Proposal, could suggest that the States presently party to the Madrid Agreement were somewhat lukewarm in accepting the Protocol and wished for a complete safeguard of the Madrid Agreement as it stood.

1074. Mr. BOBROVSZKY (Hungary) said that his Delegation supported the Basic Proposal and agreed with the comments made by the Delegation of Switzerland. He considered that, at that stage, it was not worthwhile to determine the conditions of termination of the Madrid Agreement.

1075. Mr. PROŠEK (Czechoslovakia) confirmed that his Delegation supported the Basic Proposal with the inclusion of a clarification in respect of the relations between the States which were party to the Madrid Agreement and to the Protocol, and the States and organizations which were party only to the Protocol.

1076. Ms. GORLENKO (Soviet Union) said that her Delegation supported the Basic Proposal and agreed with the comments made by the Delegation of Switzerland. She added that the future of the Protocol and the Madrid Agreement could be decided at a later stage. She wished also to draw attention to the remark made by the Delegation of Czechoslovakia which could be reflected either in the Article, or in the Regulations under the Protocol.

1077. Mr. KIM Yu Chol (Democratic People's Republic of Korea) supported the Basic Proposal as also the position taken by the Delegation of Switzerland.

1078. Miss VIDAUD (France) explained that the present state of reflection of her Delegation was that, if a provision such as that given in the Basic Proposal or in paragraph (1) of the proposals contained in documents MM/DC/21 and MM/DC/23 was to exist, it should be supplemented by a provision similar to that in paragraph (2) of the proposal by the Delegations of Belgium and the Netherlands (document MM/DC/23). That latter provision would call into question, in part or in whole, the impact of the safeguard clause, but only after the working of the Protocol had been reviewed in the light of experience. She further stated that a more automatic provision could also be envisaged, such as that given in paragraph (2) of the proposal by the Delegations of Portugal and the Federal Republic of Germany (document MM/DC/21). She concluded by saying that her Delegation was willing to examine all possibilities, but would have a preference for the flexible solution proposed by the Delegations of Belgium and the Netherlands.

1079. Mr. MOTA MAIA (Portugal) stated that, although the States party to the Madrid Agreement had always claimed to be satisfied with that system, it was nevertheless true that certain of those States wished certain of the provisions of the Madrid Agreement to be amended as proposed in the Protocol. Although it was necessary to have a safeguard clause with regard to the Madrid Agreement, it had to be limited in time to enable States to enjoy the improvements introduced by the Protocol.

1080. Mr. ZOLBOOT (Mongolia) stated that, although his Delegation appreciated the proposal made by the Delegations of the Federal Republic of Germany and Portugal, it supported the majority of delegations which expressed themselves in favor of the Basic Proposal.

1081. Mr. MOLIJN (UNICE) said that his Organization considered the safeguard clause, in Article 9^{sexies}, as the cornerstone of the Protocol. His Organization supported the Delegation of Switzerland and considered that, if changes were needed in the future, that could be dealt with in accordance with the proposal made by the Delegations of Belgium and the Netherlands.

1082. Mr. DE LAS HERAS LORENZO (Spain) said that his Delegation wished the Vienna Convention on the Law of Treaties to be respected, thus implying deletion of Article 9^{sexies}, the principle of which it did not hold to be necessary. However, in view of the ongoing discussions and the position taken by the other delegations, his Delegation would support, as a compromise, the proposal made by the Delegations of Portugal and the Federal Republic of Germany (document MM/DC/21). He considered, as also pointed out by the Delegation of Portugal, that if the safeguard clause was to be maintained absolutely as it stood, that would constitute a "mortal danger" rather than a safeguard clause for the Madrid Agreement since a State that wished to enjoy the advantages provided by the Protocol would have to denounce the Madrid Agreement.

1083. Mrs. ABBAR (Morocco) stated that her Delegation supported the Basic Proposal. She added that she understood the concern of the countries that would be affected by certain of the provisions in the Protocol and which were unhappy with the safeguard clause. If there was a majority of delegations that did not support the Basic Proposal, her Delegation would then favor the proposal by the Delegations of Belgium and the Netherlands (document MM/DC/23).

1084. Mr. KUNZE (AIM) recalled that, in the meetings having prepared the Diplomatic Conference, most delegations and representatives of intergovernmental and non-governmental organizations had stated that they were happy with the present Madrid system, but that they were willing to make certain concessions in favor of countries desiring to enter the international trademark registration system. His Organization still considered that those concessions within the Protocol should not apply between the Madrid member States, and this was why he supported the Basic Proposal of Article 9^{sexies} and could not agree with some of the comments made by some delegations of States party to the Madrid Agreement. He added, however, on behalf of AIM and the European Communities Trademark Practitioners Association (ECTA), that a possibility should be provided to eventually change the situation created by the said safeguard clause. In any case, he considered that the proposal contained in document MM/DC/21 was unacceptable for industry and private organizations. The only real solution could be a proposal following the lines of the proposal made by the Delegations of Belgium and the Netherlands.

1085. Mr. HARLÉ (AIPPI) said that his Organization had shown itself altogether opposed to departing from the Basic Proposal in that matter. The safeguard clause was fundamental for AIPPI, but his Organization would not have a systematically negative attitude towards a compromise. In that respect, he approved the position taken by the Delegation of Switzerland and, if necessary, the proposal presented by the Delegations of Belgium and the Netherlands. With regard to that latter proposal, he added that AIPPI would be in favor of any review of the safeguard clause taking place only after a sufficiently lengthy period.

1086. Mr. BOGSCH (Director General of WIPO) pointed out that since the Basic Proposal did not lay down any time limit on the existence of the safeguard clause, the member States could decide the convening of a diplomatic conference for the revision of that safeguard clause.

1087. Ms. KIK (UEPIP) said that her Organization had already expressed the value it attributed to the safeguard clause as provided in the Basic Proposal of Article 9sexies. However, if the Basic Proposal was to be amended, her Organization could only support the amendment as proposed by the Delegations of Belgium and the Netherlands.

1088. Mr. WINTER (BDI and DVGR) stated that, whereas discussions hitherto had concerned an improvement to the Madrid Agreement, it would seem that discussions now bore on a revision, or even the abolition, of the Madrid Agreement in favor of the Protocol. The circles concerned in the Federal Republic of Germany preferred the Madrid system to remain as it was and that there be discussion, in some ten or 15 years' time, as to whether revision of that Agreement would then be desirable. In that respect, he stated that the organizations he represented supported the position taken by the Delegation of Switzerland and considered that there was no reason to discuss at present a modification to the Basic Proposal.

1089. Mr. HANSMANN (FICPI) recalled that his Organization agreed in principle with the safeguard clause as contained in the Basic Proposal of Article 9sexies. However, it was felt to be very useful for the users of the international trademark registration system to be able, in the future, to have a single system. Therefore, it could be envisaged to make the safeguard clause flexible.

1090. The CHAIRMAN summed up the situation by saying that the proposal made by the Delegations of Portugal and the Federal Republic of Germany (document MM/DC/21) did not seem to enjoy any large degree of support since numerous delegations had advocated ideas that differed from those expressed in the proposal, at least as far as paragraph (2) was concerned. He pointed out that paragraph (1) of that proposal remained to be discussed. He added that, although it had already been the subject of observations, he had still to officially open discussions on the proposal presented by the Delegations of Belgium and the Netherlands (document MM/DC/23).

1091. Mr. BOGSCH (Director General of WIPO) asked whether the Delegations of Belgium and the Netherlands could give their position on the square brackets included in paragraph (2) of their proposal, particularly as regards the majority required in the Assembly.

1092. Mr. FURSTNER (Netherlands) stated firstly that he agreed with the proposal made by the Delegations of the Federal Republic of Germany and Portugal as regards the deletion, in paragraph (1), of the terms "and, consequently, no request for territorial extension can be made, under Article 3ter(1) or (2) of this Protocol, with respect to any such State." Secondly, as regards the proposal put forward by the Delegation of Belgium and his Delegation, he said that the advantages of the Protocol would effectively not be known before the system had been in operation for a certain time.

Since the Madrid Agreement had proved itself to be satisfactory, his Delegation could in principle agree with Article 9^{sexies} as it appeared in the Basic Proposal, leaving to a future diplomatic conference the possibility to change the system. However, he considered that to be too strict, since certain changes in the system could already be foreseen, and that was the reason for the proposed paragraph (2) in document MM/DC/23. The final goal was to have a single international trademark registration system, and not two systems working in parallel. The idea was to have a period of experience of ten or 20 years, the first one being an absolute minimum, after the entry into force of the Protocol, to see how the system worked and, after that period, the Assembly would be given a possibility to propose a final single system. He added that, contrary to the proposal made by the Delegations of the Federal Republic of Germany and Portugal, that change into a single system would not be automatic. As regards the majority in the Assembly, a unanimous vote had been proposed although it was probably not the best solution. He concluded by indicating that the vote in the Assembly concerning that question would only be open to States which would be party to both the Madrid Agreement and the Protocol.

1093. Mr. BOGSCH (Director General of WIPO) said that, according to that proposal, the result would not lead to a single system since it would only apply between States which are party to both the Madrid Agreement and the Protocol. For those States which were not party to the Protocol, the Madrid system would continue. Furthermore, it would not be a single system if a restriction of the scope of the safeguard clause were to be decided.

1094. The CHAIRMAN noted that the system proposed by the Delegations of Belgium and the Netherlands enabled member States of the Madrid Union to have access to one or other of the advantages proposed by the Protocol. He reminded the Delegation of the Netherlands of the question raised by the Director General with respect to the majority that would be needed for a decision by the Assembly. He further asked whether any delegations supported that proposal and asked delegations that spoke to give their preference as to the figures given in square brackets in paragraph (2) of the proposal.

1095. Miss VIDAUD (France) stated that a system such as that proposed by the Delegations of Belgium and the Netherlands could prove useful in order to examine after several years of operation of the Protocol whether the safeguard clause should be maintained, fully or in part. However, the requirements laid down in the proposal appeared too stringent and she suggested instead that either the Assembly could draw up, for example every two years, a report on the operation of the Protocol or that the countries party to the Madrid Agreement could, at any time, review the situation with relation to the Protocol. She explained that the ten or 20-year period proposed by the Delegations of Belgium and the Netherlands could also be replaced by a period of five years since that seemed reasonable to assess whether the working of the Protocol was satisfactory. She added, with regard to the second requirement relating to the number of States party to the Madrid Agreement that would have to be party to the Protocol, that the figure 14 seemed excessive to her and she proposed, as a first idea, to reduce that number by half. Finally, with regard to the majority required for the Assembly to amend the provision relating to the safeguard clause, she proposed a two-thirds majority since she held that the adoption of a majority at too high a level, or even a requirement of unanimity, would be likely to paralyze the situation. She concluded by stating that her Delegation needed to think again before announcing its final position.

1096. Mr. von MÜHLEND AHL (Federal Republic of Germany) declared that, since the proposal his Delegation had put forward with the Delegation of Portugal had not found much support, he was ready to consider with an open mind the proposal made by the Delegations of Belgium and the Netherlands. He wondered whether that proposal provided for a sufficiently long period of time and a sufficient number of countries before the system was revised or even abandoned. He noted that the Delegation of the Netherlands had indicated that a period of ten years should be a minimum. He considered that that proposal needed clarifications.

1097. The CHAIRMAN repeated that he would like the delegations to make proposals on the elements in square brackets in the proposal made by the Delegations of Belgium and the Netherlands, relating to the number of years, the number of countries and to the majority required within the Assembly.

1098. Mr. SUGDEN (United Kingdom) considered that, within a certain period of time, it could be very desirable for the Madrid Agreement and the Protocol to come closer together. Since that was the intention behind the proposal of the Delegations of Belgium and the Netherlands, his Delegation was sympathetic to a provision of that sort in the Protocol. As regards the majority which should be required in the Assembly, he considered that the matter should be decided by the existing Madrid Union countries. With respect to the number of States, he agreed with the remarks made by the Delegation of the Federal Republic of Germany which suggested that the period of years that were mentioned should run from the time on which, for instance, the 14th State party to the Madrid Agreement had joined the Protocol.

1099. Mr. BOGSCH (Director General of WIPO) said that, according to his understanding, the proposal made by the Delegations of Belgium and the Netherlands provided that certain aspects of the safeguard clause could be abandoned, but did not provide that some advantages of the Protocol could be introduced in the Madrid Agreement. Two parallel systems would exist as long as all countries party to the Madrid Agreement were not also party to the Protocol. If it occurred that all countries party to the Madrid Agreement became also party to the Protocol, a decision would have to be taken to lift the safeguard clause and build up a uniform system.

1100. Mr. BOCKEN (EFPIA) stated that his Organization supported the proposal by the Delegations of Belgium and the Netherlands and proposed, for the elements in square brackets, ten years or the date on which the 14th State party to the Madrid Agreement had deposited its instrument of ratification, acceptance, approval of or accession to the Protocol, as also a majority of two-thirds for the decision by the Assembly.

1101. The CHAIRMAN decided to adjourn the discussion on Article 9sexies till the following meeting (continued in paragraph 1102).

<p><u>Thirteenth Meeting</u> <u>Wednesday, June 21, 1989</u> <u>Morning</u></p>

Article 9sexies: Safeguard of the Madrid (Stockholm) Agreement (continued from paragraph 1101)

1102.1 The CHAIRMAN opened the meeting and resumed the discussion on Article 9sexies dealing with the safeguard clause. He reminded the meeting that the discussion bore on the proposal made by the Delegations of Belgium and the Netherlands (document MM/DC/23) and announced that an informal document was to be distributed to amend the wording of the proposal and which proposed figures for the elements shown in square brackets. He said that paragraph (2) would therefore read as follows: "The Assembly referred to in Article 10 of this Protocol may, by a three-fourths majority, repeal paragraph (1) or restrict the scope of paragraph (1), on expiry of a period of ten years from the entry into force of this Protocol, but not before one half of the States party to the Madrid (Stockholm) Agreement have become party to this Protocol. In the vote of the Assembly only those States which are party to that Agreement and to this Protocol shall have the right to participate."

1102.2 He stated that the informal document gave some reply to the questions raised by the proposal made by the Delegations of Belgium and the Netherlands. He asked whether any delegations wished to speak with regard to that informal document.

1103. Mr. MEKIDECHE (Algeria) stated that his Delegation supported that new version of paragraph (2). He added that, in principle, his Delegation was not opposed to the safeguard clause, but that it had doubts as to its true impact. According to Article 9sexies, as given in the Basic Proposal, the Madrid Agreement would remain frozen. If a State party to the Madrid Agreement wished to apply the provisions of the Protocol, it would have to denounce the Agreement as set out in Article 15(4) of the Protocol. He further stated that the drafting of Article 9sexies would have to be clarified to enable a State party to the Madrid Agreement to denounce the Agreement under the provisions of that Agreement and not those of the Protocol.

1104. The CHAIRMAN was of the opinion that a member State of the Madrid Union could only denounce the Madrid Agreement in accordance with the provisions of that Agreement.

1105. Mr. MEKIDECHE (Algeria) said that, if his interpretation was incorrect, then there was reason to clarify the wording of the Protocol in that respect.

1106. Mr. BOGSCH (Director General of WIPO) considered that the conditions and consequences of denouncing the Madrid Agreement could only be governed by that Agreement, which indeed contained such provisions.

1107. The CHAIRMAN shared the view of the Director General. According to him, there were three possible solutions, i.e.: a State remained bound by the Madrid Agreement and did not accede to the Protocol; a State remained bound by the Madrid Agreement and acceded also to the Protocol; or a State acceded to the Protocol and denounced, either at the same time or subsequently, the Madrid Agreement. However, he held that it was not Article 9^{sexies} that governed those matters. He asked the Delegation of Algeria whether the situation had become clearer.

1108. Mr. MEKIDECHE (Algeria) considered that, in view of what had been said, Article 9^{sexies} should be more specific.

1109. The CHAIRMAN pointed out that, if a State wished to denounce the Madrid Agreement, it could do so under the provisions of the Madrid Agreement. He added that Article 9^{sexies} of the Basic Proposal for the Protocol did not oblige a State to remain bound by the Madrid Agreement.

1110. Mr. PEETERS (Belgium) felt that, on the face of it, the informal proposal drawn up by the International Bureau with regard to paragraph (2) of the proposal contained in document MM/DC/23 was more precise. He added that his Delegation could support the proposal for a three-fourths majority for the Assembly.

1111. Mr. COMTE (Switzerland) pointed out again that his Delegation would have preferred to adopt the safeguard clause as worded in the Basic Proposal. He nevertheless added that his Delegation was willing to go along with the version of Article 9^{sexies} as proposed in the informal document presented by the International Bureau. However, he suggested that the notion of "simple majority of States" should replace the rather unusual concept of "one half of the States."

1112. The CHAIRMAN was favorably inclined towards the proposal made by the Delegation of Switzerland and asked whether any delegations were in agreement.

1113. Mr. BOGSCH (Director General of WIPO) considered that the proposal by the Delegation of Switzerland should be adopted in view of the problems that could arise if there were to be an odd number of States.

1114. The CHAIRMAN therefore decided that the word "majority" should replace the words "one half" in the informal document presented by the International Bureau. He explained that it would be a simple majority.

1115. Mr. von MÜHLEND AHL (Federal Republic of Germany) confirmed that his Delegation, like most other delegations, accepted the principle of the safeguard clause. He added that his Delegation considered the informal document which had been presented to be an acceptable compromise. However, he considered that there was a major difficulty as regards the time limit after which the Assembly could take a decision. He explained that, if the Protocol was ratified within a short period of time by a sufficient number of States, a

decision might be taken before the two systems have been able to operate sufficiently in parallel. The time limit proposed did away with many of the advantages which existed in the Basic Proposal and in the proposal presented by his own Delegation and the Delegation of Portugal. He concluded that, as regards the majority, his Delegation could agree with a majority of three-fourths in the Assembly.

1116. Mr. BOGSCH (Director General of WIPO) said that the time limit could be of 15 years, which constituted a compromise solution between the ten and 20 years proposed by the Delegations of Belgium and the Netherlands.

1117. The CHAIRMAN expressed his surprise at the reaction of the Federal Republic of Germany in view of the fact that, in its proposal for Article 9sexies contained in document MM/DC/21, it had proposed an automatic period of ten years together with the same condition with regard to 14 States.

1118. Mr. von MÜHLENDahl (Federal Republic of Germany) indicated that, in the proposal made by his Delegation and the Delegation of Portugal, the ten-year period only started to run once 14 States had become party to the Protocol. In the present informal document, the question of when 14 States, or half of the States party to the Madrid Agreement, joined the Protocol, did not really matter since the main condition was the minimum period of ten years. He concluded that that was probably not the right approach.

1119. The CHAIRMAN said that he now had a better understanding of the problem raised by the Delegation of the Federal Republic of Germany.

1120. Mr. KOMAROV (Soviet Union) said that his Delegation was ready to support the text of Article 9sexies, as proposed in the informal document, in the spirit of general compromise. He added, however, that clarifications and additions might be needed, in particular, in order to find a solution to the concerns expressed by the Delegation of the Federal Republic of Germany.

1121. Mr. GEUZE (Netherlands) stated that his Delegation could agree with the text of Article 9sexies, as proposed in the informal document, with the inclusion of the amendment proposed by the Delegation of Switzerland. He added that a further amendment could be included along the lines of the remarks made by the Delegation of the Federal Republic of Germany. He proposed that the wording "but not before a majority of the States party to the Madrid Agreement have become party to this Protocol" be amended to read "but not before five years have passed after a majority of the States party to the Madrid Agreement have become party to this Protocol."

1122. The CHAIRMAN replied that, in his view, nothing could be done earlier than ten years and, moreover, it would be necessary for the majority of States party to the Madrid Agreement to be party also to the Protocol.

1123. Mr. BOGSCH (Director General of WIPO) felt that it would be prudent to extend the ten-year period to 15 years.

1124. The CHAIRMAN noted that, if such were the case, even if all countries party to the Madrid Agreement were also party to the Protocol, nothing could be done for 15 years as from the date of entry into force of the Protocol. He noted that it constituted a new suggestion, whereas certain delegations had already approved a ten-year period. He therefore asked the delegations to express themselves on that idea of a 15-year period.

1125. Mr. BOGSCH (Director General of WIPO) observed that the Delegation of the Federal Republic of Germany had made a remark that warranted serious consideration since a ten-year period could indeed seem somewhat short for a clause to safeguard the Madrid Agreement. It was necessary to give some time to the new system deriving from the Protocol to establish itself and it was necessary to decide for what period of time it was wished to maintain the Madrid Agreement.

1126. The CHAIRMAN remarked that the suggestion went in the direction of the wishes expressed by the delegations that preferred the Basic Proposal made by the International Bureau.

1127. Mrs. MAYER-DOLLINER (Austria) said that her Delegation could support the compromise solution contained in the informal document of the International Bureau, including the suggestion made by the Delegation of Switzerland and the time period of 15 years, taking into account the concerns of the Delegation of the Federal Republic of Germany. She added that her Delegation could also agree with a four-fifths majority in the Assembly.

1128. Miss VIDAUD (France) pointed out that her Delegation was in favor of a balanced provision containing a safeguard clause together with the possibility of reviewing the matter after a certain number of years of joint operation of the Protocol and of the Madrid Agreement. She added that paragraph (2), requiring the convening of the Assembly comprising both countries party to the Protocol and countries party to both the Protocol and the Madrid Agreement, aimed at avoiding the convening of a diplomatic conference. She further considered that it was necessary to make the provisions that were to be laid down in paragraph (2) more flexible and to speak, for example with regard to the period, of: "ten years at the latest after the entry into force of the Protocol," whereby the words "at the latest" would not mean that the safeguard clause had to be amended since there was an additional condition relating to the number of countries party to the Madrid Agreement that had also to be party to the Protocol. As for the majority required in the Assembly, her Delegation was able to accept a three-fourths majority. Finally, with regard to the number of States party to the Madrid Agreement that had also to be party to the Protocol, she thought that the concept of "majority" was perhaps a little excessive.

1129. Mr. BOGSCH (Director General of WIPO) said that he had not fully understood the first proposal made by the Delegation of France with regard to "ten years at the latest after the entry into force of the Protocol." He pointed out that, in the informal suggestion made by the International Bureau with regard to paragraph (2), there was no obligation to revise the safeguard clause, but only the possibility. He wondered whether the proposal made by the Delegation of France did not mean that, on the contrary, beyond a certain period, the safeguard clause could no longer be revised.

1130. The CHAIRMAN shared the point of view expressed by the Director General. A just balance would have to be found between the interests of States that wish to enjoy the advantages of the Protocol as quickly as possible and those that wish to remain bound as long as possible by the Madrid Agreement.

1131. Mr. BOGSCH (Director General of WIPO) supported the explanations that had been given by the Chairman and asked what meaning had to be given to the term "at the latest" used by the Delegation of France.

1132. Miss VIDAUD (France) said that when her Delegation spoke of "ten years at the latest after the entry into force of the Protocol," that meant that a report would have to be submitted to the Assembly after a certain number of years on the joint operation of the Madrid Agreement and Protocol systems.

1133. Mr. von MÜHLENDAHL (Federal Republic of Germany) believed that the decision taken by the Assembly, according to Article 9^{sexies}, would be governed by the provisions of Article 13 of the Madrid Agreement. According to the said Article 13, the amendments entered into force one month after their acceptance by three-fourths of the States which participated in the vote had been received by the International Bureau. With respect to the amendment of the safeguard clause, he considered that the procedure of entry into force should be different, mainly as regards the time of entry into force, because that amendment may require modifications of the national legislations. He added that his present reflection could also be applicable to the amendment of Article 5(2)(e). He concluded by indicating that his concerns might not be valid if the decision of the Assembly, according to Article 9^{sexies}, was not governed by Article 13 but by a separate regime, which meant that the Assembly could adopt its own rules with respect to the entry into force of the amendments.

1134. Mr. BOGSCH (Director General of WIPO) said that the intention behind the informal suggestion by the International Bureau was that Article 13 would not apply there. He confirmed that the Assembly, according to Article 9^{sexies}, would decide on the modalities and the time of entry into force of any restrictions to, or the deletion of, the safeguard clause.

1135. The CHAIRMAN emphasized, however, that Article 13 of the Protocol indeed mentioned the fact that Article 13 of the Madrid Agreement would apply mutatis mutandis.

1136. Mr. BOGSCH (Director General of WIPO) replied that the comment was correct, but that Article 13 of the Protocol did not refer to the safeguard clause.

1137. Mr. DE LAS HERAS LORENZO (Spain) said that he was able to accept the informal text presented by the International Bureau as a compromise, but that he wished to propose certain amendments. His main concern was the period that had been proposed as ten years and was now proposed to be extended to 15 years. He held that such a period for reflection was excessive since States would not take such a decision in an uncautious and unconsidered manner without taking into account experience resulting from application of the Protocol and that, further, a three-fourths majority was required and that constituted an adequate guarantee.

1138. Mr. BOGSCH (Director General of WIPO) said, with respect to the time limits of ten or 15 years, that, in any case, the safeguard clause could not be revised or abolished before the expiry of those time limits. He added that there could be several occasions to restrict the safeguard clause, since it could first be restricted in respect of one aspect and, later on, in respect of another aspect.

1139. Mr. SHANDA-TONME (Cameroon) held that the new text of Article 9sexies, as proposed by the International Bureau, well reflected the spirit of the discussions held at the preceding meeting with the aim of achieving a compromise.

1140. Mr. GEVERS (ECTA) stated that his Organization supported the last version of Article 9sexies that was given in the informal document by the International Bureau. He emphasized, as had already been mentioned by the Director General, that the Assembly would not be obliged to repeal the safeguard clause at the end of that ten or 15-year period. If the Protocol was a success and was shown to afford essential advantages to users of the Madrid Agreement, it should not be necessary to wait 15 years or ten years to recognize those advantages and to decide to ease or even delete the safeguard clause. If, on the contrary, success was slower to emerge, the Assembly would meet and decide to postpone a decision. He therefore considered that the proposal for ten years was the most realistic and the most flexible. As for the three-fourths majority, that should probably refer to the countries party to both the Madrid Agreement and to the Protocol. He therefore felt that to mention the majority at the beginning of paragraph (2) could appear ambiguous and that it could be inserted into the final sentence of paragraph (2).

1141. Mr. KUNZE (AIM) pointed out that his Organization had supported the proposal made by the Delegations of Belgium and the Netherlands and added that the new suggestion with regard to 15 years could be accepted as an additional compromise. He noted that the period could in fact be shorter if, during the initial years following entry into force of the Protocol, a majority of States party to the Madrid Agreement acceded to the Protocol. He concluded that it was necessary to find a compromise that was acceptable not only to the States but also to the users of the system.

1142. Mr. MOLIJN (UNICE) agreed with the comments made by the Representative of AIM. However, his Organization considered the safeguard clause as one of the most important points of the whole Protocol and it should be guaranteed that such safeguard clause would remain as long as possible.

1143. The CHAIRMAN, summing up discussions, noted that the tendency was towards a ten-year period and that paragraph (2) of the informal document presented by the International Bureau could constitute the basis for a compromise, subject to account being taken of the amendment proposed by the Delegation of Switzerland with regard to the use of the words "majority of States" instead of "one half of the States."

1144. Mr. HARLÉ (AIPPI) said that his Organization felt that the informal document submitted by the International Bureau constituted a compromise that was particularly welcome. He added that AIPPI supported the proposal made by the Delegation of Switzerland as to the use of the word "majority," as also the figure of three-fourths for the required majority, since that constituted a precious safeguard. He thought, in fact, that the States bound by both the Madrid Agreement and the Protocol would not try to delete or amend the safeguard clause unless they were absolutely certain to obtain such a three-fourths majority. He concluded that AIPPI, while preferring the 15-year period, could accept that of ten years.

1145. Mrs. ØSTERBORG (Denmark) declared that important parts of her country's industry had stated that Denmark should consider membership to the Protocol, but also to the Madrid Agreement. She therefore said that the question of the working of the safeguard clause was of interest to her Delegation which could accept the idea of having a provision providing for the revision of the safeguard clause in the light of the experience gained with the two trademark registration systems functioning side by side. She concluded by indicating that she was flexible on the wording and was prepared to follow what the majority of the delegations would decide.

1146. Mr. KARAYANEV (Bulgaria) repeated that his Delegation was in favor of the Basic Proposal although it could accept a solution of compromise. While appreciating the clarifications given by the Director General, he considered that the proposal and the concerns of the Delegation of the Federal Republic of Germany deserved attention. He concluded that he could also support the idea of the five-year period after the majority of the countries party to the Madrid Agreement had also become party to the Protocol, that time limit being a supplementary condition to the ten-year minimum period after the date of entry into force of the Protocol.

1147. The CHAIRMAN noted that what had been said by the Delegation of Bulgaria corresponded to the recent proposal by the Delegation of the Netherlands.

1148. Mr. PROŠEK (Czechoslovakia) recalled that his Delegation had considered very favorably the text of Article 9^{sexies} of the Basic Proposal. His Delegation was still interested in a clarification according to which only the Protocol would apply between a State party to both the Protocol and the Madrid Agreement and a State party only to the Protocol. He said that his remarks had been supported by the Delegation of the Soviet Union.

1149. Mr. BOGSCH (Director General of WIPO) stated that, in the first paragraph of the notes relating to Article 9^{sexies} of the Basic Proposal, the last sentence said that "naturally, the Protocol does apply in the relations between a State that is party to both the Protocol and the Stockholm Act and any State or Organization that is party to the Protocol but is not party to the Stockholm Act."

1150. The CHAIRMAN noted that the Delegation of Czechoslovakia would be satisfied if the fact were shown in the Records of the Conference.

1151. Mr. SUGDEN (United Kingdom) considered that, although his country was not a party to the Madrid Agreement, the safeguard clause interested potential Protocol countries. His Delegation hoped that the two systems would come closer together and, therefore, it welcomed the informal proposal made by the International Bureau. He indicated that his Delegation had preference for the amendment proposed by the Delegation of the Netherlands and supported by the Delegation of Bulgaria.

1152. Mr. VOULGARIS (Greece) said that, since his country was not party to the Madrid Agreement, the matter of the safeguard clause did not concern it directly. However, he said that his Delegation, whilst having a preference for the Basic Proposal, would go along on that matter with the majority of delegations.

1153. Mr. von MÜHLENDahl (Federal Republic of Germany) said that his Delegation supported the proposal made by the Delegation of the Netherlands with respect to the time limit of five years. Furthermore, he asked whether the International Bureau could explain the meaning of the term "majority." He wondered whether it meant the majority at the time of the entry into force of the Protocol, or at the time of the expiration of the ten-year period, or, finally, at the time the decision was taken by the Assembly.

1154. The CHAIRMAN replied that, in his view, the presence of a majority of States was to be determined at the time the decision was to be taken by the Assembly.

1155.1 Mr. BOGSCH (Director General of WIPO) felt that the compromise was heading towards the possibility of revising the safeguard clause five years after the majority of States party to the Madrid Agreement had also become party to the Protocol, but, in any event, not earlier than ten years from the entry into force of the Protocol.

1155.2 He further noted that the number of members of the Assembly could vary over time and that the majority would therefore not always be the same.

1156. Mr. von MÜHLENDahl (Federal Republic of Germany) confirmed that his Delegation agreed with the two cumulative conditions as proposed by the Delegation of the Netherlands. As regards the majority in the Assembly, he considered that it should exist at the time the periods of ten years and five years had expired.

1157. The CHAIRMAN considered that the matter warranted clarification. He noted that there was an informal proposal by the International Bureau which, subject to a modification proposed by the Delegation of Switzerland, appeared to constitute an acceptable compromise. There now existed a new proposal for modification from the Delegation of the Netherlands, which had been approved by the Delegations of Bulgaria, the Federal Republic of Germany and the United Kingdom. He asked whether other delegations approved the amendment proposed by the Delegation of the Netherlands. He also asked that latter Delegation whether it could propose a wording.

1158. Mr. GEUZE (Netherlands) proposed that the informal paper presented by the International Bureau be amended by adding, after the words "after the expiry of ten years from the entry into force of this Protocol" the words "but not before five years after a majority of the States party to the Madrid Agreement have become party to this Protocol." He added that, as regards the majority in the Assembly, the required majority should exist at the moment the decision was taken.

1159. Mr. BOGSCH (Director General of WIPO) thought that the suggestion should be expressed in a slightly different manner by stating that once the majority of countries party to the Madrid (Stockholm) Agreement had become party to the Protocol the five-year period would begin to run.

1160.1 The CHAIRMAN suggested to the Delegation of the Netherlands a wording that was slightly different from its proposal, i.e.: "but not before the expiry of a period of five years from the date on which the majority of countries party to the Madrid (Stockholm) Agreement have become party to this Protocol."

1160.2 He noted that the proposal was supported by the Delegations of Italy, the United Kingdom and Switzerland, as also by other delegations. He asked whether any delegations opposed that proposal.

1161. Miss VIDAUD (France) felt that it was difficult for her Delegation to take a stance on the new proposal that had been expressed verbally and which concerned a substantive provision. Her view was that the modification reintroduced an additional period of time in order to place a brake on a possible calling into question of the safeguard clause. The position of her Delegation with regard to the new modification was negative since it ran counter to a degree of flexibility.

1162. Mr. BOGSCH (Director General of WIPO) replied to the Delegation of France that the new proposal by the Delegation of the Netherlands did not necessarily constitute a brake. Indeed, if the majority of the States party to the Madrid Agreement acceded to the Protocol in the first five years following entry into force of the Protocol, the possibility provided for in paragraph (2) would occur ten years after the entry into force of the Protocol.

1163.1 The CHAIRMAN asked whether other delegations were opposed to the wording of Article (2) drafted in accordance with the informal proposal by the

International Bureau together with the amendments proposed by the Delegations of Switzerland and the Netherlands. He noted that such was not the case and that consensus therefore existed in respect of the text, with the exception of the Delegation of France.

1163.2 He proposed to return to Article 9~~sexies~~ (1) and noted that the paragraph (as given in the proposal by Belgium and the Netherlands) (document MM/DC/23) corresponded to the text of Article 9~~sexies~~ in the Basic Proposal. He nevertheless pointed out that there was a proposal by the Delegations of the Federal Republic of Germany and of Portugal, supported by the Delegation of the Netherlands, to delete the words "and, consequently, no request for territorial extension can be made, under Article 3~~ter~~(1) or (2) of this Protocol, with respect to any such State." The reason for deletion was that it was simply an example of a provision, amongst other provisions in the Protocol, which would not be applicable by virtue of the safeguard clause.

1164. Mr. BOGSCH (Director General of WIPO) stated that he was in agreement with the deletion of those words.

1165. The CHAIRMAN asked whether any delegation opposed the deletion of those words. He noted that such was not the case and asked whether the delegations were in a position to adopt Article 9~~sexies~~. He noted that such was the case.

1166. Article 9~~sexies~~ was adopted as given in the Basic Proposal for paragraph (1), with the modification proposed by the Delegations of the Federal Republic of Germany and Portugal (see paragraph 1163) and, for paragraph (2), as suggested by the Director General with the modifications proposed by the Delegations of Switzerland and the Netherlands (see paragraphs 1102.1, 1111 and 1160.1).

Article 15: Denunciation (continued from paragraph 1030)

1167. The CHAIRMAN opened the discussion on Article 15 and pointed out that no agreement had been reached on paragraph (5). He proposed that the text of the paragraph as given in the suggestion by the Director General (document MM/DC/24) be discussed and asked the Director General to present his suggestion.

1168. Mr. BOGSCH (Director General of WIPO) said that the draft paragraph (5) contained in document MM/DC/24 endeavored to take into account the wishes of the majority of delegations. He added that the suggestion sought to achieve a balance, particularly in subparagraph (b), to meet the wishes expressed by the Delegations of Spain and of Greece.

1169. The CHAIRMAN said that document MM/DC/24 would require a few editorial adjustments in the French version and those would be settled by the Drafting Committee. He had in mind, particularly, the expression "la partie qui fait la dénonciation," contained in paragraph (5)(a), which could be replaced by an expression such as "la partie contractante qui dénonce le Protocole."

1170. Mr. VOULGARIS (Greece) said that his Delegation supported the suggestion made by the Director General. He added that, from an editorial point of view, the term "applicable law," contained in paragraph (5)(a)(iii), could be specified.

1171. The CHAIRMAN thought that the editorial proposal made by the Delegation of Greece could make that text more complicated particularly since the notion of "applicable law" was a current term.

1172. Mr. DE LAS HERAS LORENZO (Spain) supported the suggestion made by the Director General.

1173. Mr. SUGDEN (United Kingdom) said that his Delegation welcomed the suggestion made by the Director General. He added that it reflected the ideas that his Delegation had previously expressed. He wondered whether a possible complication would exist, since international registrations might have expired or be due for renewal within the period of two years after the denunciation and before the transformation had to be effected. He concluded by indicating that his Delegation had an open mind for a possible amendment of paragraph (5)(a)(i) to cope with that problem.

1174. Mr. von MÜHLENDahl (Federal Republic of Germany) indicated that his Delegation was prepared to withdraw the proposal it had made (document MM/DC/17), in favor of the suggestion submitted by the Director General. That decision was taken with some hesitation, since he considered the situation to be now more difficult. He said that he could also agree with the remarks made by the Delegation of the United Kingdom as regards paragraph (5)(a)(i). He concluded that his Delegation could accept the new suggestion as a balanced provision, although he considered that paragraph (5)(b) did not answer the question raised by the Delegation of Spain.

1175. Mr. BOGSCH (Director General of WIPO) considered that it was sufficient to agree on a text and it was not necessary to try to force countries to agree on the reasons for their agreement to the text. As regards the remark made by the Delegation of the United Kingdom, there was an inherent risk in paragraph (5)(a)(i) that during the two-year period there might be requests for national applications and registrations in respect of international registrations which had expired. The only way to solve that problem would be to reduce drastically the period of two years, which could not be envisaged.

1176. Mr. SHANDA-TONME (Cameroon) wished to underline the pertinent observation made by the Delegation of Greece as regards the notion of "applicable law." He nevertheless acknowledged that the expression was habitually used and that paragraph (5)(a)(iii) could remain unchanged.

1177. Miss VIDAUD (France) said that her Delegation was able, in a spirit of compromise, to align itself with the delegations that had first mooted the suggestion made by the Director General. She nevertheless added that it was not her impression that the Delegation of the Federal Republic of Germany had

completely waived its proposal for Article 15(5) contained in document MM/DC/17. She felt that the value of that proposal was that it was in addition to paragraph (5) of the Basic Proposal, i.e. the possibilities for transformation would only be given on expiry of the international registration. Such an approach could be maintained to avoid the problems that would result from the two-year period referred to in paragraph (5)(a)(i) of the suggestion made by the Director General. She further wondered whether it would not be more reliable, from a legal point of view, to maintain the proposal by the Delegation of the Federal Republic of Germany by extending it to all the Contracting Parties to the Protocol and to take up, with regard to the conditions and time limit for transformation, the three-month period adopted in Article 9quinquies. Moreover, items (ii) and (iii) of the suggestion made by the Director General could be maintained.

1178. Mr. BOGSCH (Director General of WIPO) shared the opinion expressed by the interested circles and considered that the three-month limit was too short since if, for example, a registration expired one month after denunciation, its owner would have very little time to carry out the transformation.

1179. Mr. MOTA MAIA (Portugal) said that his Delegation was satisfied with the suggestion presented by the Director General in document MM/DC/24. He felt that it would not be possible to find a more equitable and more balanced formula.

1180. Mr. COMTE (Switzerland) said that his Delegation could also go along with the suggestion made by the Director General. However, his Delegation had the same concern as the Delegation of the United Kingdom with regard to international registrations that expired during the period of two years during which transformation was possible. That problem could be solved by adding after item (i) the following phrase: "but, at the latest, within three months from the expiry of the registration." That suggestion would make it possible to align that case with the other provisions of the Protocol relating to transformation, particularly Article 9quinquies. He held in fact that there was no reason to provide for preferential treatment for transformation in the event of denunciation of the Protocol.

1181. Mr. BOGSCH (Director General of WIPO) observed that, when a State denounced the Protocol, the international registration would have no further effect and the expiry in question could only be a fiction since it was a matter of the date on which the international registration would have expired if denunciation had not taken place.

1182. Mr. VOULGARIS (Greece) said that his Delegation was in favor of the suggestion made by the Director General as contained in document MM/DC/24. He considered that any addition to that suggestion could but complicate matters and that there was no reason to provide in item (i), with respect to the two-year period, special time limits taking into account the fact that a registration could expire within the two years that followed denunciation of the Protocol. Indeed, even if an international registration had expired in the meantime it was possible to carry out a transformation within those two years.

1183. The CHAIRMAN noted that the Delegation of Switzerland withdrew its proposal.

1184. Miss VIDAUD (France) emphasized that the notion of expiry of the international registration, in the event of a State denouncing the Protocol, did not seem to her to correspond to the discussions on Article 9 quinquies. She pointed, in that respect, to the example she had given during the discussion on that Article and which concerned validity, between the parties to the contract at least, of the assignment of an international registration to an assignee who was not a beneficiary of the Madrid Agreement. In the case of Article 15(5), the situation was identical since, within the framework of a denunciation of the Protocol by a Contracting Party, the international registration could no longer be invoked on the territory of such Party. That was why it was suggested that the owner be enabled to transform his international registration into a national mark. As far as the substance was concerned, she said that her Delegation was able to go along with the proposal made by the Delegation of Switzerland, but that, in a spirit of consensus, it was willing to support a text capable of satisfying the Committee as a whole.

1185. Mrs. MAYER-DOLLINER (Austria) said that her Delegation supported the suggestion made by the Director General which was formulated in a very well-balanced way.

1186. Mr. KUNZE (AIM) said that there were apparently two different interpretations with respect to the suggestion of the Director General. On the one hand, some delegations seemed to believe that, if an international registration expired one or two months after the date of denunciation, the national applications resulting from a transformation would not be valid if filed after the expiration of the international registration. On the other hand, other delegations understood that the important point was that the international registration be valid at the time of denunciation and, from that date, transformation into national applications was possible during two years, whether or not the international registration had expired in the meantime. He added that, in his opinion, that second interpretation, which was given by the Delegation of Greece, was correct and that, with such an interpretation, he could fully support the suggestion made by the Director General.

1187. Mr. BOGSCH (Director General of WIPO) said that, to his understanding, all delegations agreed that the interpretation of the Delegation of Greece was the only possible interpretation of the text.

1188. Mr. von MÜHLEND AHL (Federal Republic of Germany) confirmed that the only possible interpretation of the text was the one made by the Delegation of Greece. With respect to that Article, he was surprised by the position of the interested circles, since the transformation clause would lead to a "submarine" effect with marks which would cease to have effect because of the denunciation and which could reappear within a period of two years with a retroactive effect.

1189. Mr. SUGDEN (United Kingdom) said that his Delegation considered also that the international registration ceased to have effect from the time the denunciation took effect. He considered that it would be interesting to know from interested circles whether the "submarine" effect resulting from the transformation clause could be dangerous. He added that just before the end of the period of two years, the transformation clause could be applied and the marks would be backdated covering the said two-year period. In fact, industries would have to wait for two years to see whether the transformation clause was applied. He considered, however, that the denunciation would be known, since it only came into effect one year after its notification.

1190. Mr. BOGSCH (Director General of WIPO) stated that there were no "submarine" effects, since everybody would be able to see from the International Register that, on the date the denunciation became effective, a mark was registered for a given country.

1191. The CHAIRMAN noted that there existed a fairly large consensus on the suggestion made by the Director General (document MM/DC/24).

1192. Mr. KUNZE (AIM) said that his Organization could agree with the reply the Director General had given to the question asked by the Delegation of the United Kingdom.

1193. The CHAIRMAN pointed out that paragraph (5), as suggested by the Director General, required certain minor amendments of a purely editorial nature. He asked whether any delegations were opposed to the adoption of paragraph (5) as given in the suggestion made by the Director General. He noted that such was not the case.

1194. Article 15(5) was adopted as given in the suggestion made by the Director General and contained in document MM/DC/24 subject to amendments of an editorial nature to be made by the Drafting Committee.

1195. Mr. BOGSCH (Director General of WIPO) said that the reference in paragraph (5)(a) to a later designation according to Article 3ter(2) should also be included in Article 9quinquies. He asked that the Drafting Committee be authorized to rectify that obvious omission.

1196. The CHAIRMAN asked whether all delegations were agreed that minor amendments be made to Article 9quinquies to take into account the wording of Article 15(5) as it had been adopted. He noted that there was no opposition. He proposed to terminate the meeting and to resume the discussions on Article 16 at the following meeting.

Fourteenth Meeting
Wednesday, June 21, 1989
Afternoon

Article 16: Signature; Languages; Depositary Functions (continued from paragraph 1047.1)

1197. The CHAIRMAN opened the meeting and resumed discussion on Article 16. He pointed out to delegations that the discussion bore mainly on a proposal by the Delegation of Spain (document MM/DC/14) with regard to Article (1)(a) and (b). In that proposal, the Delegation of Spain suggested that the Protocol be signed not only in the English and French languages, but also in Spanish. He asked delegations to give their views on document MM/DC/14.

1198. Mr. COMTE (Switzerland) emphasized that the Basic Proposal for the Protocol foresaw that the text of the Protocol be signed in two languages and that the text of those two languages would be equally authentic. For his Delegation, the Basic Proposal was the result of a consensus achieved during the preparatory work. Consequently, the proposal by the Delegation of Spain raised a certain number of problems for the Delegation of Switzerland and the consequences of those problems had to be measured. Before giving an opinion, he wished to put a preliminary question to the Delegation of Spain and asked what were the intentions of the Delegation of Spain with respect to the working languages that would be used for the application of the Protocol. He was aware that the matter of working languages was within the competence of the Assembly, but nevertheless felt that the economy of the system resulting from the Protocol would depend very largely on the number of working languages that the International Bureau and the users would have to handle. He therefore wondered whether the fact, for the delegations, of accepting the Spanish language as one of the authentic languages of the Protocol would have consequences for determining the working languages to be used for the application of the Protocol. He concluded by saying that once the Delegation of Spain had replied to that question he would be able to announce the position of his Delegation.

1199. Mr. DELICADO MONTERO-RIOS (Spain) said that, if the proposal made by his Delegation was accepted, acceptance would not be used as an argument in the matter of the choice of working languages. The Spanish Delegation acknowledged that the matter of working languages was different and would require a completely separate solution in view of its implications, particularly for users of the system. He nevertheless pointed out that the Conference was being held in Madrid, at the invitation of the Spanish authorities, and those authorities were very interested in being able to sign a Protocol drawn up in the Spanish language and the Delegation hoped that the Conference would accept the possibility of the Protocol being signed in Spanish by the Spanish authorities.

1200. Mr. COMTE (Switzerland) thanked the Delegation of Spain for its very clear reply which would enable his Delegation to support the proposal made by the Delegation of Spain. He pointed out that the support of his Delegation in no way prejudged its position with respect to the working languages of the Protocol and the authentic languages under other treaties that could be adopted in future.

1201. Mr. KARAYANEV (Bulgaria) said that, in view of the clarifications which had been given, his Delegation supported the proposal of the Delegation of Spain.

1202. Mr. KRIEGER (Federal Republic of Germany) considered that the problem raised by the proposal of the Delegation of Spain was difficult and had political aspects. He understood the position of Spain, since the present Diplomatic Conference was taking place in Madrid a century after the Madrid Agreement had been set up. He stated that it was not only a question of political goodwill because of the effect that such a decision could have in other contexts. He, therefore, considered that the Delegation of Spain should clarify the statement they had made and confirm that the acceptance of its proposal, with regard to Article 16(1)(a), would not create a precedent, mainly in respect of the working languages of the Protocol, which was a matter which should be left to the Assembly. He concluded by asking the Delegation of Spain to confirm that Spain had no intention to request that Spanish became a working language, if the Assembly had to decide on that question.

1203. Mr. DELICADO MONTERO-RIOS (Spain) asked whether it was wished that the Delegation of Spain should sign a declaration. He pointed out that it had been clearly stated that his Delegation asked solely that the original text of the Protocol be drawn up in Spanish also and signed in that language and that, if it was so decided, the Delegation would in no way exploit that decision to ask that the Spanish language also be a working language. He therefore confirmed that the Delegation of Spain would never use the fact that the Protocol had been signed in Spanish to ask for that language to be accepted as a working language.

1204. Mr. KRIEGER (Federal Republic of Germany) declared that he had correctly understood the statement made by the Delegation of Spain, but, however, he wished to have clarification on one point. He noted that the Delegation of Spain had said that, in the future, Article 16(1)(a) would not constitute an argument for asking to have Spanish as a working language if the Assembly had to decide on that question. He said that his Delegation had no intention to request from the Delegation of Spain a formal declaration concerning that statement. He wanted the Delegation of Spain to repeat, for the Records of the Diplomatic Conference, the last sentence of its declaration.

1205. Mr. DELICADO MONTERO-RIOS (Spain) stated that, despite the fact that he had participated in many diplomatic conferences, he found himself for the first time in the unusual situation in which a host delegation was asked to make such a declaration. He felt that he had reached the limits of his possibilities by saying that the Delegation of Spain did not intend to use the above-mentioned decision concerning the Spanish proposal as a precedent in order to ask in future that the Spanish language be a working language. He wished to emphasize his sharp protest at the unusual situation that had been created and with which his Delegation was faced.

1206. Mr. FOUAD (Egypt) stated that his Delegation supported in principle the text of the Basic Proposal. He added, however, that out of respect for the role played by the host country of the Conference, and after having heard the clear and concise explanations that had been given, his Delegation did not oppose the proposal contained in document MM/DC/14.

1207. Mr. HEMMERLING (German Democratic Republic) said that his Delegation could associate itself with the statements made by other delegations and could also support the proposal of the Delegation of Spain.

1208. Mrs. LISAVAC (Yugoslavia) said that her Delegation considered it would be justified for the Protocol to be signed in the Spanish language also. She therefore supported the proposal contained in MM/DC/14.

1209. Mr. SUGDEN (United Kingdom) said that his Delegation fully understood the position of the Delegation of Spain and that, in view of the assurances which had been given, it could support the proposal contained in document MM/DC/14.

1210. Mr. PEETERS (Belgium) said that his Delegation was able to accept the proposal contained in document MM/DC/14 in view of the precise statement made by the Delegation of Spain on the implications of that proposal.

1211. Mr. KOMAROV (Soviet Union) indicated that his Delegation had some difficulties to solve, in a positive manner, that language problem. However, the declarations of the Delegation of Spain had been taken into consideration and his Delegation could support what had been said by the previous delegations.

1212. Mr. FORTINI (Italy) said that his Delegation could support the proposal contained in document MM/DC/14 in view of the fact that, according to the Spanish Delegation, acceptance of the proposal would not be used as a precedent when choosing the working languages.

1213. Mr. FICHTE (Austria) said that his Delegation could exceptionally, and in view of the explanations given by the Delegation of Spain, support the proposal contained in document MM/DC/14.

1214. Mr. VOULGARIS (Greece) said that his Delegation could support the proposal contained in document MM/DC/14 following the explanations on the limited implications of that proposal that had been given by the Delegation of Spain.

1215. Mr. VU (Viet Nam) said that his Delegation could accept the proposal for amendments to Article 16(1)(a) and (b) in view of the statement made by the Delegation of Spain to explain its proposal.

1216. Mr. LI (Democratic People's Republic of Korea) said that his Delegation could also support the proposal made by the Delegation of Spain following the explanations that had been given.

1217. Mrs. BOYTHA-FÜZESSÉRY (Hungary) said that her Delegation supported the proposal by the Delegation of Spain once the decision to be taken did not constitute a precedent.

1218. Mr. FITZPATRICK (Ireland) said that his Delegation, in the light of the clarification and explanations which had been given, could support the proposal made by the Delegation of Spain.

1219. Mr. ZOLBOOT (Mongolia) said that his Delegation also agreed with the proposal of the Delegation of Spain.

1220. Mr. NGONGANG OUANDJI (Cameroon) said that his Delegation, although it did not have the right to vote in the Conference, wished to express its support for the proposal by the Delegation of Spain in view of the explanations that the Delegation had given.

1221. Mr. KRIEGER (Federal Republic of Germany) repeated that the language question was a difficult and political problem for his Delegation, in view of the fact that the German language was the most spoken language in Europe and that it was the official language of five member States of the Madrid Union. He said, however, that he had full understanding for the position of the Delegation of Spain and, in view of the explanations given by that Delegation, the support of many delegations and the traditional friendship between Spain and his country, his own Delegation was ready to accept the proposal of the Delegation of Spain.

1222. Mr. FURSTNER (Netherlands) said that, in view of the clear statements made by the Delegation of Spain, his Delegation could support, as a sign of respect and gratitude, the proposal contained in document MM/DC/14.

1223. Mr. BENDAOU (Morocco) said that his Delegation wished to associate itself with the delegations that had supported the proposal made by the Delegation of Spain.

1224. Mrs. ØSTERBORG (Denmark) said that her Delegation associated itself with the other delegations which had accepted the proposal of the Delegation of Spain. She added that this acceptance was linked with the declaration of that Delegation relating to the working languages of the Protocol.

1225. Mr. SHANDA-TONME (Cameroon) said that his Delegation wished, after having heard the statement by the Federal Republic of Germany, that the Delegation of Spain should examine the possibility of waiving the recording of the statement it had made following the intervention by the Delegation of the Federal Republic of Germany (see paragraph 1205.)

1226. The CHAIRMAN replied that it was not for him to ask for the deletion of any part of the minutes of the Conference since, a priori, only the delegation concerned could do so. He asked the Delegation of Spain whether it wished to take the floor.

1227. Mr. DELICADO MONTERO-RIOS (Spain) warmly thanked all the delegations that had made statements in favor of the proposal by the Delegation of Spain

and, in particular, the Delegation of the Federal Republic of Germany for their understanding and their efforts towards a favorable solution. To reply to the Delegation of Cameroon, he stated, however, that he preferred that the Records of the Conference should record the full exchange of views that had taken place with regard to paragraph (1)(a) of Article 16.

1228. The CHAIRMAN asked whether other delegations wished to speak on paragraph (1)(a). He noted that such was not the case.

1229. Article 16(1)(a) was adopted as proposed by the Delegation of Spain (document MM/DC/14).

1230. The CHAIRMAN opened the discussion on paragraph (1)(b) and pointed out that, following the proposal contained in document MM/DC/14, and to take into account paragraph (1)(a) as adopted, the Spanish language should no longer appear in paragraph (1)(b). He noted that no delegation asked for the floor.

1231. Article 16(1)(b) was adopted as proposed by the Delegation of Spain (document MM/DC/14).

1232. The CHAIRMAN opened the discussion on paragraph (2) and noted that there were no requests to take the floor.

1233. Paragraph (2) was adopted as given in the Basic Proposal.

1234. The CHAIRMAN opened the discussion on paragraph (3) of the Basic Proposal.

1235. Mr. VOULGARIS (Greece) stated that, due to the modification of paragraph (1)(a), the Director General had now to transmit three copies of the signed texts of the Protocol.

1236. Mr. BOGSCH (Director General of WIPO) pointed out that each of the two copies referred to in paragraph (3) would comprise the signed texts of the Protocol in all the authentic languages.

1237. Mr. SHANDA-TONME (Cameroon) suggested that the beginning of paragraph (3) should read as follows: "The Director General of WIPO shall transmit..."

1238. Mr. CURCHOD (Secretary to the Main Committee) pointed out that Article 5(2)(d) of the Basic Proposal defined the term "Director General" as the abbreviated form of "Director General of the World Intellectual Property Organization." That was why, as from Article 5 of the Protocol, the simple term "Director General" was used.

1239. Mr. SHANDA-TONME (Cameroon) nevertheless felt that there was reason at that juncture in the final provisions of the Protocol to restate the expression in full. He nevertheless added that his Delegation could accept the wording of paragraph (3) as given in the Basic Proposal.

1240. The CHAIRMAN thought in fact that there was no reason to modify the text of the Basic Proposal. He nevertheless asked whether any member delegation of the Conference wished to take up the suggestion made by the Delegation of Cameroon. He noted that such was not the case.

1241. Paragraph (3) was adopted as given in the Basic Proposal.

1242. The CHAIRMAN opened the discussion on paragraph (4) and noted that no comments were forthcoming.

1243. Paragraph (4) was adopted as given in the Basic Proposal.

1244. The CHAIRMAN opened the discussion on paragraph (5). He pointed out that the words "formal confirmation" had to be deleted as had been done throughout the text of the Protocol.

1245. Mr. VOULGARIS (Greece) observed that the Basic Proposal made no mention of the notification of denunciation of the Protocol although that was provided for in the Madrid Agreement. He proposed that paragraph (5) be appropriately supplemented.

1246. Mr. BOGSCH (Director General of WIPO) said that reference to notification of denunciations would be added to paragraph (5).

1247. The CHAIRMAN asked whether any delegation opposed the proposal made by the Delegation of Greece. He noted that such was not the case.

1248. Paragraph (5) was adopted as given in the Basic Proposal with the addition proposed by the Delegation of Greece.

1249.1 The CHAIRMAN, after having confirmed that Article 16 as a whole had been approved, stated that the major work program of the Main Committee had been completed. He expressed his gratitude to all the delegations that, in his view, had shown a great spirit of cooperation with the result that the substantive work relating to approval of the Protocol had been carried out in record time.

1249.2 He said that, following a break in the meeting, the proposal with regard to the meeting of the Madrid Union Assembly immediately after approval of the Protocol would have to be discussed. He pointed out that it was necessary that the Madrid Union Assembly accept to receive within its midst

the future Contracting Parties to the Protocol. He explained that the matter of the meeting in extraordinary session of the Madrid Union Assembly was the subject of document MM/DC/22 that had already been distributed to delegations.

1250. Mr. SUGDEN (United Kingdom) declared that the question of the further consideration of the words mutatis mutandis by the Drafting Committee should also be reexamined (continued from paragraph 446).

1251.1 The CHAIRMAN replied that the question would be dealt with after the break.

1251.2 Following a break in the meeting, he asked the Delegation of the United Kingdom to give its views on the matter of the term mutatis mutandis used in the Protocol.

1252. Mr. SUGDEN (United Kingdom) declared that his Delegation had expressed several times, not only in the present meeting but also in other meetings, its concerns about the use of the words mutatis mutandis, because it did not always make it clear what was changed in a provision. In the present Protocol, when an article was very short, its meaning was quite understandable and it was not necessary to spell out, once again, the text of that article in full. However, in some other occasions, for instance Article 10 of the Protocol, it was not precisely clear, even taking into account the notes contained in document MM/DC/3, what was going to be changed when one took account of the words mutatis mutandis. In those circumstances, he believed that it would be better to have a clearer text indicating precisely what the changes were. One way would be to redraft each article in full, but that would probably lead to extremely lengthy articles in some situations such as Article 10. An intermediate way was just to make quite clear in the article what was to be changed. He concluded that the Drafting Committee should be authorized to look at that particular point and to make recommendations to the Main Committee.

1253. The CHAIRMAN asked the Chairman of the Drafting Committee what he thought of the proposal by the Delegation of the United Kingdom relating to the term mutatis mutandis.

1254. Mr. COMTE (Chairman of the Drafting Committee) replied that his Committee could not make proposals, but could only carry out decisions of the Main Committee. He added, on behalf of the Delegation of Switzerland, that there could be a third solution in addition to those proposed by the Delegation of the United Kingdom. It was a matter of taking into account, if the delegations approved the wording, of the very detailed explanatory notes provided by the International Bureau in respect of the Basic Proposal for the Protocol (document MM/DC/3). He added that it would suffice for the agreement of the delegations to be recorded in the minutes of the Diplomatic Conference.

1255. Mr. BOGSCH (Director General of WIPO) said that the problem should be examined from the viewpoint of the countries which were not party to the Madrid Agreement but which were likely to become party to the Protocol. The Parliament of those countries should be able to read a complete text of the

Protocol without having to read also articles of a previous agreement for which there was no official English version, otherwise there could be delays in the ratification of the Protocol.

1256. Mr. VOULGARIS (Greece) said that it was altogether conceivable that the provisions of an international treaty should make reference to the provisions of another international treaty on condition that there was no risk of uncertainty or confusion. He added that his Delegation had a question to raise with regard to the Regulations under the Protocol. He noted that, in application of Article 10 of the Protocol, which referred to Article 10 of the Madrid Agreement, the Regulations under the Protocol would be adopted by the Madrid Union Assembly, whereas in Article 10 of the Madrid Agreement it is stated that the Assembly modifies the Regulations, thus suggesting that those Regulations were adopted by some other body. For the sake of more clarity and more security, that matter should be regulated and he felt that it could be added in the text of the Protocol that the Regulations would be a modified version of the Regulations under the Madrid Agreement, in view of the fact that the Madrid Union would comprise both the States and organizations party to the Protocol and the States party to the Madrid Agreement. He concluded by saying that certain matters would have to be regulated by the Main Committee prior to submission to the Drafting Committee.

1257. The CHAIRMAN replied that if the Drafting Committee encountered problems those would be referred back to the Main Committee for discussion and settlement.

1258. Mrs. ØSTERBORG (Denmark) stated that the Protocol was an independent treaty. She added that she would prefer a reference to the articles, instead of just the words mutatis mutandis.

1259. Mr. BOGSCH (Director General of WIPO) asked the Delegation of Denmark whether the use of the word "reference" meant incorporation of the whole text of the article.

1260. Mrs. ØSTERBORG (Denmark) said that she effectively meant incorporation of the whole text of the article.

1261. Mr. BERAUDO (France) said that it should be left for the Secretariat to prepare a version of the Protocol comprising the various articles of the Madrid Agreement to which reference was made in the Protocol.

1262. Mr. BOGSCH (Director General of WIPO) did not deny that an international treaty could refer to another international treaty, but emphasized that the problem met in the Protocol resulted from a mutatis mutandis reference.

1263. Mr. FITZPATRICK (Ireland) said, firstly, on the mutatis mutandis point, that his Delegation agreed with the previous delegations to have the full text of a specific article in the Protocol. Furthermore, he considered

that the question raised by the Delegation of Greece, relating to who would adopt the Regulations under the Protocol, was of a substantive nature. He added that, on a prima facie basis, the new Assembly would adopt the Regulations, but that a country needed to ratify the Protocol before being admitted to such an Assembly. His country would not ratify the Protocol until it knew what the Regulations would be. He concluded by indicating that he would have thought that the Regulations would be adopted in the form of a mini-diplomatic conference and sought clarification on that matter.

1264. Mr. BOGSCH (Director General of WIPO) said, as regards the last remark made by the Delegation of Ireland, that the Regulations would not be adopted by a diplomatic conference. The Protocol, as adopted by the present Main Committee, provided that, on matters which were of interest to countries which had become bound by the Protocol, only those countries would vote in the Assembly. He believed that, since Contracting Parties of the Madrid Agreement and Contracting Parties of the Protocol would be in the same Union, the Regulations would be the same but, when the Protocol entered into force, the Assembly would have the power to modify the Regulations so as to cover the new provisions of the Protocol. Another possibility would be to add under the Regulations under the Madrid Agreement a new chapter relating specifically to the Protocol. He indicated that, in the Assembly of the Madrid Union, during the next Governing Bodies, in September, the International Bureau would propose the follow-up action to the present Diplomatic Conference. Firstly, the International Bureau would prepare draft Regulations modifying the Regulations under the Madrid Agreement, which would be examined by a Committee of Experts or a Working Group. The International Bureau would also prepare draft forms, taking into account the concerns of the private circles which had always considered that a single form should be used for both the Madrid and the Protocol systems. He believed that the Committee of Experts or the Working Group would meet two or three times and, once the Protocol entered into force, the proposed Regulations would be examined by the Assembly which would then take a decision. He expressed the hope that the position of the Delegation of Ireland was not final since it was impossible to have Regulations before some countries adhered to the Protocol, enabling it to enter into force. He considered that countries would not take risks, since before the Protocol entered into force, the draft Regulations and forms would have been examined several times by a Committee of Experts or a Working Group. He also recalled that, under the Madrid system, the Regulations were changed from time to time and those changes were decided by the Assembly. If a country did not agree with those changes, which had to be voted in the Assembly with a qualified majority, the only solution for that country was to denounce the treaty. Since the Madrid Agreement existed, no modification of the Regulations had been the cause of a denunciation by a member country.

1265. The CHAIRMAN pointed out that there were three proposals, that by the Delegation of the United Kingdom, that by the Delegation of Ireland and that by the Delegation of France. He added that the proposals were mutually incompatible and that a solution would therefore have to be found.

1266. Mr. SUGDEN (United Kingdom) said, firstly, that bearing in mind the remarks made by the Director General and by the Delegations of Denmark and Ireland, his Delegation would prefer a complete text for all the articles of the Protocol, instead of the use of the words mutatis mutandis. Secondly,

with respect to the preparation of the Regulations, his Delegation welcomed the remarks made by the Director General. His Delegation could accept the fact that, after the Protocol had entered into force, there might be only four countries which would actually be voting in the Assembly on the Regulations which would be specific to the Protocol.

1267. Mr. DE LAS HERAS LORENZO (Spain) said that his Delegation supported the other delegations that asked for an integral text in the Protocol without the references to the Madrid Agreement in view of the fact that States that were not party to the Madrid Agreement would be party to the Protocol. He noted that the method of referring to a prior treaty to which a State was not party would not seem correct from a legal point of view.

1268. Mr. von MÜHLENDahl (Federal Republic of Germany) said that his Delegation would have preferred, in some cases, the reference to the Madrid Agreement. He added, however, that his Delegation could accept the wishes expressed in favor of a complete text of all articles of the Protocol. He wondered whether it would not cause difficulties to include in the Protocol elements of the Madrid Agreement for which, until now, there existed no official translation. As regards the question of the Regulations, he considered that the problem should be solved in the way explained by the Director General. He considered that all those who had been invited to cooperate in the establishment of the Protocol would also be invited to cooperate in the establishment of the Regulations.

1269. Mr. VOULGARIS (Greece) said that his Delegation would prefer to have the articles of the Madrid Agreement reproduced in full in the text of the Protocol. In that way, the Protocol would be much clearer for countries wishing to accede to it.

1270. Mr. BOGSCH (Director General of WIPO) said, with respect to the first question raised by the Delegation of the Federal Republic of Germany, that the Drafting Committee would propose, for the articles in the Protocol referring to the Madrid Agreement, English and Spanish texts which would be better than the English and Spanish translations of the relevant articles of the Madrid Agreement. With respect to the second question, he said that, if countries joining the Madrid Union were not satisfied with the Regulations which had been prepared, they could always request their modification, like that had been done many times during the 100 years of existence of the Regulations under the Madrid Agreement.

1271.1 The CHAIRMAN asked whether other delegations wished to speak. He noted that such was not the case and that, in view of the position of the delegations that had spoken, it was necessary to envisage the full reproduction in the text of the Protocol of those articles of the Madrid Agreement that applied mutatis mutandis. He added that the work would be carried out by the Drafting Committee.

1271.2 He opened the discussion on document MM/DC/22, relating to the extraordinary meeting of the Madrid Assembly. He asked whether delegations wished to speak on that document (continued from paragraph 1031).

1272. Mrs. ØSTERBORG (Denmark) commented on the participation of her country as an observer in the meetings of the Assembly of the Madrid Union. She wondered whether, in the decision contained in document MM/DC/22, it would not be possible to have a provision, according to which a country, having signed the Protocol but having only participated in the Diplomatic Conference as an observer delegation, could participate as an observer in meetings of the Assembly of the Union. She proposed that, between paragraphs (2) and (3) of the draft decision, the following words be inserted: "Besides, to accept to admit to the meetings of the Assembly, as observers, such States or intergovernmental organizations which have signed the said Protocol in accordance with Article 16(2) until such time as their ratifications have entered into force according to the provisions of Article 14."

1273. Mr. BOGSCH (Director General of WIPO) said that he was fully in agreement with the spirit of the proposal made by the Delegation of Denmark. He believed, however, that it should not be inserted in the decision contained in document MM/DC/22. His intention was to propose to the Assembly of the Madrid Union, in September, that all those who had signed the Protocol should be invited as full members to the meetings which would prepare the Regulations.

1274. The CHAIRMAN asked the Delegation of Denmark whether it was in agreement with the suggestion made by the Director General.

1275. Mrs. ØSTERBORG (Denmark) said that her Delegation would like to hear the opinion of the Member States of the Madrid Union.

1276. Mr. SUGDEN (United Kingdom) declared that he supported the request made by the Delegation of Denmark and that his Delegation could accept that the decision be taken by the Assembly in September. Furthermore, he asked whether his Delegation could participate as observer in the extraordinary session of the Assembly which was to take place in the week to come.

1277. Mr. BOGSCH (Director General of WIPO) said that, in the history of the Madrid Union, all members of the Paris Union had been invited as observers in the meetings of the Assembly.

1278. The CHAIRMAN explained that he did not envisage, for his part, holding the extraordinary session of the Madrid Union Assembly in a composition other than that of the present Main Committee.

1279. Mr. von MÜHLENDahl (Federal Republic of Germany) said that his Delegation supported the proposal made by the Delegation of Denmark, but that the decision should be taken by the Assembly of the Madrid Union when meeting in September during the sessions of the Governing Bodies. He assured the Delegation of Denmark that, if there had to be a vote, his Delegation would vote in favor of its proposal.

1280. Mr. MOTA MAIA (Portugal) said that his Delegation altogether agreed that all member delegations of the Main Committee be invited to the extraordinary session of the Madrid Union Assembly. He added that he also approved the suggestion made by the Director General.

1281. The CHAIRMAN noted that delegations were generally favorable to document MM/DC/22, but that the decision would have to be taken by the Ordinary Assembly of the Madrid Union which was to meet in September 1989 within the framework of the WIPO Governing Bodies.

1282. Mr. NIKLASSON (Sweden) said that his Delegation endorsed the request made by the Delegation of Denmark. He added that his country might, in the light of further analysis and evolving circumstances, sign the Protocol and eventually ratify it, and it would be appreciated if his country had the opportunity to participate in the meetings which would prepare the implementation of the Protocol, and in particular the Regulations.

1283. Mr. VOULGARIS (Greece) stated that his Delegation supported the proposal made by the Delegation of Denmark. He considered the proposal to be judicious and necessary, particularly in preparation for the future Regulations under the Protocol.

1284. Mr. BOGSCH (Director General of WIPO) said, to sum up, that all members of the Paris Union would continue to be invited as observers in the Assembly. As regards the Committee of Experts or the Working Group relating to the preparation of the Regulations, he would propose to the regular session of the Madrid Union Assembly, in September 1989, that it be composed of all States which were members of the Madrid Union, of the four countries having been invited to the Diplomatic Conference as Member Delegations although not members of the Madrid Union, and of all other countries which would sign the Protocol. He added that there would be no difference in status between the members of that Committee of Experts or Working Group. As regards other countries, he said that further reflection would be needed.

1285. Mr. SCHWARTZ (European Communities) asked for confirmation that his Delegation would be invited in the same way as States to the Committee of Experts or the Working Group responsible for preparing the Regulations under the Protocol.

1286.1 The CHAIRMAN replied in the affirmative to the Delegation of the European Communities.

1286.2 He noted that there were no further comments on document MM/DC/22. He emphasized that the meeting of the Extraordinary Assembly of the Madrid Union would be held immediately after adoption of the Protocol in the Plenary.

1286.3 He said that the following meeting of the Main Committee would check the text of the Protocol prepared by the Drafting Committee before it was adopted in the Plenary on June 27, 1989. Adoption would be followed by the meeting in extraordinary session of the Madrid Union Assembly. He concluded by saying that June 28, 1989, would be devoted to the closing of the Diplomatic Conference and to the signature of the Final Act and of the Protocol by the delegations so wishing. The Chairman finally reminded the Director General that certain delegations appeared to have difficulties with respect to the afternoon of June 28, 1989.

1287. Mr. BOGSCH (Director General of WIPO) replied that it was difficult to change the time table scheduled by the Spanish authorities for the afternoon of June 28, 1989.

1288. Mr. FORTINI (Italy) asked whether the Spanish authorities could not change the time table for the days of June 27 and 28, 1989.

1289. Mr. VOULGARIS (Greece) said that his Delegation had the same problems as the Delegation of Italy. His Delegation had thought that the Diplomatic Conference would finish in the morning of June 28, 1989. He proposed that such should be the case if at all possible.

1290. Mr. FICHTE (Austria) said that he joined those delegations which had difficulties relating to the time schedule of the Diplomatic Conference.

1291. Mr. CASADO CERVIÑO (European Communities) wished to explain that, although he had sat with the delegates of the European Communities during the whole Conference, he wished to reply on behalf of the Delegation of Spain to the proposals made by various delegations. He fully understood the concern of those delegations and, consequently, the proposals they had formulated, but he wished them, for his part, also to understand that a change in agenda would raise problems for the Spanish authorities since that agenda had been laid down a long time ago.

1292. Mr. PROŠEK (Czechoslovakia) said that his Delegation had to leave Madrid in the morning of Wednesday, June 28. He added that his Delegation would prefer to sign the Final Act on Tuesday, June 27.

1293. Mr. BOGSCH (Director General of WIPO) said he would try to suggest solutions that could be discussed at the meeting of the Main Committee scheduled for the morning of Monday, June 26, 1989.

1294. The CHAIRMAN considered that the work of examining the Protocol, within the Main Committee, was now completed.

1295. Mr. MOLIJN (UNICE) said, in the name of AIM, ECTA and UNICE, that now that the Diplomatic Conference had succeeded in creating a link between the Madrid Agreement and the Protocol, he would have liked to express the gratitude of the above-mentioned Organizations to the Chairman of the Main Committee. He added that the Organizations on behalf of which he spoke were satisfied with the results achieved in the Diplomatic Conference.

1296. The CHAIRMAN thanked the representative of UNICE, together with all the delegations, and suspended the meeting.

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Morning

1297. The CHAIRMAN said that the present meeting was, normally, the final meeting of the Main Committee. He explained that the purpose was to approve the text of the Protocol as prepared by the Drafting Committee. He asked the Chairman of the Drafting Committee to present the outcome of the Committee's work and to mention those points that still appeared to raise a problem, in order that the Main Committee could take a decision.

1298.1 Mr. COMTE (Chairman of the Drafting Committee) said that a certain time had been necessary both to finalize the text of the Protocol in the three languages and also to draft those articles that referred mutatis mutandis to the Madrid Agreement. As far as that latter point was concerned, the Drafting Committee had attempted simply to reproduce, in the text of the Protocol, those items that were specific to it. He added that he wished to draw the Main Committee's attention to four points, i.e.:

1298.2 Article 5(2)(a) comprised, at the end, the words "before the expiry of one year from the date on which the notification of the extension referred to in paragraph (1) has been sent to that Office by the International Bureau." The Drafting Committee was aware that the phrase departed from the wording adopted during the discussions in the Main Committee. He added that the difference resulted from an agreement reached with the Delegation of the Soviet Union which had proposed the text adopted by the Main Committee. He emphasized that it was in order to avoid the period of time available to Offices being reduced that the date of sending the notification had been chosen as the point of departure for computing that time limit. He pointed out that the date of sending the notification was the same for all Offices and that it was known, since it was published.

1298.3 At the end of Article 9quater(1)(ii), the words "as well as the provisions of Articles 9quinquies and 9sexies" had been added to allow for the fact that those two Articles followed after Article 9quater. He added that the amendment was purely editorial.

1298.4 As for Article 10(3)(a), he wished to give an explanation which certain member delegations of the Drafting Committee had wished to include expressly in the minutes. He observed that when the Assembly met, it would have to discuss not only points specific to the Madrid Agreement and points specific to the Protocol, but also points that concerned both the Agreement and the Protocol and that, for such joint matters, the delegations of those States that were party to both the Agreement and the Protocol would not have two votes, but a single vote.

1298.5 As for Article 14(4)(a), he explained that in the Spanish version the words "at least one" had been replaced by "at least one other" to comply with the grammatical rules of the Spanish language.

1299. The CHAIRMAN first opened the discussion on Article 5(2)(a) with respect to "the date on which the notification of the extension referred to in paragraph (1) has been sent to that Office by the International Bureau." He asked whether any delegation was opposed to that formulation. He noted that such was not the case.

1300. Article 5(2)(a) was adopted as proposed by the Drafting Committee.

1301. The CHAIRMAN opened the discussion on Article 9quater(1)(ii) which referred to the provisions of Articles 9quinquies and 9sexies. He asked whether there were objections and noted that there were none.

1302. Article 9quater(1)(ii) was adopted as proposed by the Drafting Committee.

1303. The CHAIRMAN opened the discussion on Article 10(3)(a) and explained that there were no drafting problems, strictly speaking, but that it was a matter of mentioning in the minutes of the Diplomatic Conference the explanation given by the Chairman of the Drafting Committee in respect to the fact that, within the Assembly, when a matter concerned both the Madrid Agreement and the Protocol, a State party to the Protocol and to the Madrid Agreement could only enjoy one vote when voting took place. He asked whether there were any objections and noted that there were none.

1304. Article 10(3)(a) was adopted as proposed by the Drafting Committee.

1305. The CHAIRMAN opened the discussion on Article 14(4)(a) concerning the slight difference in wording between the French and English versions of the Protocol, on the one hand, and the Spanish version, on the other. He added that it was simply an editorial matter that had no effect on substance.

1306. Mr. VOULGARIS (Greece) said that the adoption of Article 5(2)(a) had been too rapid. The amendment made to that Article concerned a matter of substance and he added that he wished further details on the replacement, as the point of departure for the time limit, of the date of entry in the Register by the date of sending the notification.

1307. Mr. BOGSCH (Director General of WIPO) said that it had been felt that the date of entry in the Register could shorten the period of time afforded to Offices. Indeed, entry in the Register by the International Bureau occurred some days after it received the application, but notification to the designated States could occur some two or three weeks later only, which, of course, shortened the 12-month period by that time. That was why it had been felt preferable to start the period of 12 months as from the date of notification to the Offices of the designated States. That latter date was preferable to the date of receipt of notification by the Offices since that would have resulted in the 12-month period expiring at different dates in each Office. He concluded by saying that the date of sending the notification was published in "Les Marques internationales" and therefore any interested person could compute the expiry of the 12-month period.

1308. Mr. VOULGARIS (Greece) said his Delegation was satisfied, but there remained some doubts as to the substance. He added that the aim could not be achieved, for instance, if postal strikes delayed receipt of the notification. He stressed that, as a general rule, the date of receipt of a notification constituted the starting point for a time limit.

1309. The CHAIRMAN asked whether other delegations shared the view of the Delegation of Greece. He noted that such was not the case and considered that, within the framework of an international treaty, it could be agreed that the point of departure for a time limit would be the date of sending a notification. He added that it was true that in national laws the date of receipt was used, but here, under the Protocol, with the aim of ensuring a degree of clarity and security, it was preferable that the point of departure for the 12-month period be the same for all designated Offices. He added that it would be difficult to take into account situations such as postal strikes since the expiry dates for the period would differ depending on the Office. He asked the Delegation of Greece whether it was able to accept the proposal made by the Drafting Committee.

1310. Mr. VOULGARIS (Greece) said that his Delegation reserved its position on that matter since the text of Article 5(2)(a) had been subject to a substantive amendment.

1311. Mr. BOGSCH (Director General of WIPO) said that it would be preferable for the Delegation of Greece to lift its reservation now since the proposed text was better than that which had been approved by the Main Committee before amendment by the Drafting Committee. The new text of Article 5(2)(a) in fact gave practically a month more to Offices.

1312. Mr. VOULGARIS (Greece) said that Article 5(2)(a), as given in the Basic Proposal, was preferable since the words used there were "has been notified to that Office" which meant that the time limit started on the date of receipt of the notification by the Office. The fact that the time limit was made to begin on the date of sending the notification was somewhat excessive since, in the case of a postal strike for example, it was possible that the Office would never receive the notification and, in view of the fact that no restoring of the time limit had been provided for in the case of circumstances beyond the control of the Office, the 12-month period would have elapsed without the Office having been able to express objections. For that reason, his Delegation would prefer the point of departure for the time limit to be the date of receipt of the notification by the Office.

1313. Mr. von MÜHLENDahl (Federal Republic of Germany) considered that the matter raised by the Delegation of Greece was not a real difficulty. He added that, although the Basic Proposal mentioned the term "notification," it did not define whether the decisive date was the date of dispatch or the date of receipt of the notification. He assumed, like most delegations, that it was the date of dispatch, because a uniform date was needed to count the one-year period. The Main Committee had agreed that it should be the date of recordal of the extension, under the assumption that that date would always be the same as the date of dispatch of the notification. The Drafting Committee made it clear that, where there was a difference between the date of recordal of the extension and the date of dispatch of the notification, that difference should

not be counted to the detriment of the designated Office. He concluded by saying that the Drafting Committee had adopted a favorable solution for the Offices and his Delegation warmly supported the appeal just made by the Director General.

1314. Mr. FOUAD (Egypt) said that his Delegation supported the new text of Article 5(2)(a) as proposed by the Drafting Committee.

1315. The CHAIRMAN asked the Delegation of Greece whether it could now lift its reservation. He noted that the Delegation requested further time for reflection.

1316. Mrs. MAYER-DOLLINER (Austria) said that her Delegation could fully agree with the statement just made by the Delegation of the Federal Republic of Germany.

1317. Mr. VOULGARIS (Greece) said that he still had doubts particularly since the matter directly concerned national Offices rather than relations between an Office and the International Bureau. He added that the solution proposed by the Drafting Committee would not be altogether equitable unless the Protocol contained special provisions for circumstances beyond the control of the Office. His Delegation therefore continued to think that the Basic Proposal was the better solution and reserved its position until the following meeting of the Plenary.

1318. The CHAIRMAN replied that it would be preferable for the Protocol to be adopted by the present meeting of the Main Committee in order that any amendments could be made to the text before the Plenary met for final adoption of the Protocol. He added that the fact of postponing the decision could raise practical problems.

1319. Mr. BOGSCH (Director General of WIPO) said that the text of the Protocol would not be amended in the Plenary unless a two-thirds majority of the delegations supported the proposal by the Delegation of Greece, which seemed rather unlikely to him. He explained that the text of Article 5(2)(a) as amended by the Drafting Committee would be presented before the Plenary. Numerous delegations comprised heads of industrial property Offices who considered the possibility of enjoying in practice an additional month to be altogether satisfactory. It was unlikely that a postal strike would last more than a few weeks and that the possibility of restoring time limits could be envisaged if the period for refusal was very short, but that was not the case since it was in fact one year, or even more if a declaration was made under subparagraphs (b) and (c).

1320. Mr. VOULGARIS (Greece) proposed that the text of the Basic Proposal be adopted or, if such was not the case, that a provision provide for restoration of the time limit in the case of circumstances beyond the control of the Office.

1321. Mr. MOTA MAIA (Portugal) understood the hesitation on the part of the Delegation of Greece. As head of the Portuguese industrial property Office, he pointed out, however, that even in an exceptional situation his Office had

always considered the one-year period to be sufficient for presenting any notifications of refusal. He felt that the Delegation of Greece would be able to accept the proposal by the Drafting Committee since the situation of the Office of Greece was not likely to be all that different from the situation of the Office of Portugal.

1322. Mr. SUGDEN (United Kingdom) said that he joined the Delegation of Portugal in making an appeal to the Delegation of Greece to accept that provision. He understood the position the Delegation of Greece had expressed, since there could be situations where a national Office had less time than normal in which to process the international registration. However, those situations would be rare and in case of a one-month or two-month postal strike, it would leave ten or 16 months to the Office. He considered that to introduce a provision on cases of force majeure could be dangerous because the advantage of a uniform date would be lost and the International Bureau would not know when the 18-month period or the 12-month period expired.

1323. The CHAIRMAN asked the Delegation of Greece once more whether it could accept the proposal by the Drafting Committee.

1324. Mr. VOULGARIS (Greece) said that his Delegation wished to maintain its proposal. He added, moreover, that Article 5(2)(c) would lead, in the event of opposition, to periods that differed depending on the Office. His Delegation was going to abstain on Article 5(2)(a) and would decide at the Plenary whether it could sign the Protocol. He pointed out that the abstention concerned only the amendment proposed by the Drafting Committee, since it had no objection with regard to the remainder of the Protocol.

1325. Mr. DE LAS HERAS LORENZO (Spain) wished to make an observation that could be useful for the Delegation of Greece. According to Article 3(4), an international registration was notified to the Offices by the International Bureau but, in addition, every international registration was published by that Bureau in its gazette "Les Marques internationales" of which a certain number of copies was sent to Offices. Consequently, each Office received two notifications: one was official, as provided for in Article 3(4), and the other was that constituted by sending "Les Marques internationales." He therefore concluded that it was very difficult, in the event of force majeure, for neither of those two notifications to be received and for the Office to be prevented from exercising its right of refusal.

1326. Mr. KOMAROV (Soviet Union) said that, if cases of force majeure were considered with respect to that provision, they could also be envisaged for other provisions. He considered that the proposal made by the Delegation of Greece might entail far-reaching consequences, which were, as practice showed, primarily of a theoretical nature.

1327. The CHAIRMAN considered that Article 5(2)(a) could be maintained as proposed by the Drafting Committee since there was a consensus of delegations and noted that the Delegation of Greece abstained without entering formal opposition.

1328. Mr. VOULGARIS (Greece) explained that his Delegation, whilst abstaining with regard to Article 5(2)(a) as modified by the Drafting Committee, had proposed that a provision be included in the Protocol permitting restoral of the time limit in cases of force majeure.
1329. The CHAIRMAN replied that the statement would be recorded in the minutes of the meeting.
1330. Article 5(2)(a) was adopted as proposed by the Drafting Committee.
1331. The CHAIRMAN returned to the discussion on Article 14(4)(a) with regard to the editorial difference between the English and French versions, on the one hand, and the Spanish version of the Protocol, on the other hand. He pointed out that, in the English and French versions, the words "at least one" were given, whereas the Spanish version contained the words "at least one other." He asked the Delegation of Spain to speak.
1332. Mr. CASADO CERVIÑO (Spain) observed that his Delegation had clearly explained in the meetings of the Drafting Committee why it had requested that the words "uno" and "otro" appear in the Spanish text. The grammatical rules of Spanish required the use of both "uno" and "otro."
1333. The CHAIRMAN noted that it was necessary in the Spanish language to use the word "other." He pointed out that the English and French versions of the Protocol could be aligned on the Spanish version or that the difference could be maintained. He first asked the Delegation of France to speak.
1334. Mr. BERAUDO (France) said that the French version of the Protocol could use the word "other" without changing the meaning of the text.
1335. The CHAIRMAN asked the Delegation of the United Kingdom whether that modification could be envisaged in English.
1336. Mr. SUGDEN (United Kingdom) said that his Delegation preferred the text as it was, but that it would follow whatever was proposed for the French text.
1337. Mr. MOTA MAIA (Portugal) said that there was no further problem since the English and French versions could be aligned on the Spanish text. He further wished to support the position of the Delegation of Spain since, the grammatical rules of Portuguese were similar to those of Spanish and the same question would arise when making the official translation of the Protocol into Portuguese.
1338. The CHAIRMAN said that the new French version of Article 14(4)(a) of the Protocol would read as follows: "sous réserve qu'au moins un de ces instruments ait été déposé par un pays partie à l'Arrangement de Madrid (Stockholm) et qu'au moins un autre de ces instruments ait été déposé par un

Etat non partie..." He asked whether all delegations were in agreement and noted that such was the case. He further noted that the Delegation of the United Kingdom was in agreement with the English version which used the expression "at least one other" although it did not consider it particularly elegant.

1339. The CHAIRMAN noted that there were no further requests to take the floor on Article 14(4)(a).

1340. Article 14(4)(a) was adopted as proposed by the Drafting Committee with editorial amendments in the English and French versions (see paragraph 1338).

1341. The CHAIRMAN asked whether any delegations wished to speak on other articles of the Protocol.

1342. Mr. BRUN (European Communities) said that his Delegation wished to raise two editorial points, in Article 8 and Article 2. He said that in Article 8(1), the text of the Madrid (Stockholm) Agreement had been reproduced, including, in the second line, the reference to the national fee. Since fees could be levied, under the Protocol, by regional Offices, it would be necessary to add the words "or regional" after the word "national" or to delete the word "national."

1343. The CHAIRMAN considered that the word "fee" alone could be used. He asked the Director General whether there was any drawback in deleting the word "national." He noted that such was not the case and that no delegation requested to take the floor. He therefore considered that the word "national" had been deleted in Article 8(1). He gave the floor back to the Delegation of the European Communities for it to speak on Article 2.

1344. Mr. BRUN (European Communities) considered that it was necessary, at the end of Article 2(1)(ii), to take account of the notion of "territory of an organization" that his Delegation had proposed and which had been accepted. The text as proposed by the Drafting Committee still contained the words "in such a State." He felt that there could be curious implications insofar as, for instance, a Canadian enterprise that was domiciled or that had a real and effective industrial or commercial establishment in Greenland could, on the basis of the text of the Protocol and once it was the owner of an application or a registration for a Community trademark, file an application for international registration under the Protocol. He concluded by saying that his Delegation proposed that the words "in such a State" be replaced by the words "in the territory of such an Organization."

1345. The CHAIRMAN noted that there existed a definition of the notion of territory of an organization. He proposed, from an editorial point of view, that the term "on the territory..." be used rather than "in the territory..." He asked whether other delegations wished to speak on that point.

1346. Mr. BRUN (European Communities) said that it would also be preferable, from an editorial point of view, to say "of the said Organization" or "of that Organization."

1347. The CHAIRMAN agreed that the words "on the territory of that Organization" be used. He asked the delegations having a language other than French whether there would be problems.

1348. Mr. von MÜHLEND AHL (Federal Republic of Germany) considered that, for reason of harmony with the text of Article 2(1)(i), at the end of item (ii) the terms "in the territory of the said Contracting Organization" should be used.

1349. The CHAIRMAN noted the proposal by the Delegation of the Federal Republic of Germany to use the expression "in the territory of the said Contracting Organization."

1350. Mr. BERAUDO (France) wondered whether there should not be formal harmonization between Article 2(1)(i) and Article 2(1)(ii).

1351. Mr. BOGSCH (Director General of WIPO) pointed out that the proposal by the Federal Republic of Germany aimed simply to use in item (ii) the words "the said Contracting Organization" since in item (i) the words "the said Contracting State" were used.

1352.1 The CHAIRMAN noted that there were no further requests to take the floor on that matter.

1352.2 He proposed to review the articles of the Protocol one by one in order to ascertain whether any problems subsisted.

1352.3 He opened the discussion on Article 1 and noted that there were no requests to take the floor.

1353. Article 1 was adopted as proposed by the Drafting Committee.

1354. The CHAIRMAN opened the discussion on Article 2 and noted that there were no requests to take the floor.

1355. Article 2 was adopted as proposed by the Drafting Committee with an amendment to paragraph (1)(ii) (see paragraph 1349).

1356. The CHAIRMAN opened the discussion on Article 3.

1357. Mr. COMTE (Chairman of the Drafting Committee) mentioned that in paragraph (3)(ii) the word "notifications" was in the plural in the French version and, consequently, the word should also appear in the plural in the English text.

1358. The CHAIRMAN noted that the Delegation of the United Kingdom had no objections and asked the Delegation of Spain whether such was also the case for the Spanish text.

1359. Mr. DE LAS HERAS LORENZO (Spain) said that his observation referred to paragraph (4) of that Article in the last sentence but one. He considered that the term "registro internacional" given in capitals in the Spanish text should be in lower case as in the French text.

1360. The CHAIRMAN said that the International Bureau would take that into account.

1361. Article 3 was adopted as proposed by the Drafting Committee with an amendment to paragraph (3)(ii) of the English version (see paragraph 1357) and an amendment to paragraph (4) of the Spanish version (see paragraph 1359).

1362. The CHAIRMAN opened the discussion on Article 3bis and noted that there were no requests to take the floor.

1363. Article 3bis was adopted as proposed by the Drafting Committee.

1364. The CHAIRMAN opened the discussion on Article 3ter and noted that there were no requests to take the floor.

1365. Article 3ter was adopted as proposed by the Drafting Committee.

1366. The CHAIRMAN opened the discussion on Article 4.

1367. Mr. DE LAS HERAS LORENZO (Spain), referring to the first line of Article 4, and more particularly to the adjective "efectuado" which was in the singular in the Spanish text, said that the adjective would have to be in the plural since it referred to two nouns.

1368. The CHAIRMAN said that the International Bureau would take that into account.

1369. Article 4 was adopted as proposed by the Drafting Committee with an amendment to paragraph (1)(a) of the Spanish version (see paragraph 1367).

1370. The CHAIRMAN opened the discussion on Article 4bis and noted that there were no requests to take the floor.

1371. Article 4bis was adopted as proposed by the Drafting Committee.

1372. The CHAIRMAN opened the discussion on Article 5.

1373. Mr. COMTE (Chairman of the Drafting Committee) said that paragraph (2)(d) mentioned the words "date of entry into force of the Protocol." He mentioned that the word "this" should be used in front of the word "Protocol" since the word "Protocol" alone was only used in the headings of articles.

1374. Mr. VOULGARIS (Greece) repeated the position of his Delegation in respect of Article 5(2)(a) and the proposal to maintain the text adopted by the Main Committee before amendment by the Drafting Committee or to add a provision on the restoral of the time limit in cases of force majeure. He added, however, that his Delegation abstained and would not vote against Article 5.

1375. Mr. NGONGANG OUANDJI (Cameroon) raised a question with respect to the French version of Article 5(2)(c)(i). He proposed that the French version of item (i) should be amended to read: "avant l'expiration des 18 mois, il a informé le Bureau international..."

1376. Mr. BERAUDO (France) said that his Delegation preferred to maintain the text as it stood.

1377. The CHAIRMAN asked whether other delegations wished to speak. He noted that such was not the case and considered that Article 5 was adopted with the reservations mentioned by the Delegation of Greece.

1378. Mr. VOULGARIS (Greece) said that, as far as Article 5(2)(a) was concerned, his Delegation had not made a reservation, but a proposal and said that it abstained for the moment. He explained that a reservation would mean that he voted against paragraph (2)(a), which was not the case.

1379. The CHAIRMAN modified his statement and said that there was an abstention on the part of the Delegation of Greece.

1380. Article 5 was adopted as proposed by the Drafting Committee with an amendment to paragraph (2)(d) (see paragraph 1373).

1381. The CHAIRMAN opened the discussion on Article 5bis and noted that there were no requests to take the floor.

1382. Article 5bis was adopted as proposed by the Drafting Committee.

1383. The CHAIRMAN opened the discussion on Article 5ter.

1384. Mr. SUGDEN (United Kingdom) said that his Delegation had a slight misunderstanding of what was agreed in the Drafting Committee on Article 5ter(1). He believed that that provision should use the term "upon the payment" rather than the term "against the payment." He added that in paragraph (2) of the English text the term "upon payment" was used and the same should apply in paragraph (1).

1385. The CHAIRMAN took note of the amendment proposed by the Delegation of the United Kingdom.

1386. Article 5ter was adopted as proposed by the Drafting Committee with an amendment to paragraph (1) of the English version (see paragraph 1384).

1387. The CHAIRMAN opened the discussion on Article 6 and noted that there were no requests to take the floor.

1388. Article 6 was adopted as proposed by the Drafting Committee.

1389. The CHAIRMAN opened the discussion on Article 7.

1390. Mr. NGONGANG OUANDJI (Cameroon) asked for an explanation of the use of the words "an unofficial notice" in Article 7(3). He wondered whether the term "an official notice" should not be used.

1391. Mr. BOGSCH (Director General of WIPO) said that the term "unofficial notice" was used since if, for any reason whatever, the International Bureau did not send a notice, such omission would not have legal consequences.

1392. Article 7 was adopted as proposed by the Drafting Committee.

1393. The CHAIRMAN opened the discussion on Article 8.

1394. Mr. COMTE (Chairman of the Drafting Committee) announced a correction to Article 8(7)(b) in which it should read: "the date of entry into force of this Protocol."

1395. Article 8 was adopted as proposed by the Drafting Committee with an amendment to paragraph (1) (see paragraph 1343) and an amendment to paragraph (7)(b) (see paragraph 1394).

1396. The CHAIRMAN opened the discussion on Article 9 and noted that there were no requests to take the floor.

1397. Article 9 was adopted as proposed by the Drafting Committee.

1398. The CHAIRMAN opened the discussion on Article 9bis and noted that there were no requests to take the floor.

1399. Article 9bis was adopted as proposed by the Drafting Committee.

1400. The CHAIRMAN opened the discussion on Article 9ter and noted that there were no requests to take the floor.

1401. Article 9ter was adopted as proposed by the Drafting Committee.

1402. The CHAIRMAN opened the discussion on Article 9quater.

1403. Mr. FURSTNER (Netherlands) proposed that the situation be slightly clarified. He indicated that, as a general rule, the entry into force of the Protocol would occur three months after the deposit of an instrument by a given country. As regards the Benelux, that would mean three months after the last of the Benelux countries had deposited its instruments. In Article 9quater of the Madrid Agreement it was mentioned that the notification to the International Bureau "shall not take effect until six months" after the date of its communication. His Delegation, therefore, suggested to align the two periods and to replace the period of six months in Article 9quater(2) of the Protocol by three months.

1404. The CHAIRMAN noted that there were no objections to the proposal made by the Delegation of the Netherlands.

1405. Article 9quater was adopted as proposed by the Drafting Committee with the amendment proposed by the Delegation of the Netherlands (see paragraph 1403).

1406. The CHAIRMAN opened the discussion on Article 9quinquies.

1407. Mr. COMTE (Chairman of the Drafting Committee) felt it was preferable to replace the expression "made under Article 3ter(2)" by the expression "according to Article 3ter(2)," since the same Article had already used the expression "according to Article 3(4)."

1408. The CHAIRMAN noted that there were no objections.

1409. Article 9quinquies was adopted as proposed by the Drafting Committee with an amendment (see paragraph 1407).

1410. The CHAIRMAN opened the discussion on Article 9sexies and noted that there were no requests to take the floor.

1411. Article 9sexies was adopted as proposed by the Drafting Committee.

1412. The CHAIRMAN opened the discussion on Article 10 and noted that there were no requests to take the floor.

1413. Article 10 was adopted as proposed by the Drafting Committee.

1414. The CHAIRMAN opened the discussion on Article 11 and noted that there were no requests to take the floor.

1415. Article 11 was adopted as proposed by the Drafting Committee.

1416. The CHAIRMAN opened the discussion on Article 12.

1417. Mr. COMTE (Chairman of the Drafting Committee) mentioned that Article 12 was one of the rare articles in which there were both references to certain articles of the Madrid Agreement and to certain articles of the Protocol. He added that, to make things perfectly clear, he proposed that the words "of the said Agreement" be added after the words "any reference to Article 8."

1418. Article 12 was adopted as proposed by the Drafting Committee with an amendment (see paragraph 1417).

1419. The CHAIRMAN opened the discussion on Article 13 and noted that there were no requests to take the floor.

1420. Article 13 was adopted as proposed by the Drafting Committee.

1421. The CHAIRMAN opened the discussion on Article 14 and noted that there were no requests to take the floor.

1422. Article 14 was adopted as proposed by the Drafting Committee.

1423. The CHAIRMAN opened the discussion on Article 15.

1424. Mr. COMTE (Chairman of the Drafting Committee) said that, in paragraph (5)(a), the words "according to" should be used before the reference to Article 3ter(2).

1425. Article 15 was adopted as proposed by the Drafting Committee with an amendment to paragraph (5)(a) (see paragraph 1424).

1426. The CHAIRMAN opened the discussion on Article 16 and noted that there were no requests to take the floor.

1427. Article 16 was adopted as proposed by the Drafting Committee.

1428.1 The CHAIRMAN noted that the Main Committee had definitively adopted the Protocol that was to be presented to the Plenary for adoption by the Diplomatic Conference.

1428.2 He thanked all delegations for their understanding and their readiness to compromise that had made it possible to achieve the text of the Protocol. That text had, generally, been adopted by consensus and that fact would assure its successful future. He also thanked the Director General, the International Bureau, together with the interpreters.

1428.3 He pointed out that the following meeting would be the Plenary to adopt the Protocol. He added that he would also chair the Extraordinary Assembly of the Madrid Union. He then proposed to close the meeting.

1429. Mr. KRIEGER (Federal Republic of Germany) asked at what time the final statements of the delegations could take place.

1430. Mr. BOGSCH (Director General of WIPO) said that the final declarations would be made just before the signature of the Protocol. He added that many delegations, having full powers, indicated that they would probably sign the Protocol, but that a final decision depended on what the other countries would do. He indicated that the 18 countries which had the full powers to sign the Protocol were at this moment the Democratic People's Republic of Korea, Denmark, France, the German Democratic Republic, Germany (Federal Republic of), Greece, Hungary, Italy, Liechtenstein, Luxembourg, Monaco, Mongolia, Portugal, the Soviet Union, Spain, Switzerland, the United Kingdom and Yugoslavia. He wondered whether the delegations of those countries could, subject to last-minute decisions, indicate whether they would sign the Protocol since that would give mutual assurances to all other countries that they would not be alone or very few to sign the Protocol. He emphasized that he was speaking about the Protocol and not the Final Act.

1431. Mr. KOMAROV (Soviet Union) said that the proposed procedure could be accepted. The delegations could indicate that they had a general intention to sign the Protocol, subject to the absence of specific circumstances.

1432. Mr. CASADO CERVIÑO (Spain) said that the Delegation of Spain intended to sign the Protocol.

1433. Mr. KIM Yu Chol (Democratic People's Republic of Korea) said that his Delegation intended to sign the Protocol.

1434. Mrs. ØSTERBORG (Denmark) said that her Delegation had the intention of signing the Protocol.

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1435. Miss VIDAUD (France) said that her Delegation also intended to sign the Protocol.
1436. Mr. HEMMERLING (German Democratic Republic) said that his Delegation intended to sign the Protocol.
1437. Mr. von MÜHLEND AHL (Federal Republic of Germany) said that his Delegation intended to sign the Protocol.
1438. Mr. VOULGARIS (Greece) said that his country intended to sign the Protocol.
1439. Mr. PUSZTAI (Hungary) said that his Delegation was ready to sign the Protocol.
1440. Mr. TSEDENDAMBA (Mongolia) said that his Delegation intended to sign the Protocol.
1441. Mr. MOTA MAIA (Portugal) said that his Delegation intended to sign the Protocol.
1442. Mr. KOMAROV (Soviet Union) said that his Delegation was ready to sign the Protocol.
1443. Mr. COMTE (Switzerland) said that his Delegation intended to sign the Protocol.
1444. Mr. TARNOFSKY (United Kingdom) said that his Delegation intended to sign the Protocol.
1445. Mr. ŽARKOVIĆ (Yugoslavia) said that his Delegation intended to sign the Protocol.
1446. Mr. BOGSCH (Director General of WIPO) asked whether any other countries he had not yet mentioned had the intention of signing the Protocol.
1447. Mr. FOUAD (Egypt) said that his country would sign the Protocol once his Government had approved it.
1448. Mr. MEKIDECHE (Algeria) said that his Delegation reserved the possibility of signing the Protocol, although it did not have full powers.
1449. Mrs. MAYER-DOLLINER (Austria) said that her Delegation intended to sign the Protocol if it had the full powers from its Government.

1450. Mr. BOGSCH (Director General of WIPO) said, speaking under the control of the Chairman and of the Secretary of the Credentials Committee, that countries which had credentials would also be regarded as being entitled to sign. He obtained confirmation from the Secretary of the Credentials Committee that his interpretation was correct and that, therefore, the Delegations of Algeria, Austria and Egypt would be able to sign if they wished to do so.

1451. Mr. von MÜHLENDahl (Federal Republic of Germany) expressed the deep gratitude of the Main Committee to its Chairman and added that Mr. Combaldieu's election had been quite obvious for formal reasons, since he was the present Chairman of the Assembly of the Madrid Union. Furthermore, all delegations also knew that his long experience in matters of protection of intellectual property made him the best possible Chairman. He had met all those expectations and had to be congratulated on his admirable performance.

1452. The CHAIRMAN, after having noted that there were no further requests to take the floor, closed the final meeting of the Main Committee.

PARTICIPANTS

LIST OF PARTICIPANTS

I. MEMBER DELEGATIONSALGERIAHead of the Delegation

Djelloul KHATIB, Ambassadeur, Ambassade d'Algérie, Madrid

Delegates

Ferhat MEKIDECHE, Chef de bureau, Direction de la qualité, Ministère du commerce

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GABR N. (Mrs.) (Egypt)

Delegate: 337Vice-Chairman of the Drafting Committee: 353GALAN E. (International Association for the Advancement of Teaching and
Research in Intellectual Property (ATRIP))Observer: 349

GEROULAKOS P. (Greece)

Delegate: 338

GEUZE M.C. (Netherlands)

Delegate: 340

Interventions in the Main Committee: 1121; 1158

GEVERS F. (Benelux Association of Trademark and Design Agents (BMM); European
Communities Trade Mark Practitioners' Association (ECTA))Observer: 348; 349

Interventions in the Main Committee: 538; 628; 743; 745; 1140

GIL VEGA V. (Colegio Oficial de Agentes de la Propiedad Industrial (COAPI))

Observer: 348

GORDON-LENNOX N. (United Kingdom)

Head of the Delegation: 342

GORLENKO S.A. (Ms.) (Soviet Union)

Delegate: 341Interventions in the Main Committee: 203; 205; 209; 224; 270; 292; 312;
338; 615; 664; 764; 832; 1005; 1076GRAFFIGNA-SPERLING C. (Mrs.) (World Intellectual Property Organization (WIPO))
Senior Program Officer, External Relations Bureau: 351

GROOM J.A. (Institute of Trade Mark Agents (ITMA))

Observer: 349

- GUAN G. (China)
Head of the Delegation: 345
- GUESSOUS A. (Morocco)
Head of the Delegation: 340
- HANSMANN A. (Committee of National Institutes of Patent Agents (CNIPA);
Federal Chamber of Patent Attorneys (FCPA); International Federation of
Industrial Property Attorneys (FICPI))
Observer: 348
Intervention in the Plenary: 61
Interventions in the Main Committee: 558; 636; 857; 885; 1089
- HARLÉ R. (International Association for the Protection of Industrial Property
(AIPPI))
Observer: 349
Intervention in the Plenary: 58
Interventions in the Main Committee: 193; 195; 255; 397; 399; 517; 631;
782; 854; 887; 1085; 1144
- HAYDEN H.A. (Ireland)
Delegate: 339
- HEIL G. (European Communities (EC))
Delegate: 344
- HEMMERLING J. (German Democratic Republic)
Head of the Delegation: 337
Vice-President of the Conference: 352
Interventions in the Main Committee: 339; 364; 382; 598; 1070; 1207; 1436
- HIDALGO LLAMAS M. (Spain)
Delegate: 342
- HONG Y. (Democratic People's Republic of Korea)
Delegate: 336
- HUBER J. (European Communities (EC))
Delegate: 344
- IANNANTUONO P. (Italy)
Alternate Head of the Delegation: 339
Interventions in the Main Committee: 325; 389; 607; 700; 1058
- ILIEV K. (Bulgaria)
Head of the Delegation: 334
Intervention in the Plenary: 123
- JACOBACCI G. (Italian National Institute for the Defense, Identification and
Certification of the Authenticity of Trademarks (INDICAM))
Observer: 349
- JEGEDE E.O. (Nigeria)
Delegate: 346
- JOHNSON T.L. (Chartered Institute of Patent Agents (CIPA); Committee of
National Institutes of Patent Agents (CNIPA); Institute of Trade Mark
Agents (ITMA); International Federation of Industrial Property Attorneys
(FICPI))
Observer: 348; 349
Interventions in the Main Committee: 408; 632; 751; 783; 794

- JONES B.L. (Miss) (Argentina)
Delegate: 345
Intervention in the Plenary: 141
- KARAYANEV P. (Bulgaria)
Alternate Head of the Delegation: 336
Interventions in the Main Committee: 172; 174; 213; 340; 385; 502; 606;
694; 774; 776; 786; 876; 884; 981;
1063; 1071; 1146; 1201
- KAREKEN R. (The United States Trademark Association (USTA))
Observer: 350
- KHATIB D. (Algeria)
Head of the Delegation: 335
- KIK C. (Ms.) (Union of European Practitioners in Industrial Property
(UEPIP))
Observer: 350
Intervention in the Plenary: 60
Interventions in the Main Committee: 394; 539; 1087
- KIM T.J. (Republic of Korea)
Delegate: 347
Intervention in the Plenary: 86
- KIM Y. C. (Democratic People's Republic of Korea)
Delegate: 336
Interventions in the Plenary: 102; 129
Interventions in the Main Committee: 367; 650; 1077; 1433
- KOMAROV L.E. (Soviet Union)
Head of the Delegation: 341
Chairman of the Credentials Committee: 352
Member of the Steering Committee: 353
Interventions in the Plenary: 6; 15; 41; 71; 81; 83; 99; 111; 126
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870; 873; 883; 922; 925; 1120;
1211; 1326; 1431; 1442
- KOMMER M. (Mrs.) (Luxembourg)
Delegate: 339
- KRIEGER A. (Germany (Federal Republic of))
Alternate Head of the Delegation: 337
Vice-President of the Conference: 352
Interventions in the Plenary: 34; 122
Interventions in the Main Committee: 331; 375; 377; 1202; 1204; 1221;
1429
- KUNHARDT H.W. (European Communities (EC))
Delegate: 344
- KUNZ-HALLSTEIN H.P. (Max Planck Institute for Foreign and International
Patent, Copyright and Competition Law (MPI))
Observer: 350

- KUNZE G. (European Association of Industries of Branded Products (AIM))
Observer: 349
Interventions in the Main Committee: 480; 537; 633; 695; 697; 707; 709;
778; 858; 880; 1084; 1141; 1186;
1192
- LADJOUZI M.S. (Algeria)
Delegate: 335
- LAHTINEN S.-L. (Ms.) (Finland)
Delegate: 346
- LAUBER J. (Ms.) (The United States Trademark Association (USTA))
Observer: 350
- LEARDINI P. (European Federation of Pharmaceutical Industries' Associations (EFPIA))
Observer: 349
- LEDAKIS G. (World Intellectual Property Organization (WIPO))
Legal Counsel: 351
Secretary of the Credentials Committee: 352
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- LI J.G. (Democratic People's Republic of Korea)
Head of the Delegation: 336
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Intervention in the Main Committee: 1216
- LISAVAC T. (Mrs.) (Yugoslavia)
Alternate Head of the Delegation: 343
Intervention in the Plenary: 127
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- LUOMA R. (Finland)
Alternate Head of the Delegation: 346
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- MATSARSKY V.I. (Soviet Union)
Delegate: 341
- MAUGUÉ P. (World Intellectual Property Organization (WIPO))
Senior Counsellor, Industrial Property (Special Projects) Division: 351
Secretary of the Drafting Committee: 351
- MAYER R. (Luxembourg)
Head of the Delegation: 339
- MAYER-DOLLINER G. (Mrs.) (Austria)
Alternate Head of the Delegation: 335
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284; 298; 313; 378; 464; 496; 532;
555; 595; 601; 679; 682; 703; 733;
747; 802; 847; 866; 1068; 1127;
1185; 1316; 1449

- MBALA D. (Zaire)
Alternate Head of the Delegation: 347
- MEKIDECHE F. (Algeria)
Delegate: 335
Vice-Chairman of the Main Committee: 353
Intervention in the Plenary: 132
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1072; 1103; 1105; 1108; 1448
- MELLOR K. (European Communities (EC))
Delegate: 344
- MESELLATI H. (Libya)
Delegate: 346
- MILENKOVIĆ V. (Yugoslavia)
Delegate: 343
- MIYAMOTO T. (Japan)
Delegate: 346
- MOENCH M. (Mrs.) (German Democratic Republic)
Delegate: 337
- MOLDOVEANU P. (Romania)
Delegate: 341
Intervention in the Plenary: 104
- MOLIJN H. (Union of Industrial and Employers' Confederations of Europe (UNICE))
Observer: 350
Interventions in the Main Committee: 410; 482; 568; 627; 777; 856; 995;
1081; 1142; 1295
- MÖRNER A. (Ms.) (Sweden)
Alternate Head of the Delegation: 347
Intervention in the Plenary: 54
Interventions in the Main Committee: 387; 784
- MOTA MAIA J. (Portugal)
Alternate Head of the Delegation: 340
Vice-President of the Conference: 352
Interventions in the Plenary: 5; 46; 70; 72; 74; 76; 78; 80; 85; 87; 89;
92; 95; 98; 100; 105; 133
Interventions in the Main Committee: 179; 251; 272; 306; 391; 600; 613;
987; 996; 1037; 1079; 1179; 1280;
1321; 1337; 1441
- MÜCK E. (Czechoslovakia)
Head of the Delegation: 336
Intervention in the Plenary: 40
- MUELLER H.-J. (Committee of National Institutes of Patent Agents (CNIPA);
Federal Chamber of Patent Attorneys (FCPA))
Observer: 348

MÜHLEND AHL A. von (Germany (Federal Republic of))

Deputy Head of the Delegation: 338

Vice-Chairman of the Drafting Committee: 353

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597; 617; 620; 653; 678; 702; 720;
724; 749; 765; 769; 790; 804; 813;
835; 851; 874; 881; 928; 959; 973;
985; 990; 1002; 1010; 1014; 1023;
1027; 1040; 1051; 1054; 1096; 1115;
1118; 1133; 1153; 1156; 1174; 1188;
1268; 1279; 1313; 1348; 1437; 1451

MUÑOZ CAPARRÓS C. (Mrs.) (Spain)

Delegate: 341

Intervention in the Plenary: 33

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MURALT D. von (Liechtenstein; Switzerland)

Delegate: 339; 342

NGONGANG OUANDJI A. (Cameroon)

Head of the Delegation: 345

Interventions in the Plenary: 49; 142

Interventions in the Main Committee: 1220; 1375; 1390

NGUYEN D.T. (Viet Nam)

Head of the Delegation: 343

Vice-President of the Conference: 352

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NIELSEN F. (De Danske Patentageters Forening (DPAA))

Observer: 348

NIKLISSON S. (Sweden)

Head of the Delegation: 347

Intervention in the Main Committee: 1282

NOOTEBOOM E. (European Communities (EC))

Delegate: 343

NZINAHORA P. (Burundi)

Delegate: 345

Intervention in the Plenary: 103

O'DONOGHUE F.X. (Ireland)

Delegate: 339

O'NEILL A. (Ireland)

Delegate: 339

- ØSTERBORG L. (Mrs.) (Denmark)
Deputy Head of the Delegation: 336
Interventions in the Main Committee: 852; 1145; 1224; 1258; 1260; 1272;
1275; 1434
- OUSHAKOV V.M. (Soviet Union)
Delegate: 341
- PANIZO ARCOS F. (Spain)
Head of the Delegation: 341
Intervention in the Plenary: 118
- PASCHE J.-D. (Switzerland)
Alternate Head of the Delegation: 342
- PASSEMAR B. de (Center for the International Study of Industrial Property
(CEIPI))
Observer: 348
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- PAULOURO DAS NEVES J.C. (Portugal)
Head of the Delegation: 340
- PEETERS W.J.S. (Belgium)
Deputy Head of the Delegation: 335
Intervention in the Plenary: 44
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- PEREIRA DA CRUZ J. (Portugal)
Delegate: 340
- PERICO D. (Italy)
Alternate Delegate: 339
- PEYRON P. (Italy)
Delegate: 339
- PIMOSHENKO Y.P. (Soviet Union)
Delegate: 341
- POMBO F. (International Chamber of Commerce (ICC))
Observer: 349
- PROŠEK J. (Czechoslovakia)
Delegate: 336
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Interventions in the Main Committee: 171; 182; 185; 210; 315; 366; 586;
610; 837; 908; 1059; 1075; 1148;
1292
- PUSZTAI G. (Hungary)
Head of the Delegation: 338
Vice-Chairman of the Main Committee: 353
Interventions in the Plenary: 28; 134
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- QAYOOM M. (World Intellectual Property Organization (WIPO))
Senior Program Officer, External Relations Bureau: 351
- RAMBLA JOVANI A. (Spain)
Delegate: 341
- REGNER H.O.J. (Sweden)
Adviser: 347
- ROLFE R.A. (Ms.) (The United States Trademark Association (USTA))
Observer: 350
- ROSSITTER D.T. (Pharmaceutical Trade Marks Group (PTMG); Trade Marks; Patents
and Designs Federation (TMPDF))
Observer: 350
- SALÉNKO L.P. (Mrs.) (Soviet Union)
Delegate: 341
- SAMPAIO A. de (International Federation of Industrial Property Attorneys
(FICPI))
Observer: 349
- SCHAEFERS A. (World Intellectual Property Organization (WIPO))
Deputy Director General: 351
Secretary of the Conference: 352
- SCHLESSER F. (Luxembourg)
Alternate Head of the Delegation: 339
- SCHROETER S. (German Democratic Republic)
Delegate: 337
Intervention in the Plenary: 56
- SCHWAB B. (European Communities (EC))
Deputy Head of the Delegation: 343
Interventions in the Main Committee: 588; 609; 622; 950; 953; 958; 962
- SCHWARTZ I.E. (European Communities (EC))
Head of the Delegation: 343
Interventions in the Plenary: 42; 136
Interventions in the Main Committee: 163; 297; 354; 763; 1285
- SCORDAMAGLIA V. (European Communities (EC))
Delegate: 344
- SHANDA-TONME J.-C. (Cameroon)
Adviser: 345
Interventions in the Main Committee: 392; 435; 440; 579; 714; 719; 980;
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1225; 1237; 1239
- SOLORZANO GONZALEZ E. (European Communities (EC))
Delegate: 344
- SONN H. (International Federation of Industrial Property Attorneys (FICPI))
Observer: 349
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- SUGDEN A. (United Kingdom)
Delegate: 342
Interventions in the Main Committee: 849; 918; 920; 986; 992; 1016;
1022; 1028; 1098; 1151; 1173; 1189;
1209; 1250; 1252; 1266; 1276; 1322;
1336; 1384
- SUNDSTRÖM K. (Ms.) (Sweden)
Alternate Head of the Delegation: 347
- SVENDSEN N.H. (Denmark)
Delegate: 336
- TAKAKURA S. (Japan)
Delegate: 346
Intervention in the Plenary: 53
- TAO J. (Mrs.) (China)
Delegate: 345
Interventions in the Plenary: 50; 84; 143
Intervention in the Main Committee: 400
- TARNOFSKY V. (United Kingdom)
Alternate Head of the Delegation: 342
Vice-President of the Conference: 352
Intervention in the Plenary: 30
Interventions in the Main Committee: 177; 332; 363; 415; 421; 442; 566;
587; 642; 706; 1444
- TATHAM D.H. (Trade Marks, Patents and Designs Federation (TMPDF))
Observer: 350
Intervention in the Plenary: 65
Interventions in the Main Committee: 264; 396; 521; 637; 781; 855
- THIREAU H. (Chamber of Trademark and Design Specialists (CSMM))
Observer: 348
- THOFT P.L. (Denmark)
Head of the Delegation: 336
Intervention in the Plenary: 131
- THRIERR A. (Union of Manufacturers for the International Protection of
Industrial and Artistic Property (UNIFAB))
Observer: 350
Interventions in the Main Committee: 341; 412
- TODD M. (United Kingdom)
Delegate: 342
- TSEDENDAMBA D. (Mongolia)
Head of the Delegation: 340
Interventions in the Plenary: 45; 140
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- TURNER D.G. (Institute of Trade Mark Agents (ITMA))
Observer: 349
Intervention in the Plenary: 64
Interventions in the Main Committee: 407; 516; 630; 779; 809

- TURTOLA J. (Finland)
Alternate Delegate: 346
- ULLOA G. (International League for Competition Law (LIDC))
Observer: 349
- VAN BAUWEL L.J.M. (Benelux Trademark Office (BBM))
Observer: 348
Intervention in the Plenary: 57
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- VAN KAAM M. (Union of Industrial and Employers' Confederations of Europe (UNICE))
Observer: 350
- VERCAUTEREN DRUBBEL P. (Belgium)
Delegate: 335
- VERSCHURE D. (Netherlands)
Deputy Head of the Delegation: 340
Intervention in the Plenary: 125
- VIDAL N. (Argentina)
Head of the Delegation: 345
- VIDAUD B. (Miss) (France)
Delegate: 337
Interventions in the Main Committee: 157; 218; 242; 246; 254; 314; 321;
352; 365; 419; 432; 441; 461; 510;
535; 550; 575; 604; 661; 670; 672;
727; 738; 772; 792; 801; 829; 831;
943; 1064; 1078; 1095; 1128; 1132;
1161; 1177; 1184; 1435
- VOULGARIS J. (Greece)
Alternate Head of the Delegation: 338
Interventions in the Main Committee: 907; 977; 979; 1009; 1012; 1018;
1025; 1152; 1170; 1182; 1214; 1235;
1245; 1256; 1269; 1283; 1289; 1306;
1308; 1310; 1312; 1317; 1320; 1324;
1328; 1374; 1378; 1438
- VU H.T. (Viet Nam)
Delegate: 343
Interventions in the Main Committee: 379; 1215
- WIN P.P. de (World Federation of Advertisers (WFA))
Observer: 350
- WINTER F. (Bundesverband der Deutschen Industrie e.V. (BDI); Deutsche
Vereinigung für gewerblichen Rechtsschutz und Urheberrecht (DVGR))
Observer: 348
Intervention in the Main Committee: 1088
- WINTERBEECK C. (Belgium)
Head of the Delegation: 335
Interventions in the Plenary: 77; 130

YBAÑEZ RUBIO I. (Spain)

Delegate: 342

YESTE LOPEZ M.T. (Mrs.) (Spain)

Delegate: 342

ŽARKOVIĆ B. (Yugoslavia)

Head of the Delegation: 343

Vice-President of the Conference: 352

Intervention in the Plenary: 39

Intervention in the Main Committee: 1445

ZARMOUH O.O. (Libya)

Delegate: 346

ZOLBOOT D. (Mongolia)

Delegate: 340

Interventions in the Main Committee: 381; 616; 1080; 1219

